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7 Attorneys for Defendants
THE CITY OF SUNNYVALE, THE MAYOR OF
8 SUNNYVALE, ANTHONY SPITALERI in his
official capacity, THE CHIEF OF THE
9 SUNNYVALE DEPARTMENT OF PUBLIC
SAFETY, FRANK GRGURINA, in his official
10 capacity

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN JOSE DIVISION
14

15 LEONARD FYOCK,
SCOTT HOCHSTETLER,
16 WILLIAM DOUGLAS,
DAVID PEARSON, BRAD SEIFERS, and
17 ROD SWANSON,

18 Plaintiffs,

19 v.

20 THE CITY OF SUNNYVALE, THE
MAYOR OF SUNNYVALE,
21 ANTHONY SPITALERI in his official
capacity, THE CHIEF OF THE
22 SUNNYVALE DEPARTMENT OF
PUBLIC SAFETY, FRANK GRGURINA,
23 in his official capacity, and DOES 1-10

24 Defendants.
25

Case No. 13-cv-05807 RMW

**DECLARATION OF RODERICK M.
THOMPSON IN SUPPORT OF
SUNNYVALE'S OPPOSITION TO
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

Date: February 21, 2014
Time: 9:00 a.m.
Location: San Jose Courthouse
Courtroom 6 – 4th Floor
280 South 1st Street
San Jose, CA 95113

26 I, Roderick M. Thompson, declare as follows:

27 1. I am licensed to practice law in the state of California and am a partner at the law
28 firm of Farella Braun + Martel LLP, counsel for the City of Sunnyvale; the former Mayor of

1 Sunnyvale, Anthony Spitaleri, in his official capacity; and the Chief of the Sunnyvale Department
2 of Public Safety, Frank Grgurina, in his official capacity (“Defendants” or the “City”). I have
3 personal knowledge of the matters stated herein and if called and sworn as a witness, I could and
4 would competently testify to the facts set forth herein.

5 2. Attached as Exhibit 1 is a true and correct copy of California Statutes, 1999, Ch.
6 129.

7 3. Attached as Exhibit 2 is a true and correct copy of *Mass Shootings in the United*
8 *States involving High-Capacity Ammunition Magazines* from the Violence Policy Center.

9 4. Attached as Exhibit 3 is a true and correct copy of an article, Blair, *et al.*, “Active
10 Shooter Events from 2000 to 2012” from the FBI Law Enforcement Bulletin, dated January 2014,
11 available at <http://leb.fbi.gov/2014/january/active-shooter-events-from-2000-to-2012>.

12 5. Attached as Exhibit 4 is a true and correct copy of a presentation from the Mayors
13 Against Illegal Guns, *Analysis of Recent Mass Shootings*, September 2013.

14 6. Attached as Exhibit 5 are true and correct copies of various news articles
15 downloaded from Westlaw New Room regarding media accounts where a shooter was subdued or
16 tackled while reloading.

17 7. Attached as Exhibit 6 is a true and correct copy of a memorandum from the
18 Department of The Treasury, *Report and Recommendation of the Importability of Certain*
19 *Semiautomatic Rifles*, dated July 6, 1989.

20 8. Attached as Exhibit 7 is a true and correct copy of a study by the Department of
21 The Treasury, *Study on the Sporting Suitability of Modified Semiautomatic Assault Rifles*, April
22 1998.

23 9. Attached as Exhibit 8 is a true and correct copy of House of Representatives
24 Report No. 103-489 (1994).

25 10. Attached as Exhibit 9 is a true and correct copy of a website printout of Santa
26 Clara County Election Results from November 5, 2013, available at
27 http://results.enr.clarityelections.com/CA/Santa_Clara/49877/123386/Web01/en/summary.html.

28 11. Attached as Exhibit 10 is a true and correct copy of a report, *The Militarization of*

1 *the U.S. Civilian Firearms Market*, by Violence Policy Center, June 2011.

2 12. Attached as Exhibit 11 is a true and correct copy of the written testimony of
3 Laurence H. Tribe submitted to the Senate Judiciary Committee, February 12, 2013.

4 13. Attached as Exhibit 12 are true and correct copies of excerpts of Gary Kleck, *Point*
5 *Blank: Guns & Violence in America*, 1991 (2d ed. 2009).

6 14. Attached as Exhibit 13 is a true and correct copy of a web reprint of Claude
7 Werner, *The Armed Citizen: A Five-Year Analysis*, printed on December 20, 2013, available at
8 [www.gunssavelives.net/self-defense/analysis-of-five-years-of-armed-encounters-with-data-](http://www.gunssavelives.net/self-defense/analysis-of-five-years-of-armed-encounters-with-data-tables/)
9 [tables/](http://www.gunssavelives.net/self-defense/analysis-of-five-years-of-armed-encounters-with-data-tables/).

10 15. Attached as Exhibit 14 is a true and correct copy of an excerpt of Massad Ayoob,
11 *Gun Digest Book of Concealed Carry*, 2012 Krause Publications (2d Ed.).

12 16. Attached as Exhibit 15 is a true and correct copy of a U.S. Department of Justice,
13 Bureau of Alcohol, Tobacco, Firearms and Explosives report, *ATF Study on the Importability of*
14 *Certain Shotguns*, January 2011.

15 17. Attached as Exhibit 16 is a true and correct copy of a report by the U.S.
16 Department of The Treasury, *Study on the Sporting Suitability of Modified Semiautomatic Assault*
17 *Rifles*, April 1998.

18 18. Attached as Exhibit 17 is a true and correct copy of Brian J. Siebel, Brady Center
19 to Prevent Gun Violence, *Assault Weapons: Mass Produced Mayhem*, October 2008.

20 19. Attached as Exhibit 18 is a true and correct copy of an excerpt of Municipal Code
21 of Chicago, §§ 8-20-010. 8-20-075.

22 20. Attached as Exhibit 19 is a true and correct copy of the Statement of Professors of
23 Constitutional Law: The Second Amendment and the Constitutionality of the Proposed Gun
24 Violence Prevention Legislation, January 30, 2013.

25 21. Attached as Exhibit 20 is a true and correct copy of a news article, *Woman*
26 *Wrestled Fresh Ammo Clip From Tucson Shooter as He Tried to Reload*, January 9, 2011, Kevin
27 Dolak, ABCNews website page, printed on January 10, 2014, available at
28 <http://abcnews.go.com/Politics/patricia-maisch-describes-stopping-gunman->

1 reloading/story?id=12577933.

2 22. Attached as Exhibit 21 is a true and correct copy of a news article, *Sandy Hook's*
3 *Shooter's Pause May Have Aided Students Escape*, December 23, 2012, Edmund Mahony, The
4 Courant website page, printed on January 10, 2014, available at [http://articles.courant.com/2012-](http://articles.courant.com/2012-12-23/news/hc-lanza-gunjam-20121222_1_rifle-school-psychologist-classroom)
5 [12-23/news/hc-lanza-gunjam-20121222_1_rifle-school-psychologist-classroom](http://articles.courant.com/2012-12-23/news/hc-lanza-gunjam-20121222_1_rifle-school-psychologist-classroom).

6 23. Attached as Exhibit 22 is a true and correct copy of the City and County of San
7 Francisco's Opposition to Plaintiffs' Motion for Preliminary Injunction (Dkt. 34), dated January
8 16, 2014, in *San Francisco Veteran Police Officers, et al. v. The City and County of San*
9 *Francisco, et al.*, Case No. CV 13-5351 WHA (N.D. Cal.).

10 24. Attached as Exhibit 23 is a true and correct copy of Brief for Professional
11 Historians and Law Professors Saul Cornell, Paul Finkleman, Stanley Katz, and David T. Konig
12 as *Amici Curiae* in Support of Appellees, dated September 20, 2010 in *Heller v. District of*
13 *Colombia*, D.C. Circuit, Case No. 10-7036.

14 25. Attached as Exhibit 24 is a true and correct copy of 2002 Maryland Session Laws
15 Ch. 26 (H.B. 11).

16 26. Attached as Exhibit 25 is a true and correct copy of N.Y.S. AB No. 11535 (2000).

17 27. Attached as Exhibit 26 is a true and correct copy of the City of Rochester, New
18 York, City Code, Chapter 47: Dangerous Articles, as adopted by the Rochester City Council 11-
19 25-1941.

20 28. Attached as Exhibit 27 is a true and correct copy of Francis Clines, *Death on the*
21 *L.I.R.R.: The Rampage; Gunman in a Train Aisle Passes Out Death*, New York Times, December
22 9, 1993.

23 29. Attached as Exhibit 28 is a true and correct copy of Dennis A. Henigan, *The Heller*
24 *Paradox*, 56 UCLA L. Rev. 1171, 1197-98 (2009).

1 I declare under penalty of perjury under the laws of the United States of America that the
2 foregoing is true and correct. Executed January 29, 2014, at San Francisco, California.

3
4 /s/ Roderick M. Thompson

Roderick M. Thompson

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EXHIBIT 1

To

**Declaration of Roderick M. Thompson in
Support of Sunnyvale's Opposition to
Plaintiffs' Motion for Preliminary
Injunction**

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(3) Each dealer shall be provided instructions regarding the procedure for completion of the form and routing of the form. Dealers shall comply with these instructions which shall include the information set forth in this subdivision.

(4) One firearm transaction shall be reported on each record of sale document. For purposes of this subdivision, a "transaction" means a single sale, loan, or transfer of any number of firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person.

(e) The dealer or salesperson making a sale shall ensure that all required information has been obtained from the purchaser. The dealer and all salespersons shall be informed that incomplete information will delay sales.

(f) As used in this section, the following definitions shall control:

(1) "Purchaser" means the purchaser or transferee of a firearm or the person being loaned a firearm.

(2) "Purchase" means the purchase, loan, or transfer of a firearm.

(3) "Sale" means the sale, loan, or transfer of a firearm.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

WEAPONS—LARGE CAPACITY MAGAZINES—SENTENCES

CHAPTER 129

S.B. No. 23

AN ACT to amend Sections 245, 12001, 12020, 12022, 12022.5, 12280, 12285, and 12289 of, and to add Sections 12079 and 12276.1 to, the Penal Code, relating to firearms.

[Filed with Secretary of State July 19, 1999.]

LEGISLATIVE COUNSEL'S DIGEST

SB 23, Perata. Firearms: assault weapons.

(1) Existing law makes it a misdemeanor for any person to manufacture, cause to be manufactured, import into this state, keep or offer for sale, give, lend, or possess specified weapons and explosives.

This bill would make it a misdemeanor or a felony, beginning January 1, 2000, for any person, except as provided, to manufacture, import into the state, keep or offer for sale, give, or lend any large-capacity magazine. A large-capacity magazine would be defined to mean any ammunition feeding device with the capacity to accept more than 10 rounds. By expanding the definition of, and increasing the penalty for, a crime, this bill imposes a state-mandated local program.

(2) Existing law requires imposition of a longer term of imprisonment on any person convicted of assault with a deadly weapon, and for enhanced terms of imprisonment for a person convicted of a felony, if that person was either armed with, or personally used, an assault weapon or machinegun, as defined, in the commission of, or attempted commission of that felony.

Existing law makes it a crime to engage in specified activities regarding assault weapons and regulates the lawful possession of those weapons. Existing law defines the term "assault weapon" by, among other things, designating a list of specified semiautomatic firearms.

Additions or changes indicated by underline; deletions by asterisks * * *

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This bill would further define the term "assault weapon" by providing descriptive definitions concerning the capacity and function of the weapon. These expanded definitions would specifically apply to the above-mentioned increased term and enhancement provisions and to related provisions. By expanding the definition of a crime, this bill would impose a state-mandated local program.

(3) Existing law makes it a crime, punishable either as a felony or a misdemeanor, for any person to possess any assault weapon, as defined. However, if a person charged with a first-time violation of that offense presents proof that he or she lawfully possessed the assault weapon within a specified period, and has since registered the weapon or relinquished it, the offense is punishable as an infraction, if the person has also complied with specified conditions. Existing law also provides a period of forgiveness to persons in possession of an assault weapon during a specified period under specified conditions. In addition, existing law exempts specified law enforcement agencies from the prohibition against possession, purchase, or sale of assault weapons.

This bill would make it an infraction, punishable by a fine up to \$500, for a first-time violation of the above-mentioned offense, if the offender was found in possession of no more than 2 firearms in compliance with specified provisions and proves that he or she lawfully possessed the assault weapon prior to the date it was defined as an assault weapon under the proposed provision set forth in (2). This bill would also add an additional period of forgiveness for persons in possession of assault weapons, as defined, pursuant to the proposed provision set forth in (2), to extend to the one-year period after the weapon was defined as an assault weapon under that proposed provision. By defining a new crime, this bill would impose a state-mandated local program. The bill would also exempt certain additional off-duty and certain retired law enforcement personnel from the prohibition against possession, purchase, or sale of assault weapons.

(4) Existing law requires any person who lawfully possesses an assault weapon, as defined, prior to specified periods, to register that weapon with the Department of Justice, within a specified period of time.

This bill would require any person who lawfully possessed an assault weapon prior to the date it was defined as an assault weapon pursuant to the proposed provision mentioned in (2) above, to register the weapon within one year of the effective date of that provision.

(5) Existing law requires the Department of Justice to conduct a public education and notification program regarding the registration of assault weapons, the limited forgiveness period of the registration requirement and the consequences of nonregistration.

This bill would require that the public education and notification program include the new definition of assault weapons discussed in paragraph (2) above.

(6) The bill would state legislative intent.

(7) The bill would provide that its provisions are severable.

(8) This bill would incorporate additional changes in Section 12020 of the Penal Code proposed by SB 359, to be operative if SB 359 and this bill are both enacted and become effective on or before January 1, 2000, and this bill is enacted last.

(9) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 245 of the Penal Code is amended to read:

245. (a)(1) Any person who commits an assault upon the person of another with a deadly weapon or instrument other than a firearm or by any means of force likely to produce great bodily injury shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not exceeding one year, or by a fine not exceeding ten thousand dollars (\$10,000), or by both the fine and imprisonment.

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(2) Any person who commits an assault upon the person of another with a firearm shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not less than six months and not exceeding one year, or by both a fine not exceeding ten thousand dollars (\$10,000) and imprisonment.

(3) Any person who commits an assault upon the person of another with a machinegun, as defined in Section 12200, or an assault weapon, as defined in Section 12276 or 12276.1, shall be punished by imprisonment in the state prison for 4, 8, or 12 years.

(b) Any person who commits an assault upon the person of another with a semiautomatic firearm shall be punished by imprisonment in the state prison for three, six, or nine years.

(c) Any person who commits an assault with a deadly weapon or instrument, other than a firearm, or by any means likely to produce great bodily injury upon the person of a peace officer or firefighter, and who knows or reasonably should know that the victim is a peace officer or firefighter engaged in the performance of his or her duties, when the peace officer or firefighter is engaged in the performance of his or her duties, shall be punished by imprisonment in the state prison for three, four, or five years.

(d)(1) Any person who commits an assault with a firearm upon the person of a peace officer or firefighter, and who knows or reasonably should know that the victim is a peace officer or firefighter engaged in the performance of his or her duties, when the peace officer or firefighter is engaged in the performance of his or her duties, shall be punished by imprisonment in the state prison for four, six, or eight years.

(2) Any person who commits an assault upon the person of a peace officer or firefighter with a semiautomatic firearm and who knows or reasonably should know that the victim is a peace officer or firefighter engaged in the performance of his or her duties, when the peace officer or firefighter is engaged in the performance of his or her duties, shall be punished by imprisonment in the state prison for five, seven, or nine years.

(3) Any person who commits an assault with a machinegun, as defined in Section 12200, or an assault weapon, as defined in Section 12276 or 12276.1, upon the person of a peace officer or firefighter, and who knows or reasonably should know that the victim is a peace officer or firefighter engaged in the performance of his or her duties, shall be punished by imprisonment in the state prison for 6, 9, or 12 years.

(e) When a person is convicted of a violation of this section in a case involving use of a deadly weapon or instrument or firearm, and the weapon or instrument or firearm is owned by that person, the court shall order that the weapon or instrument or firearm be deemed a nuisance, and it shall be confiscated and disposed of in the manner provided by Section 12028.

(f) As used in this section, "peace officer" refers to any person designated as a peace officer in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.

SEC. 2. Section 12001 of the Penal Code is amended to read:

12001. (a) As used in this title, the terms "pistol," "revolver," and "firearm capable of being concealed upon the person" shall apply to and include any device designed to be used as a weapon, from which is expelled a projectile by the force of any explosion, or other form of combustion, and that has a barrel less than 16 inches in length. These terms also include any device that has a barrel 16 inches or more in length which is designed to be interchanged with a barrel less than 16 inches in length.

(b) As used in this title, "firearm" means any device, designed to be used as a weapon, from which is expelled through a barrel a projectile by the force of any explosion or other form of combustion.

(c) As used in Sections 12021, 12021.1, 12070, 12071, 12072, 12073, 12078, and 12101 of this code, and Sections 8100, 8101, and 8103 of the Welfare and Institutions Code, the term "firearm" includes the frame or receiver of the weapon.

(d) For the purposes of Sections 12025 and 12031, the term "firearm" also shall include any rocket, rocket propelled projectile launcher, or similar device containing any explosive or incendiary material whether or not the device is designed for emergency or distress signaling purposes.

(e) For purposes of Sections 12070, 12071, and paragraph (7) of subdivision (a), and subdivisions (b), (c), (d), and (f) of Section 12072, the term "firearm" does not include an

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unloaded firearm that is defined as an "antique firearm" in Section 921(a)(16) of Title 18 of the United States Code.

(f) Nothing shall prevent a device defined as a "pistol," "revolver," or "firearm capable of being concealed upon the person" from also being found to be a short-barreled shotgun or a short-barreled rifle, as defined in Section 12020.

(g) For purposes of Sections 12551 and 12552, the term "BB device" means any instrument that expels a metallic projectile, such as a BB or a pellet, through the force of air pressure, CO₂ pressure, or spring action, or any spot marker gun.

(h) As used in this title, "wholesaler" means any person who is licensed as a dealer pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto who sells, transfers, or assigns firearms, or parts of firearms, to persons who are licensed as manufacturers, importers, or gunsmiths pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code, or persons licensed pursuant to Section 12071, and includes persons who receive finished parts of firearms and assemble them into completed or partially completed firearms in furtherance of that purpose.

"Wholesaler" shall not include a manufacturer, importer, or gunsmith who is licensed to engage in those activities pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code or a person licensed pursuant to Section 12071 and the regulations issued pursuant thereto. A wholesaler also does not include those persons dealing exclusively in grips, stocks, and other parts of firearms that are not frames or receivers thereof.

(i) As used in Section 12071, 12072, or 12084, "application to purchase" means any of the following:

(1) The initial completion of the register by the purchaser, transferee, or person being loaned the firearm as required by subdivision (b) of Section 12076.

(2) The initial completion of the LEFT by the purchaser, transferee, or person being loaned the firearm as required by subdivision (d) of Section 12084.

(3) The initial completion and transmission to the department of the record of electronic or telephonic transfer by the dealer on the purchaser, transferee, or person being loaned the firearm as required by subdivision (c) of Section 12076.

(j) For purposes of Section 12023, a firearm shall be deemed to be "loaded" whenever both the firearm and the unexpended ammunition capable of being discharged from the firearm are in the immediate possession of the same person.

(k) For purposes of Sections 12021, 12021.1, 12025, 12070, 12072, 12073, 12078, and 12101 of this code, and Sections 8100, 8101, and 8103 of the Welfare and Institutions Code, notwithstanding the fact that the term "any firearm" may be used in those sections, each firearm or the frame or receiver of the same shall constitute a distinct and separate offense under those sections.

(l) For purposes of Section 12020, a violation of that section as to each firearm, weapon, or device enumerated therein shall constitute a distinct and separate offense.

(m) Each application that requires any firearms eligibility determination involving the issuance of any license, permit, or certificate pursuant to this title shall include two copies of the applicant's fingerprints on forms prescribed by the Department of Justice. One copy of the fingerprints may be submitted to the United States Federal Bureau of Investigation.

(n) As used in this chapter, a "personal handgun importer" means an individual who meets all of the following criteria:

(1) He or she is not a person licensed pursuant to Section 12071.

(2) He or she is not a licensed manufacturer of firearms pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code.

(3) He or she is not a licensed importer of firearms pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(4) He or she is the owner of a pistol, revolver, or other firearm capable of being concealed upon the person.

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Additions or changes indicated by underline; deletions by asterisks * * *

(5) He or she acquired that pistol, revolver, or other firearm capable of being concealed upon the person outside of California.

(6) He or she moves into this state on or after January 1, 1998, as a resident of this state.

(7) He or she intends to possess that pistol, revolver, or other firearm capable of being concealed upon the person within this state on or after January 1, 1998.

(8) The pistol, revolver, or other firearm capable of being concealed upon the person was not delivered to him or her by a person licensed pursuant to Section 12071 who delivered that firearm following the procedures set forth in Section 12071 and subdivision (c) of Section 12072.

(9) He or she, while a resident of this state, had not previously reported his or her ownership of that pistol, revolver, or other firearm capable of being concealed upon the person to the Department of Justice in a manner prescribed by the department that included information concerning him or her and a description of the firearm.

(10) The pistol, revolver, or other firearm capable of being concealed upon the person is not a firearm that is prohibited by subdivision (a) of Section 12020.

(11) The pistol, revolver, or other firearm capable of being concealed upon the person is not an assault weapon, as defined in Section 12276 or 12276.1.

(12) The pistol, revolver, or other firearm capable of being concealed upon the person is not a machinegun, as defined in Section 12200.

(13) The person is 18 years of age or older.

(o) For purposes of paragraph (6) of subdivision (n):

(1) Except as provided in paragraph (2), residency shall be determined in the same manner as is the case for establishing residency pursuant to Section 12505 of the Vehicle Code.

(2) In the case of members of the armed forces of the United States, residency shall be deemed to be established when he or she was discharged from active service in this state.

SEC. 3. Section 12020 of the Penal Code is amended to read:

12020. (a) Any person in this state who does any of the following is punishable by imprisonment in a county jail not exceeding one year or in the state prison:

(1) Manufactures or causes to be manufactured, imports into the state, keeps for sale, or offers or exposes for sale, or who gives, lends, or possesses any cane gun or wallet gun, any undetectable firearm, any firearm which is not immediately recognizable as a firearm, any camouflaging firearm container, any ammunition which contains or consists of any flechette dart, any bullet containing or carrying an explosive agent, any ballistic knife, any multiburst trigger activator, any nunchaku, any short-barreled shotgun, any short-barreled rifle, any metal knuckles, any belt buckle knife, any leaded cane, any zip gun, any shuriken, any unconventional pistol, any lipstick case knife, any cane sword, any shobi-zue, any air gauge knife, any writing pen knife, any metal military practice handgrenade or metal replica handgrenade, or any instrument or weapon of the kind commonly known as a blackjack, slungshot, billy, sandclub, sap, or sandbag * * *.

(2) Commencing January 1, 2000, manufactures or causes to be manufactured, imports into the state, keeps for sale, or offers or exposes for sale, or who gives, or lends, any large-capacity magazine.

(3) Carries concealed upon his or her person any explosive substance, other than fixed ammunition * * *.

(4) Carries concealed upon his or her person any dirk or dagger * * *.

However, a first offense involving any metal military practice handgrenade or metal replica handgrenade shall be punishable only as an infraction unless the offender is an active participant in a criminal street gang as defined in the Street Terrorism and Enforcement and Prevention Act (Chapter 11 (commencing with Section 186.29) of Title 7 of Part 1). A bullet containing or carrying an explosive agent is not a destructive device as that term is used in Section 12301.

(b) Subdivision (a) does not apply to any of the following:

Additions or changes indicated by underline; deletions by asterisks * * *

(1) The sale to, purchase by, or possession of short-barreled shotguns or short-barreled rifles by police departments, sheriffs' offices, marshals' offices, the California Highway Patrol, the Department of Justice, or the military or naval forces of this state or of the United States for use in the discharge of their official duties or the possession of short-barreled shotguns and short-barreled rifles by regular, salaried, full-time members of a police department, sheriff's office, marshal's office, the California Highway Patrol, or the Department of Justice when on duty and the use is authorized by the agency and is within the course and scope of their duties.

(2) The manufacture, possession, transportation or sale of short-barreled shotguns or short-barreled rifles when authorized by the Department of Justice pursuant to Article 6 (commencing with Section 12095) of this chapter and not in violation of federal law.

(3) The possession of a nunchaku on the premises of a school which holds a regulatory or business license and teaches the arts of self-defense.

(4) The manufacture of a nunchaku for sale to, or the sale of a nunchaku to, a school which holds a regulatory or business license and teaches the arts of self-defense.

(5) Any antique firearm. For purposes of this section, "antique firearm" means any firearm not designed or redesigned for using rimfire or conventional center fire ignition with fixed ammunition and manufactured in or before 1898 (including any matchlock, flintlock, percussion cap, or similar type of ignition system or replica thereof, whether actually manufactured before or after the year 1898) and also any firearm using fixed ammunition manufactured in or before 1898, for which ammunition is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade.

(6) Tracer ammunition manufactured for use in shotguns.

(7) Any firearm or ammunition which is a curio or relic as defined in Section 178.11 of Title 27 of the Code of Federal Regulations and which is in the possession of a person permitted to possess the items pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto. Any person prohibited by Section 12021, 12021.1, or 12101 of this code or Section 8100 or 8103 of the Welfare and Institutions Code from possessing firearms or ammunition who obtains title to these items by bequest or intestate succession may retain title for not more than one year, but actual possession of these items at any time is punishable pursuant to Section 12021, 12021.1, or 12101 of this code or Section 8100 or 8103 of the Welfare and Institutions Code. Within the year, the person shall transfer title to the firearms or ammunition by sale, gift, or other disposition. Any person who violates this paragraph is in violation of subdivision (a).

(8) Any other weapon as defined in subsection (e) of Section 5845 of Title 26 of the United States Code and which is in the possession of a person permitted to possess the weapons pursuant to the federal Gun Control Act of 1968 (Public Law 90-618), as amended, and the regulations issued pursuant thereto. Any person prohibited by Section 12021, 12021.1, or 12101 of this code or Section 8100 or 8103 of the Welfare and Institutions Code from possessing these weapons who obtains title to these weapons by bequest or intestate succession may retain title for not more than one year, but actual possession of these weapons at any time is punishable pursuant to Section 12021, 12021.1, or 12101 of this code or Section 8100 or 8103 of the Welfare and Institutions Code. Within the year, the person shall transfer title to the weapons by sale, gift, or other disposition. Any person who violates this paragraph is in violation of subdivision (a). The exemption provided in this subdivision does not apply to pen guns.

(9) Instruments or devices that are possessed by federal, state, and local historical societies, museums, and institutional collections which are open to the public, provided that these instruments or devices are properly housed, secured from unauthorized handling, and, if the instrument or device is a firearm, unloaded.

(10) Instruments or devices, other than short-barreled shotguns or short-barreled rifles, that are possessed or utilized during the course of a motion picture, television, or video production or entertainment event by an authorized participant therein in the course of making that production or event or by an authorized employee or agent of the entity producing that production or event.

(11) Instruments or devices, other than short-barreled shotguns or short-barreled rifles, that are sold by, manufactured by, exposed or kept for sale by, possessed by, imported by, or lent by persons who are in the business of selling instruments or devices listed in subdivision (a) solely to the entities referred to in paragraphs (9) and (10) when engaging in transactions with those entities.

(12) The sale to, possession of, or purchase of any weapon, device, or ammunition, other than a short-barreled rifle or short-barreled shotgun, by any federal, state, county, city and county, or city agency that is charged with the enforcement of any law for use in the discharge of their official duties, or the possession of any weapon, device, or ammunition, other than a short-barreled rifle or short-barreled shotgun, by peace officers thereof when on duty and the use is authorized by the agency and is within the course and scope of their duties.

(13) Weapons, devices, and ammunition, other than a short-barreled rifle or short-barreled shotgun, that are sold by, manufactured by, exposed, or kept for sale by, possessed by, imported by, or lent by, persons who are in the business of selling weapons, devices, and ammunition listed in subdivision (a) solely to the entities referred to in paragraph (12) when engaging in transactions with those entities.

(14) The manufacture for, sale to, exposing or keeping for sale to, importation of, or lending of wooden clubs or batons to special police officers or uniformed security guards authorized to carry any wooden club or baton pursuant to Section 12002 by entities that are in the business of selling wooden batons or clubs to special police officers and uniformed security guards when engaging in transactions with those persons.

(15) Any plastic toy handgrenade, or any metal military practice handgrenade or metal replica handgrenade that is a relic, curio, memorabilia, or display item, that is filled with a permanent inert substance or that is otherwise permanently altered in a manner that prevents ready modification for use as a grenade.

(16) Any instrument, ammunition, weapon, or device listed in subdivision (a) that is not a firearm that is found and possessed by a person who meets all of the following:

(A) The person is not prohibited from possessing firearms or ammunition pursuant to Section 12021 or 12021.1 or paragraph (1) of subdivision (b) of Section 12316 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(B) The person possessed the instrument, ammunition, weapon, or device no longer than was necessary to deliver or transport the same to a law enforcement agency for that agency's disposition according to law.

(C) If the person is transporting the listed item, he or she is transporting the listed item to a law enforcement agency for disposition according to law.

(17) Any firearm, other than a short-barreled rifle or short-barreled shotgun, that is found and possessed by a person who meets all of the following:

(A) The person is not prohibited from possessing firearms or ammunition pursuant to Section 12021 or 12021.1 or paragraph (1) of subdivision (b) of Section 12316 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(B) The person possessed the firearm no longer than was necessary to deliver or transport the same to a law enforcement agency for that agency's disposition according to law.

(C) If the person is transporting the firearm, he or she is transporting the firearm to a law enforcement agency for disposition according to law.

(D) Prior to transporting the firearm to a law enforcement agency, he or she has given prior notice to that law enforcement agency that he or she is transporting the firearm to that law enforcement agency for disposition according to law.

(E) The firearm is transported in a locked container as defined in subdivision (d) of Section 12026.2.

(18) The possession of any weapon, device, or ammunition, by a forensic laboratory or any authorized agent or employee thereof in the course and scope of his or her authorized activities.

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(19) The sale of, giving of, lending of, importation into this state of, or purchase of, any large-capacity magazine to or by any federal, state, county, city and county, or city agency that is charged with the enforcement of any law, for use by agency employees in the discharge of their official duties whether on or off duty, and where the use is authorized by the agency and is within the course and scope of their duties.

(20) The sale to, lending to, transfer to, purchase by, receipt of, or importation into this state of, a large capacity magazine by a sworn peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 who is authorized to carry a firearm in the course and scope of his or her duties.

(21) The sale or purchase of any large-capacity magazine to or by a person licensed pursuant to Section 12071.

(22) The loan of a lawfully possessed large-capacity magazine between two individuals if all of the following conditions are met:

(A) The person being loaned the large-capacity magazine is not prohibited by Section 12021, 12021.1, or 12101 of this code or Section 8100 or 8103 of the Welfare and Institutions Code from possessing firearms or ammunition.

(B) The loan of the large-capacity magazine occurs at a place or location where the possession of the large-capacity magazine is not otherwise prohibited and the person who lends the large-capacity magazine remains in the accessible vicinity of the person to whom the large-capacity magazine is loaned.

(23) The importation of a large-capacity magazine by a person who lawfully possessed the large-capacity magazine in the state prior to January 1, 2000, lawfully took it out of the state, and is returning to the state with the large-capacity magazine previously lawfully possessed in the state.

(24) The lending or giving of any large-capacity magazine to a person licensed pursuant to Section 12071, or to a gunsmith, for the purposes of maintenance, repair, or modification of that large-capacity magazine.

(25) The return to its owner of any large-capacity magazine by a person specified in paragraph (24).

(26) The importation into this state of, or sale of, any large-capacity magazine by a person who has been issued a permit to engage in those activities pursuant to Section 12079, when those activities are in accordance with the terms and conditions of that permit.

(27) The sale of, giving of, lending of, importation into this state of, or purchase of, any large-capacity magazine, to or by entities that operate armored vehicle businesses pursuant to the laws of this state.

(28) The lending of large-capacity magazines by the entities specified in paragraph (27) to their authorized employees, while in the course and scope of their employment for purposes that pertain to the entity's armored vehicle business.

(29) The return of those large-capacity magazines to those entities specified in paragraph (27) by those employees specified in paragraph (28).

(c)(1) As used in this section, a "short-barreled shotgun" means any of the following:

(A) A firearm which is designed or redesigned to fire a fixed shotgun shell and having a barrel or barrels of less than 18 inches in length.

(B) A firearm which has an overall length of less than 26 inches and which is designed or redesigned to fire a fixed shotgun shell.

(C) Any weapon made from a shotgun (whether by alteration, modification, or otherwise) if that weapon, as modified, has an overall length of less than 26 inches or a barrel or barrels of less than 18 inches in length.

(D) Any device which may be readily restored to fire a fixed shotgun shell which, when so restored, is a device defined in subparagraphs (A) to (C), inclusive.

(E) Any part, or combination of parts, designed and intended to convert a device into a device defined in subparagraphs (A) to (C), inclusive, or any combination of parts from which

a device defined in subparagraphs (A) to (C), inclusive, can be readily assembled if those parts are in the possession or under the control of the same person.

(2) As used in this section, a "short-barreled rifle" means any of the following:

(A) A rifle having a barrel or barrels of less than 16 inches in length.

(B) A rifle with an overall length of less than 26 inches.

(C) Any weapon made from a rifle (whether by alteration, modification, or otherwise) if that weapon, as modified, has an overall length of less than 26 inches or a barrel or barrels of less than 16 inches in length.

(D) Any device which may be readily restored to fire a fixed cartridge which, when so restored, is a device defined in subparagraphs (A) to (C), inclusive.

(E) Any part, or combination of parts, designed and intended to convert a device into a device defined in subparagraphs (A) to (C), inclusive, or any combination of parts from which a device defined in subparagraphs (A) to (C), inclusive, may be readily assembled if those parts are in the possession or under the control of the same person.

(3) As used in this section, a "nunchaku" means an instrument consisting of two or more sticks, clubs, bars or rods to be used as handles, connected by a rope, cord, wire, or chain, in the design of a weapon used in connection with the practice of a system of self-defense such as karate.

(4) As used in this section, a "wallet gun" means any firearm mounted or enclosed in a case, resembling a wallet, designed to be or capable of being carried in a pocket or purse, if the firearm may be fired while mounted or enclosed in the case.

(5) As used in this section, a "cane gun" means any firearm mounted or enclosed in a stick, staff, rod, crutch, or similar device, designed to be, or capable of being used as, an aid in walking, if the firearm may be fired while mounted or enclosed therein.

(6) As used in this section, a "fléchette dart" means a dart, capable of being fired from a firearm, which measures approximately one inch in length, with tail fins which take up five-sixteenths of an inch of the body.

(7) As used in this section, "metal knuckles" means any device or instrument made wholly or partially of metal which is worn for purposes of offense or defense in or on the hand and which either protects the wearer's hand while striking a blow or increases the force of impact from the blow or injury to the individual receiving the blow. The metal contained in the device may help support the hand or fist, provide a shield to protect it, or consist of projections or studs which would contact the individual receiving a blow.

(8) As used in this section, a "ballistic knife" means a device that propels a knifelike blade as a projectile by means of a coil spring, elastic material, or compressed gas. Ballistic knife does not include any device which propels an arrow or a bolt by means of any common bow, compound bow, crossbow, or underwater spear gun.

(9) As used in this section, a "camouflaging firearm container" means a container which meets all of the following criteria:

(A) It is designed and intended to enclose a firearm.

(B) It is designed and intended to allow the firing of the enclosed firearm by external controls while the firearm is in the container.

(C) It is not readily recognizable as containing a firearm.

"Camouflaging firearm container" does not include any camouflaging covering used while engaged in lawful hunting or while going to or returning from a lawful hunting expedition.

(10) As used in this section, a "zip gun" means any weapon or device which meets all of the following criteria:

(A) It was not imported as a firearm by an importer licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(B) It was not originally designed to be a firearm by a manufacturer licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

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(C) No tax was paid on the weapon or device nor was an exemption from paying tax on that weapon or device granted under Section 4181 and subchapters F (commencing with Section 4216) and G (commencing with Section 4221) of Chapter 32 of Title 26 of the United States Code, as amended, and the regulations issued pursuant thereto.

(D) It is made or altered to expel a projectile by the force of an explosion or other form of combustion.

(11) As used in this section, a "shuriken" means any instrument, without handles, consisting of a metal plate having three or more radiating points with one or more sharp edges and designed in the shape of a polygon, trefoil, cross, star, diamond, or other geometric shape for use as a weapon for throwing.

(12) As used in this section, an "unconventional pistol" means a firearm that does not have a rifled bore and has a barrel or barrels of less than 18 inches in length or has an overall length of less than 26 inches.

(13) As used in this section, a "belt buckle knife" is a knife which is made an integral part of a belt buckle and consists of a blade with a length of at least 2½ inches.

(14) As used in this section, a "lipstick case knife" means a knife enclosed within and made an integral part of a lipstick case.

(15) As used in this section, a "cane sword" means a cane, swagger stick, stick, staff, rod, pole, umbrella, or similar device, having concealed within it a blade that may be used as a sword or stiletto.

(16) As used in this section, a "shobi-zue" means a staff, crutch, stick, rod, or pole concealing a knife or blade within it which may be exposed by a flip of the wrist or by a mechanical action.

(17) As used in this section, a "leaded cane" means a staff, crutch, stick, rod, pole, or similar device, unnaturally weighted with lead.

(18) As used in this section, an "air gauge knife" means a device that appears to be an air gauge but has concealed within it a pointed, metallic shaft that is designed to be a stabbing instrument which is exposed by mechanical action or gravity which locks into place when extended.

(19) As used in this section, a "writing pen knife" means a device that appears to be a writing pen but has concealed within it a pointed, metallic shaft that is designed to be a stabbing instrument which is exposed by mechanical action or gravity which locks into place when extended or the pointed, metallic shaft is exposed by the removal of the cap or cover on the device.

(20) As used in this section, a "rifle" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.

(21) As used in this section, a "shotgun" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of projectiles (ball shot) or a single projectile for each pull of the trigger.

(22) As used in this section, an "undetectable firearm" means any weapon which meets one of the following requirements:

(A) When, after removal of grips, stocks, and magazines, it is not as detectable as the Security Exemplar, by walk-through metal detectors calibrated and operated to detect the Security Exemplar.

(B) When any major component of which, when subjected to inspection by the types of X-ray machines commonly used at airports, does not generate an image that accurately depicts the shape of the component. Barium sulfate or other compounds may be used in the fabrication of the component.

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(C) For purposes of this paragraph, the terms "firearm," "major component," and "Security Exemplar" have the same meanings as those terms are defined in Section 922 of Title 18 of the United States Code.

All firearm detection equipment newly installed in nonfederal public buildings in this state shall be of a type identified by either the United States Attorney General, the Secretary of Transportation, or the Secretary of the Treasury, as appropriate, as available state-of-the-art equipment capable of detecting an undetectable firearm, as defined, while distinguishing innocuous metal objects likely to be carried on one's person sufficient for reasonable passage of the public.

(23) As used in this section, a "multiburst trigger activator" means one of the following devices:

(A) A device designed or redesigned to be attached to a semiautomatic firearm which allows the firearm to discharge two or more shots in a burst by activating the device.

(B) A manual or power-driven trigger activating device constructed and designed so that when attached to a semiautomatic firearm it increases the rate of fire of that firearm.

(24) As used in this section, a "dirk" or "dagger" means a knife or other instrument with or without a handguard that is capable of ready use as a stabbing weapon that may inflict great bodily injury or death. A nonlocking folding knife, a folding knife that is not prohibited by Section 653k, or a pocketknife is capable of ready use as a stabbing weapon that may inflict great bodily injury or death only if the blade of the knife is exposed and locked into position.

(25) As used in this section, "large-capacity magazine" means any ammunition feeding device with the capacity to accept more than 10 rounds, but shall not be construed to include a feeding device that has been permanently altered so that it cannot accommodate more than 10 rounds nor shall it include any .22 caliber tube ammunition feeding device.

(d) Knives carried in sheaths which are worn openly suspended from the waist of the wearer are not concealed within the meaning of this section.

SEC. 3.5. Section 12020 of the Penal Code is amended to read:

12020. (a) Any person in this state who does any of the following is punishable by imprisonment in a county jail not exceeding one year or in the state prison:

(1) Manufactures or causes to be manufactured, imports into the state, keeps for sale, or offers or exposes for sale, or who gives, lends, or possesses any cane gun or wallet gun, any undetectable firearm, any firearm which is not immediately recognizable as a firearm, any camouflaging firearm container, any ammunition which contains or consists of any fléchette dart, any bullet containing or carrying an explosive agent, any ballistic knife, any multiburst trigger activator, any nunchaku, any short-barreled shotgun, any short-barreled rifle, any metal knuckles, any belt buckle knife, any leaded cane, any zip gun, any shuriken, any unconventional pistol, any lipstick case knife, any cane sword, any shobi-zue, any air gauge knife, any writing pen knife, any metal military practice handgrenade or metal replica handgrenade, or any instrument or weapon of the kind commonly known as a blackjack, slungshot, billy, sandclub, sap, or sandbag * * * :

(2) Commencing January 1, 2000, manufactures or causes to be manufactured, imports into the state, keeps for sale, or offers or exposes for sale, or who gives, or lends, any large-capacity magazine.

(3) Carries concealed upon his or her person any explosive substance, other than fixed ammunition * * * :

(4) Carries concealed upon his or her person any dirk or dagger * * * .

However, a first offense involving any metal military practice handgrenade or metal replica handgrenade shall be punishable only as an infraction unless the offender is an active participant in a criminal street gang as defined in the Street Terrorism and Enforcement and Prevention Act (Chapter 11 (commencing with Section 186.29) of Title 7 of Part 1). A bullet containing or carrying an explosive agent is not a destructive device as that term is used in Section 12301.

(b) Subdivision (a) does not apply to any of the following:

Additions or changes indicated by underline; deletions by asterisks * * *

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(1) The sale to, purchase by, or possession of short-barreled shotguns or short-barreled rifles by police departments, sheriffs' offices, marshals' offices, the California Highway Patrol, the Department of Justice, or the military or naval forces of this state or of the United States for use in the discharge of their official duties or the possession of short-barreled shotguns and short-barreled rifles by * * * peace officer members of a police department, sheriff's office, marshal's office, the California Highway Patrol, or the Department of Justice when on duty and the use is authorized by the agency and is within the course and scope of their duties and the peace officer has completed a training course in the use of these weapons certified by the Commission on Peace Officer Standards and Training.

(2) The manufacture, possession, transportation or sale of short-barreled shotguns or short-barreled rifles when authorized by the Department of Justice pursuant to Article 6 (commencing with Section 12095) of this chapter and not in violation of federal law.

(3) The possession of a nunchaku on the premises of a school which holds a regulatory or business license and teaches the arts of self-defense.

(4) The manufacture of a nunchaku for sale to, or the sale of a nunchaku to, a school which holds a regulatory or business license and teaches the arts of self-defense.

(5) Any antique firearm. For purposes of this section, "antique firearm" means any firearm not designed or redesigned for using rimfire or conventional center fire ignition with fixed ammunition and manufactured in or before 1898 (including any matchlock, flintlock, percussion cap, or similar type of ignition system or replica thereof, whether actually manufactured before or after the year 1898) and also any firearm using fixed ammunition manufactured in or before 1898, for which ammunition is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade.

(6) Tracer ammunition manufactured for use in shotguns.

(7) Any firearm or ammunition which is a curio or relic as defined in Section 178.11 of Title 27 of the Code of Federal Regulations and which is in the possession of a person permitted to possess the items pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto. Any person prohibited by Section 12021, 12021.1, or 12101 of this code or Section 8100 or 8103 of the Welfare and Institutions Code from possessing firearms or ammunition who obtains title to these items by bequest or intestate succession may retain title for not more than one year, but actual possession of these items at any time is punishable pursuant to Section 12021, 12021.1, or 12101 of this code or Section 8100 or 8103 of the Welfare and Institutions Code. Within the year, the person shall transfer title to the firearms or ammunition by sale, gift, or other disposition. Any person who violates this paragraph is in violation of subdivision (a).

(8) Any other weapon as defined in subsection (e) of Section 5845 of Title 26 of the United States Code and which is in the possession of a person permitted to possess the weapons pursuant to the federal Gun Control Act of 1968 (Public Law 90-618), as amended, and the regulations issued pursuant thereto. Any person prohibited by Section 12021, 12021.1, or 12101 of this code or Section 8100 or 8103 of the Welfare and Institutions Code from possessing these weapons who obtains title to these weapons by bequest or intestate succession may retain title for not more than one year, but actual possession of these weapons at any time is punishable pursuant to Section 12021, 12021.1, or 12101 of this code or Section 8100 or 8103 of the Welfare and Institutions Code. Within the year, the person shall transfer title to the weapons by sale, gift, or other disposition. Any person who violates this paragraph is in violation of subdivision (a). The exemption provided in this subdivision does not apply to pen guns.

(9) Instruments or devices that are possessed by federal, state, and local historical societies, museums, and institutional collections which are open to the public, provided that these instruments or devices are properly housed, secured from unauthorized handling, and, if the instrument or device is a firearm, unloaded.

(10) Instruments or devices, other than short-barreled shotguns or short-barreled rifles, that are possessed or utilized during the course of a motion picture, television, or video production or entertainment event by an authorized participant therein in the course of making that production or event or by an authorized employee or agent of the entity producing that production or event.

(11) Instruments or devices, other than short-barreled shotguns or short-barreled rifles, that are sold by, manufactured by, exposed or kept for sale by, possessed by, imported by, or lent by persons who are in the business of selling instruments or devices listed in subdivision (a) solely to the entities referred to in paragraphs (9) and (10) when engaging in transactions with those entities.

(12) The sale to, possession of, or purchase of any weapon, device, or ammunition, other than a short-barreled rifle or short-barreled shotgun, by any federal, state, county, city and county, or city agency that is charged with the enforcement of any law for use in the discharge of their official duties, or the possession of any weapon, device, or ammunition, other than a short-barreled rifle or short-barreled shotgun, by peace officers thereof when on duty and the use is authorized by the agency and is within the course and scope of their duties.

(13) Weapons, devices, and ammunition, other than a short-barreled rifle or short-barreled shotgun, that are sold by, manufactured by, exposed * * * or kept for sale by, possessed by, imported by, or lent by, persons who are in the business of selling weapons, devices, and ammunition listed in subdivision (a) solely to the entities referred to in paragraph (12) when engaging in transactions with those entities.

(14) The manufacture for, sale to, exposing or keeping for sale to, importation of, or lending of wooden clubs or batons to special police officers or uniformed security guards authorized to carry any wooden club or baton pursuant to Section 12002 by entities that are in the business of selling wooden batons or clubs to special police officers and uniformed security guards when engaging in transactions with those persons.

(15) Any plastic toy handgrenade, or any metal military practice handgrenade or metal replica handgrenade that is a relic, curio, memorabilia, or display item, that is filled with a permanent inert substance or that is otherwise permanently altered in a manner that prevents ready modification for use as a grenade.

(16) Any instrument, ammunition, weapon, or device listed in subdivision (a) that is not a firearm that is found and possessed by a person who meets all of the following:

(A) The person is not prohibited from possessing firearms or ammunition pursuant to Section 12021 or 12021.1 or paragraph (1) of subdivision (b) of Section 12316 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(B) The person possessed the instrument, ammunition, weapon, or device no longer than was necessary to deliver or transport the same to a law enforcement agency for that agency's disposition according to law.

(C) If the person is transporting the listed item, he or she is transporting the listed item to a law enforcement agency for disposition according to law.

(17) Any firearm, other than a short-barreled rifle or short-barreled shotgun, that is found and possessed by a person who meets all of the following:

(A) The person is not prohibited from possessing firearms or ammunition pursuant to Section 12021 or 12021.1 or paragraph (1) of subdivision (b) of Section 12316 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(B) The person possessed the firearm no longer than was necessary to deliver or transport the same to a law enforcement agency for that agency's disposition according to law.

(C) If the person is transporting the firearm, he or she is transporting the firearm to a law enforcement agency for disposition according to law.

(D) Prior to transporting the firearm to a law enforcement agency, he or she has given prior notice to that law enforcement agency that he or she is transporting the firearm to that law enforcement agency for disposition according to law.

(E) The firearm is transported in a locked container as defined in subdivision (d) of Section 12026.2.

(18) The possession of any weapon, device, or ammunition, by a forensic laboratory or any authorized agent or employee thereof in the course and scope of his or her authorized activities.

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(19) The sale of, giving of, lending of, importation into this state of, or purchase of, any large-capacity magazine to or by any federal, state, county, city and county, or city agency that is charged with the enforcement of any law, for use by agency employees in the discharge of their official duties whether on or off duty, and where the use is authorized by the agency and is within the course and scope of their duties.

(20) The sale to, lending to, transfer to, purchase by, receipt of, or importation into this state of, a large capacity magazine by a sworn peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 who is authorized to carry a firearm in the course and scope of his or her duties.

(21) The sale or purchase of any large-capacity magazine to or by a person licensed pursuant to Section 12071.

(22) The loan of a lawfully possessed large-capacity magazine between two individuals if all of the following conditions are met:

(A) The person being loaned the large-capacity magazine is not prohibited by Section 12021, 12021.1, or 12101 of this code or Section 8100 or 8103 of the Welfare and Institutions Code from possessing firearms or ammunition.

(B) The loan of the large-capacity magazine occurs at a place or location where the possession of the large-capacity magazine is not otherwise prohibited and the person who lends the large-capacity magazine remains in the accessible vicinity of the person to whom the large-capacity magazine is loaned.

(23) The importation of a large-capacity magazine by a person who lawfully possessed the large-capacity magazine in the state prior to January 1, 2000, lawfully took it out of the state, and is returning to the state with the large-capacity magazine previously lawfully possessed in the state.

(24) The lending or giving of any large-capacity magazine to a person licensed pursuant to Section 12071, or to a gunsmith, for the purposes of maintenance, repair, or modification of that large-capacity magazine.

(25) The return to its owner of any large-capacity magazine by a person specified in paragraph (24).

(26) The importation into this state of, or sale of, any large-capacity magazine by a person who has been issued a permit to engage in those activities pursuant to Section 12079, when those activities are in accordance with the terms and conditions of that permit.

(27) The sale of, giving of, lending of, importation into this state of, or purchase of, any large-capacity magazine, to or by entities that operate armored vehicle businesses pursuant to the laws of this state.

(28) The lending of large-capacity magazines by the entities specified in paragraph (27) to their authorized employees, while in the course and scope of their employment for purposes that pertain to the entity's armored vehicle business.

(29) The return of those large-capacity magazines to those entities specified in paragraph (27) by those employees specified in paragraph (28).

(c)(1) As used in this section, a "short-barreled shotgun" means any of the following:

(A) A firearm which is designed or redesigned to fire a fixed shotgun shell and having a barrel or barrels of less than 18 inches in length.

(B) A firearm which has an overall length of less than 26 inches and which is designed or redesigned to fire a fixed shotgun shell.

(C) Any weapon made from a shotgun (whether by alteration, modification, or otherwise) if that weapon, as modified, has an overall length of less than 26 inches or a barrel or barrels of less than 18 inches in length.

(D) Any device which may be readily restored to fire a fixed shotgun shell which, when so restored, is a device defined in subparagraphs (A) to (C), inclusive.

(E) Any part, or combination of parts, designed and intended to convert a device into a device defined in subparagraphs (A) to (C), inclusive, or any combination of parts from which

a device defined in subparagraphs (A) to (C), inclusive, can be readily assembled if those parts are in the possession or under the control of the same person.

(2) As used in this section, a "short-barreled rifle" means any of the following:

(A) A rifle having a barrel or barrels of less than 16 inches in length.

(B) A rifle with an overall length of less than 26 inches.

(C) Any weapon made from a rifle (whether by alteration, modification, or otherwise) if that weapon, as modified, has an overall length of less than 26 inches or a barrel or barrels of less than 16 inches in length.

(D) Any device which may be readily restored to fire a fixed cartridge which, when so restored, is a device defined in subparagraphs (A) to (C), inclusive.

(E) Any part, or combination of parts, designed and intended to convert a device into a device defined in subparagraphs (A) to (C), inclusive, or any combination of parts from which a device defined in subparagraphs (A) to (C), inclusive, may be readily assembled if those parts are in the possession or under the control of the same person.

(3) As used in this section, a "nunchaku" means an instrument consisting of two or more sticks, clubs, bars or rods to be used as handles, connected by a rope, cord, wire, or chain, in the design of a weapon used in connection with the practice of a system of self-defense such as karate.

(4) As used in this section, a "wallet gun" means any firearm mounted or enclosed in a case, resembling a wallet, designed to be or capable of being carried in a pocket or purse, if the firearm may be fired while mounted or enclosed in the case.

(5) As used in this section, a "cane gun" means any firearm mounted or enclosed in a stick, staff, rod, crutch, or similar device, designed to be, or capable of being used as, an aid in walking, if the firearm may be fired while mounted or enclosed therein.

(6) As used in this section, a "fléchette dart" means a dart, capable of being fired from a firearm, which measures approximately one inch in length, with tail fins which take up five-sixteenths of an inch of the body.

(7) As used in this section, "metal knuckles" means any device or instrument made wholly or partially of metal which is worn for purposes of offense or defense in or on the hand and which either protects the wearer's hand while striking a blow or increases the force of impact from the blow or injury to the individual receiving the blow. The metal contained in the device may help support the hand or fist, provide a shield to protect it, or consist of projections or studs which would contact the individual receiving a blow.

(8) As used in this section, a "ballistic knife" means a device that propels a knifelike blade as a projectile by means of a coil spring, elastic material, or compressed gas. Ballistic knife does not include any device which propels an arrow or a bolt by means of any common bow, compound bow, crossbow, or underwater spear gun.

(9) As used in this section, a "camouflaging firearm container" means a container which meets all of the following criteria:

(A) It is designed and intended to enclose a firearm.

(B) It is designed and intended to allow the firing of the enclosed firearm by external controls while the firearm is in the container.

(C) It is not readily recognizable as containing a firearm.

"Camouflaging firearm container" does not include any camouflaging covering used while engaged in lawful hunting or while going to or returning from a lawful hunting expedition.

(10) As used in this section, a "zip gun" means any weapon or device which meets all of the following criteria:

(A) It was not imported as a firearm by an importer licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(B) It was not originally designed to be a firearm by a manufacturer licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

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(C) No tax was paid on the weapon or device nor was an exemption from paying tax on that weapon or device granted under Section 4181 and subchapters F (commencing with Section 4216) and G (commencing with Section 4221) of Chapter 32 of Title 26 of the United States Code, as amended, and the regulations issued pursuant thereto.

(D) It is made or altered to expel a projectile by the force of an explosion or other form of combustion.

(11) As used in this section, a "shuriken" means any instrument, without handles, consisting of a metal plate having three or more radiating points with one or more sharp edges and designed in the shape of a polygon, trefoil, cross, star, diamond, or other geometric shape for use as a weapon for throwing.

(12) As used in this section, an "unconventional pistol" means a firearm that does not have a rifled bore and has a barrel or barrels of less than 18 inches in length or has an overall length of less than 26 inches.

(13) As used in this section, a "belt buckle knife" is a knife which is made an integral part of a belt buckle and consists of a blade with a length of at least 2½ inches.

(14) As used in this section, a "lipstick case knife" means a knife enclosed within and made an integral part of a lipstick case.

(15) As used in this section, a "cane sword" means a cane, swagger stick, stick, staff, rod, pole, umbrella, or similar device, having concealed within it a blade that may be used as a sword or stiletto.

(16) As used in this section, a "shobi-zue" means a staff, crutch, stick, rod, or pole concealing a knife or blade within it which may be exposed by a flip of the wrist or by a mechanical action.

(17) As used in this section, a "leaded cane" means a staff, crutch, stick, rod, pole, or similar device, unnaturally weighted with lead.

(18) As used in this section, an "air gauge knife" means a device that appears to be an air gauge but has concealed within it a pointed, metallic shaft that is designed to be a stabbing instrument which is exposed by mechanical action or gravity which locks into place when extended.

(19) As used in this section, a "writing pen knife" means a device that appears to be a writing pen but has concealed within it a pointed, metallic shaft that is designed to be a stabbing instrument which is exposed by mechanical action or gravity which locks into place when extended or the pointed, metallic shaft is exposed by the removal of the cap or cover on the device.

(20) As used in this section, a "rifle" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.

(21) As used in this section, a "shotgun" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of projectiles (ball shot) or a single projectile for each pull of the trigger.

(22) As used in this section, an "undetectable firearm" means any weapon which meets one of the following requirements:

(A) When, after removal of grips, stocks, and magazines, it is not as detectable as the Security Exemplar, by walk-through metal detectors calibrated and operated to detect the Security Exemplar.

(B) When any major component of which, when subjected to inspection by the types of X-ray machines commonly used at airports, does not generate an image that accurately depicts the shape of the component. Barium sulfate or other compounds may be used in the fabrication of the component.

(C) For purposes of this paragraph, the terms "firearm," "major component," and "Security Exemplar" have the same meanings as those terms are defined in Section 922 of Title 18 of the United States Code.

All firearm detection equipment newly installed in nonfederal public buildings in this state shall be of a type identified by either the United States Attorney General, the Secretary of Transportation, or the Secretary of the Treasury, as appropriate, as available state-of-the-art equipment capable of detecting an undetectable firearm, as defined, while distinguishing innocuous metal objects likely to be carried on one's person sufficient for reasonable passage of the public.

(23) As used in this section, a "multiburst trigger activator" means one of the following devices:

(A) A device designed or redesigned to be attached to a semiautomatic firearm which allows the firearm to discharge two or more shots in a burst by activating the device.

(B) A manual or power-driven trigger activating device constructed and designed so that when attached to a semiautomatic firearm it increases the rate of fire of that firearm.

(24) As used in this section, a "dirk" or "dagger" means a knife or other instrument with or without a handguard that is capable of ready use as a stabbing weapon that may inflict great bodily injury or death. A nonlocking folding knife, a folding knife that is not prohibited by Section 653k, or a pocketknife is capable of ready use as a stabbing weapon that may inflict great bodily injury or death only if the blade of the knife is exposed and locked into position.

(25) As used in this section, "large-capacity magazine" means any ammunition feeding device with the capacity to accept more than 10 rounds, but shall not be construed to include a feeding device that has been permanently altered so that it cannot accommodate more than 10 rounds nor shall it include any .22 caliber tube ammunition feeding device.

(d) Knives carried in sheaths which are worn openly suspended from the waist of the wearer are not concealed within the meaning of this section.

SEC. 4. Section 12022 of the Penal Code is amended to read:

12022. (a)(1) Except as provided in subdivisions (c) and (d), any person who is armed with a firearm in the commission or attempted commission of a felony shall, upon conviction of that felony or attempted felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of one year, unless the arming is an element of the offense of which he or she was convicted. This additional term shall apply to any person who is a principal in the commission or attempted commission of a felony if one or more of the principals is armed with a firearm, whether or not the person is personally armed with a firearm.

(2) Except as provided in subdivision (c), and notwithstanding subdivision (d), if the firearm is an assault weapon, as defined in Section 12276 or Section 12276.1, or a machinegun, as defined in Section 12200, the additional term described in this subdivision shall be three years whether or not the arming is an element of the offense of which he or she was convicted. The additional term provided in this paragraph shall apply to any person who is a principal in the commission or attempted commission of a felony if one or more of the principals is armed with an assault weapon or machinegun whether or not the person is personally armed with an assault weapon or machinegun.

(b)(1) Any person who personally uses a deadly or dangerous weapon in the commission or attempted commission of a felony shall, upon conviction of that felony or attempted felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of one year, unless use of a deadly or dangerous weapon is an element of the offense of which he or she was convicted.

(2) If the person described in paragraph (1) has been convicted of carjacking or attempted carjacking, the additional term shall be one, two, or three years.

(3) When a person is found to have personally used a deadly or dangerous weapon in the commission or attempted commission of a felony as provided in this subdivision and the weapon is owned by that person, the court shall order that the weapon be deemed a nuisance and disposed of in the manner provided in Section 12028.

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(c) Notwithstanding the enhancement set forth in subdivision (a), any person who is personally armed with a firearm in the commission or attempted commission of a violation of Section 11351, 11351.5, 11352, 11366.5, 11366.6, 11378, 11378.5, 11379, 11379.5, or 11379.6 of the Health and Safety Code, shall, upon conviction of that offense and in addition and consecutive to the punishment prescribed for that offense of which he or she has been convicted, be punished by an additional term of imprisonment in the state prison for three, four, or five years in the court's discretion. The court shall order the middle term unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its enhancement choice on the record at the time of the sentence.

(d) Notwithstanding the enhancement set forth in subdivision (a), any person who is not personally armed with a firearm who, knowing that another principal is personally armed with a firearm, is a principal in the commission or attempted commission of an offense specified in subdivision (c), shall, upon conviction of that offense, be punished by an additional term of one, two, or three years in the court's discretion. The court shall order the middle term unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its enhancement choice on the record at the time of the sentence.

(e) For purposes of imposing an enhancement under Section 1170.1, the enhancements under this section shall count as one, single enhancement.

(f) Notwithstanding any other provision of law, the court may strike the additional punishment for the enhancements provided in subdivision (c) or (d) in an unusual case where the interests of justice would best be served, if the court specifies on the record and enters into the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

SEC. 5. Section 12022.5 of the Penal Code is amended to read:

12022.5. (a)(1) Except as provided in subdivisions (b) and (c), any person who personally uses a firearm in the commission or attempted commission of a felony shall, upon conviction of that felony or attempted felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of imprisonment in the state prison for 3, 4, or 10 years, unless use of a firearm is an element of the offense of which he or she was convicted.

(2) If the person described in paragraph (1) has been convicted of carjacking or attempted carjacking, the additional term shall be 4, 5, or 10 years. The court shall order imposition of the middle term unless there are circumstances in aggravation or mitigation. The court shall state its reasons for its enhancement choice on the record at the time of sentencing.

(b)(1) Notwithstanding subdivision (a), any person who is convicted of a felony or an attempt to commit a felony, including murder or attempted murder, in which that person discharged a firearm at an occupied motor vehicle which caused great bodily injury or death to the person of another, shall, upon conviction of that felony or attempted felony, in addition and consecutive to the sentence prescribed for the felony or attempted felony, be punished by an additional term of imprisonment in the state prison for 5, 6, or 10 years.

(2) Notwithstanding subdivision (a), any person who personally uses an assault weapon, as specified in Section 12276 or Section 12276.1, or a machinegun, as defined in Section 12200, in the commission or attempted commission of a felony, shall, upon conviction of that felony or attempted felony, in addition and consecutive to the sentence prescribed for the felony or attempted felony, be punished by an additional term of imprisonment in the state prison for 5, 6, or 10 years.

(c) Notwithstanding the enhancement set forth in subdivision (a), any person who personally uses a firearm in the commission or attempted commission of a violation of Section 11351, 11351.5, 11352, 11366.5, 11366.6, 11378, 11378.5, 11379, 11379.5, or 11379.6 of the Health and Safety Code, shall, upon conviction of that offense and in addition and consecutive to the punishment prescribed for the offense of which he or she has been convicted, be punished by an additional term of imprisonment in the state prison for 3, 4, or 10 years in the court's discretion. The court shall order the imposition of the middle term unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its enhancement choice on the record.

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Additions or changes indicated by underline; deletions by asterisks * * *

(d) The additional term provided by this section may be imposed in cases of assault with a firearm under paragraph (2) of subdivision (a) of Section 245, or assault with a deadly weapon which is a firearm under Section 245, or murder if the killing was perpetrated by means of shooting a firearm from a motor vehicle, intentionally at another person outside of the vehicle with the intent to inflict great bodily injury or death.

(e) When a person is found to have personally used a firearm, an assault weapon, or a machinegun in the commission or attempted commission of a felony as provided in this section and the firearm, assault weapon, or machinegun is owned by that person, the court shall order that the firearm be deemed a nuisance and disposed of in the manner provided in Section 12028.

(f) For purposes of imposing an enhancement under Section 1170.1, the enhancements under this section shall count as one, single enhancement.

SEC. 6. Section 12079 is added to the Penal Code, to read:

12079. (a) Upon a showing that good cause exists, the Department of Justice may issue permits for the possession, transportation, or sale between a person licensed pursuant to Section 12071 and an out-of-state client, of large capacity magazines.

(b) For purposes of this section, "large capacity magazine" shall have the same meaning as that set forth in paragraph (25) of subdivision (c) of Section 12020.

SEC. 7. Section 12276.1 is added to the Penal Code, to read:

12276.1. (a) Notwithstanding Section 12276, "assault weapon" shall also mean any of the following:

(1) A semiautomatic, centerfire rifle that has the capacity to accept a detachable magazine and any one of the following:

(A) A pistol grip that protrudes conspicuously beneath the action of the weapon.

(B) A thumbhole stock.

(C) A folding or telescoping stock.

(D) A grenade launcher or flare launcher.

(E) A flash suppressor.

(F) A forward pistol grip.

(2) A semiautomatic, centerfire rifle that has a fixed magazine with the capacity to accept more than 10 rounds.

(3) A semiautomatic, centerfire rifle that has an overall length of less than 30 inches.

(4) A semiautomatic pistol that has the capacity to accept a detachable magazine and any one of the following:

(A) A threaded barrel, capable of accepting a flash suppressor, forward handgrip, or silencer.

(B) A second handgrip.

(C) A shroud that is attached to, or partially or completely encircles, the barrel that allows the bearer to fire the weapon without burning his or her hand, except a slide that encloses the barrel.

(D) The capacity to accept a detachable magazine at some location outside of the pistol grip.

(5) A semiautomatic pistol with a fixed magazine that has the capacity to accept more than 10 rounds.

(6) A semiautomatic shotgun that has both of the following:

(A) A folding or telescoping stock.

(B) A pistol grip that protrudes conspicuously beneath the action of the weapon, thumbhole stock, or vertical handgrip.

(7) A semiautomatic shotgun that has the ability to accept a detachable magazine.

(8) Any shotgun with a revolving cylinder.

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(b) "Assault weapon" does not include any antique firearm.

(c) The following definitions shall apply under this section:

(1) "Magazine" shall mean any ammunition feeding device.

(2) "Capacity to accept more than 10 rounds" shall mean capable of accommodating more than 10 rounds, but shall not be construed to include a feeding device that has been permanently altered so that it cannot accommodate more than 10 rounds.

(3) "Antique firearm" means any firearm manufactured prior to January 1, 1899.

(d) This section shall become operative January 1, 2000.

SEC. 8. Section 12280 of the Penal Code is amended to read:

12280. (a)(1) Any person who, within this state, manufactures or causes to be manufactured, distributes, transports, or imports into the state, keeps for sale, or offers or exposes for sale, or who gives or lends any assault weapon, except as provided by this chapter, is guilty of a felony, and upon conviction shall be punished by imprisonment in the state prison for four, six, or eight years.

(2) In addition and consecutive to the punishment imposed under paragraph (1), any person who transfers, lends, sells, or gives any assault weapon to a minor in violation of paragraph (1) shall receive an enhancement of one year.

(b) Except as provided in Section 12288, and in subdivisions (c) and (d), any person who, within this state, possesses any assault weapon, except as provided in this chapter, is guilty of a public offense and upon conviction shall be punished by imprisonment in the state prison, or in a county jail, not exceeding one year. However, if the person presents proof that he or she lawfully possessed the assault weapon prior to June 1, 1989, or prior to the date it was specified as an assault weapon, and has since either registered the firearm and any other lawfully obtained firearm * * * specified by Section 12276 or 12276.5 pursuant to Section 12285 or relinquished them pursuant to Section 12288, a first-time violation of this subdivision shall be an infraction punishable by a fine of up to five hundred dollars (\$500), but not less than three hundred fifty dollars (\$350), if the person has otherwise possessed the firearm in compliance with subdivision (c) of Section 12285. In these cases, the firearm shall be returned unless the court finds in the interest of public safety, after notice and hearing, that the assault weapon should be destroyed pursuant to Section 12028.

(c) A first-time violation of subdivision (b) shall be an infraction punishable by a fine of up to five hundred dollars (\$500), if the person was found in possession of no more than two firearms in compliance with subdivision (c) of Section 12285 and the person meets all of the following conditions:

(1) The person proves that he or she lawfully possessed the assault weapon prior to the date it was defined as an assault weapon pursuant to Section 12276.1.

(2) The person is not found in possession of a firearm specified as an assault weapon pursuant to Section 12276 or Section 12276.5.

(3) The person has not previously been convicted of violating this section.

(4) The person was found to be in possession of the assault weapons within one year following the end of the one-year registration period established pursuant to subdivision (a) of Section 12285.

(5) The person has since registered the firearms and any other lawfully obtained firearms defined by Section 12276.1, pursuant to Section 12285, except as provided for by this section, or relinquished them pursuant to Section 12288.

(d) Firearms seized pursuant to subdivision (c) shall be returned unless the court finds in the interest of public safety, after notice and hearing, that the assault weapon should be destroyed pursuant to Section 12028.

(e) Notwithstanding Section 654 or any other provision of law, any person who commits another crime while violating this section may receive an additional, consecutive punishment of one year for violating this section in addition and consecutive to the punishment, including enhancements, which is prescribed for the other crime.

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Additions or changes indicated by underline; deletions by asterisks * * *

(f) Subdivisions (a) and (b) shall not apply to the sale to, purchase by, or possession of assault weapons by the Department of Justice, police departments, sheriffs' offices, marshals' offices, the * * * Youth and Adult Corrections Agency, the Department of the California Highway Patrol, district attorneys' offices, Department of Fish and Game, Department of Parks and Recreation, or the military or naval forces of this state or of the United States for use in the discharge of their official duties * * *.

(g) Subdivision (b) shall not prohibit the possession or use of assault weapons by sworn peace officer members of those agencies * * * specified in subdivision (f) for law enforcement purposes, whether on or off duty.

(h) Subdivisions (a) and (b) shall not prohibit the sale or transfer of assault weapons by an entity specified in subdivision (f) to a person, upon retirement, who retired as a sworn officer from that entity.

(i) Subdivision (b) shall not apply to the possession of an assault weapon by a retired peace officer who received that assault weapon pursuant to subdivision (h).

(j) Subdivision (b) shall not apply to the possession of an assault weapon, as defined in Section 12276, by any person during the 1990 calendar year, * * * during the 90-day period immediately after the date it was specified as an assault weapon pursuant to Section 12276.5, or during the one-year period after the date it was defined as an assault weapon pursuant to Section 12276.1, if all of the following are applicable:

(1) The person is eligible under this chapter to register the particular assault weapon.

(2) The person lawfully possessed the particular assault weapon described in paragraph (1) prior to June 1, 1989, * * * if the weapon is specified as an assault weapon pursuant to Section 12276, or prior to the date it was specified as an assault weapon pursuant to Section 12276.5, or prior to the date it was defined as an assault weapon pursuant to Section 12276.1.

(3) The person is otherwise in compliance with this chapter.

(k) Subdivisions (a) and (b) shall not apply to the manufacture by persons who are issued permits pursuant to Section 12287 of assault weapons for sale to the following:

(1) Exempt entities listed in subdivision (f).

(2) Entities and persons who have been issued permits pursuant to Section 12286.

(3) Entities outside the state who have, in effect, a federal firearms dealer's license solely for the purpose of distribution to an entity listed in paragraphs (4) to (6), inclusive.

(4) Federal military and law enforcement agencies.

(5) Law enforcement and military agencies of other states.

(6) Foreign governments and agencies approved by the United States State Department.

(l) Subdivision (a) shall not apply to a person who is the executor or administrator of an estate that includes an assault weapon registered under Section 12285 or that was possessed pursuant to subdivision (g) or (i) which is disposed of as authorized by the probate court, if the disposition is otherwise permitted by this chapter.

(m) Subdivision (b) shall not apply to a person who is the executor or administrator of an estate that includes an assault weapon registered under Section 12285 or that was possessed pursuant to subdivision (g) or (i), if the assault weapon is possessed at a place set forth in paragraph (1) of subdivision (c) of Section 12285 or as authorized by the probate court.

(n) Subdivision (a) shall not apply to:

(1) A person who lawfully possesses and has registered an assault weapon pursuant to this chapter who lends that assault weapon to another if all the following apply:

(A) The person to whom the assault weapon is lent is 18 years of age or over and is not in a class of persons prohibited from possessing firearms by virtue of Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(B) The person to whom the assault weapon is lent remains in the presence of the registered possessor of the assault weapon.

(C) The assault weapon is possessed at any of the following locations:

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(i) While on a target range that holds a regulatory or business license for the purpose of practicing shooting at that target range.

(ii) While on the premises of a target range of a public or private club or organization organized for the purpose of practicing shooting at targets.

(iii) While attending any exhibition, display, or educational project that is about firearms and that is sponsored by, conducted under the auspices of, or approved by a law enforcement agency or a nationally or state recognized entity that fosters proficiency in, or promotes education about, firearms.

(2) The return of an assault weapon to the registered possessor which is lent by the same pursuant to paragraph (1).

(o) Subdivision (b) shall not apply to the possession of an assault weapon by a person to whom an assault weapon is lent pursuant to subdivision (n).

(p) Subdivisions (a) and (b) shall not apply to the possession and importation of an assault weapon into this state by a nonresident if all of the following conditions are met:

(1) The person is attending or going directly to or coming directly from an organized competitive match or league competition that involves the use of an assault weapon.

(2) The competition or match is conducted on the premises of one of the following:

(i) A target range that holds a regulatory or business license for the purpose of practicing shooting at that target range.

(ii) A target range of a public or private club or organization that is organized for the purpose of practicing shooting at targets.

(3) The match or competition is sponsored by, conducted under the auspices of, or approved by, a law enforcement agency or a nationally or state recognized entity that fosters proficiency in, or promotes education about, firearms.

(4) The assault weapon is transported in accordance with Section 12026.1 or 12026.2.

(5) The person is 18 years of age or over and is not in a class of persons prohibited from possessing firearms by virtue of Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(q) Subdivision (b) shall not apply to any of the following persons:

(1) A person acting in accordance with Section 12286.

(2) A person who has a permit to possess an assault weapon issued pursuant to Section 12286 when he or she is acting in accordance with Section 12285 or 12286.

(r) Subdivisions (a) and (b) shall not apply to any of the following persons:

(1) A person acting in accordance with Section 12285.

(2) A person acting in accordance with Section 12286 or 12290.

(s) Subdivision (b) shall not apply to the registered owner of an assault weapon possessing that firearm in accordance with subdivision (c) of Section 12285.

(t) Subdivision (a) shall not apply to the importation into this state of an assault weapon by the registered owner of that assault weapon, if it is in accordance with the provisions of subdivision (c) of Section 12285.

(u) As used in this chapter, the date a firearm is * * * an assault weapon * * * is the earliest of the following:

(1) The effective date of an amendment to Section 12276 that adds the designation of the specified firearm.

(2) The effective date of the list promulgated pursuant to Section 12276.5 that adds or changes the designation of the specified firearm.

(3) The operative date of Section 12276.1, as specified in subdivision (b) of that section.

SEC. 9. Section 12285 of the Penal Code is amended to read:

12285. (a) Any person who lawfully possesses an assault weapon, as defined in Section 12276, prior to June 1, 1989, shall register the firearm by January 1, 1991, and any person who lawfully possessed an assault weapon prior to the date it was specified as an assault

weapon pursuant to Section 12276.5 shall register the firearm within 90 days * * * with the Department of Justice pursuant to those procedures that the department may establish. Except as provided in subdivision (a) of Section 12280, any person who lawfully possessed an assault weapon prior to the date it was defined as an assault weapon pursuant to Section 12276.1, and which was not specified as an assault weapon under Section 12276 or 12276.5, shall register the firearm within one year of the effective date of Section 12276.1, with the department pursuant to those procedures that the department may establish. The registration shall contain a description of the firearm that identifies it uniquely, including all identification marks, the full name, address, date of birth, and thumbprint of the owner, and any other information that the department may deem appropriate. The department may charge a fee for registration of up to twenty dollars (\$20) per person but not to exceed the actual processing costs of the department. After the department establishes fees sufficient to reimburse the department for processing costs, fees charged shall increase at a rate not to exceed the legislatively approved annual cost-of-living adjustment for the department's budget or as otherwise increased through the Budget Act.

(b)(1) Except as provided in paragraph (2), no assault weapon possessed pursuant to this section may be sold or transferred on or after January 1, 1990, to anyone within this state other than to a licensed gun dealer, as defined in subdivision (c) of Section 12290, or as provided in Section 12288. Any person who (A) obtains title to an assault weapon registered under this section or that was possessed pursuant to subdivision (g) or (i) of Section 12280 by bequest or intestate succession, or (B) lawfully possessed a firearm subsequently declared to be an assault weapon pursuant to Section 12276.5, or subsequently defined as an assault weapon pursuant to Section 12276.1, shall, within 90 days, render the weapon permanently inoperable, sell the weapon to a licensed gun dealer, obtain a permit from the Department of Justice in the same manner as specified in Article 3 (commencing with Section 12230) of Chapter 2, or remove the weapon from this state. A person who lawfully possessed a firearm that was subsequently declared to be an assault weapon pursuant to Section 12276.5 may alternatively register the firearm within 90 days of the declaration issued pursuant to subdivision (f) of Section 12276.5.

(2) A person moving into this state, otherwise in lawful possession of an assault weapon, shall do one of the following:

(A) Prior to bringing the assault weapon into this state, that person shall first obtain a permit from the Department of Justice in the same manner as specified in Article 3 (commencing with Section 12230) of Chapter 2.

(B) The person shall cause the assault weapon to be delivered to a licensed gun dealer, as defined in subdivision (c) of Section 12290, in this state in accordance with Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto. If the person obtains a permit from the Department of Justice in the same manner as specified in Article 3 (commencing with Section 12230) of Chapter 2, the dealer shall redeliver that assault weapon to the person. If the licensed gun dealer, as defined in subdivision (c) of Section 12290, is prohibited from delivering the assault weapon to a person pursuant to this paragraph, the dealer shall possess or dispose of the assault weapon as allowed by this chapter.

(c) A person who has registered an assault weapon under this section may possess it only under any of the following conditions unless a permit allowing additional uses is first obtained under Section 12286:

(1) At that person's residence, place of business, or other property owned by that person, or on property owned by another with the owner's express permission.

(2) While on the premises of a target range of a public or private club or organization organized for the purpose of practicing shooting at targets.

(3) While on a target range that holds a regulatory or business license for the purpose of practicing shooting at that target range.

(4) While on the premises of a shooting club which is licensed pursuant to the Fish and Game Code.

(5) While attending any exhibition, display, or educational project which is about firearms and which is sponsored by, conducted under the auspices of, or approved by a law

Ch. 129, § 9

STATUTES OF 1999

enforcement agency or a nationally or state recognized entity that fosters proficiency in, or promotes education about, firearms.

(6) While on publicly owned land if the possession and use of a firearm described in Section 12276 or 12276.1 is specifically permitted by the managing agency of the land.

(7) While transporting the assault weapon between any of the places mentioned in this subdivision, or to any licensed gun dealer, as defined in subdivision (c) of Section 12290, for servicing or repair pursuant to subdivision (b) of Section 12290, if the assault weapon is transported as required by Section 12026.1.

(d) No person who is under the age of 18 years, no person who is prohibited from possessing a firearm by Section 12021 or 12021.1, and no person described in Section 8100 or 8103 of the Welfare and Institutions Code may register or possess an assault weapon.

(e) The department's registration procedures shall provide the option of joint registration for assault weapons owned by family members residing in the same household.

(f) For 90 days following January 1, 1992, a forgiveness period shall exist to allow persons specified in subdivision (b) of Section 12280 to register with the Department of Justice assault weapons that they lawfully possessed prior to June 1, 1989.

(g) Any person who registered a firearm as an assault weapon pursuant to the provisions of law in effect prior to January 1, 2000, where the assault weapon is thereafter defined as an assault weapon pursuant to Section 12276.1, shall be deemed to have registered the weapon for purposes of this chapter and shall not be required to reregister the weapon pursuant to this section.

(h) Any person who registers his or her assault weapon during the 90-day forgiveness period described in subdivision (f), and any person whose registration form was received by the Department of Justice after January 1, 1991, and who was issued a temporary registration prior to the end of the forgiveness period, shall not be charged with a violation of subdivision (b) of Section 12280, if law enforcement becomes aware of that violation only as a result of the registration of the assault weapon. This subdivision shall have no effect upon persons charged with a violation of subdivision (b) of Section 12280 of the Penal Code prior to January 1, 1992, provided that law enforcement was aware of the violation before the weapon was registered.

SEC. 10. Section 12287 of the Penal Code is amended to read:

12287. (a) The Department of Justice may, upon a finding of good cause, issue permits for the manufacture of assault weapons to federally licensed manufacturers of firearms for the sale to, purchase by, or possession of assault weapons by, any of the following:

- (1) The agencies listed in subdivision (f) of Section 12280.
- (2) Entities and persons who have been issued permits pursuant to Section 12286.
- (3) Entities outside the state who have, in effect, a federal firearms dealer's license solely for the purpose of distribution to an entity listed in paragraphs (4) to (6), inclusive.
- (4) Federal law enforcement and military agencies.
- (5) Law enforcement and military agencies of other states.
- (6) Foreign governments and agencies approved by the United States State Department.

(b) Application for the permits, the keeping and inspection thereof, and the revocation of permits shall be undertaken in the same manner as specified in Article 3 (commencing with Section 12230) of Chapter 2.

SEC. 11. Section 12289 of the Penal Code is amended to read:

12289. (a) The Department of Justice shall conduct a public education and notification program regarding the registration of assault weapons * * * and the definition of the weapons set forth in Section 12276.1. The public education and notification program shall include outreach to local law enforcement agencies and utilization of public service announcements in a variety of media approaches, to ensure maximum publicity of the limited forgiveness period of the registration requirement specified in subdivision (f) of Section 12285 and the consequences of nonregistration. The department shall develop posters describing

1999-2000 REGULAR SESSION

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gunowners' responsibilities under this chapter which shall be posted in a conspicuous place in every licensed gun store in the state during the forgiveness period.

(b) Any costs incurred by the Department of Justice to implement this section which cannot be absorbed by the department shall be funded from the Dealers' Record of Sale Special Account, as set forth in subdivision (d) of Section 12076, upon appropriation by the Legislature.

SEC. 12. It was the original intent of the Legislature in enacting Chapter 19 of the Statutes of 1989 to ban all assault weapons, regardless of their name, model number, or manufacture. It is the purpose of this act to effectively achieve the Legislature's intent to prohibit all assault weapons.

SEC. 13. If any phrase, clause, sentence, section, or provision of this act or application thereof is held invalid as to any person or circumstance, such invalidity shall not affect any other phrase, clause, sentence, section, provision, or application of this act, that can be given effect without the invalid phrase, clause, sentence, section, provision, or application and to this end the provisions of the act are declared to be severable.

SEC. 14. Section 3.5 of this bill incorporates amendments to Section 12020 of the Penal Code proposed by this bill and SB 359. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2000, (2) each bill amends Section 12020 of the Penal Code, and (3) this bill is enacted after SB 359, in which case Section 12020 of the Penal Code, as amended by SB 359, shall remain operative only until the operative date of this bill, at which time Section 3.5 of this bill shall become operative, and Section 3 of this bill shall not become operative.

SEC. 15. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

FINANCIAL INSTITUTIONS—TRUST COMPANIES—INVESTMENTS

CHAPTER 130

A.B. No. 459

AN ACT to amend Section 1561.1 of the Financial Code, relating to investments.

[Filed with Secretary of State July 20, 1999.]

LEGISLATIVE COUNSEL'S DIGEST

AB 459, Ackerman. Trust companies: investments.

Existing law authorizes a trust company to invest or reinvest in the securities or other interests of any fund for which the trust company or its affiliate is providing specified investment or management services. The trust company is required to provide written notice to certain persons at least 30 days prior to an initial investment.

This bill instead requires that notice to be provided within 30 days before or after the initial investment.

The people of the State of California do enact as follows:

SECTION 1. Section 1561.1 of the Financial Code is amended to read:

1561.1. (a) As used in this section:

(1) "Fund" means any investment company registered under the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.), as amended from time to time.

Additions or changes indicated by underline; deletions by asterisks * * *

1559

EXHIBIT 2

To

**Declaration of Roderick M. Thompson in
Support of Sunnyvale's Opposition to
Plaintiffs' Motion for Preliminary
Injunction**

Violence Policy Center

1730 Rhode Island Avenue, NW
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Mass Shootings in the United States Involving High-Capacity Ammunition Magazines



Columbine shooter armed with Intratec TEC-DC9 assault pistol equipped with high-capacity ammunition magazine

Mass Shooting Incident	Casualties	Firearm(s)	High-Capacity Ammunition Magazine(s)
Santa Monica, California June 7, 2013 Shooter: John Zawahri	6 dead, (including shooter)	AR-type assault rifle built from parts	40 30-round magazines
Sandy Hook Elementary School Newtown, Connecticut December 14, 2012 Shooter: Adam Lanza	28 dead, (including shooter)	Bushmaster assault rifle, 10mm Glock pistol, 9mm Sig Sauer pistol	30-round magazines
Century Aurora 16 movie theater Aurora, Colorado July 20, 2012 Shooter: James Holmes	12 dead, 58 wounded	Smith & Wesson M&P15 assault rifle, .40 Glock pistol, Remington 12 gauge shotgun	100-round magazine

Mass Shooting Incident	Casualties	Firearm(s)	High-Capacity Ammunition Magazine(s)
IHOP Carson City, Nevada September 6, 2011 Shooter: Eduardo Sencion	5 dead, (including shooter), seven wounded	MAK-90 assault rifle (illegally converted to full- auto)	20- and 30-round magazines
Safeway parking lot Tucson, Arizona January 8, 2011 Shooter: Jared Loughner	6 dead, 13 wounded	Glock 19 pistol	Two 31-round magazines Two 15-round magazines
Shreveport, Louisiana August 16, 2010 Shooter: Marcus Donte Reed	3 dead	Assault weapon	30-round magazine
Hartford Distributors Manchester, Connecticut August 3, 2010 Shooter: Omar Thornton	9 dead (including shooter), 2 wounded	Sturm, Ruger SR9 pistol	High-capacity magazine (capacity unstated)
ABB, Inc. St. Louis, Missouri January 7, 2010 Shooter: Timothy Hendron	4 dead (including shooter), 5 wounded	Romarm AK-47 assault rifle, Tristar 12 gauge shotgun, Hi-Point .40 pistol	Two "banana-style" high- capacity magazines (capacity not stated)
Fort Hood Fort Hood, Texas November 5, 2009 Shooter: Nidal Hasan	13 dead, 34 wounded	FN Five-seven 5.7mm pistol	30- and 20-round magazines
LA Fitness Center Collier, Pennsylvania August 4, 2009 Shooter: George Sodini	4 dead (including shooter), nine wounded	Two 9mm pistols, .45 pistol, .32 pistol	30-round magazines
American Civic Association Binghamton, New York April 3, 2009 Shooter: Jiverly Wong	14 dead (including shooter), 4 wounded	9mm Beretta handgun, .45 handgun	30-round magazine
Alabama, multiple locations March 10, 2009 Shooter: Michael McLendon	11 dead (including shooter)	Two assault rifles	High-capacity magazines taped together
Walt Lou Trailer Park Stafford, Virginia May 5, 2008 Shooter: Aaron Poseidon Jackson	4 dead (including shooter)	WASR-10 assault rifle, Smith & Wesson .38 revolver	30-round magazines

Mass Shooting Incident	Casualties	Firearm(s)	High-Capacity Ammunition Magazine(s)
Northern Illinois University DeKalb, Illinois February 14, 2008 Shooter: Steven Phillip Kazmierczak	6 dead (including shooter), 21 wounded	Glock19 9mm pistol, Hi-Point 380, Remington12 gauge Sportsman 48 shotgun	33- and 15-round magazines
Westroads Mall Omaha, Nebraska December 5, 2007 Shooter: Robert Hawkins	9 dead (including shooter), 5 wounded	WASR-10 assault rifle	Two 30-round magazines taped together
Virginia Tech Blacksburg, Virginia April 16, 2007 Shooter: Seung-Hui Cho	33 dead (including shooter), 17 wounded	Glock 19 pistol, Walther P22 pistol	15-round magazines
Hunting Camp Birchwood, Wisconsin November 21, 2004 Shooter: Chai Vang	6 dead, 3 wounded	SKS assault rifle	20-round magazine
Edgewater Technology Inc. Wakefield, Massachusetts December 26, 2000 Shooter: Michael McDermott	7 dead	AK-47 assault rifle, 12 gauge pump- action shotgun	60-round, large-capacity feeding device
Xerox Honolulu, Hawaii November 2, 1999 Shooter: Byran Uyesugi	7 dead	Glock 17 9mm pistol	Three 15-round magazines
Wedgewood Baptist Church Fort Worth, Texas September 15, 1999 Shooter: Larry Gene Ashbrook	8 dead (including shooter), 7 wounded	Sturm, Ruger P85 9mm pistol, .380 pistol	Three 15-round magazines
Columbine High School Littleton, Colorado April 20, 1999 Shooters: Eric Harris and Dylan Klebold	15 dead (including shooters), 23 wounded	Intratec TEC-DC9 assault pistol, Hi-Point 9mm Carbine, Savage 67H pump- action shotgun, Savage 311-D 12- gauge shotgun	High-capacity magazines (capacity unstated)

Mass Shooting Incident	Casualties	Firearm(s)	High-Capacity Ammunition Magazine(s)
Thurston High School Springfield, Oregon May 21, 1998 Shooter: Kip Kinkel	4 dead, 22 wounded	9mm Glock pistol, .22 Sturm Ruger rifle, .22 Sturm Ruger pistol	50-round magazine
Westside Middle School Jonesboro, Arkansas March 24, 1998 Shooters: Andrew Golden and Mitchell Johnson	5 dead, 10 wounded	M-1 rifle, Remington .30-06 rifle, various handguns	15-round magazine
Connecticut State Lottery Headquarters Newington, Connecticut March 6, 1998 Shooter: Matthew Beck	5 dead (including shooter)	Glock 9mm pistol	19-round magazine
Caltrans Maintenance Yard Orange, California December 18, 1997 Shooter: Arturo Reyes Torres	5 dead (including shooter), 2 wounded	AK-47 assault rifle	Five 30-round magazines
DC Police Headquarters Washington, DC November 22, 1994 Shooter: Bennie Lee Lawson	4 dead (including shooter), 1 wounded	Cobray M-11 assault pistol	Extended magazine
Fairchild Air Force Base hospital Spokane, Washington June 20, 1994 Shooter: Dean Mellberg	5 dead (including shooter), 23 wounded	MAK-90 assault rifle	75-round drum magazine
Long Island Railroad Long Island, New York December 7, 1993 Shooter: Colin Ferguson	6 dead, 19 wounded	Sturm, Ruger P-89 9mm pistol	Four 15-round magazines
Pettit & Martin Law Offices San Francisco, California July 1, 1993 Shooter: Gian Luigi Ferri	9 dead (including shooter), 6 wounded	Two Intratec TEC-DC9 assault pistols, .45 pistol	40- to 50-round magazines

Mass Shooting Incident	Casualties	Firearm(s)	High-Capacity Ammunition Magazine(s)
CIA Headquarters Langley, Virginia January 25, 1993 Shooter: Mir Aimal Kasi	2 dead, 3 wounded	AK-47 assault rifle	30-round magazine
Luby's Cafeteria Killeen, Texas October 16, 1991 Shooter: George Hennard	24 dead (including shooter), 20 wounded	Sturm, Ruger P-89 9mm pistol, Glock 9mm pistol	17- and 15-round magazines
General Motors Acceptance Corp. Jacksonville, Florida June 18, 1990 Shooter: James Pough	10 dead (including shooter), 4 wounded	M-1 rifle, .38 revolver	30-round magazines
Standard Gravure Corporation Louisville, Kentucky September 14, 1989 Shooter: Joseph Wesbecker	9 dead (including shooter), 12 wounded	AK-47 assault rifle, 2 MAC-11 assault pistols, .38 revolver, Sig Sauer 9mm pistol	30-round magazines
Cleveland Elementary School Stockton, California January 17, 1989 Shooter: Patrick Purdy	6 dead (including shooter), 30 wounded	AK-47 assault rifle, Taurus 9mm pistol, unidentified pistol	75-round drum magazine
Palm Bay shopping center Palm Bay, Florida April 23, 1987 Shooter: William Cruse	6 dead (including 2 police officers)	Sturm, Ruger Mini-14 assault rifle	Five 30-round magazines
McDonald's San Ysidro, California July 18, 1984 Shooter: James Huberty	22 dead (including shooter), 19 wounded	Uzi Carbine, Browning 9mm pistol, Winchester 1200 pump-action 12-gauge shotgun	25-round magazine

EXHIBIT 3

To

**Declaration of Roderick M. Thompson in
Support of Sunnyvale's Opposition to
Plaintiffs' Motion for Preliminary
Injunction**



FBI Law Enforcement Bulletin

Home • 2014 • January • Active Shooter Events from 2000 to 2012

Active Shooter Events from 2000 to 2012

By J. Pete Blair, Ph.D., M. Hunter Martindale, M.S., and Terry Nichols, M.S.



1/7/2014

On April 20, 1999, two Columbine High School students killed twelve classmates and a teacher in Littleton, Colorado. The shooters committed suicide before officers entered the school to intervene. Outrage on the part of the public and deep introspection by the police produced massive changes in law enforcement response to ongoing acts of violence.[1] Unfortunately, active shooter events (ASEs) have continued to occur. Recent tragedies have happened at the Century 21 Movie Theater in Aurora, Colorado, and Sandy Hook Elementary School in Newtown, Connecticut. Out of 70 people shot in Aurora, Colorado, 12 eventually died. Twenty first graders, six staff members, and the shooter's mother were murdered in Newtown. Even more recently, employees at the Washington Navy Yard in the District of Columbia were attacked. Twelve people were killed in this attack. All four of these events drew national attention.

Such high-profile events put a substantial amount of pressure on law enforcement officials to respond effectively; however, solid empirical information is needed if law enforcement administrators are to develop effective policies and procedures regarding these events. The goal of this article is to provide such information along with the authors' insights into what these data tell us about an effective active shooter response.

Although not an exhaustive review of each incident, this evaluation identified a steady rise in incidents, as well as a consistent increase in the number of those shot and killed. The data establish that officers must have the equipment with them to engage the shooter to end the threat and must be prepared to administer medical assistance to the wounded before emergency medical services (EMS) arrive.

In addition, though officers responded quickly (i.e., median time 3 minutes), shooters inflicted devastating damage beforehand. This adds to the growing evidence that citizens must have insight on how to respond. The FBI's support for strong citizen awareness, detailed in the "Run, Hide, Fight" protocol, is endorsed by all other federal agencies. [2] The data establish that when prepared, the potential victims themselves can stop the shooter.

METHODOLOGY

Dr. Blair is the director of research for the Advanced Law Enforcement Rapid Response Training Center and an associate professor of criminal justice at Texas State University, San Marcos.



Mr. Martindale is a research assistant for the Advanced Law Enforcement Rapid Response Training Center and a graduate student at the Texas State University School of Criminal Justice in San Marcos.



In Depth

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- Leadership Spotlight
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Search Strategy

The federal government defines an active shooter as “an individual actively engaged in killing or attempting to kill people in a confined and populated area, typically through the use of firearms.”³ For this study ASEs were located via a systematic search strategy.⁴ Public records were searched using a variety of search terms to locate news stories from 2000 to 2012 involving potential ASEs in the United States. Incidents identified from these searches then were evaluated to see if they met the following criteria: The event had to involve one or more persons engaged in killing or attempting to kill multiple people in an area occupied by multiple unrelated individuals—at least one of the victims must be unrelated to the shooter. The primary motive in these incidents appears to be mass murder; that is, the shooting is not a by-product of an attempt to commit another crime. While many gang-related shootings could fall within this category, they were excluded from this study because gang-related shootings are not considered ASEs by law enforcement. A total of 110 active shooter events were identified through this process.

Mr. Nichols retired as a commander from the San Marcos, Texas, Police Department and is the assistant director of the Advanced Law Enforcement Rapid Response Training Center.



To check the completeness of the list, the authors checked the events identified during the search process against other lists/collections of ASEs. In no case did the authors find an event (that met their definition) in another list that they had not found via the public records search. While the authors believe that the search strategy produced an accurate list of ASEs, it, of course, is possible that they missed an event.

Data

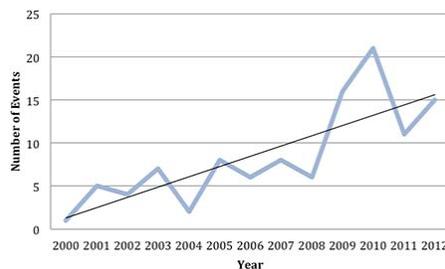
Sources used to collect information about the events included reports from the investigating agencies, the supplemental homicide reports (SHRs) produced by the FBI, and news stories. Not all sources of data were available for all events. The most current data from SHRs only cover up to 2010. For this reason it was not possible to use SHRs for events that occurred in 2011 and 2012. Recent events generally are under ongoing investigations, and the investigating agencies do not release these reports. Therefore, events that occurred during 2011 and 2012 were coded from the most recent news reports.

For the events that occurred between 2000 and 2010, agency reports were obtained through Freedom of Information Act (FOIA) requests. Out of these 84 events identified between 2000 and 2010, 42 agencies (50 percent) supplied the requested information. Forty-six of the 84 events (55 percent) were located in the SHRs. News reports were available for all 110 events. When data were available from multiple sources, the agreement between the sources was high. Two coders also coded the events to ensure reliability. Their agreement with each other was high.

FINDINGS

A discussion will cover the increasing frequency of ASEs and the number of people killed. Next, information about the shooters will be presented. Finally, how the events concluded will be described.

Figure 1. Active Shooter Events by Year

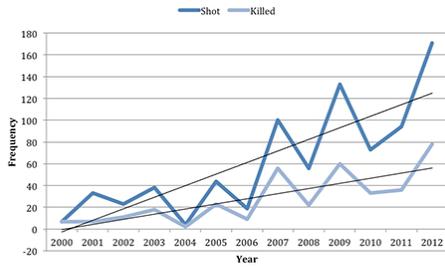


Characteristics of Events

Frequency

Figure 1 presents the frequency of ASEs by year. The dotted trendline shows a definite increase over the past 12 years. In fact, the number of events drastically increased following 2008. The rate at which these events occurred went from approximately 1 every other month between 2000 and 2008 (5 per year) to more than 1 per month between 2009 and 2012 (almost 16 per year). The authors’ tracking also indicates that this increased rate has continued into 2013—more specifically, there were 15 events. While it is possible that this increase is an artifact of the search strategy (perhaps, archiving of the news reports has improved in recent years), the authors believe that the observed rise represents a real increase in the number of events in recent years. Figure 2 shows the number of people shot and the number of people killed for each year. Here again the trend line shows a definite increase. The authors’ tracking indicated that there were 72 people shot and 39 killed in 2013.

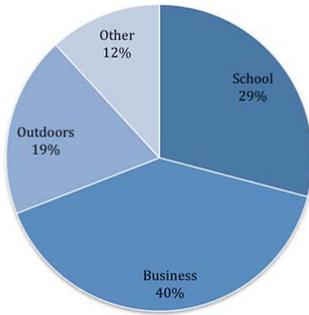
Figure 2. Number of People Shot and Killed Per Year



Location

Figure 3 illustrates the primary location of ASEs. Business locales (e.g., retail stores, office buildings, and factories/warehouses) were the most frequently attacked locations. Schools, both K-12 and institutions of higher education, were the second-most attacked locations at 29 percent. Approximately 1 out of 5 ASEs occurred in outdoor environments. The other category includes places, like military bases and churches, that did not fit into one of the other categories. It also is worthwhile to note that 18 percent of the attackers went mobile during their attacks; that is, the perpetrator started at one location and then moved to another while still actively attacking. Most frequently, attackers simply walked to another nearby location, but in some cases they used an automobile to move between more distant attack sites.

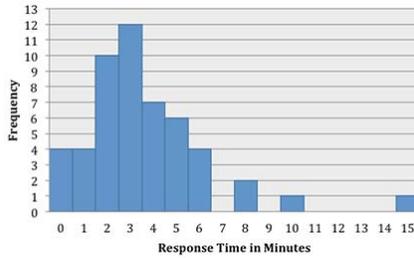
Figure 3. Location of Attacks



Police Response Time

Figure 4 shows police response time for these events. This information was not available for more than half of the cases identified. For the 51 cases that included the data, the median response time was 3 minutes—fast by law enforcement standards.

Figure 4. Police Response Time

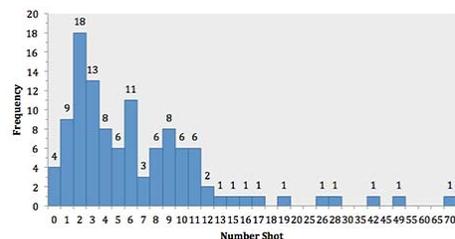


Number Shot

Figure 5 depicts the number of people shot per event—the median is five. It should be noted that if the shooter is shot, the authors do not include the shooter in their counts of the number of people shot or killed. As can be seen in the figure, most of the events are clustered on the left side and do not

right-hand side of the figure. It also is worth noting that in the five largest-casualty events (Northern Illinois University in DeKalb; Sandy Hook Elementary School; Fort Hood Army Base, Killeen, Texas; Virginia Polytechnic and State University in Blacksburg; and the Century 21 Theater) the police were on scene in about 3 minutes; yet, a substantial number of people still were shot and injured or killed.

Figure 5. Number Shot Per Event



Characteristics of the Shooter

Shooter Profile

Single shooters conducted all attacks between 2000 to 2012 that the authors identified. Shooters did not fit a specific profile. While most (94 percent) of the shooters were male, some were female. They also came from different racial and ethnic categories. The youngest shooter in the data set was 13, and the oldest was 88. Again, no clear profile based upon the demographics of the shooter was observed.

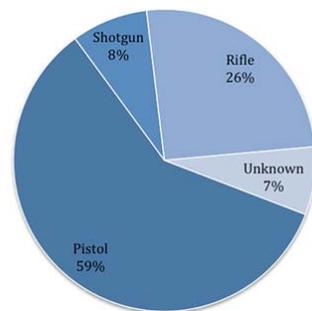
Relationship Between Shooter and Victims

The shooter did not have any apparent connection (such as being a current or former student/employee) with the attack location in 45 percent of events. In 55 percent of the incidents, the shooter did have a connection with the attack location.

Shooter Equipment

Figure 6 shows the most powerful weapon that shooters brought to the attack site. In about 60 percent of the attacks the most powerful weapon used was a pistol. In 8 percent it was a shotgun, and the most powerful weapon used was a rifle in about 25 percent of the cases. Shooters brought multiple weapons in about one-third of the attacks. Perpetrators brought improvised explosive devices (IEDs) to the attack site in 3 percent of the cases and wore body armor in 5 percent.

Figure 6. Most Powerful Weapon Used



Resolution of the Event

Conclusion of All Incidents

Figure 7 depicts how the attacks ended. Six media accounts for events ending in 2011 and 2012 did not explicitly state how the incidents concluded; therefore, these events were excluded from the flowchart. If the incident ended before law enforcement officers arrived on scene, it is depicted to the left of the centerline. Events that ended after the police arrived are depicted to the right of the centerline. Approximately half of the events (49 percent) ended before law enforcement arrived on scene. This points to the phenomenal speed with which these incidents occur.

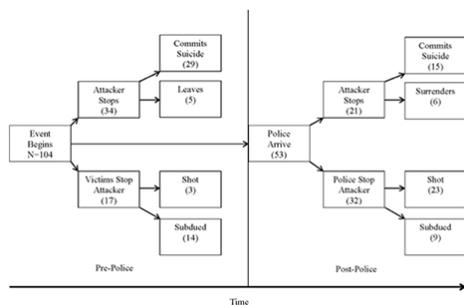
Of the cases that ended before the police arrived, 67 percent (34) ended with attackers stopping themselves via suicide (29 cases) or by leaving the scene (5 cases). In the other 33 percent (17) of the cases that ended before the police arrived, the potential victims at the scene stopped the shooter themselves. Most commonly they physically subdued the attacker (14 cases), but 3 cases involved people at the scene shooting the perpetrator to end the attack.

ASes still were ongoing when law enforcement arrived in 51 percent (53) of the cases. Of these, attackers stopped themselves when law enforcement arrived in 21 cases (40 percent). Most commonly the attacker committed suicide (15 cases), but there were 6 cases in which the perpetrator surrendered to the arriving police.

Law enforcement officers used force to stop perpetrators 60 percent of the time (32 cases) when the attack still was ongoing at the time of their arrival. Most commonly they shot the attacker (23 cases). In 9 cases responding officers subdued the attacker with means other than a firearm.

In 8 (7 percent) of the cases the authors examined, the attacker shot the responding officers. If only the shootings that were active at the time that the police arrived are considered (53—those to the right of the centerline), then officers were shot in 15 percent of events ongoing at the time of their arrival. That makes an active shooter call among the most dangerous in law enforcement.

Figure 7. Event Resolution



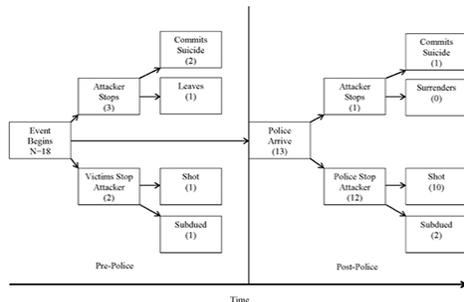
Solo Officer Response

Initially, training programs and departments instructed their officers to form teams before entering a structure to seek out an attacker. Teams offer the responding officers a variety of advantages, but they also take time to assemble. As time went by, agencies began to weigh the advantages and disadvantages of smaller teams and even solo officer entry into the attack location. Many departments now authorize officers to make solo entry into locations where an ASE is occurring.

The authors also sought to assess how events that included solo officer entry unfolded. In many cases, solo officer entry was a difficult item to code. Police and media reports often did not contain enough information to determine whether a solo officer entry was conducted; nonetheless, the authors identified 18 cases that they confidently believe involved solo officer entry. The resolution of the cases is presented in figure 8. During solo officer entries, the event likely would be ongoing, and the officers probably would use force to stop the attacker. This most likely was a product of these officers arriving on scene and entering the attack site quickly—the median response time was 3 minutes for all events and 2 minutes for those involving solo officers.

In total, 13 of the 18 events (72 percent) still were ongoing when solo officers arrived on scene. Of these 13 incidents, law enforcement personnel either shot or physically subdued the shooter 12 times. Solo officers were also more likely to be injured during the event. Three of the 18 solo officers (17 percent) were shot. If only cases ongoing at the time of solo officer entry (13) were considered, officers were shot 23 percent of the time. Solo officer entries provide faster response, but also increase the danger to the officer.

Figure 8. Event Resolution for Solo Officer Entries



TRAINING AND EQUIPMENT IMPLICATIONS

Prepared to Use Force

The authors have seen discussions on message boards—even in training classes—where officers suggest the only training needed to respond to ASEs is to get to the scene quickly. The belief is that most events will be over, or suspects will kill themselves. While it is true that 1) 49 percent of the events end before officers arrive and 2) suspects kill themselves after the police arrive 14 percent of the time, responding officers used force to stop the attack in 31 percent of the ASEs assessed. This 1 in 3 chance of having to use force makes it clear that simply training officers to show up is not enough. Officers must learn the tactical skills needed to successfully resolve these events. Because not all events occur indoors (18 percent happen outdoors), officers must be trained to operate in both environments. Indoor (i.e., close-quarters) battle tactics are not suitable in outdoor environments, and using them outdoors can be fatal.

Being prepared to use force also means having the equipment needed to act effectively. The data clearly support equipping officers with patrol rifles. Many ASE sites involve open spaces or long hallways that create engagement distances beyond the ability of most officers to effectively engage a suspect with a pistol. Add this to the possibility that the officers may have to place precision fire on a suspect while avoiding hitting fleeing or injured victims, and the need for patrol rifles is clear.

equivalent to what they will face if they go in harm's way.

Because shooters often carry rifles and frequently shoot at officers in these events, law enforcement personnel should wear body armor that can protect them from rifle fire. This means that officers should be equipped with ballistic plates. Most of the rifle rounds used by active shooters can be stopped with type III plates, but some shooters have fired rounds that would be stopped only by type IV plates. Many of the commercially available plate carriers also have attachment points that can be used to carry other equipment, which proves useful during ASEs. This allows the plate carrier to serve as a "go bag" in addition to providing enhanced protection.

Some agencies recommend the use of ballistic shields in ASEs. The danger inherent in these events argues for increased protection, but that generally comes with a tradeoff. For instance, most shields are designed to be used with pistols, which would require the officer to give up the ballistic advantage of a rifle. Also, man-portable shields currently are not rated to stop rifle fire. In the roughly 1 of 4 events where the shooter is armed with a rifle, a shield would not provide additional protection.

Ready to Provide Medical Assistance

During the confusion of an ASE, it is common for different descriptions of the shooter to be phoned into 911 or communicated to responding officers. This often creates a situation where, even though the police have found the body of or dealt with a shooter directly, they cannot be certain that this was the only shooter. Additionally, it is common for people to continue to call in reports of people with guns after the shooter has been dealt with. In some cases, this is caused by a lag between observation and reporting. The person calling saw the actual shooter, fled, and then reported what he or she saw several minutes later. In others, the caller has seen police officers responding in plain clothes or nontraditional uniforms and mistaken the officers for attackers. In yet other cases, the callers are simply wrong. Regardless of the cause of the confusion, the officers on scene often must engage in a systematic search of the attack location to confirm that there is not another shooter. In a large attack site, this search can take hours.

This creates a problem for those wounded and in need of medical care because most EMS providers will not enter a scene until it is declared "secure" or "cold." Securing the scene can take hours. During this time, victims may bleed to death or go into shock and die. To combat this problem, national organizations have endorsed the Rescue Task Force (RTF) concept.^[5] This involves having EMS personnel enter attack sites to stabilize and rapidly remove the injured, while a ballistic or explosive threat still may exist. EMS personnel operating in RTFs wear body armor and are provided security by law enforcement personnel. This concept represents a significant improvement in EMS response to ASEs, but it undoubtedly will take substantial time to implement nationwide.

Even with faster EMS response, responding officers will face situations where they can save the lives of victims by quickly applying proper hemorrhage control techniques after the immediate threat has been dealt with. Additionally, in a mass-casualty event, the number of wounded may overwhelm the capabilities of responding EMS personnel. Recognizing that the primary objective of a responding officer is to neutralize the threat, if officers have some medical training, they may be in a position to aid the injured and possibly save lives.^[6] This training currently is available, and the authors strongly recommend that all law enforcement officers receive it to maximize their ability to help those injured during these horrible events.^[7]

Obviously, if officers are going to be trained to provide medical aid, they need equipment to provide this aid. Numerous wound care kits are commercially available and easily can be attached to a plate carrier. Also, the authors suggest that all officers carry tourniquets. Tourniquets are useful for stopping extremity bleeding, whether it is caused by a gunshot wound or other trauma. In numerous cases across the country, officers have saved not only the lives of other officers but also civilians by applying a tourniquet.

Civilians Trained to React

Police have, generally, done an excellent job responding to active shooter events quickly. Despite the dramatic improvement in police response since the Columbine High School shooting incident, attacks that result in high numbers of casualties continue. The five highest casualty events since 2000 happened despite police arriving on scene in about 3 minutes. Clearly, fast and effective police response comprises only part of the answer to limiting the damage done during these attacks.

Also important are the actions that civilians take to protect themselves during the 3 or more minutes that it takes the police to arrive. Civilians need to be trained about what to do if one of these attacks occurs. A variety of resources are available at no cost. Federal agencies, including both the FBI and the Department of Homeland Security, Federal Emergency Management Agency, endorse the use of the teaching technique of Run, Hide, Fight to explain to civilians how they can protect themselves and others around them.^[8] Police departments and the communities they serve should work together to implement this training.

CONCLUSION

The frequency of active shooter events has increased in recent years. These incidents also have generated a substantial amount of public concern. The authors hope that the data provided in this article will provide police administrators with the information they need to form sound, evidence-based best practices in responding to these events and that these best practices will help save lives.

Endnotes

[1] J.P. Blair, T. Nichols, D. Burns, and J.R. Curnutt, *Active Shooter Events and Response* (Boca Raton, FL: CRC Press, 2013).

[2] Federal Bureau of Investigation, Critical Incident Response Group, "Active Shooter/Mass Casualty Events," <http://www.fbi.gov/about-us/cirg/active-shooter-and-mass-casualty-incidents> (accessed November 22, 2013).

[3] Federal Bureau of Investigation, Critical Incident Response Group, "Active Shooter Event: Quick Reference Guide," <http://www.fbi.gov/about-us/cirg/active-shooter-and-mass-casualty-incidents/active-shooter-tent-card-090513.pdf> (accessed November 22, 2013).

[4] Ibid.

[5] Department of Homeland Security, Federal Emergency Management Agency, U.S. Fire Administration, "Fire/Emergency Medical Services Department Operational Considerations and Guide for Active Shooter and Mass Casualty Incidents," http://www.usfa.fema.gov/downloads/pdf/publications/active_shooter_guide.pdf (accessed November 26, 2013); International Association of Fire Fighters, "IAFF Position Statement: Active Shooter Events," http://www.iaff.org/Comm/PDFs/IAFF_Active_Shooter_Position_Statement.pdf (accessed November 26, 2013); Joint Committee to Create a National Policy to Enhance Survivability From Mass Casualty Shooting Events, "Improving Survival from Active Shooter Events: The Hartford Consensus," <http://www.naemi.org/Libraries/Trauma%20Resources/Hartford%20Consensus%20Document%20Final%204-8-13.sfb> (accessed November 26, 2013); Joint Committee to Create a National Policy to Enhance Survivability From Mass Casualty Shooting Events, "Active Shooter and Intentional Mass-Casualty Events: The Hartford Consensus II," <http://bulletin.facs.org/2013/03/hartford-consensus-ii/> (accessed November 26, 2013); and Joint Committee to Create a National Policy to Enhance Survivability From Mass Casualty Shooting Events, "Improving Survival from Active Shooter Events: The Hartford Consensus."

2013).

[6] Joint Committee to Create a National Policy to Enhance Survivability From Mass Casualty Shooting Events, "Improving Survival from Active Shooter Events: The Hartford Consensus."

[7] For additional information, see the standards developed by the Committee for Tactical Emergency Casualty Care at c-tecc.org (accessed November 26, 2013).

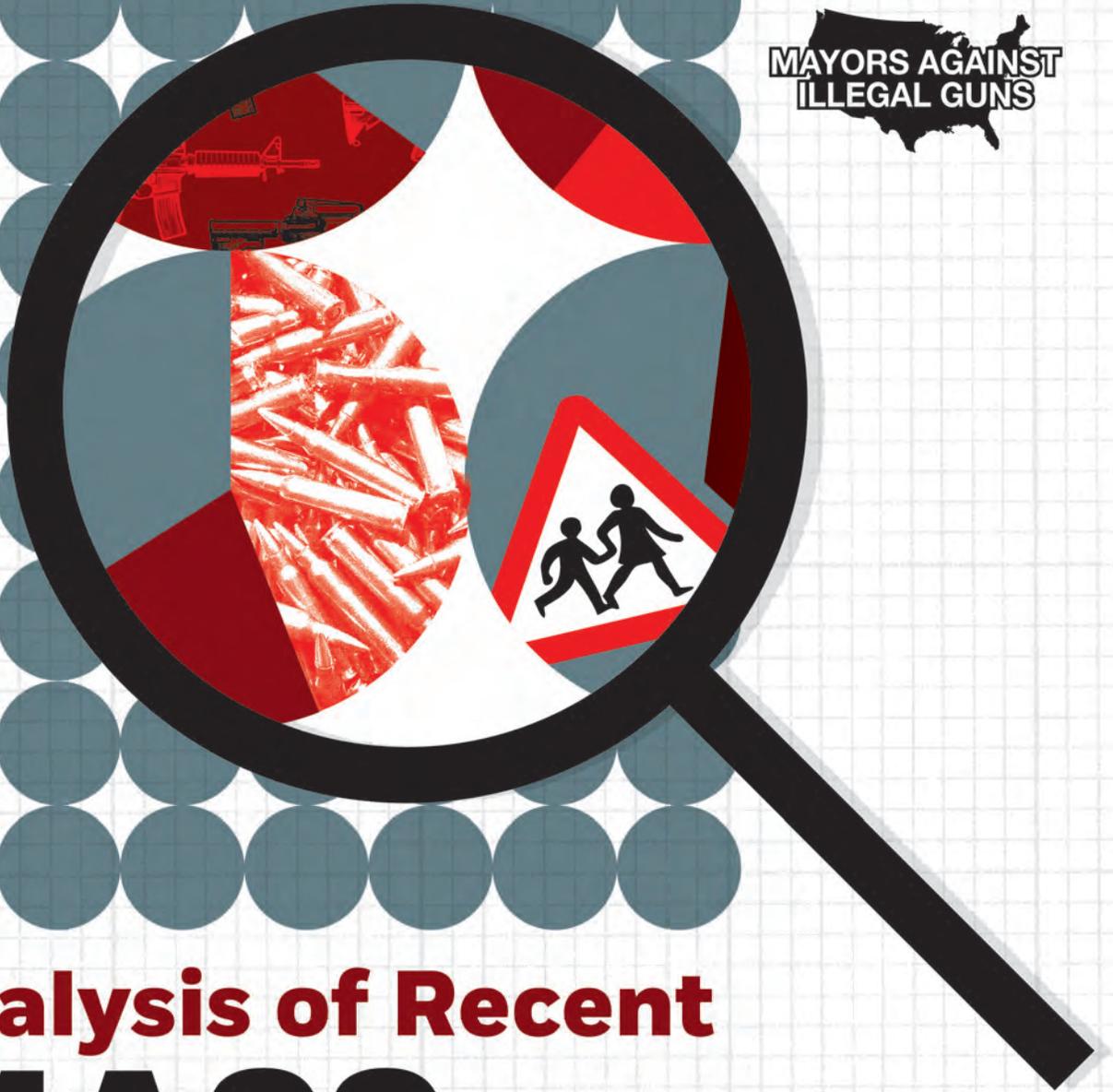
[8] Federal Bureau of Investigation, Critical Incident Response Group, "Active Shooter/Mass Casualty Events"; and Ready Houston, <http://www.readyhoustontx.gov/videos.html#hf> (accessed November 26, 2013).

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EXHIBIT 4
To
Declaration of Roderick M. Thompson in
Support of Sunnyvale's Opposition to
Plaintiffs' Motion for Preliminary
Injunction

September 2013



Analysis of Recent

MASS SHOOTINGS



ANALYSIS OF RECENT MASS SHOOTINGS

Mayors Against Illegal Guns conducted a comprehensive analysis of every mass shooting between January 2009 and September 2013 that was identifiable through FBI data and media reports. This report describes the **93 MASS SHOOTINGS — ALMOST TWO PER MONTH — THAT OCCURRED IN 35 STATES** in the nearly five-year period. Each description includes the location of the shooting, number of people killed and/or injured, and information on the shooter, gun(s), ammunition, and gun purchase, where available.

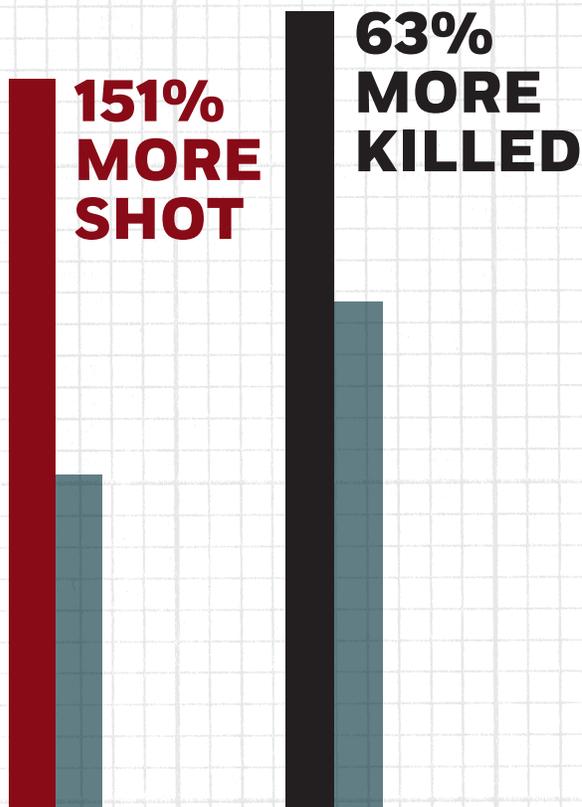
The FBI defines “mass shooting” as any incident where at least four people were murdered with a gun. Mayors Against Illegal Guns reviewed mass shootings in the FBI’s Supplementary Homicide Reports from 2009-2011, the most recent data available, and searched the media for further details about these incidents as well as for mass shootings that occurred in 2012 and 2013.

This survey includes every shooting we identified in which at least four people were murdered with a gun. And the findings reveal a different portrait of mass shootings in America than conventional wisdom might suggest:



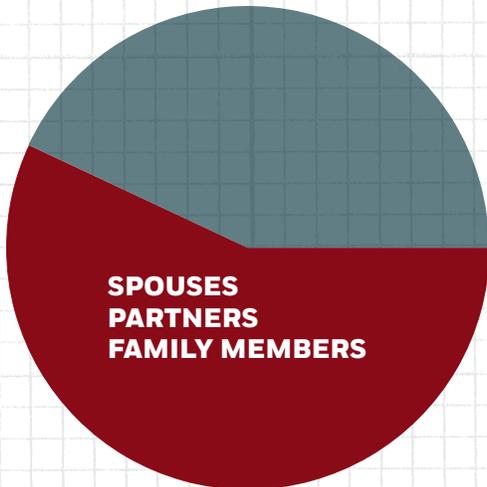
Mass shootings

represent a small share of total U.S. firearm homicides. Less than one percent of gun murder victims recorded by the FBI in 2010 were killed in incidents with four or more victims.



Assault weapons or high-capacity magazines

were used in at least 14 of the incidents (15%). These incidents resulted in an average of 14.4 total people shot — 151% more people shot than in other incidents (5.7) — and 7.8 deaths — 63% more deaths than in other incidents (4.8).



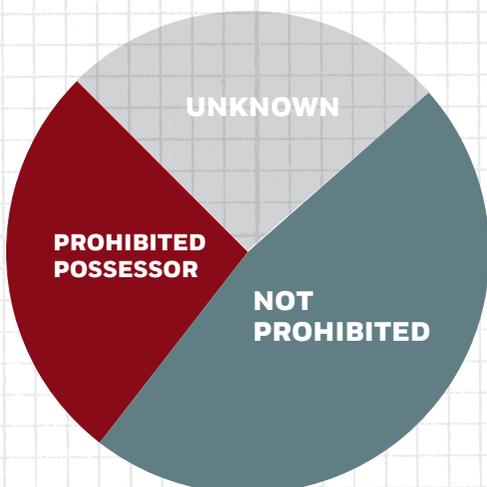
Domestic or family violence

There was a noteworthy connection between mass shooting incidents and domestic or family violence. In at least 53 of the cases (57%), the shooter killed a current or former spouse or intimate partner or other family member, and in at least 17 incidents the shooter had a prior domestic violence charge.



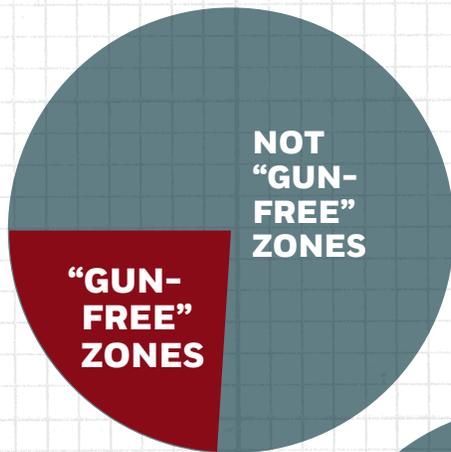
Mental health

We did not find evidence that any of the shooters were prohibited from possessing guns by federal law because they had been adjudicated mentally ill or involuntarily committed for treatment. In 10 of the 93 incidents (11%), we found evidence that concerns about the mental health of the shooter had been brought to the attention of a medical practitioner, school official or legal authority prior to the shooting.



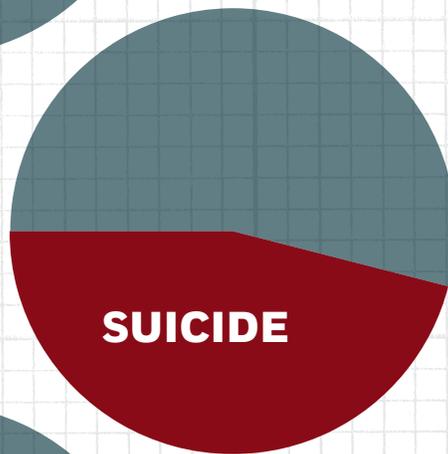
Role of prohibited possessors

Certain categories of people, including felons, certain domestic abusers, and people adjudicated mentally ill are prohibited by federal law from possessing guns. We had sufficient evidence to judge whether the shooter was a prohibited gun possessor in 75 of the 93 incidents (81%). Of those 75 incidents, 32 (43%) involved a prohibited possessor, and 43 (57%) did not.



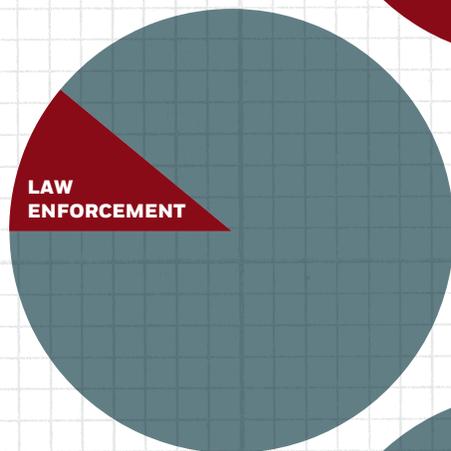
"Gun-free" zones

Sixty-two of the 93 incidents (67%) took place wholly in private residences. Of the 31 incidents in public spaces, at least 17 took place wholly or in part where concealed guns could be lawfully carried. All told, no more than 14 of the shootings (15%) took place entirely in public spaces that were so-called "gun-free zones."



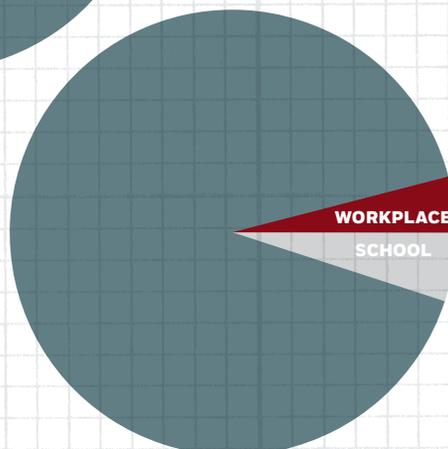
Suicide

In 40 of the 93 incidents (43%), the shooter committed suicide during the incident.



Law enforcement

In 13 of the 93 shootings (14%), law enforcement or military officers were targeted in the shooting or killed or injured responding to it.



Workplace and school shootings

Four of the 93 shootings (4%) occurred at the shooter's current or former workplace. Four of the 93 shooting incidents (4%) took place in schools, including primary, secondary, and college campuses.



MASS SHOOTING INCIDENTS JANUARY 2009–SEPTEMBER 2013 (in reverse chronological order)

Washington, D.C., 9/16/2013: The alleged shooter, who was a civilian contractor and former non-combat military, killed twelve and wounded three more in an attack on Building 197 at the Navy Yard.

- **SHOOTER NAME:** Aaron Alexis, 34
- **GUN DETAILS:** The shooter arrived with a shotgun and also obtained a handgun from one a security guard that he killed.
- **AMMO DETAILS:** Unknown
- **GUN ACQUIRED:** Two days before the incident the shooter passed a National Instant Criminal Background Check System (NICS) at the licensed gun dealer Sharpshooters in Lorton, VA, and purchased the shotgun.
- **PROHIBITING CRITERIA:** The shooter had been arrested at least three times including: in September 2010 in Fort Worth, Texas for shooting a firearm into a neighbor's apartment; in August 2008 in Dekalb County, Georgia for disorderly conduct; and in 2004 in Seattle, Washington for shooting out the tires of another man's vehicle. But court records do not indicate he was convicted in any of these cases, and this record did not prohibit him from buying guns. He had also received treatment for mental health conditions at two VA hospitals beginning in August, 2013 following an incident where he called Newport Rhode Island Police to report hearing voices. But these incidents did not rise to the level of prohibiting from buying guns. And during his military service he was reportedly cited on at least eight occasions for misconduct ranging from traffic tickets and showing up late for work to insubordination, extended absences from work, and disorderly conduct. On account of this the Navy sought to offer him a "general discharge" but he was ultimately honorably discharged through the early-enlisted transition program in January 2011.
- **NOT A GUN-FREE ZONE:** There were armed guards at the Washington Navy Yard, and the shooter was familiar with the premises, so he did not select it as a target on the presumption he would not faced armed resistance. In fact, the shooter reportedly used a gun that he took from a guard after killing him.

Crab Orchard, TN, 9/11/2013: Bennett and his girlfriend Moser killed a woman and three teenagers, apparently during an attempted robbery during a marijuana exchange. The victims' bodies were discovered in a car parked along the side of the road in the Renegade Mountain resort community near Crossville.

- **SHOOTER NAME:** Jacob Allen Bennett, 26 and Brittany Lina Yvonn Moser, 25
- **GUN DETAILS:** Handgun
- **AMMO DETAILS:** Unknown
- **GUN ACQUIRED:** Unknown
- **PROHIBITING CRITERIA:** Bennett was prohibited from possessing firearms. In 2010 he received a 6-year prison sentence for charges of theft, forgery, and possession of a handgun during a felony, but was paroled on March 4, 2013. The Cumberland County sheriff's office estimated they had previously arrested Bennett



five times.

- **NOT A GUN-FREE ZONE:** We could find no evidence that permit holders were prohibited from carrying guns in this area. In Tennessee, concealed weapons would be prohibited only if the county or municipality declared itself a gun-free zone.

Oklahoma City, OK, 8/14/13: The shooter killed four of his relatives including an infant inside of their family home.

- **SHOOTER NAME:** Daniel Green, 40
- **GUN DETAILS:** .380 semiautomatic handgun
- **AMMO DETAILS:** A box of .380 handgun ammunition was found in the vehicle when the shooter was arrested.
- **GUN ACQUIRED:** One of the victims owned a .380 semiautomatic handgun and kept it hidden in the attic.
- **PROHIBITING CRITERIA:** Green's father told police in an affidavit that his son was schizophrenic, but there is no evidence that Green had been adjudicated mentally ill or had a criminal history that would prohibit gun ownership.

Dallas, TX, 08/07/2013: The gunman shot and killed his girlfriend and her daughter, and injured two others; and then in a separate attack shot and killed his estranged wife and her daughter, and injured another two people. He also detonated an explosive but it did not harm anyone.

- **SHOOTER NAME:** Erbie Lee Bowser, 44
- **GUN DETAILS:** .380 pistol
- **AMMO DETAILS:** Unknown
- **GUN ACQUIRED:** Unknown
- **PROHIBITING CRITERIA:** The shooter's estranged wife had obtained a protective order against Bowser in February 2011, citing family violence, and he was later arrested for violating the order. The order seems to have expired in February 2012, but would likely have been prohibiting while it was in place. A criminal conviction for domestic violence, which would also likely have been prohibiting, was expunged from his record after he completed a court program for veterans in the summer of 2012. Bowser was a veteran, but he had not served in combat — making him ineligible to enter the program. He apparently lied about his military history in order to enter the program.

Clarksburg, WV, 07/26/2013: According to a criminal complaint, the shooter was trying to collect \$10,000 two men owed him for drugs when one of them aimed a handgun at him. He stripped the man of the weapon and used it to kill them both; he then shot and killed a father-son newspaper delivery team that happened to be outside the house.

- **SHOOTER NAME:** Sidney Muller, 27
- **GUN DETAILS:** 9mm Beretta
- **AMMO DETAILS:** Unknown



- **GUN ACQUIRED:** Gun apparently belonged to one of the victims
- **PROHIBITING CRITERIA:** The shooter had been convicted previously for driving under the influence and had been arrested for driving with a suspended license, but was not criminally prohibited from possessing a gun. The shooter was also a veteran of the U.S. Marine Corps and his lawyers indicated he had scored four out of five in Post-Traumatic Stress Disorder testing and had been diagnosed as bipolar. He was reportedly in treatment at the local VA hospital. But there is no evidence his mental illness rose to the level of prohibiting him from possessing guns.

Hialeah, FL, 7/16/13: The shooter killed the two managers of his building, a bystander across the street, and three more occupants before police killed him in a standoff.

- **SHOOTER NAME:** Pedro Alberto Vargas, 42
- **GUN DETAILS:** Glock 17 9mm semiautomatic pistol
- **AMMO DETAILS:** Hundreds of additional rounds were found in Vargas' apartment following the incident.
- **GUN ACQUIRED:** Vargas obtained a concealed weapons permit after completing a two-hour training and four-hour safety course in the fall of 2010 at the Florida Gun Center in Hialeah. In October 2010 he passed a background check and purchased a Glock 17, which was used in the shootings.
- **PROHIBITING CRITERIA:** The shooter had developed a pattern of anonymously harassing his former co-workers online, and was confronted about it three days before the shooting. But there is no evidence Vargas was prohibited from owning a gun.

Santa Monica, CA, 6/7/13: The shooter killed his father and brother, burned down their house, and shot and wounded a passing driver who tried to intervene. He then carjacked another vehicle and made the driver transport him to Santa Monica College, firing at a city bus and police cruiser along the way, injuring three. Once on the college's campus, he shot and killed three people outside and fired 70 rounds at students in the library before he was shot and killed by police.

- **SHOOTER NAME:** John Zawahri, 23
- **GUN DETAILS:** The shooter was armed with a .223 caliber AR-15 assault rifle that did not have a serial number; this type of rifle is prohibited in California. A .44 caliber "black powder" revolver that had been converted to fire .45 caliber rounds and three "Zip Guns," which are illegal to possess, were also recovered.
- **AMMO DETAILS:** The shooter was carrying a duffel bag containing approximately 1,300 rounds of ammunition. He was armed with approximately forty 30-round .223 magazines, which are illegal to purchase, sell, or transfer in the state of California.
- **GUN ACQUIRED:** The assault rifle, high-capacity magazines, and several components to modify the firearms may have been shipped from outside California. The firearms were not registered to the shooter or to his family members.
- **PROHIBITING CRITERIA:** The shooter had a history of mental health issues and had previously been held for a short-term psychiatric evaluation, which would have prohibited him from accessing or possessing a firearm for five years, but the prohibition expired in 2011. The shooter had attempted to buy a firearm in 2011, but a letter from the Department of Justice discovered in his bedroom after the shooting indicated that he had not been eligible to purchase it at that time, likely because of this hospitalization.



Fernley, NV, 05/13/2013: On May 10th, the shooter killed a couple in their home and stole \$3,500 in cash and jewelry. Three days later, he killed two more people and stole a firearm and their vehicle, and then shot and killed another person later that day.

- **SHOOTER NAME:** Jeremiah Bean, 25
- **GUN DETAILS:** NEF Co. Model R92 .22 caliber handgun. The shooter also stole a Smith & Wesson from one of his victims.
- **AMMO DETAILS:** Unknown
- **GUN ACQUIRED:** Unknown
- **PROHIBITING CRITERIA:** The shooter had been previously convicted for felony charges of burglary and grand larceny, and finished his parole in December 2012. This criminal record likely prohibited him from possessing firearms.

Waynesville, IN, 5/11/13: The alleged shooter killed four people in a home where methamphetamine was subsequently discovered, leading police to believe the crime was drug-related.

- **SHOOTER NAME:** Samuel Earl Sallee, 55
- **GUN DETAILS:** A Ruger 10/22 .22 caliber rifle was recovered.
- **GUN ACQUIRED:** Unknown
- **PROHIBITING CRITERIA:** The alleged shooter, who had been at the location of the homicides just hours before the bodies were discovered, was taken into custody two days after the shooting. He was prohibited from possessing firearms due to several prior felony convictions including for intimidation, drunk driving (on multiple occasions), receipt of stolen property, and battery. Although authorities delayed in charging the shooter with a crime while they tried to determine a motive for the homicides, they charged him with illegal firearm possession.

Ottawa, KS, 04/28/2013: The shooter raped and killed a woman, as well as killing her 18-month old daughter and two men who were with her at a farm in eastern Kansas.

- **SHOOTER NAME:** Kyle Flack, 27
- **GUN DETAILS:** Unknown
- **AMMO DETAILS:** Unknown
- **GUN ACQUIRED:** Unknown
- **PROHIBITING CRITERIA:** In 2005 the shooter was convicted of attempted murder in the 2nd degree, having shot a man five times with a pistol, but he only served two years of a five-year sentence and was paroled in July 2009. He was required to register as a violent offender until 2024 and was prohibited from buying guns. His mother also sought mental health treatment on his behalf; her concerns were dismissed, but Flack ultimately submitted to a mental health evaluation.

Manchester, IL, 4/24/13: The shooter broke into a home and killed the grandmother of his child and four of her family members including two young children, apparently related to a cus-



tody dispute over his 3-year-old daughter. The shooter was subsequently killed in a gunfight with law enforcement.

- **SHOOTER NAME:** Rick Odell Smith, 43
- **GUN DETAILS:** All of the victims were killed with a Winchester 20-gauge pump-action shotgun. A .270 Bolt Action Winchester rifle and Ruger carbine rifle were also recovered.
- **PROHIBITING CRITERIA:** The shooter had been previously convicted for felony reckless homicide, which would likely have prohibited from possessing guns, along with drug possession and writing bad checks.

Federal Way, WA, 4/21/13: The shooter killed his girlfriend inside the apartment they shared and then fatally shot two men in a nearby parking lot. When a neighbor called 911, the shooter broke down the man's door with a shotgun and killed him. He was subsequently shot and killed by police.

- **SHOOTER NAME:** Dennis Clark III, 27
- **GUN DETAILS:** .40 caliber semi-automatic handgun and a pistol grip Mossberg 500 pump shotgun. Federal Way Police report that Clark had a permit to carry a concealed weapon and was the registered owner of at least two firearms, including the handgun he used in the shooting.
- **AMMO DETAILS:** Unknown
- **GUN ACQUIRED:** Unknown
- **PROHIBITING CRITERIA:** Clark had no criminal convictions but in 2002 had used a BB gun to shoot a girl in the buttocks and back after she broke up with him, resulting in a fourth-degree assault charge that was dismissed. He was charged with misdemeanor criminal trespass in 2003. And in March 2009 he was charged with harming a police dog but the case was dismissed.

Akron, OH, 4/18/13: The shooters killed four people inside a townhouse; the initial motive for the crime was reportedly robbery.

- **SHOOTER NAME:** Derrick Brantley, 21 and Deshanon Haywood, 21
- **GUN DETAILS:** Unknown
- **AMMO DETAILS:** Unknown
- **GUN ACQUIRED:** Unknown
- **PROHIBITING CRITERIA:** One shooter, Brantley, was free on bond awaiting trial on felony charges of heroin trafficking. The other, Haywood, was paroled from prison in February 2012 after serving part of a two-year sentence for cocaine trafficking and heroin possession. He immediately violated his parole and was sentenced to 45 days of house arrest. Both were likely prohibited from possessing firearms by their criminal histories.

Herkimer, NY, 04/13/2013: The shooter killed two people and critically wounded one at John's Barber Shop and then killed two more people at Gaffey's Fast Lube, a car care facility. He was killed by responding officers.



- **SHOOTER NAME:** Kurt Myers, 64
 - **GUN DETAILS:** According to the police superintendent, Myers used a shotgun. Additional guns and ammunition were found by emergency crews after Myers set fire to the apartment.
 - **AMMO DETAILS:** Unknown
 - **GUN ACQUIRED:** Unknown
 - **PROHIBITING CRITERIA:** There is no reason to believe Myers was prohibited him from possessing a gun. He was arrested in 1973 for drunk driving
 - **NOT A GUN-FREE ZONE:** Gaffey's Fast Lube does not have a specific policy prohibiting guns and allows permit holders to carry concealed weapons on the premises. John's Barbershop did not reopen following the shooting but the owner of a neighboring business did not recall the barbershop having any explicit firearm policy or ban, which would have been required to prohibit customers from carrying guns on the premises.
-

Albuquerque, NM, 1/19/13: The shooter killed his parents and three siblings in their home. He then loaded a van with guns and ammunition with the intent to kill his girlfriend's family and die in a shootout at Wal-Mart, according to court documents. Instead, he spent the next day with his girlfriend and her family and went to a church he regularly attended, where he was arrested for murder after speaking with the pastor.

- **SHOOTER NAME:** Nehemiah Griego, 15
 - **GUN DETAILS:** AR-15 assault rifle, .22 rifle, and two shotguns
 - **AMMO DETAILS:** Unknown
 - **GUN ACQUIRED:** The guns had been legally purchased by his parents.
 - **PROHIBITING CRITERIA:** As a juvenile, the shooter was prohibited from purchasing firearms, but it was lawful for him to possess long guns like those used in the incident.
-

Tulsa, OK, 1/7/13: During a robbery the shooters bound the hands of four women in an apartment at the Fairmont Terrace complex and shot each one in the head. The 3-year-old son of one of the victims was in the apartment at the time of the incident but was unharmed.

- **SHOOTER NAME:** Cedric Dwayne Poore, 39 and James Stanford Poore, 32
 - **GUN DETAILS:** .40 caliber pistol
 - **AMMO DETAILS:** Unknown
 - **GUN ACQUIRED:** Unknown
 - **PROHIBITING CRITERIA:** Both shooters had extensive criminal histories: Cedric Poore received a 35-year prison sentences in 1995 for armed robbery and James Poore received a 12-year sentence in 2000 for armed robbery with a firearm. Both were released in 2011, but likely remained prohibited from possessing firearms.
-

Newtown, CT (Sandy Hook Elementary School), 12/14/12: The shooter killed his



mother in her home and then traveled to a nearby elementary school where he shot twenty-eight people, killing twenty-six of them, including twenty children, before killing himself.

- **SHOOTER NAME:** Adam Peter Lanza, 20
- **GUN DETAILS:** A Bushmaster .223 assault-style rifle was used in the attack at the elementary school. A 10mm Glock handgun, a 9mm SIG Sauer handgun, and a shotgun were also recovered at the crime scene.
- **AMMO DETAILS:** Lanza was carrying multiple high-capacity clips, reportedly enough ammunition to kill nearly every student at school.
- **GUN ACQUIRED:** The guns were legally registered to Lanza's mother, who he shot and killed earlier in the day and with whom he lived.
- **PROHIBITING CRITERIA:** Under Connecticut law, Lanza would have been prohibited from possessing handguns because he had not reached the legal age, 21. However, he would not have been prohibited from possessing a long gun like the Bushmaster rifle used in the shooting. Lanza's mental health was also scrutinized after the shooting, and while his social isolation had been noted, we did not find evidence that concerns had been brought to the attention of a public authority.

Tule River Reservation, CA, 12/8/2012: The shooter killed his mother and two uncles in the travel trailer where they lived and injured his young son; he then shot his two daughters, one fatally, while fleeing with them from the police. The gunman died after a shootout with police in which he also shot himself in the head.

- **SHOOTER NAME:** Hector Celaya, 31
- **GUN DETAILS:** .38 caliber revolver
- **AMMO DETAILS:** Unknown
- **GUN ACQUIRED:** Unknown
- **PROHIBITING CRITERIA:** Celaya had been imprisoned in 2008 for an assault and battery charge and was prohibited from having weapons as a condition of three years' probation. It is likely that this criminal record prohibited him from possessing firearms. He was subsequently arrested multiple times for driving while intoxicated, and was due in court in January 2013 to face a misdemeanor drug possession charge.

Detroit, MI, 12/4/2012: Three adults and one minor were shot to death in a house on the east side of the city before a fire broke out, apparently set by the shooter. There are no reports of arrests or suspects.

- **GUN DETAILS:** Unknown
- **AMMO DETAILS:** Unknown
- **GUN ACQUIRED:** Unknown
- **PROHIBITING CRITERIA:** The assailants are unknown.

Northridge, CA, 12/02/2012: The shooter arrived at an unlicensed boarding house on Devonshire street, reportedly in search of his girlfriend, and after a dispute shot and killed four people



outside.

- **SHOOTER NAME:** Ka Pasasouk, 31
- **GUN DETAILS:** semiautomatic handgun
- **AMMO DETAILS:** Unknown
- **GUN ACQUIRED:** Unknown
- **PROHIBITING CRITERIA:** The shooter was prohibited from possessing guns, having been convicted for car theft and felony robbery. While on probation in September 2012, he was arrested again for possession of methamphetamine. According to the district attorney, a prosecutor then released him on probation over the objection of probation officials, who believed he posed a threat to the safety of the community.
- **NOT A GUN-FREE ZONE:** Permit holders were not prohibited from carrying guns in this area.

New Town, ND, 11/18/2012: The shooter murdered a woman and her three grandchildren in their home on Fort Berthold Indian Reservation. When confronted by police he stabbed himself in the neck and died of his injuries.

- **SHOOTER NAME:** Kalcie Eagle, 21
- **GUN DETAILS:** .25-06 hunting rifle
- **AMMO DETAILS:** Unknown
- **GUN ACQUIRED:** The rifle did not belong to the shooter; police speculated that it may have belonged to a family member.
- **PROHIBITING CRITERIA:** In March 2012, Eagle was arrested in a stolen pickup truck after a high-speed chase with police. He pled guilty to felony unauthorized use of a vehicle, and was sentenced to a year in jail, with more than three years of supervised probation and more than \$45,000 in fines and restitution. Because of this offense, he was likely prohibited from possessing a firearm.

Minneapolis, MN, 9/27/12: The shooter killed six people and injured two at a signage business, from which he was fired earlier in the day, before killing himself.

- **SHOOTER NAME:** Andrew John Engeldinger, 36
- **GUN DETAILS:** Glock 9mm semiautomatic handgun
- **AMMO DETAILS:** Engeldinger fired at least 46 bullets during the shooting. At his home, police recovered packaging for 10,000 rounds of ammunition.
- **GUN ACQUIRED:** Engeldinger purchased the gun used in the shooting one year before at KGS Guns and Ammo in Minneapolis after passing a background check and obtaining a permit-to-purchase. Around the same time, Engeldinger purchased another, similar handgun that police recovered when searching his home.
- **PROHIBITING CRITERIA:** Engeldinger had a concealed carry permit and was not prohibited from possessing a gun. But his family suspected he had paranoid schizophrenia and two years before the shooting they reached out on his behalf to the National Alliance on Mental Illness. Engeldinger did not pursue treatment.
- **ONLINE CONNECTION:** According to Minneapolis Police, Engeldinger may have purchased some or all of his stockpiled ammunition online from out-of-state dealers.



Oak Creek, WI, 8/5/12: The shooter killed six people at a Sikh temple and injured three others, including a responding police officer, before killing himself.

- **SHOOTER NAME:** Wade Michael Page, 40
- **GUN DETAILS:** 9mm semiautomatic handgun
- **AMMO DETAILS:** Page reportedly bought three 19-round magazines when he purchased the gun.
- **GUN ACQUIRED:** Page acquired the gun at a local gun shop a week before the shooting.
- **PROHIBITING CRITERIA:** Page was involved with the white supremacist movement but he does not appear to have been prohibited from purchasing a gun. He received a discharge from the army “under other than honorable conditions” and was demoted from sergeant to specialist, but this did not affect his access to firearms. Federal officials investigated Page’s ties to supremacist groups more than once prior to the shooting, but did not collect enough evidence to open an investigation.
- **NOT A GUN-FREE ZONE:** Nothing restricted the possession of a firearm on the property. Wisconsin state law permits people to carry their guns in temples and other places of worship unless there is a sign or they have been personally notified that carrying firearms is prohibited by the property owner or occupant. Amardeep Kaleka, whose father founded the temple and was killed during the attack, confirmed that there was no such sign on the property.

Aurora, Co, 7/20/12: The shooter killed twelve and wounded fifty-eight in an attack on a suburban movie theater during a midnight screening of Batman.

- **SHOOTER NAME:** James Holmes, 24
- **GUN DETAILS:** Smith & Wesson AR-15 assault-style rifle, Remington 870 12-gauge shotgun, and two Glock .40 caliber handguns.
- **AMMO DETAILS:** Holmes had a 100-round drum magazine for the AR-15 and reportedly only ceased firing with it when it jammed.
- **GUN ACQUIRED:** Holmes acquired the guns at local gun shops.
- **PROHIBITING CRITERIA:** While a student at the University of Colorado, Holmes was treated by the school psychiatrist, who expressed concern about his behavior and referred him to the university Behavioral Evaluation and Threat Assessment (BETA) team. They took no further action and he was never adjudicated mentally ill.
- **ONLINE CONNECTION:** Holmes purchased over 6,000 rounds of ammunition online.

Newton Falls, OH, 7/6/12: The shooter killed his girlfriend, another couple, and their son in two separate shootings, before being cornered by the police and killing himself.

- **SHOOTER NAME:** Robert Brazzon, 55
- **GUN DETAILS:** Unknown
- **AMMO DETAILS:** Unknown
- **GUN ACQUIRED:** Unknown
- **PROHIBITING CRITERIA:** Brazzon had previously pled guilty to felony drug trafficking after police seized 47 guns from his home in 1999 (the guns were later returned to Brazzon’s brother and son following a



court petition). But due to Ohio laws that provide for the restoration of felons' firearm rights, it is unclear whether Brazzon was prohibited from possessing firearms at the time of the shooting.

Tempe, AZ, 6/2/2012: The shooter killed his wife and three children inside of their home, then drove the bodies to a location in the Vekol Valley desert, where he lit the car on fire and shot himself. His wife had filed for a divorce earlier in the year but he had not vacated their shared residence. He was also reportedly undergoing treatment for a brain tumor.

- **SHOOTER NAME:** James Butwin, 47
 - **GUN DETAILS:** Two guns were recovered in the vehicle, and the caliber of the shells for one matched those found in the house where the murders took place.
 - **AMMO DETAILS:** Unknown
 - **GUN ACQUIRED:** Unknown
 - **PROHIBITING CRITERIA:** There is no evidence that Butwin was prohibited from owning a gun.
-

Seattle, WA, 5/20/12: The shooter killed five people in a string of neighborhood shootings that began in a coffee shop, and later killed himself.

- **SHOOTER NAME:** Ian Lee Stawicki, 40
 - **GUN DETAILS:** At least one Para-Ordnance .45 caliber handgun – some reports say he carried two.
 - **AMMO DETAILS:** Unknown
 - **GUN ACQUIRED:** Stawicki legally purchased the weapon used in the shooting in addition to two others.
 - **PROHIBITING CRITERIA:** The shooter was a concealed carry permit holder but had a history of mental illness and arrests. He was twice charged with misdemeanor assault but both cases were dismissed when the victims — his girlfriend and brother — refused to testify. Before the shooting, Stawicki's family attempted to have his concealed carry permit revoked. Stawicki's family had become concerned that his mental health had worsened. However, his family was rebuffed by authorities, who said they had no legal basis to revoke Stawicki's permit on claims about Stawicki's behavior alone.
-

Leivasy, WV, 5/19/2012: The shooter killed a man after a dispute over a debt for drugs, as well as his girlfriend and their two children.

- **SHOOTER NAME:** James Roy Belknap, 27
- **GUN DETAILS:** Unknown
- **AMMO DETAILS:** Unknown
- **GUN ACQUIRED:** Unknown
- **PROHIBITING CRITERIA:** In 2007, Belknap pled guilty on charges of conspiracy to deliver cocaine and was sentenced to 5 years in prison. In exchange, prosecutors dismissed a grand jury indictment charging him with murder. He was therefore prohibited from possessing a gun.



Port St. John, FL, 5/15/12: The shooter attacked her four children — ages 12 to 17 — in her home, killing them before shooting and killing herself. An autopsy indicated that she had a blood alcohol level of .16 at the time of the shooting — twice the legal limit.

- **SHOOTER NAME:** Tonya Thomas, 33
- **GUN DETAILS:** Taurus .38 caliber revolver
- **AMMO DETAILS:** She fired 18-hollow-point rounds during the incident, reloading the gun three times.
- **GUN ACQUIRED:** Unknown
- **PROHIBITING CRITERIA:** There is no evidence she was prohibited from possessing a gun. The shooter was charged with misdemeanor battery in 2002 for striking the father of her children but it was later dropped.

Gilbert, AZ, 5/2/12: The shooter, formerly a member of the U.S. Marine Corps and a founder and leader of a border militia group, shot and killed four people including his girlfriend, before killing himself. At the time of the incident he was running for the office of Pinal County Sheriff.

- **SHOOTER NAME:** Jason Todd (“J.T.”) Ready, 39
- **GUN DETAILS:** At least two handguns and a shotgun were recovered from the scene. Six-armor piercing grenades, which may not legally be possessed by civilians, were also recovered.
- **AMMO DETAILS:** Unknown
- **GUN ACQUIRED:** Unknown
- **PROHIBITING CRITERIA:** There is no evidence that the shooter was prohibited from owning guns, even though he had a record of dangerous behavior. In 1992, he was arrested for damage to property and aggravated assault with a weapon and pled guilty to simple assault, a misdemeanor. He was court-martialed twice during his military service, the second resulting in a bad conduct discharge in 1996. In 2009, a woman filed an order of protection against him, but it was not active at the time of the shooting. Officers had also responded to multiple domestic violence calls from Ready’s home. Indeed, his girlfriend went to police headquarters on February 28, 2012 to make a complaint and report two domestic violence incidents, but she did not go to court to file for an order of protection.

Oakland, CA (Oikos University), 4/2/12: The shooter killed seven people at a Korean Christian college, where he had formerly been a student.

- **SHOOTER NAME:** One L. Goh, 43
- **GUN DETAILS:** .45 caliber handgun
- **AMMO DETAILS:** Goh was armed with four magazines of ammunition, holding 10 rounds each.
- **GUN ACQUIRED:** The gun was purchased legally in California two months before the shooting.
- **PROHIBITING CRITERIA:** None apparent, though Goh was expelled from the school for disciplinary problems.

Norcross, GA, 2/20/12: The shooter returned to a Korean spa from which he’d been kicked out after an altercation, where he shot and killed two of his sisters and their husbands before commit-



ting suicide.

- **SHOOTER NAME:** Jeong Soo Paek, 59
- **GUN DETAILS:** .45 caliber handgun
- **AMMO DETAILS:** Unknown
- **GUN ACQUIRED:** Police reported that he acquired the gun legally.
- **PROHIBITING CRITERIA:** Paek does not appear to have been prohibited, although he had allegedly served two months in jail for assaulting his sister six years earlier. In 2006 she applied for a temporary protection order and described his intention to harm himself or others with guns.
- **NOT A GUN-FREE ZONE:** We could find no indication that the property owner forbade possession of a firearm on their property.

Villa Park, IL, 1/17/2012: The shooter killed his girlfriend, her two sons, and her niece while they slept. After leaving the scene of the crime he shot himself and died of his injuries.

- **SHOOTER NAME:** Cedric Anderson, 42
- **GUN DETAILS:** .357 Magnum handgun
- **AMMO DETAILS:** Unknown
- **GUN ACQUIRED:** Unknown
- **PROHIBITING CRITERIA:** Anderson has several drug-related offenses dating back to 1990, and in 2008 received probation for possessing a firearm without the required license. On December 29, 2011 was convicted of felony heroin possession, and was awaiting sentencing at the time of the massacre. He was therefore prohibited from possessing a gun.

Grapevine, TX, 12/25/11: The shooter killed his estranged wife, two children, and three other family members as they opened their Christmas presents, before killing himself. The shooter's wife had filed for bankruptcy in August 2010 and reportedly separated from him during the proceedings, moving to the apartment complex where the shooting took place.

- **SHOOTER NAME:** Aziz Yazdanpanah, 56
- **GUN DETAILS:** 9mm and .40 caliber handguns
- **AMMO DETAILS:** Unknown
- **GUN ACQUIRED:** The 9mm was purchased in 1996 and registered to the shooter.
- **PROHIBITING CRITERIA:** In 1996, the shooter pled guilty to one count of subscribing to a false income tax return, and was fined \$1000 and placed on three years' probation. But police said the 9mm was legally registered to the shooter and there is no evidence that he was otherwise prohibited from purchasing a gun.

Emington, IL, 12/16/2011: The shooter killed her boyfriend and her three children before taking her own life in the backyard of their home.

- **SHOOTER NAME:** Sara McMeen, 30



- **GUN DETAILS:** Semi-automatic pistol
- **AMMO DETAILS:** Unknown
- **GUN ACQUIRED:** Unknown
- **PROHIBITING CRITERIA:** There is no evidence the shooter was prohibited from owning a gun. But she reportedly suffered from bipolar disorder and postpartum depression, and did not take any medication. She also had a family history of mental illness and violence. In 1971, McMeen's father shot and killed his wife with a 12-gauge shotgun. He was found not guilty by reason of insanity, and diagnosed with schizophrenia with suicidal and homicidal tendencies.

Gargatha, VA, 12/15/11: The shooter killed two of his children, their mother, and the man she was living with before killing himself. The shooter was reportedly involved in a custody dispute with the woman at the time of her death.

- **SHOOTER NAME:** Esteban Quintero-Gonzales, 37
- **GUN DETAILS:** Unknown
- **AMMO DETAILS:** Unknown
- **GUN ACQUIRED:** Unknown
- **PROHIBITING CRITERIA:** There is no evidence the shooter was prohibited from possessing a gun.

Bay City, TX, 11/30/11: The shooter and his wife argued in their mobile home, and when she exited he shot her three times in the front yard, injuring her, before killing his four children aged 2 to 5 and then killing himself.

- **SHOOTER NAME:** Jose Avila-Alva, 24
- **GUN DETAILS:** .22 caliber revolver
- **AMMO DETAILS:** Unknown
- **GUN ACQUIRED:** The handgun was reported stolen in 2010.
- **PROHIBITING CRITERIA:** The shooter was not a legal resident of the U.S., and had been deported to Mexico in 2006 for unlawful entry, which would have prohibited him from purchasing a gun. One week earlier, on November 22, 2011, the shooter's wife filed an assault report against him and was taken to a crisis center by police, but she did not press charges.

Greensboro, NC, 11/20/2011: The shooter shot and injured a married man she had been having an affair with since 2008, injuring him. At some point that morning she also shot four children in her house, including her older son, a niece, a nephew, and a friend, and they all died of their injuries. She then picked up her son from a sleepover, shot and killed him, and turned the gun on herself.

- **SHOOTER NAME:** Mary Ann Holder
- **GUN DETAILS:** .38 caliber handgun



- **AMMO DETAILS:** Unknown
 - **GUN ACQUIRED:** Unknown
 - **PROHIBITING CRITERIA:** There is no evidence the shooter was prohibited from possessing a gun. The wife of the man the shooter was having an affair with sought a restraining order against her earlier in 2011; the shooter responded by requesting a restraining order against the man and his wife. Both orders had expired.
-

Liberty, SC, 10/14/11: The shooter killed her ex-husband, two sons, and their step-grandmother. When investigators arrived, she told them one of her sons had committed the homicides and then killed himself, but this story was inconsistent with forensic evidence. Nine days after the shooting she was taken into custody and charged with four counts of homicide. She had reportedly taken out a \$700,000 life insurance policy for her family members with herself named as the beneficiary.

- **SHOOTER NAME:** Susan Diane Hendricks, 48
 - **GUN DETAILS:** .380 caliber handgun
 - **AMMO DETAILS:** Unknown
 - **GUN ACQUIRED:** Unknown
 - **PROHIBITING CRITERIA:** In April 2006, Susan Hendricks shot and killed Doyle “O’Brian” Teague in her home after he had allegedly entered uninvited and threatened her. No charges were filed against Hendricks at the time, and the case was never closed. There is no evidence that she was prohibited from possessing a gun in 2011.
-

Seal Beach, CA, 10/12/11: The shooter injured one and killed eight at a hair salon, including his ex-wife, before being taken into police custody.

- **SHOOTER NAME:** Scott Evans Dekraai, 41
 - **GUN DETAILS:** Dekraai carried 3 handguns – a 9 mm Springfield, a Heckler & Koch .45, and a Smith & Wesson .44 Magnum – and used at least two in the shooting.
 - **AMMO DETAILS:** News articles say Dekraai was carrying “extra ammunition” when the shooting began.
 - **GUN ACQUIRED:** All three guns were purchased legally and registered in accordance with California law.
 - **PROHIBITING CRITERIA:** Dekraai was subject to a restraining order that specifically prohibited him from possessing guns, but the order expired in 2008. Dekraai had been diagnosed with Post Traumatic Stress Disorder, and during a custody suit his ex-wife had filed court papers claiming that he was mentally unstable and had threatened to kill himself or someone else at least once.
-

Laurel, IN, 9/26/11: The shooter killed a man, the man’s estranged wife, their two children, and a neighbor. The male victim reportedly had sold the addictive pain-reliever Oxycontin to the shooter, and on the day of the murders they had argued over the price.

- **SHOOTER NAME:** David E. Ison, 46



- **GUN DETAILS:** A .380 caliber handgun was used in the slayings. Another stolen .380 handgun and an AK-47 were recovered during the investigation.
- **AMMO DETAILS:** Unknown
- **GUN ACQUIRED:** Unknown
- **PROHIBITING CRITERIA:** The shooter had a lengthy criminal record, including a conviction for armed robbery, which would have prohibited him from possessing a gun, and at the time of the murders was on probation for 10 counts of burglary.

Monongalia County, WV, 9/6/2011: The shooter killed five people and injured one before fleeing from the police and then killing himself.

- **SHOOTER NAME:** Shayne Riggleman, 22
- **GUN DETAILS:** A .30-.30 rifle was used. A second rifle and a .22 caliber pistol were also recovered.
- **AMMO DETAILS:** Unknown
- **GUN ACQUIRED:** Unknown
- **PROHIBITING CRITERIA:** In 2008, Riggleman was sentenced to 14 months in prison for armed robbery, an offense that would prohibit him from possessing firearms, though it is possible his rights were restored under West Virginia law. He had also been diagnosed with bipolar disorder and schizophrenia at Chestnut Ridge Hospital and his family had him committed on several occasions.

Carson City, NV (IHOP Shooting), 9/6/2011: The shooter killed four people at an IHOP restaurant, including three National Guard members, before killing himself.

- **SHOOTER NAME:** Eduardo Sencion, 32
- **GUN DETAILS:** A Norinco Mak 90 assault rifle that had been illegally modified into a fully automatic machine gun. A Romarm/Cugir AK-47 type assault rifle and a Glock 26 semiautomatic handgun were also recovered.
- **AMMO DETAILS:** Police recovered 450 rounds of AK-47 ammunition from Sencion's van and "box upon box" of additional ammunition at his home.
- **GUN ACQUIRED:** Five years earlier, the gun had been sold by a private party in California to an unknown buyer.
- **PROHIBITING CRITERIA:** Sencion was taken into protective custody during a mental health commitment in April 2000 but no court order was involved and it remains unclear if a record of the incident was reported to the NICS database.
- **NOT A GUN-FREE ZONE:** IHOP allows individual franchises to determine their own firearm policies, and this franchise allows concealed carrying of firearms on the premises.

Marion County, FL, 8/5/11: The shooter killed the mother of his child in her mother's home, his own 6-year-old sister, and two other acquaintances before setting the building on fire. Court records indicated he had smoked synthetic marijuana laced with cocaine prior to the murders. The gun was not immediately recovered.



- **SHOOTER NAME:** James Edward Bannister, 31
- **GUN DETAILS:** Believed to be a .38 caliber revolver
- **AMMO DETAILS:** Unknown
- **GUN ACQUIRED:** Unknown
- **PROHIBITING CRITERIA:** There is no evidence that he had a prohibiting criminal record.

Wheatland, WY, 7/30/11: The shooter killed his three sons and his brother and shot and injured his wife before surrendering to police. His wife later reported he had become upset because he wanted to keep the curtains of their home drawn to prevent the neighbors from looking inside.

- **SHOOTER NAME:** Everett E. Conant III
- **GUN DETAILS:** Two semiautomatic handguns were used in the shooting. A shotgun and a rifle were also recovered.
- **AMMO DETAILS:** Police testified that about 50 rounds were fired during the incident.
- **GUN ACQUIRED:** Unknown
- **PROHIBITING CRITERIA:** The police reported that the shooter did not have a criminal record. There is no evidence to indicate he was prohibited from possessing a gun.

Wagener, SC, 7/3/2011: The shooter apparently went on a murder-suicide rampage, killing his wife, her twin sister, his mother-in-law, and his ex-girlfriend in two different residences before he was confronted by law enforcement and shot himself.

- **SHOOTER NAME:** Kenneth Myers, 47
- **GUN DETAILS:** A 20-gauge shotgun was used in the massacre. Myers owned numerous weapons including an SKS, AK-47, two 9 mm handguns, a .22 caliber revolver, and a .38 caliber snub-nose pistol.
- **AMMO DETAILS:** Unknown
- **GUN ACQUIRED:** Unknown
- **PROHIBITING CRITERIA:** There is no evidence that the shooter was prohibited from owning a gun. However, he reportedly had a history of violence, having threatened his mother-in-law with a rifle. In a suicide note, he blamed his wife's family for contributing to her drug problem.

Grand Prairie, TX, 6/23/11: The shooter killed his wife and four of her family members at his daughter's birthday party before killing himself.

- **SHOOTER NAME:** Tan Do, 35
- **GUN DETAILS:** Reported to be a handgun
- **AMMO DETAILS:** Unknown
- **GUN ACQUIRED:** Unknown
- **PROHIBITING CRITERIA:** Tan Do had a history of domestic violence. His wife had obtained a protective order against him but had withdrawn it earlier that year against the advice of a prosecutor.



Medford, NY, 6/9/11: The shooter killed four people at a pharmacy, Haven Drugs, and stole thousands of hydrocodone pills before fleeing in a vehicle. During the trial he acknowledged that he and his wife were addicted to prescription medication.

- **SHOOTER NAME:** David Laffer
- **GUN DETAILS:** A .45 caliber handgun was used in the shooting. Several other legally registered guns were also recovered from the shooter's home.
- **AMMO DETAILS:** Unknown
- **GUN ACQUIRED:** Unknown
- **PROHIBITING CRITERIA:** The gun was legally registered to the shooter, and there is no evidence he was prohibited from possessing a gun. But five months before the shooting, Suffolk County Detective Kenneth Ripp investigated an identity theft claim made by the shooter's mother, who said the shooter had stolen her debit card. After questioning the shooter and his mother, Ripp advised the Suffolk County Pistol License Bureau that the shooter was dangerous and that his guns should be confiscated. Despite Ripp's report, the guns were not removed.
- **GUN-FREE ZONE:** We could find no evidence that Haven Drugs posted a sign or had a policy prohibiting the carrying of firearms. Current employees declined to comment.

Yuma, AZ, 6/2/11: In a series of separate shootings over a five-hour period, a gunman shot and killed his ex-wife, three of her friends, and her attorney, before killing himself.

- **SHOOTER NAME:** Carey H. Dyess, 73
- **GUN DETAILS:** Handgun
- **AMMO DETAILS:** Unknown
- **GUN ACQUIRED:** Unknown
- **PROHIBITING CRITERIA:** Dyess's ex-wife alleged there had been domestic abuse and a judge had issued an order of protection against him in 2006, but there is no evidence that he was prohibited from possessing firearms at the time of the shooting.

Ammon, ID, 5/11/11: The shooter killed his two infant children, their mother, and her sister before setting fire to the house and shooting himself. He had separated from the victim several months before the incident, and in the week before the shooting he had sent her harassing text messages.

- **SHOOTER NAME:** Gaylin Leirmoe
- **GUN DETAILS:** .45 caliber handgun
- **AMMO DETAILS:** Eight shots were fired during the shooting.
- **GUN ACQUIRED:** Unknown
- **PROHIBITING CRITERIA:** In October 2009, the shooter was charged with misdemeanor battery for domestic violence with no traumatic injury after hitting his girlfriend — the woman he would ultimately kill — at her birthday celebration. The charges were later dismissed. There is no evidence that he was prohibited from possessing a gun.



Oak Harbor, Ohio, 4/16/11: The shooter killed his wife and three children, age 1 to 4, before killing himself.

- **SHOOTER NAME:** Alan Atwater
- **GUN DETAILS:** .22 caliber rifle, shotgun
- **AMMO DETAILS:** Unknown
- **GUN ACQUIRED:** Unknown
- **PROHIBITING CRITERIA:** The shooter and his wife separately reported to friends that in the past he had held her against a wall and choked her. But there is no evidence he was prohibited from possessing a gun.

Willowbrook, CA, 2/11/11: Two brothers, their uncle, and their cousin were shot and killed by an unknown assailant on the patio of their home.

- **SHOOTER NAME:** Unknown
- **GUN DETAILS:** Unknown
- **AMMO DETAILS:** Witnesses reported that the shooting was loud and continuous. Police believe a semiautomatic weapon was used.
- **GUN ACQUIRED:** Unknown
- **PROHIBITING CRITERIA:** The assailant is unknown.

Minot, ND 1/28/11: The shooter, a Somali national, killed the mother of his child at her home — and then her brother, her mother, and her mother's boyfriend at a nearby home. The murder weapon was never recovered.

- **SHOOTER NAME:** Omar Mohamed Kalmio, 28
- **GUN DETAILS:** Believed to be a handgun.
- **AMMO DETAILS:** Unknown
- **GUN ACQUIRED:** Unknown
- **PROHIBITING CRITERIA:** In 2006, Kalmio was convicted of second-degree assault with a dangerous weapon and sentenced to a year in prison, which offense prohibited him from legally possessing a firearm.

Tucson, AZ, 1/8/11: The shooter attacked a constituent event hosted by Congresswoman Gabrielle Giffords, killing six and wounding fourteen, including Giffords, before he was subdued.

- **SHOOTER NAME:** Jared Loughner, 22
- **GUN DETAILS:** 9mm Glock 19 semiautomatic handgun
- **AMMO DETAILS:** 33-round magazine
- **GUN ACQUIRED:** Loughner passed a background check and purchased the Glock handgun at Sportsman's Warehouse in Tucson two months before the attack. Loughner also purchased a Harrington & Richardson shotgun in 2009; this gun was not used in the attack.



- **PROHIBITING CRITERIA:** Loughner had a history of mental illness and drug use. He was rejected from Army enlistment in 2008 after failing a drug test and admitting to drug use on his U.S. Army medical history application form, which should have prohibited Loughner from buying a gun for at least one year. However, Loughner successfully purchased a Harrington & Richardson shotgun in 2009, within a year of his Army rejection. Loughner's purchase of the Glock 19 handgun in 2010 violated the plain intent of federal law, which prohibits someone considered an/to be "unlawful user of or addicted to any controlled substance" from purchasing a gun, but the purchase was still allowed under current enforcement practices. Loughner was also suspended from Pima Community College in 2010 for erratic behavior, and exhibited other signs of mental instability in posts to websites.
- **NOT A GUN-FREE ZONE:** It was lawful to carry a firearm in the area of the shooting. An armed bystander, Joe Zamudio, mistook someone else as the shooter and prepared to fire on him before he was stopped by other bystanders.

Boston, MA, 09/28/10: The shooter killed four and wounded one during a drug-related robbery.

- **SHOOTER NAME:** Edward Washington, 33, and Dwayne Moore, 35, were both charged in the killings. Washington was acquitted. In Moore's first trial, the jury deadlocked 11-1 in favor of his guilt, but he was later convicted in a retrial.
- **GUN DETAILS:** .40 caliber Iberia handgun and 9mm Cobray semiautomatic. The Cobray has not been recovered, but the weapon was identified based on recovered bullets and shell casings.
- **AMMO DETAILS:** 14 rounds fired
- **GUN ACQUIRED:** Unknown
- **PROHIBITING CRITERIA:** There is no evidence the shooters were prohibited from possessing guns.
- **NOT A GUN-FREE ZONE:** Any person holding the appropriate license could lawfully carry a firearm in this area. As of 2012 there were an estimated 250,000 concealed weapons permit holders in Massachusetts, and neither state or local law prohibits them from carrying in the city of Boston.

Riviera Beach, FL 9/27/10: The shooter killed his estranged wife and four of his stepchildren in their home, injured one other, and then shot and killed himself.

- **SHOOTER NAME:** Patrick Dell, 41
- **GUN DETAILS:** Handgun
- **AMMO DETAILS:** Unknown
- **GUN ACQUIRED:** Unknown
- **PROHIBITING CRITERIA:** In May 2010, the shooter's wife obtained a restraining order, which was active at the time of the shooting and would have prohibited him from owning a gun. In December 2009, Dell has also been arrested on felony aggravated assault, and had been convicted of misdemeanor improper exhibition of a dangerous firearm. Police had responded to 34 calls from the household in the four years preceding the shooting. In April 2008, the shooter's wife had taken out another restraining order against Dell for abusive behavior.

Jackson, KY, 9/10/10: The shooter, reportedly enraged at how his wife prepared his eggs, fatally



shot her, his stepdaughter, and three neighbors. He killed himself when the police arrived.

- **SHOOTER NAME:** Stanley Neace, 47
- **GUN DETAILS:** Shotgun
- **AMMO DETAILS:** Unknown
- **GUN ACQUIRED:** Unknown
- **PROHIBITING CRITERIA:** There is no evidence the shooter was prohibited from possessing a gun.

Chicago, IL, 9/2/10: The shooter murdered four individuals execution-style in a garage on South Kildare Avenue. Officials believe he was part of a drug-trafficking crew that had been involved in at least 10 other killings.

- **SHOOTER NAME:** Raul Segura-Rodriguez, 36
- **GUN DETAILS:** Unknown
- **AMMO DETAILS:** Unknown
- **GUN ACQUIRED:** Unknown
- **PROHIBITING CRITERIA:** While the shooter was reportedly an experienced criminal, there is no evidence of convictions that would have prohibited him from possessing a gun.

Lake Havasu City, AZ, 8/29/10: The shooter killed his ex-girlfriend, her boyfriend, and three others while they were celebrating her boyfriend's birthday and took his own life later that night.

- **SHOOTER NAME:** Brian Diez, 26
- **GUN DETAILS:** Unknown
- **AMMO DETAILS:** Unknown
- **GUN ACQUIRED:** Unknown
- **PROHIBITING CRITERIA:** The gunman's girlfriend had taken out a restraining order against him earlier that year, which would likely prohibit him from purchasing or possessing a gun.

Buffalo, NY, 8/14/10: The shooter opened fire on a group of people outside a bar, killing four and wounding four others.

- **SHOOTER NAME:** Riccardo McCray, 24
- **GUN DETAILS:** Unknown
- **AMMO DETAILS:** Unknown
- **GUN ACQUIRED:** Unknown
- **PROHIBITING CRITERIA:** McCray had been arrested earlier that year on felony drug charges and the previous year for having a loaded rifle in his car. If he was found guilty of either crime, he would have been prohibited from possessing firearms.
- **NOT A GUN-FREE ZONE:** We could find no indication that it was unlawful to carry a firearm in the area.



There are an estimated 100,000 concealed weapon permit holders in New York and other than limiting a person's ability to carry when he is under the influence of drugs or alcohol, Buffalo does not add any additional requirements to state law.

Lanham, MD, 8/6/10: The shooter killed two children, their mother, and their paternal aunt in the home where they resided. Police said the shooter was involved in drug trafficking and the victims owed him money.

- **SHOOTER NAME:** Darrell Lynn Bellard
- **GUN DETAILS:** Unknown
- **AMMO DETAILS:** Unknown
- **GUN ACQUIRED:** Unknown
- **PROHIBITING CRITERIA:** There is no evidence that he was prohibited from possessing a gun.

Manchester, CT, 8/3/10: The shooter killed eight coworkers at a beer distributor and wounded two others before killing himself.

- **SHOOTER NAME:** Omar Thornton, 34
- **GUN DETAILS:** Two Ruger SR9 9mm handguns
- **AMMO DETAILS:** The shooter allegedly carried two extra magazines and two extra boxes of ammunition with him to the attack.
- **GUN ACQUIRED:** Unknown
- **PROHIBITING CRITERIA:** There is no indication that he was prohibited from possessing firearms and the guns he used were registered to him.

Hialeah, FL, 6/6/10: The shooter killed four women, including his wife — who had just separated from him. He injured three others before shooting and killing himself. The shooting occurred in Yoyito-Cafe Restaurant, where the shooter's wife was employed as a waitress, and in the parking lot immediately outside.

- **SHOOTER NAME:** Gerardo Regalado, 38
- **GUN DETAILS:** .45 caliber handgun
- **AMMO DETAILS:** Unknown
- **GUN ACQUIRED:** The shooter had a concealed weapons permit.
- **PROHIBITING CRITERIA:** There is no evidence that the shooter was prohibited from owning a gun. However, relatives said the shooter had abused and terrorized women in the past, and had been imprisoned in Cuba for a particularly violent incident, but he did not have a criminal record in the United States.
- **NOT A GUN-FREE ZONE:** We could find no indication that guns were prohibited in this area. Guns are prohibited in Florida restaurants only in areas primarily devoted to the serving of alcohol.



Chicago, IL, 4/14/10: The shooter who had converted to Islam in prison killed his family for not going along with his conversion, fatally shooting his mother, pregnant wife, infant son, and two nieces, and injuring one other.

- **SHOOTER NAME:** James A. Larry, 33
- **GUN DETAILS:** Shotgun
- **AMMO DETAILS:** Unknown
- **GUN ACQUIRED:** Unknown
- **PROHIBITING CRITERIA:** Larry was almost certainly prohibited from purchasing a gun, having recently served a prison term for a weapons charge. He had also recently pled no contest to misdemeanor battery against his wife.

Los Angeles, CA, 4/3/10: The shooter killed four and injured two at a San Fernando Valley restaurant after a dispute with other patrons. He was indicted in a separate investigation for engaging in the business of dealing firearms without a license and possession of a firearm with an obliterated serial number, having sold firearms to an informant working for federal agents the previous year.

- **SHOOTER NAME:** Nerses Arthur Galstyan, 28
- **GUN DETAILS:** Unspecified handgun
- **AMMO DETAILS:** Unknown
- **GUN ACQUIRED:** Unknown
- **PROHIBITING CRITERIA:** There is no evidence the shooter was prohibited from possessing a gun.

Washington, DC, 03/30/10: Three gunmen killed four and wounded five in retaliation for another murder.

- **SHOOTER NAME:** Nathaniel D. Simms, 26; Orlando Carter, 20, and unnamed 14-year-old juvenile.
- **GUN DETAILS:** An AK-47 assault rifle and 9mm and .45-caliber handguns
- **AMMO DETAILS:** Unknown
- **GUN ACQUIRED:** Unknown
- **PROHIBITING CRITERIA:** The adults were reported to have lengthy criminal histories, which prohibited them from purchasing guns, and the 14-year-old was too young to purchase or own a gun.
-

New Orleans, LA, 3/26/10: The shooter killed his ex-girlfriend, her sister, and two children.

- **SHOOTER NAME:** Damian Jordan, 22
- **GUN DETAILS:** Handgun
- **AMMO DETAILS:** Unknown



- **GUN ACQUIRED:** Unknown
- **PROHIBITING CRITERIA:** Jordan was likely prohibited from possessing a gun due to a lengthy history of domestic abuse, though he had repeatedly pled down the crimes to simple battery.

Appomattox, VA, 1/19/10: The shooter killed eight family-members and acquaintances and fired at responding police officers – even forcing a helicopter to make an emergency landing – before surrendering. He wore a bulletproof vest during the attack.

- **SHOOTER NAME:** Christopher Speight, 39
- **GUN DETAILS:** High-powered rifle
- **AMMO DETAILS:** Unknown
- **GUN ACQUIRED:** Unknown
- **PROHIBITING CRITERIA:** The shooter was a concealed carry permit holder and was not prohibited from possessing a gun.

Bellville, TX, 1/16/10: The shooter, angered after a household argument, fatally shot his mother, stepfather, sister, brother and niece.

- **SHOOTER NAME:** Maron Thomas, 20
- **GUN DETAILS:** Handgun and shotgun
- **AMMO DETAILS:** Unknown
- **GUN ACQUIRED:** Unknown
- **PROHIBITING CRITERIA:** There is no evidence the shooter was prohibited from possessing a gun.

Madison, WI, 12/3/2009: The shooter killed two women with whom he was involved in paternity cases, along with their daughters, before shooting himself in his car.

- **SHOOTER NAME:** Tyrone Adair, 38
- **GUN DETAILS:** Two handguns were found inside the vehicle where Adair died, one of which matched the caliber of the ammunition used in the murders.
- **AMMO DETAILS:** Unknown
- **GUN ACQUIRED:** Police report that Adair bought a 9mm gun that was advertised on Craigslist. This gun was likely transferred in a private sale.
- **PROHIBITING CRITERIA:** The shooter was prohibiting from possessing firearms due to an active restraining order involving a third woman. He had also been arrested in March 2009 after a domestic incident, but charges were not filed in that case.

Lakewood, WA, 11/29/09: The shooter killed four police officers in a Tacoma Coffee shop, eluding police for two days before being killed as he fled.



- **SHOOTER NAME:** Maurice Clemmons, 37
- **GUN DETAILS:** When he was killed, he was in possession of the handgun of one of the officers he had killed.
- **AMMO DETAILS:** Unknown
- **GUN ACQUIRED:** Unknown
- **PROHIBITING CRITERIA:** The shooter was prohibited from purchasing a firearm, having been charged with at least 13 felonies across two states. He had posted bail for raping a child just six days before the attack.
- **NOT A GUN-FREE ZONE:** The police officers were armed at the time of the shooting.

Osage, KS, 11/28/09: The shooter killed his estranged wife, her grandmother, and his two daughters in their home.

- **SHOOTER NAME:** James Kahler, 46
- **GUN DETAILS:** Assault rifle
- **AMMO DETAILS:** Unknown
- **GUN ACQUIRED:** Unknown
- **PROHIBITING CRITERIA:** Kahler was charged with a misdemeanor domestic violence assault in March 2009. If convicted, he would have been prohibited from purchasing a firearm.

Jupiter, FL, 11/26/09: The shooter killed his two twin sisters, his aunt, and his cousin's daughter, and injured two other family members, during a Thanksgiving celebration. He eluded capture for over a month before authorities apprehended him.

- **SHOOTER NAME:** Paul Merhige, 40
- **GUN DETAILS:** He used at least two handguns during the shooting.
- **AMMO DETAILS:** Unknown
- **GUN ACQUIRED:** Purchased at least six guns (including a .22 caliber handgun and a .40 caliber semi-automatic handgun), a high-powered rifle with a scope, and ammunition from two gun stores in South Florida.
- **PROHIBITING CRITERIA:** The shooter was involuntarily committed to mental health facilities at least three times in the decade before the killing, which prohibited him under federal law from possessing guns. But his records were not submitted to the NICS database. His parents reportedly knew he had ceased taking prescribed psychotropic medication in the weeks leading up the shooting. In addition, his sister Carla Merhige had requested a restraining order against him in 2006, but later withdrew the request. The shooter was able to obtain a concealed weapons permit.

Pearcy, AR, 11/12/09: Three shooters killed five people in their mobile homes and stole wheel rims, televisions, a handgun, and a vehicle. One of the shooters injured a police officer while he was being apprehended several days later.

- **SHOOTER NAME:** Samuel Conway, Marvin Lamar Stringer, and Jeremy Pickney
- **GUN DETAILS:** .22 and .25 caliber handguns



- **AMMO DETAILS:** Unknown
- **GUN ACQUIRED:** Unknown
- **PROHIBITING CRITERIA:** There is no evidence that the shooters were prohibited from possessing guns.

Oklahoma City, OK, 11/9/2009: The shooter or shooters killed four people in a house before setting the building on fire. Two of the victims were pregnant. The crime was premeditated by two conspirators, and related to drugs they sold for one of the victims. It is unclear whether just one or both of the conspirators were present for the shooting, but both were charged with six counts of murder. Tyner surrendered to authorities a week after the killings. Phillips was arrested in Tulsa in April 2010 after allegedly attempting to sell two guns stolen from a police sergeant's home.

- **SHOOTERS:** David Allen Tyner (pled guilty), 31 and Denny Edward Phillips (pled not guilty), 34
- **GUN DETAILS:** Handgun
- **AMMO DETAILS:** Two types of bullet cases were recovered at the crime scene.
- **GUN ACQUIRED:** Unknown
- **PROHIBITING CRITERIA:** Phillips was prohibited due to a lengthy criminal history including multiple felony convictions. Phillips was convicted in 1996 for assault with a deadly weapon, and other crimes including a jail escape. He was also convicted in 2010 for possession of a firearm by a felon. He was also convicted of aggravated assault and battery. There is no indication that Tyner was prohibited, though he was reportedly a member of a prison gang.

Fort Hood, TX, 11/5/09: The shooter killed thirteen and wounded thirty soldiers during an attack at the Fort Hood army base.

- **SHOOTER NAME:** Nidal Malik Hasan, 39
- **GUN DETAILS:** A FN Five-seven handgun was used in the attack. A Smith and Wesson .357 revolver also recovered.
- **AMMO DETAILS:** Hasan fired at least 220 rounds of ammunition and had 200 rounds in his pocket when he was detained.
- **GUN ACQUIRED:** Purchased legally at a local gun shop, Guns Galore.
- **PROHIBITING CRITERIA:** The shooter had links with terrorist organizations, but being placed on a terror watch list does not prohibit purchase or possession of firearms under current law.

Mount Airy, NC, 11/01/09: The shooter killed four people outside a television store before eventually surrendering to the police.

- **SHOOTER NAME:** Marcos Chavez Gonzalez, 29
- **GUN DETAILS:** Assault rifle.
- **AMMO DETAILS:** Unknown



- **GUN ACQUIRED:** Unknown
- **PROHIBITING CRITERIA:** The shooter was a prohibited purchaser, having been convicted of kidnapping a minor in 2002.
- **NOT A GUN-FREE ZONE:** It was lawful to carry a firearm in the area of the shooting.

Lawrenceville, GA, 08/27/09: The shooter killed his girlfriend, his daughter, and two others in a domestic dispute.

- **SHOOTER NAME:** Richard Ringold, 44
- **GUN DETAILS:** Unknown
- **AMMO DETAILS:** Unknown
- **GUN ACQUIRED:** Unknown
- **PROHIBITING CRITERIA:** There is no evidence the shooter was prohibited from possessing a gun.

Kansas City, KS, 6/22/09: The shooter killed a woman with whom he had been romantically linked and three others at the house where she was staying. He had argued with the woman and followed her to the house.

- **SHOOTER NAME:** Adrian Burks
- **GUN DETAILS:** Unknown
- **AMMO DETAILS:** Unknown
- **GUN ACQUIRED:** Unknown
- **PROHIBITING CRITERIA:** The shooter was prohibited from possessing firearms. He had served 10 years in Kansas prisons for robbery, aggravated assault, and burglary. He also fatally shot a man in March 2009, but he was not charged in the incident, which his cousin later described as “self defense.” In April 2009, he was charged with battery and a criminal threat against the sister of the man he killed and was ordered not to possess firearms.

Middletown, MD, 04/19/09: The shooter killed his wife and three children in their home before committing suicide.

- **SHOOTER NAME:** Christopher Alan Wood, 34
- **GUN DETAILS:** .25-caliber handgun
- **AMMO DETAILS:** Unknown
- **GUN ACQUIRED:** Unknown
- **PROHIBITING CRITERIA:** There is no evidence the shooter was prohibited from possessing a gun.
- **GREEN HILL, AL, 4/7/2009:** The shooter killed his estranged wife, their teenage daughter, and two other relatives one day before his divorce proceedings were scheduled to take place. He then lit the house on fire and shot himself.
- **SHOOTER NAME:** Kevin Garner, 45



- **GUN DETAILS:** handgun
- **AMMO DETAILS:** Unknown
- **GUN ACQUIRED:** Unknown
- **PROHIBITING CRITERIA:** There is no evidence the shooter was prohibited from owning a gun. In divorce documents, however, his wife cited physical and emotional abuse.

Graham, WA, 4/4/2009: After a dispute with his wife in which she told him she was ending their relationship, the shooter returned home and killed his five children. Police believe he then made an unsuccessful attempt to find his wife again and then killed himself in his car.

- **SHOOTER NAME:** James Harrison
- **GUN DETAILS:** Unspecified rifle
- **AMMO DETAILS:** Unknown
- **GUN ACQUIRED:** Unknown
- **PROHIBITING CRITERIA:** There is no evidence Harrison was prohibited from possessing a gun. Since 2001 the state had received five complaints about the shooter, including one for abuse in 2007 that stemmed from a slapping incident with one of his children. None of the complaints resulted in a domestic violence conviction. After the shooting, his wife said that she and her children had sustained years of abuse.

Binghamton, NY, 4/3/09: The shooter killed fourteen and wounded four at the American Civic Association where he had been taking English classes before killing himself. He wore a bullet-proof vest during the attack.

- **SHOOTER NAME:** Jiverly A. Wong, 42
- **GUN DETAILS:** 9mm and .45 caliber Beretta handguns.
- **AMMO DETAILS:** Allegedly fired 98 rounds during the attack. At least one magazine with a 30-round capacity was recovered at the scene.
- **GUN ACQUIRED:** The guns were registered to his New York State pistol license.
- **PROHIBITING CRITERIA:** Wong was not prohibited from possessing a gun, and had a New York State concealed carry permit. People who knew Wong said he exhibited no outward signs of mental instability, although a letter he wrote that was delivered to a newspaper after the shooting indicated he was paranoid and suffering from mental illness.

Carthage, NC, 3/29/09: The shooter opened fire at a nursing home where his estranged wife worked, killing eight and injuring three before he was shot and arrested by a police officer.

- **SHOOTER NAME:** Robert Stewart, 45
- **GUN DETAILS:** .357 Magnum handgun and Winchester 1300 shotgun
- **AMMO DETAILS:** Unknown
- **GUN ACQUIRED:** The guns were acquired legally from a local sporting good store.



- **PROHIBITING CRITERIA:** There is no indication the Stewart was prohibited from possessing a gun.
-

Santa Clara, CA, 3/29/09: The gunman killed five family members and wounded two in an apparent murder-suicide.

- **SHOOTER NAME:** Devan Kalathat, 45
 - **GUN DETAILS:** Two .45 caliber pistols
 - **AMMO DETAILS:** Unknown
 - **GUN ACQUIRED:** Purchased legally weeks before the incident.
 - **PROHIBITING CRITERIA:** There is no indication that Kalathat was prohibited from possessing a gun.
-

East Oakland, CA, 3/21/09: The shooter used a semiautomatic handgun to kill two police officers after they stopped his car and then fled on foot to an apartment where he killed two SWAT officers with an assault weapon and injured a third before being killed by police.

- **SHOOTER NAME:** Lovelle Mixon
 - **GUN DETAILS:** 9mm semiautomatic handgun and SKS assault-style rifle
 - **AMMO DETAILS:** Police said the assault weapon had a high-capacity magazine.
 - **GUN ACQUIRED:** The shooter took part in a home invasion robbery in Modesto, CA, on February 21 2009 in which a rifle was reported stolen. Police did not comment on whether the stolen rifle was the one used in the shooting.
 - **PROHIBITING CRITERIA:** The shooter had a lengthy criminal history, including a conviction for armed battery, which would have prohibited him from possessing a gun, and he was on parole for assault with a deadly weapon at the time of the shootings.
 - **GUN-FREE ZONE:** Two of the victims were shot on a public roadway — the 7400 block of Macarthur Boulevard in East Oakland — where no state law would have prohibited a citizen with the appropriate permit to carry a gun. All of the police officers killed in the incident were armed.
-

Raytown, MO, 3/16/09: The gunman shot and stabbed his former girlfriend, her boyfriend, and her two nephews, killing all four.

- **SHOOTER NAME:** Gevante Anderson, 26
 - **GUN DETAILS:** Unknown
 - **AMMO DETAILS:** Unknown
 - **GUN ACQUIRED:** Unknown
 - **PROHIBITING CRITERIA:** There is no evidence the shooter was prohibited from possessing a gun.
-

Miami, FL, 3/15/09: At a birthday party, the shooter killed his estranged wife, her daughter, her daughter's boyfriend, and the boyfriend's grandmother. He then returned to his house where he set the building on fire and shot and killed himself.



- **SHOOTER NAME:** Guillermo Lopez, 48
- **GUN DETAILS:** Semi-automatic handgun
- **AMMO DETAILS:** Unknown
- **GUN ACQUIRED:** Unknown
- **PROHIBITING CRITERIA:** There is no evidence the shooter was prohibited from possessing a gun.

Catawba, NC, 3/12/09: The gunman shot and stabbed a woman and her three children in their home. He later killed himself and his girlfriend after a police chase in Utah.

- **SHOOTER NAME:** Chiew Chan Saevang, 38
- **GUN DETAILS:** Unknown
- **AMMO DETAILS:** Unknown
- **GUN ACQUIRED:** Unknown
- **PROHIBITING CRITERIA:** There is no evidence the shooter was prohibited from possessing a gun.

Geneva County, AL, 3/10/09: The shooter killed ten, including four members of his family, before killing himself.

- **SHOOTER NAME:** Michael Kenneth McLendon, 28
- **GUN DETAILS:** Bushmaster AR-15, SKS rifle, shotgun, and .38 pistol
- **AMMO DETAILS:** Police recovered additional ammunition from his vehicle after the shooting.
- **GUN ACQUIRED:** Unknown
- **PROHIBITING CRITERIA:** The shooter had no criminal record and there is no indication he was prohibited from possessing a gun.
- **NOT A GUN-FREE ZONE:** It was lawful to carry a firearm in the public intersection and gas station where two of the individuals were shot.

Cleveland, OH, 3/05/09: The shooter killed his new wife and four of her relatives before committing suicide.

- **SHOOTER NAME:** Davon Crawford, 33
- **GUN DETAILS:** At least one semiautomatic handgun.
- **AMMO DETAILS:** Unknown
- **GUN ACQUIRED:** Unknown
- **PROHIBITING CRITERIA:** Crawford was likely prohibited from possessing a gun. He was convicted of manslaughter in 1995 and pled guilty to felonious assault with a firearm in 2005, though Ohio enables felons to restore their gun rights so it is possible he was no longer prohibited.

Brockport, NY, 02/14/2009: The shooter killed a nurse in the Lakeside Memorial Hospital



parking lot and a motorist who intervened, and wounded the motorist's girlfriend. The shooter had been fired from the hospital after the nurse filed a sexual harassment complaint against him. He then drove 50 miles and killed another nurse — who had filed a similar complaint against the shooter — and her husband in their home.

- **SHOOTER NAME:** Frank Garcia, 34
- **GUN DETAILS:** .40 caliber Glock handgun
- **AMMO DETAILS:** Unknown
- **GUN ACQUIRED:** Unknown
- **PROHIBITING CRITERIA:** There is no evidence that the shooter was prohibited from owning a gun. However, he had applied for concealed carry permits and been denied three times. In his 1995 application, he omitted information about his criminal record — including arrests for criminal possession of a weapon, assault, and harassment. In 2001 and 2006 he made further omissions, and was evaluated as lacking moral character. But in 2007 a judge reversed the denial and granted Garcia a concealed weapon permit.
- **GUN FREE ZONE:** We found no indication that permit holders were prohibited from carrying guns in this area at the time of the incident.

Wilmington, CA, 1/27/09: The shooter killed his wife and their five children before killing himself.

- **SHOOTER NAME:** Ervin Lupoe, 40
- **GUN DETAILS:** Unknown
- **AMMO DETAILS:** Unknown
- **GUN ACQUIRED:** Unknown
- **PROHIBITING CRITERIA:** The shooter did not have a criminal record and there is no indication he was prohibited from possessing a gun.

EXHIBIT 5

Declaration of Roderick M. Thompson in Support of Sunnyvale's Opposition to Plaintiffs' Motion for Preliminary Injunction

NewsRoom

8/11/11 Statesman J. (Salem, Or.) C1
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August 11, 2011

Section: Mid-Valley

Brush with tragedy spurs author

August 11, 2011

One of the more notorious crimes in Salem history remains fresh in the mind of a South Salem resident who easily could have been a victim.

On May 7, 1981, Lawrence Moore walked into the Oregon Museum Tavern on Front Street NE at 10:20 p.m. during ladies night, stood at the entrance, raised his 9mm semiautomatic pistol and calmly squeezed off two 13-round clips.

The shooting spree that left four people dead and 20 wounded ended shortly after when Moore tried to reload his pistol and was tackled by patrons.

Christie Kraemer, a published author, was 30 years old and a regular of the tavern. She left the bar with her friend 15 minutes before the shooting.

Thirty years later, Kraemer has written "Shattered Tomorrows," a fictional book loosely based on the facts of the shooting that will be released Monday by Rogue Phoenix Press.

"It was cathartic," Kraemer said.

Her brush with tragedy had lingered in her memory, and she said she never felt as though there was closure despite Moore being found guilty and sentenced to life in prison. She also said she wanted to write the book to answer the question "Why?"

"It's kind of been nagging me for a long time," she said.

According to Statesman Journal reports, when he testified at his October 1981 murder trial, Moore claimed that he was defending himself against the band of enemies who were plotting against him.

Spraying the tavern with gunfire was his last chance to defend himself, Moore said. "No place to run, no place to hide; I couldn't get away from them, I was going to die anyway."

A jury rejected his insanity defense and he remains at the Oregon State Penitentiary, where he is serving a life sentence.

"The facts are out there and everyone will take them to their own view; even with the facts, you are still left with 'no one knows why he did it and he's never going to say,'" she said.

For many of the victims and patrons who were at the tavern the night of the shooting, small decisions made the difference between life, death and an altered future.

In Kraemer's case, she said she was with her friend, who wanted to go to the tavern in hopes a man her friend was interested in would be there. They waited for a while, had a drink and when he didn't arrive, they decided to move on to the next bar. The decision took them out of harm's way.

Others were not as lucky.

She said she has received some criticism from people for not writing a true story, but using fiction allowed her to end the story the way she wanted to see it end.

"This isn't going to be sunshine and rainbows," she said.

She also said she hopes the book will do for others what it did for her — give some sort of closure and allow people to put it in the past.

esperez@StatesmanJournal.com or (503) 399-6740 or follow at Twitter.com/ElidaSPerezSJ

Book

"Shattered Tomorrows" will be released Monday by Rogue Phoenix Press.

The book is a fictional story loosely based on the shooting spree at the Oregon Museum Tavern on Front Street NE on May 7, 1981.

For information, go to roguephoenixpress.com or call (503) 302-5392.

---- Index References ----

News Subject: (Violent Crime (1VI27); Social Issues (1SO05); Murder & Manslaughter (1MU48); Crime (1CR87); Death Penalty (1DE04))

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Section: WEEKEND
Section: 1 - FIRST

CRIME TIME

Greg Thom

Times change, but the camera never lies. From ``Squizzly" Taylor's fatal shootout in a Carlton bedroom to the 1987 Queen St massacre, police photographers have recorded the bloody aftermath of these terrible crimes. Greg Thom delves into the files of forensic investigators to reveal these frozen moments in crime.

December 8, 1987

The spirit of Christmas was shattered on December 8, 1987 when a paranoid, psychotic and hate-filled Melbourne University drop-out named Frank Vitkovic walked into the Australia Post building at 191 Queen St and shot eight office workers dead. He stalked his innocent victims across three floors. The murderous rampage was brought to an end only when several would-be victims, one of them wounded, tackled the gunman as he reloaded his weapon. Survivors of the carnage placed the M1 carbine, which Vitkovic used with such devastating effect, in a fridge. Despite their efforts to stop him, Vitkovic managed to break free and jump to his death.

Gun Alley, December 30, 1921

This long-gone, nondescript lane off Little Collins St, known as Gun Alley, became synonymous with one of Melbourne's most shocking and sensational murders of the 20th century.

A policeman is photographed near the spot where the naked body of 12-year-old girl Alma Tirtschke was discovered on December 30, 1921.

Described as slightly built, 137cm tall, freckle-faced and with long, dark auburn hair, the bright Hawthorn West Primary School student was abducted, raped and murdered while on her way to deliver a parcel of meat to her aunt in Collins St.

Under intense public and media pressure to solve the crime, police soon charged Colin Campbell Ross, licensee of the Australian Wine Cafe situated not far from where Alma's body was found.

Crucial pieces of evidence in the police case against Ross were strands of hair found on blankets at his home. Scientific tests proved them to be similar to that of Tirtschke, the first time hair analysis had been used in Australian criminal history to secure a conviction.

Found guilty of murder and sentenced to death, Ross went to his grave protesting his innocence. DNA tests 75 years after the murder proved the hair did not come from the dead girl's scalp.

ANZ Bank car park, High St, Kew, November 28, 1975

Police hunt for clues at the scene of the robbery and murder of Spyropoulos Dimitriou. The 49-year-old father of two was ambushed, shot through the heart and left for dead by a pair of bandits who lay in wait in the car park behind the bank, as he arrived to deposit \$4000 in takings from his bakery business.

St Kilda, April 16, 1955

A heated discussion at the dinner table about football ended in the stabbing death of 59-year-old Thomas Butler. The St Kilda wharfie, whose shoes can be seen under the table, was stabbed through the heart and lung with a carving knife in his Inkerman St home, after he allegedly grabbed his wife, Mary, by the throat.

Butler had been to the football that day with a boarder of five years, James McEwan. Both men were said to have drunk heavily at the game and later at a St Kilda hotel.

McEwan, 34, was charged with murder despite telling police he was trying to break up a scuffle between the Butlers. He was found not guilty of murder and manslaughter.

Carlton, October 28, 1927

Notorious Melbourne gangster "Squizzy" Taylor's high-profile criminal career came to a sudden and bloody end in this dingy bedroom at a Carlton boarding house.

The diminutive crime lord and former jockey, with a taste for expensive clothes and cheap blondes, arrived at the Barkly St address determined to confront rival Sydney underworld identity John "Snowy" Cutmore.

A total of 28 shots -- several bullets can be seen embedded in the wall in this picture -- were fired during the gun battle, which subsequently removed both gangsters from the criminal equation.

West Footscray, December 8, 1977

Dragan Menicanin shot his wife, Angela, four times with a pistol, before calmly placing the weapon next to the family TV and turning himself in to police.

The 45-year-old fitter told detectives the shooting followed an argument in which he feared his wife was going to kill him.

In an unsworn statement from the dock during the murder trial, Menicanin said he didn't want to kill his wife.

"I didn't want her dead. I am missing her."

Menicanin was acquitted on the grounds of insanity.

continued page 8

from page 7

Break of Day, May, 1867

Aboriginal trackers point to the discovery of pistols used in the murder of banker Thomas Burke, near Rokewood in central Victoria.

Burke was ambushed by two men while returning to Ballarat to deliver a gold shipment from the Break of Day mining company.

This picture, along with two other photos depicting the tree from which the killers fired and the location of a hidden horse and buggy, are believed to be the first crime scene photographs taken in Victoria.

Hamilton, March 28, 1959

Victor Herbert Rissman laughed as his wife, Mabel, fetched a double-barrelled shotgun during a heated dinner-table argument that escalated in the kitchen of their Hamilton farm. The 54-year-old Rissman continued taunting her even after she pulled the trigger and the left barrel failed to fire. Mrs Rissman stopped the laughter with a blast from the remaining barrel. She was found guilty of manslaughter and sentenced to five years' jail.

Rye, May 18, 1979

Detectives unearth the bodies of murdered drug couriers Douglas and Isabel Wilson, discovered in a shallow grave at Rye on May 18, 1979. The pair were killed after betraying the notorious Mr Asia Drug Syndicate to authorities.

James Frederick Bazley, described in court as a ``\$10,000-a-head murderer'', was convicted of the Wilson killings as well as conspiring to murder Griffith anti-drugs campaigner Donald Mackay. He was allegedly hired by Mafia figure Robert Trimbole to kill the Wilsons and their dog, Taj. Bazley, a dog lover, is alleged to have said: ``Why the dog? The dog didn't talk."

The pooch was later found unharmed wandering the streets of Brunswick.

Richmond, May 30, 1934

The scene confronting police entering this bedroom of a house in Bosisto St, Richmond, on May 30, 1934, shocked Melbourne.

Francis O'Brien, 50, unemployed and by his own admission going mad from an inability to sleep, slashed the throats of his sleeping family -- wife Rose, 39, son Owen, 3, daughter Joan, 2 and nine-month-old Marie -- before taking his own life.

After his death, it was revealed O'Brien had been found not guilty of murdering his previous wife a decade earlier in Mildura on the ground of insanity and had been admitted to Mont Park psychiatric hospital for more than three years.

He remarried within a year of his release in 1927 and reported regularly to authorities before dropping off the radar in 1930.

Fitzroy, November 3, 1946

Ill health prevented frail, middle-aged invalid pensioner Charles Barclay from often venturing outside his home in Brunswick St, Fitzroy.

With only his prized radio for company, 45-year-old Barclay snapped one afternoon when his brother-in-law, Arnold Hodgson, who he was living with, grabbed the radio after he refused to turn it off.

Police alleged Barclay hit Hodgson with an iron bar because he feared his brother-in-law would break the precious radio. Barclay was found not guilty of murder and an alternative count of manslaughter.

February 14, 1977

In October 1972, Edwin John Eastwood kidnapped six students and their teacher from Faraday Primary School near Castlemaine and demanded a \$1 million ransom from the State Government.

Nearly five years later -- on February 14, 1977 -- he escaped from jail and abducted a teacher and nine pupils at gun-point from their classroom at Wooreen Primary School in South Gippsland.

This time he demanded the release of 17 prisoners, \$7 million and 100kg in both heroin and cocaine, but Eastwood was caught and sentenced to 18 years' jail.

Numurkah, May 3, 1964

Constable Ray Denman's life ended at 2.50pm on May 3, 1964, after he responded to a frantic telephone call to intervene in a tragic tug-of-love at Numurkah.

A festering domestic dispute between the parents of local woman Aileen Wilkinson over her relationship with fiance Kim Dean Christian culminated in Christian arriving on her doorstep brandishing a loaded shotgun.

Locked out of the house by his girlfriend, Christian was surprised by Constable Denman, who ran up behind him, allegedly startling the surprised gunman into accidentally firing the shotgun. The death of the popular policeman and active member of the community stunned the town.

Christian was later acquitted of manslaughter.

---- Index References ----

Company: ANZ BANKING GROUP NEW ZEALAND LTD

News Subject: (Violent Crime (1VI27); Crime (1CR87); Property Crime (1PR85); Social Issues (1SO05))

Region: (Australasia (1AU56); Australia (1AU55); Oceania (1OC40))

Language: EN

Other Indexing: (ANZ BANK; ASIA DRUG SYNDICATE; AUSTRALIAN; AUSTRALIAN WINE CAFE; BARKLY ST; BRUNSWICK ST; CARLTON; CHRISTIAN; COLLINS ST; DNA; FARADAY PRIMARY SCHOOL; INKERMANS ST; KIM DEAN CHRISTIAN; MAFIA; MELBOURNE; MELBOURNE UNIVERSITY; NOTORIOUS MELBOURNE; QUEEN ST; ST; ST KILDA; TAYLOR; WEST PRIMARY SCHOOL; WOOREEN PRIMARY SCHOOL) (Aboriginal; Aileen Wilkinson; Alma; Alma Tirtschke; Angela; Arnold Hodgson; Barclay; Bazley; Burke; Butler; Butlers; Charles Barclay; Colin Campbell Ross; Constable Denman; Constable Ray Denman; CRIME TIME; Donald Mackay; Dragan Menicanin; Eastwood; Fitzroy; Francis; Frank Vitkovic; Greg Thom; Gun Alley; Hamilton; Hodgson; Ill; Isabel Wilson; James Frederick Bazley; James McEwan; Joan; John Eastwood; Mabel; Mary; McEwan; Menicanin; Numurkah; O'Brien; Owen; Rissman; Robert

Trimbole; Ross; Rye; Scientific; Taj; Thomas Burke; Thomas Butler; Tirtschke; Victor Herbert Rissman; Vitkovic; Wilson; Wilsons)

Word Count: 1713

End of Document

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NewsRoom

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5/11/87 Phila. Inquirer B05
1987 WLNR 546149

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May 11, 1987

Section: LOCAL

MAN SHOTS WIFE, CAR, SAY POLICE IN BUCKS

David Lee Preston, Inquirer Staff Writer

A man opened fire at his wife yesterday from outside a front door and window of their son's house in Fairless Hills, Bucks County, then fired shots into her car and their own home before being subdued, Falls Township police said.

The woman, Marie Corey, 48, was treated and released at Delaware Valley Medical Center in Langhorne for gunshot wounds of her right arm.

Her husband, Raymond Corey, 49, was charged with attempted homicide, reckless endangerment, possession of instruments of crime, aggravated assault and terroristic threats. He was arraigned last night by Bristol Township District Justice Anna Huhn, and was being held at Bucks County Prison in Doylestown after failing to pay \$400,000 bail.

Raymond Corey had fired at least 10 shots from a 30-30 Winchester rifle, and was reloading the weapon when two police officers subdued him in the street in front of his home, Sgt. Charles Schaffner said.

On Saturday night, police had gone to the Coreys' home, in the 100 block of Blough Road, responding to reports of a domestic disturbance, and the woman then decided to stay temporarily at the home of their son, Ronald, across the street, Schaffner said.

Schaffner said all was quiet until Corey "just went nuts" while as many as 20 people looked on in the residential neighborhood near the Fairless Hills Golf Course.

---- Index References ----

Language: EN

Other Indexing: (BUCKS; DELAWARE VALLEY MEDICAL CENTER) (Anna Huhn; Charles Schaffner; Coreys; Falls Township; MAN SHOTS; Marie Corey; Raymond Corey; Ronald; Schaffner)

Edition: FINAL

Word Count: 267

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1988 WLNR 2543740

WashingtonPost.com
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March 7, 1988

GUNMAN OPENS FIRE IN CHURCH; DEACON KILLED, 4 ARE INJURED

EMPORIA, KAN. -- A heavily armed man walked into a crowded church yesterday and opened fire, killing a church deacon and injuring four other persons before he was subdued by church members while reloading, authorities said. The gunman, identified as Cheunphon Ji, 29, of no known address, entered through the side door of the Calvary Baptist Church during services shortly after 11 a.m. and fired several rounds from a semiautomatic handgun at the 100 people inside, police Chief Larry Blomenkamp said. "He had no particular target. He just entered and started firing random shots," Blomenkamp said. The gunman was not a member of the church, and no motive was known, Blomenkamp said.

The man was taken to the Lyon County Jail to await charges. Thomas DeWeese, 47, was dead on arrival at Newman Hospital. One victim was in serious condition, one in good condition and two others, including a daughter of the slain deacon, were treated for gunshot wounds and released.

--- Index References ---

News Subject: (Religion (1RE60); Health & Family (1HE30); Christianity (1CH94); Fires (1FI90); Protestantism (1PR28); Accidents & Injuries (1AC02); Social Issues (1SO05))

Language: EN

Other Indexing: (Cheunphon Ji; Larry Blomenkamp; Thomas DeWeese)

Word Count: 159

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1988 WLNR 2191554

Houston Chronicle
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March 7, 1988

Section: 1

Deacon slain as gunman fires randomly at church

EMPORIA, Kan.

EMPORIA, Kan. - A man opened fire with a semi-automatic pistol at a Baptist church during Sunday morning services, killing a deacon and wounding four other churchgoers before he was subdued while reloading.

The neatly dressed gunman, identified as Cheunphon Ji, 29, address unknown, walked into Calvary Baptist Church during morning services at 11:14 a.m. and began firing randomly without a word, Police Chief Larry Blomenkamp said.

He was subdued by churchgoers after wounding five people, including Thomas DeWeese, 47, a church deacon who was dead on arrival at Newman Hospital.

"You think of something like this happening in a large city and you hear reports in faraway places of someone trying to massacre others, but not here, not in Emporia," said the Rev. Donald Kusmaul, pastor of the church.

One victim was in serious condition at an Emporia hospital. Another was in good condition and two others - including a daughter of the slain deacon - were treated for gunshot wounds and released.

Neither the gunman, who police said will be formally charged on Monday, nor his victims were immediately identified.

"There was no particular target," Blomenkamp said. "The individual just began firing random shots."

Kusmaul said no one at the church recognized the gunman, who police said left California last week and arrived Sunday morning in Emporia, located off the Kansas Turnpike about 100 miles southwest of Kansas City.

His car, which had California license plates, was found in the church parking lot.

Kusmaul said he was leading the 100-member congregation in a hymn when the gunman, carrying a duffel bag, walked in through a side door.

"He had what I thought were earmuffs on and a shoulder bag and my first thought was perhaps he's a college student," the pastor said. "Then I heard the gun."

"When I hit the floor, it was just unbelievable what was happening, and I realized those weren't earmuffs; they were ear protectors."

Churchgoers screamed and crouched under pews and on the floor until one parishioner at the back charged at the gunman as he tried to place a new clip of ammunition into his gun, Kusmaul said.

The gunman tried to escape by fleeing out the side door, but several churchgoers tackled him outside and held him for police, said Kusmaul, 43, pastor at the church for 17 years.

The man was wearing a suit and tie, "dressed like someone planning to attend church," Blomenkamp said, but he said officers did not know why he picked the Baptist church in downtown Emporia.

Police found a bag containing several handguns and ammunition at the rear of the church but said the gunman used only one weapon, a semi-automatic pistol.

DeWeese and three other victims were taken to Newman Hospital. Sandy Mattox, 43, was hit in the left shoulder and was in serious but stable condition. Daniel Goza, 14, who was grazed by a bullet, and Beverly DeWeese, the daughter of the slain deacon who was shot in the left arm, were treated and released.

Robert Adamson, 14, was taken to St. Mary's Hospital, where he underwent surgery to remove a bullet lodged in his left thigh. He was reported in good condition.

---- Index References ----

News Subject: (Religion (1RE60); Christianity (1CH94); Social Issues (1SO05); Protestantism (1PR28))

Region: (Kansas (1KA13); USA (1US73); Americas (1AM92); North America (1NO39))

Language: EN

Other Indexing: (BAPTIST; CALVARY BAPTIST CHURCH; EMPORIA; NEWMAN HOSPITAL) (Beverly DeWeese; Blomenkamp; Daniel Goza; DeWeese; Donald Kusmaul; Ji; Kusmaul; Larry Blomenkamp; Robert Adamson; Sandy Mattox; Thomas DeWeese)

Edition: 2 STAR

Word Count: 640

End of Document

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9/21/89 St. Louis Post-Dispatch 7a
1989 WLNR 414332

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September 21, 1989

Section: NEWS

CO-WORKERS STOPPED KILLER AT MACOMB PLASTICS PLANT, POLICE SAY

The Associated Press

MACOMB, Ill. (AP)

A gunman who killed two workers at a plastics factory in western Illinois was reloading his revolver when four co-workers overpowered him, police said Wednesday.

The gunman escaped Tuesday after pulling a knife and threatening his captors, sparking a police search that continued Wednesday afternoon in a wooded area near Astoria, about 35 miles southeast of Macomb.

Macomb Police Chief Richard Clark said about two dozen police officers and a canine unit were searching for the suspect in the case, Fred Hopkins, 36, of Browning. Hopkins was charged Wednesday with two counts of first-degree murder in McDonough County Circuit Court.

Hopkins is accused of killing Pam Bucy, 29, of Table Grove, and factory foreman Jimmy Cobb, 31, of Bardolph, as they arrived for the start of the noon shift at Webster Industries Inc.'s plastic bag factory, Clark said.

Without the action of four employees, more people might have been killed, he said.

"He was trying to reload his weapon, and they tackled him and subdued him," Clark said. "They calmed him down and set him down" on a chair.

Hopkins then drew a knife and escaped before police arrived, Clark said, adding that 10 witnesses had identified Hopkins as the gunman.

Clark said that Bucy had dated Hopkins and that she apparently broke off the relationship recently.

---- Index References ----

Company: WEBSTER INDUSTRIES INC; WEBSTER PORTALLOY CHAINS INC

Language: EN

Other Indexing: (MCDONOUGH COUNTY CIRCUIT COURT; WEBSTER INDUSTRIES INC) (Bucy; Clark; Fred Hopkins; Hopkins; Illinois; Jimmy Cobb; Pam Bucy; Richard Clark)

Edition: FIVE STAR

Word Count: 269

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1993 WLNR 506495

Denver Rocky Mountain News (CO)
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May 1, 1993

Section: LOCAL

BAYLIS CHARGED IN RAMPAGE THAT KILLED TWO IN SPRINGS

DICK FOSTER ROCKY MOUNTAIN NEWS SOUTHERN BUREAU

COLORADO SPRINGS

Eugene Baylis, 42, was charged Friday with four counts of murder and 16 counts of attempted murder in district court in connection with an April 17 shooting rampage at a Colorado Springs bar.

Baylis, who said he was feeling ill Friday, is scheduled to appear in El Paso District Court again Monday to acknowledge the charges against him.

Two victims died and eight others were wounded after Baylis entered Jim and I's Star Bar in north Colorado Springs and raked the bar with automatic rifle fire, police said. After he left the bar, he fired randomly around the neighborhood and at pursuers, police said.

Bar manager Paul Klein, 40, was struck by three bullets while attempting to wrestle the guns from Baylis, police said. He died the next morning at a local hospital. Stephen Fairfax, 33, was killed by three bullets in the chest as he pursued the gunman.

Baylis was shot in the head by police and subdued in the parking lot of the bar as he sat in his car reloading his AK-47 assault rifle. He was hospitalized for four days with pellet wounds from the shotgun blast but transferred to El Paso County Jail last week.

Assistant district attorney Jeanne Smith said Baylis was charged with two counts of murder for each victim under two separate provisions of state law.

"The first count charges him with premeditation, the second count is the extreme indifference section of the statute," Smith said.

The procedure would allow a jury two opportunities in each case to find Baylis guilty of first-degree murder and attempted first-degree murder, either by acting with premeditation or by acting with extreme and wanton indifference to human life that resulted in death and injury.

LIB3 LIB3

---- **Index References** ----

News Subject: (Violent Crime (1VI27); Crime (1CR87); Social Issues (1SO05))

Region: (USA (1US73); Americas (1AM92); Colorado (1CO26); North America (1NO39))

Language: EN

Other Indexing: (EL PASO COUNTY JAIL; EL PASO DISTRICT COURT; SPRINGS) (Baylis; BAYLIS CHARGED; Eugene Baylis; Jeanne Smith; Paul Klein; Smith; Stephen Fairfax)

Edition: REGIONAL

Word Count: 344

End of Document

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2/2/93 The Hartford Courant (Conn.) B1
1993 WLNR 4155138

Hartford Courant
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February 2, 1993

Section: CONNECTICUT

ROCKY HILL GUNFIRE LEAVES QUESTIONS ROCKY HILL GUNFIRE LEAVES MANY QUESTIONS

DAVE DRURY Courant Staff Writer

Courant Staff Writer

With a gun to his head and his life in disarray, Alfredo Fazio lay pinned to the pavement outside Club Mirage and begged to be put out of his misery.

"He was yelling, 'Shoot me. Shoot me. I don't want to live. I got nothing to live for. I have no job. I have no money'," said Walter Bartkiewicz, owner of Mirage, recalling the events of early Sunday. "I just said, 'Keep your hands still.' "

Bartkiewicz, who held the gun to Fazio's head, described how he and others, including two off-duty police officers, subdued Fazio, who, police say, had just blasted the front of the packed club with four rounds from a 12-gauge sawed-off shotgun.

Miraculously, no one was injured, even though police say as many as 10 rounds were fired back at Fazio from the club lobby by off-duty police. "There were five casings I counted personally in the lobby," acting Police Chief Philip R. Dunn said Monday.

Fazio, 32, of 188 Raymond Road, Rocky Hill, was held Sunday on \$250,000 bond on charges of unlawful discharge of a firearm, possession of a sawed-off shotgun and four counts of first-degree reckless endangerment. He was presented Monday morning in Superior Court in New Britain, where his bond was reduced to \$5,000 and his case was continued until Feb. 22. He was released later in the day from the Morgan Street jail after a relative posted the bond.

Police said Fazio returned to the club about 1:30 a.m. after he was thrown out earlier in the evening. He parked in front of the building, then approached the building and shot through a set of open entry doors, shattering a set of glass doors in the foyer.

Then, as hundreds of patrons hugged the dance floor above, two off-duty, out-of-town police officers who were in the club returned fire from the lobby. The officers and club employees then apprehended Fazio as he paused alongside his car to reload his weapon.

On Monday, town police were still trying to determine exactly how many rounds were fired and who fired them. A statement was taken from one of the officers involved, Meriden patrol officer Lue Sobieraj, who Dunn said fired once at the suspect. Dunn said Sobieraj acted appropriately.

"He reacted while off-duty and did an excellent job. We're sending a letter to his chief," Dunn said.

The other officer, who left the scene immediately afterward, has not yet been identified. Police said inquiries were made Monday to the internal affairs division of the Hartford Police Department.

Capt. Joseph Croughwell of the Hartford Police Department said he had no information that a Hartford policer officer may have been involved. "I do know it's an ongoing investigation conducted by the Rocky Hill Police Department, and if Hartford can assist in any way with the investigation, we will," he said.

Bartkiewicz, who was carrying a pistol, said neither he nor any employee at the club fired at Fazio. He said as many as four off-duty officers had been in the club at one point during the evening. Police officers usually identify themselves at the front door and indicate that they are carrying weapons, he said.

In talking with Fazio at the scene, and in a discussion later with his sister, Bartkiewicz said he learned that Fazio had been unemployed for nine months and did not even have enough money to put gas into his car, which had to be towed from the scene.

"The guy was deranged. He lost everything he had. He cracked up," Bartkiewicz said. He said he had recognized Fazio from earlier in the evening because he had gotten into a fight over a woman and was ejected from the club.

"He just decided to come back. His explanation to me was he wanted to come back to show us we didn't have the right to throw him out of the club," Bartkiewicz said.

For Rocky Hill police, the episode marked another busy night at the club, which, until last weekend, had operated a juice bar that had become a gathering point for 18 to 20-year-olds from across the state. Dunn said he is listing all the incidents police have responded to at the club in recent months and will refer the list to the state Department of Liquor Control.

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--- **Index References** ---

News Subject: (Government (IGO80))

Language: EN

Other Indexing: (HARTFORD; HARTFORD POLICE DEPARTMENT; ROCKY HILL POLICE DEPARTMENT; STATE DEPARTMENT; SUPERIOR COURT) (Alfredo Fazio; Bartkiewicz; Dunn; Fazio; Joseph Croughwell; Lue Sobieraj; Meriden; Miraculously; Philip R. Dunn; Rocky; Rocky Hill; ROCKY HILL GUNFIRE LEAVES QUESTIONS ROCKY HILL GUNFIRE LEAVES; Shoot; Sobieraj; Walter Bartkiewicz)

Edition: A

Word Count: 821

End of Document

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1994 WLNR 4659723

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February 27, 1994

Section: LOCAL STORIES

OREGON AND THE BRADY LAW

PHIL MANZANO and JOHN PAINTER JR. of The Oregonian staff

Summary: The milestone law begins Monday, but with Oregon's already tough standard, how will the law really affect Oregon citizens?

The federal Brady law, which becomes effective Monday, already has had the ironic and unintended effect of putting more guns into Oregon homes and businesses.

President Clinton signed the landmark gun control bill Nov. 30. In December, Oregonians rushed to buy nearly 7,500 handguns from dealers -- apparently in the mistaken belief that the law would severely restrict the sales of handguns or ban some guns altogether. It does neither.

It also will not do much to keep guns out of the hands of criminals.

The new federal law will have scant impact in Oregon because the state already has a stricter gun control law. Both laws, however, cover only a narrow area of gun sales.

But despite the limitations -- and despite complaints from law-abiding gun owners -- the Brady law may be the first wave of tighter federal controls on handguns.

"We believe we could pursue a comprehensive agenda and have it pass in Washington," Sandy Cooney of Handgun Control Inc. told a recent meeting of Oregonians Against Gun Violence. "We never said it was a panacea, but what it is, is a step."

Gun owners, however, already feel unfairly

"I don't believe the Brady will have any effect whatsoever for individuals who are criminally disposed and want to obtain a handgun," said Portland tax lawyer Thomas O. Moe, who owns handguns and long guns.

"I think the government is inadvertently disarming the innocent," Moe said. "Individuals who may necessarily buy handguns for self-protection, albeit it right or wrong, may be inhibited from doing so due to the waiting period."

Diane Witt, a firearms instructor who carries a .45-caliber semiautomatic pistol, says the Brady law accomplishes nothing.

“Because honest citizens abide by the laws, that means that they are not the element contributing to the wave of violence in the United States,” she said. “Secondly, under the terms of the Second Amendment, I do believe the right to keep and bear arms is guaranteed to me and any other law-abiding citizen, the same as any other right under the Constitution.

“We constantly in this country seem to believe that we can legislate morality and we are unable to do that. So the effect of the Brady bill on crime and violence is nothing because it will only be adhered to by the law-abiding citizen.”

LOOPHOLES AND THE LAW

The milestone Brady law requires a five-day waiting period and background checks on all handgun purchases. Oregon already requires a waiting period three times longer -- 15 days -- and a more rigorous background check.

But even so, guns get into the wrong hands. Why?

Oregon's law applies only to purchases from licensed dealers, and one federal survey showed just 7 percent of criminals obtain guns from legitimate dealers.

The law does not allow police to use their own judgment when a person's background raises concerns but does not fall into the specified categories.

Gun shows and other virtually unregulated selling provide easy access to firearms. And long guns -- shotguns and rifles -- are not covered by the regulations.

Multnomah County sheriff's Sgt. Kathy Ferrell believes there needs to be more room for discretion by law enforcement.

“There's still some scary people out there buying handguns,” said Ferrell, who runs the section that performs background checks on handgun purchases and applications for concealed weapon permits.

Oregon's law prohibits handgun sales to people under 18, to those with an outstanding felony warrant or to anyone guilty of a felony or misdemeanor convictions for fourth-degree assault, menacing, recklessly endangering another person, assaulting a public safety officer or second-degree intimidation.

In addition, no one involuntarily committed to a mental hospital or deemed by a judge to be too emotionally ill may purchase a handgun.

While that sounds impressive, there's lots more that the law doesn't do.

“We're not seeing the gun denials that we should,” Ferrell said. “Our ability to block a handgun sale is pretty bad.”

In contrast, a concealed weapons permit may be denied if there are “reasonable grounds” to believe someone could be a danger to himself or the community “as demonstrated by past pattern of behavior.”

A landmark 1990 study of retail gun sales in Oregon found that 17.6 percent of 81,222 rifles and handguns sold that year through dealers were purchased by individuals with Computerized Criminal History files. But the way the law is written, only 1.1 percent could be disqualified.

Ferrell cringes at the thought that she has allowed sales to people who appear to have drinking problems or a history of domestic violence. For instance, multiple drunken-driving convictions will not prevent a handgun sale. A string of arrests, but no convictions, for domestic violence -- a charge that is dropped almost all the time -- also would not disqualify a buyer.

Officials also see gun shows as one of the significant holes in efforts to get a handle on firearms.

"The law is only going to be as effective as its weakest link," said Clackamas County sheriff's Capt. F. Sherwood Stillman, "and right now its weakest link is that it allows gun sales at gun shows."

While there are laws that prohibit sales to certain people, such as felons, no law requires sellers at gun shows to check. "They're not going to look any further than the guy's checkbook," Stillman said.

Just how many firearms move from gun shows to felons is impossible to track because the transactions do not require paper work.

Bureau of Alcohol, Tobacco and Firearms agents in Portland say they have traced guns connected with crimes to such shows, but one bureau survey out of Washington, D.C., showed only 6 percent of criminals got their guns at unregulated shows or flea markets.

It's too expensive for one thing, said Portland homicide Detective Tom Nelson. Most criminals will buy stolen weapons from an underground source at a deep discount, or they know someone who has a weapon they can borrow or buy.

Ernest N. Lotches -- who went on an Aug. 22, 1992, rampage through downtown Portland -- used a gun bought for him, Nelson said. Lotches shot and killed a security guard with a 9 mm handgun as the two traded shots while the guard was trying to protect a 9-year-old boy.

According to Nelson, Lotches got the gun from his girlfriend, a drug and alcohol counselor he met while incarcerated in the Columbia River Correctional Institution.

More than 70 percent of criminals acquire their weapons on the black market or get them from a partner in crime, the federal survey showed.

In addition, Oregon law has absolutely no checks or waiting periods on someone buying a shotgun or rifle.

Portland homicide Detective Sue Hill feels that Oregon's gun control law must also include long guns.

"You can do a lot more damage with a shotgun than a handgun," Hill said. "You don't stand a prayer with what Kevin Lust fired at Bridgette Nelson."

On March 2, 1993, Lust walked into the Red Lion Inn/Columbia River carrying a flower box used to hold long-stemmed roses. His box carried a message of hate, not love -- a shotgun he bought Feb. 10, 1993, at a Wal-Mart in McMinnville.

With no waiting period, he handed over a \$842.37 check -- that later bounced -- and walked out with a 12-gauge Weatherby shotgun and 50 high-power shotgun shells. With no background check, no one discovered he had been convicted in Lane County of a second-degree assault that began as an attempted murder case.

A friend told police that Lust's favorite scene in "Terminator 2" was where Arnold Schwarzenegger pulls a shotgun out of a long flower box.

When Lust found Nelson at the Red Lion Inn/Columbia River he re-enacted that scene, firing two shots into her, reloading and hitting her with two more shots. A security guard tackled him as he reloaded for a third time.

"It was just too easy" for Lust to buy the gun, Hill said. "You could have Charlie Manson walk in and buy a hunting rifle (in Oregon)," Hill said. "There's nothing to prevent him from walking into whatever and buying an over and under shotgun."

But law enforcement does appreciate what effect the laws have.

State police Capt. Tom M. Dixon said Oregon's law has had a deterrent effect -- felons are not going to retail outlets to buy handguns, it appears.

In 1990, police denied handgun sales to three people with murder convictions, two people with attempted murder convictions, three convicted of rape, two convicted of robbery and seven people convicted of assault, and 20 sales were denied because the buyers were convicted of burglary. Those numbers drop over the next few years.

Portland Police Chief Charles Moose said the Brady law at least sets a minimum standard for all states and prevents someone from going to an adjacent state that may not have a background check or waiting period to buy a gun.

THE HISTORY

On Jan. 17, 1989, drifter Patrick Purdy used an assault rifle purchased at the Sandy Trading Post in Sandy to lethally spray a Stockton, Calif., schoolyard. Five children died, and 30 persons were injured.

The incident sparked Oregon's new gun law, the Comprehensive Firearms Act.

The "Oregon law surpasses the Brady bill in almost every regard," said John W. McMahon, Bureau of Alcohol, Tobacco and Firearms agent in charge in Portland. "It's one of the few states around the country doing an excellent job in surpassing the Brady bill."

But the law, does nothing to regulate the type of gun used in Purdy's rampage, did loosen the requirements for those wanting a permit to carry a concealed weapon.

Today, there are more than 40,000 concealed weapon permits in Oregon. In its first year, 1990, slightly more than 13,000 permits were issued.

Only about 1 percent of the licenses have been revoked.

The increase in licenses mirrors a surge in gun purchases.

In 1990 -- the year Oregon's gun law took effect -- the Oregon State Police counted 30,278 people who had bought a handgun from a federally licensed dealer. By the end of 1993, the count was nearly 51,000.

In December 1992, state police counted 4,202 purchases, a record then.

In December 1993, after President Clinton signed the Brady bill into law, nearly 7,500 handgun purchases were counted by the state police -- well above the monthly average for the rest of the year. And there's no sign the buying surge has slowed in 1994.

Those figures do not include the thousands of handguns exchanged between private gun owners, at gun shows or through the want ads, nor do they account for the larger numbers of rifle and shotgun purchases.

What's going on? The theories vary.

Bernie Giusto, a lieutenant with the Oregon State Police, believes people are increasingly afraid of crime.

``It is a direct reflection of how our society feels about their safety," he said.

The federal government estimates more than 200 million firearms, including 67 million handguns, are in circulation in the United States. Arms manufacturers in the United States produced 1.5 million handguns in 1991, and licensed dealers sold 7.5 million guns that year.

Who's buying all the guns?

With few exceptions, most are responsible gun owners, hunters or collectors.

The National Rifle Association cites U.S. Department of Justice statistics that say approximately 80 percent of the violent crime in the nation is committed by just 7 percent of ``repeat, violent offenders" and says that the vast majority of gun owners are honest, law-abiding citizens. Local statistics seem to bear that out.

But that doesn't change the fact that some of the guns will be used in crimes or accidents.

Moose, the Portland police chief, is a gun control advocate in part because his uncle was shot to death and a family friend was accidentally shot while playing with his dad's gun.

``Sadly enough, everyone is beginning to become touched by gun violence," Sarah Brady said in an interview with The Oregonian. ``Very few families haven't been touched in one way or another. Even children are carrying weapons. There are no safe havens."

The bill was named for her husband, press secretary James Brady, who was shot in the head and permanently disabled in the attack that wounded President Reagan.

In the assassination attempt, John W. Hinckley Jr. also wounded a capital policeman and a Secret Service agent with a .22-caliber handgun he bought for \$29 at a Dallas, Texas, pawn shop.

Sarah Brady waged a decade-long legislative battle that culminated Nov. 30 at the White House, where Clinton signed the bill into law.

Despite her efforts and a possible shift in public attitudes, a fundamental rule remains in Oregon.

``It's not very difficult to get a gun," said Giusto, the state police lieutenant. ``Anybody can get a gun."

---- **Index References** ----

Company: WAL MART STORES INC

News Subject: (Violent Crime (1VI27); Crime (1CR87); Property Crime (1PR85); Social Issues (1SO05); Economics & Trade (1EC26))

Region: (USA (1US73); Americas (1AM92); North America (1NO39); Oregon (1OR01))

Language: EN

Other Indexing: (BUREAU OF ALCOHOL; COMPREHENSIVE FIREARMS ACT; FIREARMS; HANDGUN CONTROL INC; LOOPHOLES; NATIONAL RIFLE ASSOCIATION; OREGON STATE POLICE; OREGONIANS AGAINST GUN; POLICE; RED LION INN; SANDY TRADING POST; STATE POLICE; TOBACCO; US DEPARTMENT OF JUSTICE; WAL MART; WHITE HOUSE) (Bernie Giusto; Bridgette Nelson; Charles Moose; Clinton; Criminal History; Detective; Detective Tom Nelson; Diane Witt; Ernest N. Lotches; F. Sherwood Stillman; Ferrell; Giusto; Hill; James Brady; John W. Hinckley Jr.; John W. McMahon; Kathy Ferrell; Kevin Lust; Local; Lotches; Lust; Moe; Moose; Nelson; Oregon; Patrick Purdy; Purdy; Sadly; Sandy; Sandy Cooney; Sarah Brady; Stillman; Thomas O. Moe; Today; Tom M. Dixson)

Keywords: WEAPONS VIOLATION MURDER

Edition: FOURTH

Word Count: 2550

End of Document

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NewsRoom

NewsRoom

11/6/94 Times-Picayune B4
1994 WLNR 948327

New Orleans Times Picayune
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November 6, 1994

Section: METRO

MAN JAILED IN TROOPER SHOOTOUT

The Associated Press

WAVELAND, MISS.

An Alabama man was in custody Saturday after a shootout with Mississippi Highway Patrol troopers at a restaurant on Interstate 10 about six miles north of Waveland.

Patrol Capt. Randy Sibley said about 20 people were in the restaurant when the man, armed with a 12-gauge shotgun, walked in and threatened a 16-year-old girl who had been riding in his car.

Sibley said state troopers were conducting a DWI roadblock on Mississippi 603 about a mile from the restaurant when the call about a man with a shotgun came in Saturday about 1:40 a.m.

When troopers arrived at the Waffles restaurant, the man walked in, apparently fired one shot and ran out the back of the building.

Sibley said the man had left his car a short distance down the highway and walked back carrying the shotgun. He said witnesses told officers that the man shouted at the girl before troopers drove up.

Sibley said the man shot at Trooper Scott Carnegie, who returned fire. The man ducked behind the building and was reloading the shotgun when he was subdued by two other troopers.

Sibley said no restaurant patrons or troopers were injured.

"We're very fortunate. The people inside the restaurant are very fortunate that we happened to have officers that were that close. He apparently was interested in harming some people, especially that girl," Sibley said.

Sibley said the man, identified as Russell Chappelle, 19, of Wilmer, Ala., was being held in the Hancock County Jail. Charges are pending.

The girl, Sibley said, was identified as a runaway who had been reported missing by her parents in Alabama. He said her parents picked the girl up. Law officers would not identify the girl or where she was from.

Sibley said no charges would be filed against her.

Sibley said Chappelle was treated at a hospital for two buckshot wounds in the right arm and released to officers.

Col. Jay Clark, chief of the Highway Patrol, said the troopers saved many lives.

"Their training paid off. They handled the situation in a very professional manner," Clark said. "We are very thankful there was a law enforcement presence that close to the scene."

Sibley said the restaurant and a motel behind it were hit by the shotgun blast. He said troopers recovered slugs from inside the restaurant.

---- **Index References** ----

Region: (USA (1US73); Americas (1AM92); Alabama (1AL90); North America (1NO39); Mississippi (1MI74))

Language: EN

Other Indexing: (DWI; TROOPER; TROOPER SCOTT CARNEGIE; WAFFLES; WAVELAND) (Chappelle; Clark; Jay Clark; MAN JAILED; Patrol Capt; Randy Sibley; Sibley)

Edition: THIRD

Word Count: 459

End of Document

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1/29/95 St. Louis Post-Dispatch 04D
1995 WLNR 775005

St. Louis Post-Dispatch (MO)
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January 29, 1995

Section: NEWS

SUSPECT IN RAMPAGE HAD HISTORY OF MENTAL PROBLEMS, FAMILY SAYS

1995, Reuters News Service

CHAPEL HILL, N.C.

A law student accused of going on a shooting rampage that left two people dead had a history of mental problems and once claimed to be telepathic, say family members and acquaintances.

The suspect, Wendell Williamson, 26, is under guard and in good condition at University of North Carolina Hospital, a hospital spokeswoman said. He was wounded in the legs and underwent surgery.

On Friday, he was formally charged with two counts of first-degree murder.

On Thursday, Williamson parked his father's car at an apartment complex and walked toward the center of town carrying an M-1 rifle and dozens of clips of ammunition in a green knapsack. Police said he fatally shot one man on his front porch, and a college student who was riding on his bicycle. A former Marine tackled the gunman to the ground.

Williamson, a former National Merit Scholar, had been hospitalized at one time for psychiatric problems, and had been seeing a psychiatrist at the university, his mother said Friday.

His classmates said his mental problems became apparent during his first year at law school, where he was prone to delusions and outbursts of anger.

Police had to restrain Williamson during an incident in a parking lot two years ago, and last spring he stood up in class and announced that he was exempt from an assignment because he was telepathic and already knew the answer, classmates said.

University law professor Daniel Pollitt said it was unusual that a student would break under pressure in his final semester. Traditionally, the first year of law school is the hardest, and the third the easiest.

Pollitt speculated that Williamson could have been feeling pressure about finding a job when he passed the bar. "Some people are trying to decide which job to take, but other people don't have any interviews," the professor said. "People who've been honor students since the first grade feel they've worked hard and done well and that they deserve better. They get angry."

PHOTO

Photo by AP - Bill Leone sits in his living room with his dog, Sasha, on Friday as he discusses tackling the man charged with killing two people Thursday afternoon in Chapel Hill, N.C. Leone was shot in the shoulder as he tackled the gunman, who was trying to reload his rifle.<

---- Index References ----

News Subject: (Social Issues (1SO05); Violent Crime (1VI27); Crime (1CR87))

Industry: (Healthcare Practice Specialties (1HE49); Healthcare Services (1HE13); Healthcare (1HE06); Psychiatric Services (1PS61))

Region: (North America (1NO39); Americas (1AM92); North Carolina (1NO26); USA (1US73))

Language: EN

Other Indexing: (AP BILL LEONE; MARINE; NATIONAL MERIT SCHOLAR; PHOTO; SUSPECT) (Daniel Pollitt; Photo; Police; Pollitt; Sasha; Traditionally; Wendell Williamson; Williamson)

Edition: FIVE STAR

Word Count: 456

End of Document

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NewsRoom

NewsRoom

6/29/95 Reuters News 00:00:00

Reuters
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June 29, 1995

White House gunman sentenced to 40 years in prison.

Robert Kearns

WASHINGTON, June 29 (Reuter) - A judge sentenced Francisco Duran to 40 years in prison on Thursday for shooting at the White House with an automatic weapon last October in an attempt to kill President Bill Clinton.

Judge Charles Richey rejected prosecution requests that Duran, a Colorado hotel worker convicted on April 3, be locked up for life as a deterrent to other would-be assassins. Richey did deny Duran the possibility of parole, but prosecutor Eric Dubelier said there was a chance he could be out in about 35 years with time off for good behaviour.

Richey, who also imposed a fine of \$3,200 to cover repairs to the White House, said the shooting "cannot be countenanced in a free society known as the United States of America."

Duran, 27, from Security, Colorado, pulled a Chinese-made semi-automatic assault rifle from under his rain coat last October 29 and sprayed the White House and its grounds with some 30 bullets from the sidewalk along Pennsylvania Avenue.

No one was hurt.

Duran, dressed in a blue prison uniform, told the court before being sentenced: "My actions on October 29 were inexcusable. I very much wanted to die that day. I am sorry I not only ruined my future but that of my wife and son." He has a six-year-old son named Alex.

After he spoke, Dubelier told Richey drily, "I guess he's been remarkably cured of paranoia. He spoke rationally." Duran had attempted a defence of insanity.

Dubelier asked Richey to impose a life sentence, noting that Duran was trying to reload his weapon when he was tackled by a tourist. He said Duran had personality disorders, was a drunk and bore a deep grudge against the government.

Richey sentenced Duran to 360 months for trying to kill the president and another 10 years for firearms offences.

U.S. Attorney Eric Holder said "we are very satisfied" with the sentence and told reporters he hoped it would "serve as a reminder to people who contemplate these acts."

During his 10-day trial, Duran's lawyers portrayed him as a madman who was having hallucinations that an evil "mist", linked to the White House by an umbilical cord, controlled him. They said he went to the White House to kill the mist.

But the jury accepted prosecution arguments that Duran, influenced by right-wing radio talk shows and anti-government literature criticising Clinton, opened fire when he saw a man resembling the president walk from the White House.

The prosecutors said Duran loathed the government because he had been discharged from the Army after serving time for running over a woman outside a Honolulu bar.

In the White House shooting, Duran was subdued by two bystanders as he tried to reload. The prosecution used videotapes taken by tourists.

The shooting, plus the April 19 Oklahoma City bombing, has led to tighter security at the White House. Pennsylvania Avenue in front of the mansion has been closed to vehicles.

A month before Duran's attack, a pilot crashed a small plane on the White House grounds, and there have been a number of fence-jumpers, one of whom was shot and wounded by White House guards last month.

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---- **Index References** ----

Company: WHITEHOUSE

News Subject: (Legal (1LE33); Judicial (1JU36))

Region: (U.S. Mid-Atlantic Region (1MI18); North America (1NO39); Colorado (1CO26); U.S. Southwest Region (1SO89); Oklahoma (1OK58); U.S. West Region (1WE46); Americas (1AM92); USA (1US73); Pennsylvania (1PE71))

Language: EN

Other Indexing: (ARMY; WHITE HOUSE) (Bill Clinton; Charles Richey; Clinton; Dubelier; Duran; Eric Dubelier; Eric Holder; Francisco Duran; Pennsylvania Avenue; Richey)

Word Count: 529

End of Document

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NewsRoom

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5/12/96 Fresno Bee B1
1996 WLNR 1686803

Fresno Bee
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May 12, 1996

Section: METRO

TWO RESTAURANT PATRONS SHOT IN DRIVE-BY; TWO MEN ARRESTED;
TWO OTHER SUSPECTS ARE BELIEVED TO BE INVOLVED IN THE ATTACK.

The Fresno Bee

A gun battle broke out early Saturday morning at Lorena's Taco and Seafood Restaurant in southwest Fresno, sending two patrons to the hospital as well as one of the alleged gunmen, who was shot in the foot by security guards returning fire.

Fresno police said all three were in stable condition with non-life-threatening wounds. Detectives said they had not determined a motive for the shooting, which occurred about 2:30 a.m. Saturday.

About 50 people were at the restaurant -- a taco truck and picnic tables on a fenced-off asphalt lot in the 400 block of West Belmont Avenue.

Police said a white Oldsmobile 88 with three men inside and a black Nissan Altima with a male driver stopped while heading east on Belmont. The occupants opened fire on the crowd using various weapons, including 7.62 mm assault rifles with 30-round magazines.

Jose Arroya, 49, of Parlier was hit three times in the torso and Gilbert Castellanos, believed to be in his 20s, was hit twice in the chest and abdomen. Security guards returned fire; one round hit a suspected gunman in the foot, police said.

Several cars parked nearby were hit with bullets and sustained "extensive damage," police said. The driver of the Oldsmobile fled in the Nissan. Security guards apprehended two other suspects as they attempted to reload their weapons.

Police recovered six guns at the scene. They arrested Pedro Duarte, 48, and Robert Caldera, 34, who was taken to Valley Medical Center for a gunshot wound in his right foot. They were charged with attempted murder.

---- Index References ----

Company: GENERAL MOTORS CORP

News Subject: (Violent Crime (1VI27); Crime (1CR87); Social Issues (1SO05))

Language: EN

Other Indexing: (OLDSMOBILE; VALLEY MEDICAL CENTER) (Detectives; Gilbert Castellanos; Jose Arroya; Pedro Duarte; RESTAURANT PATRONS SHOT; Robert Caldera)

Edition: HOME

Word Count: 309

End of Document

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10/7/98 Lincoln J. Star B2
1998 WLNR 8072535

Lincoln Journal Star

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October 7, 1998

Section: B

Ohio man's trial delayed for shooting at hospital

MADISON (AP) -- The trial for an Ohio man charged in the shooting death of a doctor at a Norfolk mental hospital has been postponed for a second time.

John Keylor, 70, is charged with first-degree murder in the killing of Dr. George Bartholow. The doctor, who had treated Keylor, was shot to death in October 1996 while in his office at the Norfolk Regional Center.

Keylor pleaded innocent by reason of insanity. His trial was to start Oct. 19.

At a pre-trial conference Tuesday, Keylor's attorney, Madison County Public Defender Harry Moore, asked District Judge Robert Ensz for a delay in order for psychiatrists at the Lincoln Regional Center to continue evaluations to determine if Keylor is competent to stand trial. Ensz agreed to the continuance and has set Keylor's trial date for Dec. 8.

Earlier this year, doctors told Ensz that Keylor was fit to stand trial. He originally was set to stand trial June 8, but prosecutors agreed to delay the proceeding so he can be examined further by psychiatrists.

Keylor of Toronto, Ohio, is accused of entering the mental hospital with two .38 caliber revolvers and a duffle bag filled with 200 rounds of ammunition. He allegedly wounded one employee and shot Bartholow. Keylor was tackled by hospital workers as he stopped to reload.

Bartholow lived in Omaha and spent four days a week in Norfolk.

Keylor is being held without bond.

---- Index References ----

News Subject: (Social Issues (ISO05); Violent Crime (1VI27); Crime (1CR87); Murder & Manslaughter (1MU48))

Region: (U.S. Midwest Region (1MI19); North America (1NO39); Ohio (1OH35); Americas (1AM92); USA (1US73))

Language: EN

Other Indexing: (LINCOLN REGIONAL CENTER; MADISON COUNTY PUBLIC DEFENDER HARRY MOORE; NORFOLK REGIONAL CENTER) (Bartholow; Ensz; George Bartholow; John Keylor; Keylor; Ohio; Robert Ensz)

Edition: City

Word Count: 232

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NewsRoom

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9/18/96 N.Y. Times 7
1996 WLNR 4354032

New York Times (NY)
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September 18, 1996

Penn State Shooting Is Fatal to Student; Woman Is Arrested

AP

Jillian Robbins, 19-year-old woman, opens fire with rifle in middle of Pennsylvania State University campus, killing one student and wounding another before she is tackled while trying to reload (S)

UNIVERSITY PARK, Pa., Sept. 17

A 19-year-old woman opened fire with a rifle in the middle of the Pennsylvania State University campus today, killing one student and wounding another before she was tackled while trying to reload.

The woman, Jillian Robbins, lives in State College, which surrounds University Park, but is not a student at the university. Acquaintances said Ms. Robbins had a history of mental problems.

No immediate charges were filed against Ms. Robbins. The police said that they knew of no motive for the shooting and that Ms. Robbins did not know her victims.

Officials said she fired at least five shots from her rifle, a Mauser with a telescopic sight, around 9:30 A.M., from in front of the Hetzel Union Building, one of the campus's busiest areas, where she had spread a tarp on the lawn. The shots sent hundreds of students and teachers scattering.

One student, Melanie Spalla, 19, of Altoona, Pa., was killed, and another, Nicholas Mensah, 27, of Philadelphia, was wound once in the abdomen. He was in stable condition. Another student escaped injury when a book in his backpack stopped a bullet.

An aerospace engineering student, Brendon Malovrh, tackled Ms. Robbins as she was putting in a second ammunition clip, the police said. As the two struggled, she tried to stab Mr. Malovrh with a knife, stabbing herself in the leg instead. Mr. Malovrh used his belt as a tourniquet on Ms. Robbins. She was hospitalized in serious condition.

In the only other slaying on the campus, a female graduate student was stabbed with an icicle in a library in 1969. Her killer was never found.

---- Index References ----

Region: (Pennsylvania (1PE71); USA (1US73); Americas (1AM92); North America (1NO39))

Language: EN

Other Indexing: (PENN; PENNSYLVANIA STATE UNIVERSITY; STATE COLLEGE; STATE SHOOTING; UNIVERSITY) (Acquaintances; Brendon Malovrh; Jillian Robbins; Malovrh; Melanie Spalla; Nicholas Mensah; Robbins)

Company Terms: PENNSYLVANIA STATE UNIVERSITY

Edition: Late Edition - Final

Word Count: 359

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2/20/97 Dallas Morning News 3A
1997 WLNR 6638685

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February 20, 1997

Section: NEWS

Alaska teenager kills principal, students at school

BETHEL, Alaska

BETHEL, Alaska - A teenager carrying a shotgun and a paper bag full of shells chased fellow teens through high school hallways Wednesday, killed his principal and wounded three fellow students.

The 16-year-old junior also exchanged shots with police before officers tackled him as he reloaded, said Ken Waugh, a state police spokesman. He said the motive for the shooting was not known.

Principal Ron Edwards died at a nearby hospital. Josh Palacios, a junior at Bethel Regional High School, was flown to a hospital in Anchorage, about 400 miles to the east. He was in critical condition.

The other students were less seriously hurt, witnesses said.

Police would not release the arrested teenager's name because he's a juvenile, but many witnesses in the town of 4,700 identified him as Evan Ramsey, foster son of the school superintendent and son of a locally notorious ex-convict

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---- Index References ----

News Subject: (Parents & Parenting (1PA25); Health & Family (1HE30); Teenagers (1TE59))

Region: (Alaska (1AL32); USA (1US73); Americas (1AM92); North America (1NO39))

Language: EN

Other Indexing: (ALASKA; BETHEL REGIONAL HIGH SCHOOL) (Evan Ramsey; Josh Palacios; Ken Waugh; Ron Edwards)

Edition: HOME FINAL

Word Count: 188

End of Document

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3/14/97 Dallas Morning News 1A
1997 WLNR 6645161

Dallas Morning News
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March 14, 1997

Section: NEWS

Jordan soldier kills 7 Israeli schoolgirls 6 hurt; attack increases already high tensions

Drusilla MenakerSpecial Contributor to The Dallas Morning News

Special Contributor to The Dallas Morning News

BET SHEMESH, Israel

BET SHEMESH, Israel - A Jordanian soldier opened fire Thursday on Israeli schoolgirls taking a field trip along the border, killing seven of the teenagers, wounding six and sending the two nations into shock

The gunman's motive was not known, but even as an isolated insanity, the attack took on regional political significance.

Israeli Foreign Minister David Levy suggested a link between the shooting and Jordanian King Hussein's unusually angry condemnation of Israeli policies toward Palestinians and the peace process in a letter this week to Prime Minister Benjamin Netanyahu.

Mr. Netanyahu called on Jordan to take swift action against the assailant. "This was a violent, criminal attack," Mr. Netanyahu said. "Young girls were murdered. We expect the Jordanian government to act vigorously to bring the perpetrators to justice. " King Hussein canceled a trip to the United States and returned to Jordan from Spain, where he had been on a stopover. Crown Prince Hassan promised a full investigation and prosecution of the soldier and called Thursday "a black day in the history of our country. " The Jordanian soldier, identified as Lance Cpl. Ahmed Yousef Mustafa, shot at the girls from above them on a grassy slope and chased them as they fled. He stopped firing only when ammunition for his automatic rifle ran out. As he tried to reload, he was tackled by other Jordanian soldiers.

The tragedy came during a flare-up in tension between Israel and its Arab neighbors over Israeli plans to build new Jewish housing in East Jerusalem and other issues. On Sunday, King Hussein wrote to Mr. Netanyahu that his actions were pushing the region toward "an abyss of bloodshed and disaster. " Mr. Levy, the Israeli foreign minister, told the Jordanian prime minister, Abdul-Karim Kabariti, that "recent declarations created a psychological atmosphere that could lead to such tragic acts. " Israeli Defense Minister Yitzak Mordechai cautioned, however, that "what we need now is for everybody to be careful with everything that they are saying, doing and maybe planning for the future. " In Washington, President Clinton also appealed for calm, noting that "there is no evidence at this moment that this terrible incident is related to tensions in the area. " The victims were among 80 students from the working-class town of Bet Shemesh, just west of Jerusalem, on a three-day excursion to the north of the country, along the usually tranquil border between Israel and Jordan. They were visiting the island of Naharayim in the Jordan River, where a sign proclaims "The Island of Peace" and visitors have a sweeping view of Syria, Israel and Jordan.

The area was taken by Israel in the 1948 Middle East War but returned to Jordan's control under the countries' 1994 peace treaty, although Israelis still farm and visit there freely.

Voice of Israel Radio reported that the Israeli security brigade that regularly accompanies school groups had turned in its weapons on entering the Jordanian-patrolled area.

"I heard shooting and saw my classmates rolling down the hill," said Natalie Boliti, a 13-year-old who witnessed the killings from 10 feet away on the school bus.

"At first I thought it was a joke, or a drill, but then I understood it was for real, and we started yelling and screaming and getting on the floor," she said Thursday night, her eyes ringed in red from sobbing and her anxious parents rubbing her shoulders.

The students described jumping into the bushes trying to hide, screaming for their teachers to help them and watching their desperate principal try to push his charges to safety down the hillside. Finally, the girls said, they saw bodies on the ground.

"I saw one with a bullet in her heart and one with a bullet in her hand," said Ashrat Abudbol, 14.

Some of the surviving 7th- and 8th-graders were in tears, others numb with shock as they piled out of the returning buses and into the arms of their families outside the Feirst School, a public junior and senior high school for Orthodox Jewish students.

"She's dead!" one screamed to a waiting friend. "Hush, hush, it is OK, I am here," said a father comforting his daughter.

Psychologists were at the school to counsel the children, and memorials with seven burning prayer candles were set up in a hallway and on the sidewalk outside.

The massacre turned a much-anticipated annual ritual of Israeli school life into a shocking nightmare.

"Our driver turned on the radio, and first we heard Bet Shemesh mentioned and were happy," said Hila Cohen, a 7th-grader whose class was in a different bus. "Then we realized it was a terrorist attack and we all started to cry. These girls were my friends. " One parent, Motti Cohen, recalled the agonizing wait for word that his daughter was OK. "I said, 'Please, just tell me if she is dead or alive. '" Even when he learned she was safe, he wondered how witnessing her friends' deaths would change her.

"I have been through wars, so it doesn't hurt me so much," Mr. Cohen said. "But I worry about her, how it will affect her in the future. " Yet such tragedy is all too familiar to Israelis, he said. "We are used to terrorist attacks. Everything that happens in the country hurts us. " Several parents complained that they did not know that their children's itinerary included going to a Jordanian area.

Some witnesses said the Jordanian soldiers did not try to stop their comrade as he was shooting, and Crown Prince Hassan said there would be an investigation into a possible "breakdown of management. " The wounded were taken to hospitals in Israel and in Jordan, where Jordanians lined up to donate blood.

King Hussein, visibly sorrowful, said he felt the attack as if it was "aimed at me, at my children. " "When I warned a couple of days ago of . . . the possibility of violence, I never thought that it would take the form it did today," he said.

"I can assure one and all I will do everything I can as long as I live to leave behind a legacy of peace. " Drusilla Menaker covers the Middle East and Africa from Cairo, Egypt. She is a regular contributor to The Dallas Morning News

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---- Index References ----

News Subject: (International Terrorism (1IN37); International Issues (1IN59); Government (1GO80); Political Parties (1PO73))

Region: (Middle East (1MI23); Jordan (1JO78); Arab States (1AR46); Israel (1IS16); Mediterranean (1ME20))

Language: EN

Other Indexing: (BET SHEMESH; FEIRST SCHOOL; ISRAELI DEFENSE; ISRAELI FOREIGN; ORTHODOX JEWISH) (Abdul-Karim Kabariti; Ahmed Yousef Mustafa; Ashrat Abudbol; Benjamin Netanyahu; Clinton; Cohen; Crown Prince; David Levy; Drusilla Menaker; Hassan; Hila Cohen; Hush; Hussein; Levy; Motti Cohen; Natalie Boliti; Netanyahu; Voice; Yitzak Mordechai)

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1997 WLNR 3049433

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October 2, 1997

Section: NEWS

3 slain in Miss. teen's rampage

Scott Hildebrand

A 16-year-old Mississippi high school student, apparently distraught over his breakup with a girlfriend, stabbed his mother to death and then shot nine students at a crowded high school, killing two of them, police said.

Luke Woodham, a sophomore, was described as a quiet teen, who had few friends. He faces charges of murder and aggravated assault when he appears in court today. Bond hasn't been set.

Pearl, Miss., police say Woodham stabbed his mother, Mary, 50, to death with a butcher knife in the bedroom of their brick home about 5 a.m. Wednesday.

Neighbors saw him leave the house in his mother's car, hitting a tree and crossing a neighbor's yard as he drove away. His mother usually drove him to school.

About 8:10 a.m., police say Woodham walked into the commons area just inside the front door at Pearl High School and shot his ex-girlfriend Christina Menefee, 16, as she tried to run away. Next he killed Lydia Kaye Dew, 17, who had been standing next to Menefee.

Then, police say, Woodham began shooting at random as screaming students tried to take cover.

Three boys and four girls, including one who is pregnant, were hit. Three were hospitalized, one in serious condition.

Tenth-grader Monica Tanner said the rifle ``was pretty long. . . . He was just shooting. I heard seven to eight shots. It took me a while to get out of the building because everyone was running out at the same time and screaming."

``It appeared to have to do with the ex-girlfriend," Pearl Police Chief Bill Slade said. ``He was angry. He felt like people didn't care for him."

Witnesses said a student tackled Woodham as he was about to reload his rifle, but Woodham escaped.

Police arrested him in his mother's compact car just outside the school.

Police, classmates and neighbors described Woodham as a quiet youth who had no history of violent behavior.

3 slain in Miss. teen's rampage, 1997 WLNR 3049433

``He's always been quiet, never really had a lot of friends," neighbor Tracy Thompson said. ``Nobody believed anything like that could happen." She said Woodham and his mother ``never seemed like they were on bad terms."

Woodham lived with his mother, who worked as a receptionist for Cal-Maine Foods, an egg producer. His parents apparently were divorced. He has an older brother who attends the University of Mississippi, Thompson said.

Michael Stanley, who took art classes with Woodham, said he was a talented artist. ``He's not psycho. He's smart."

The killings shocked residents in the community 3 miles east of Jackson. At one point in the day, Slade choked back tears as he talked about the rampage.

``Naturally, when we're talking about our kids and our school, it's a sad and tragic day," Jimmy Foster, mayor of the town of 22,000, said.

After the shootings, weeping students gathered in small groups outside the school where the flag was lowered to half-staff. Others held hands and prayed.

Classes were canceled until Monday, but students were told to report Friday for counseling.

Contributing: Andy Kanengiser and Jill Farrell King of The Clarion-Ledger in Jackson, Miss.

PHOTO,color,Greg Jenson,The Clarion-Ledger\ PHOTO,b/w,AP

NOTES: THE NATION

---- **Index References** ----

Region: (USA (1US73); Americas (1AM92); North America (1NO39); Mississippi (1MI74))

Language: EN

Other Indexing: (AP; CLARION LEDGER; FOODS; MISSISSIPPI; PEARL; PEARL HIGH SCHOOL; PHOTO; UNIVERSITY OF MISSISSIPPI) (Bill Slade; Bond; Christina Menefee; Contributing; Greg Jenson; Jill Farrell; Jimmy Foster; Luke Woodham; Lydia Kaye Dew; Mary; Menefee; Michael Stanley; Monica Tanner; Naturally; Slade; Tenth; Thompson; Tracy Thompson; Woodham)

Edition: FINAL

Word Count: 627

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NewsRoom

NewsRoom

3/27/97 Plain Dealer (Clev.) 5B
1997 WLNR 6341996

Cleveland Plain Dealer

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March 27, 1997

Section: OHIO

WOMAN SENTENCED FOR SHOOTING DEMOLITION MAN

ASSOCIATED PRESS

DAYTON

A 72-year-old woman convicted of shooting a worker who had come to demolish her condemned house has been sentenced to prison.

Bessie Hardin was given two terms of 5 to 25 years this week by Judge John Petzold of Montgomery County Common Pleas Court.

Hardin pleaded guilty to two counts of attempted murder earlier this month for shooting demolition worker Bill Flitton with a .22-caliber handgun in 1994. Fellow demolition worker Dennis Sovonick was injured when he tackled Hardin as she was reloading the gun.

Police said Hardin was angered by the city's efforts to demolish her house, which had been declared a nuisance.

In a pending civil lawsuit, Flitton and Sovonick allege that contractor Steve R. Rauch and his companies, Steve R. Rauch Inc. and American Environmental Control, knowingly sent them into an unsafe situation and failed to warn them about a previous threat from Hardin.

But Rauch denied responsibility for the attack, the men's injuries and claims made in the lawsuit.

"I'm sad about the situation. They have to do what they feel is correct or incorrect," Rauch said.

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---- Index References ----

News Subject: (Violent Crime (1VI27); Crime (1CR87); Social Issues (1SO05))

Language: EN

Other Indexing: (AMERICAN ENVIRONMENTAL CONTROL; DAYTON; MONTGOMERY COUNTY COMMON PLEAS COURT) (Bessie Hardin; Bill Flitton; Dennis Sovonick; Flitton; Hardin; John Petzold; Police; Rauch; Sovonick; Steve R. Rauch; WOMAN SENTENCED)

Edition: FINAL / ALL

Word Count: 237

End of Document

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NewsRoom

NewsRoom

9/26/04 Fort Wayne J. Gazette (IN) 1
2004 WLNR 15076228

Journal - Gazette
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September 26, 2004

A high-stakes business With human lives on the line, SWAT units play fragile game
[Final Edition]

Harada, Masaaki

See 'Crisis response' box at end of story.

Police cars and an ambulance approached a Bluffton Road motel without lights and sirens and slipped into a parking lot in front of a room to which they were called.

An intoxicated man with a knife had barricaded himself in the room at the Fair Oak Motel the night of July 25. Uniformed officers blocked Bluffton Road a few hundreds yards away on each side of the motel, directing traffic and curious onlookers.

While the Fort Wayne Police Department's Emergency Services Team, better known as the SWAT team, surrounded the building, a team of hostage negotiators who make up the police department's Crisis Response Team continued a painstaking conversation with the man inside.

The 32-year-old Fort Wayne man was threatening over the phone to kill himself, said Sgt. Paul Shrawder who leads the hostage negotiators. The man wanted to talk with his girlfriend who he said was leaving him.

"He's been drinking a lot. A lot of times, just time can settle a person down. Then you can make him start thinking of the situation he is in and how he can get out or work it out," Shrawder said.

This standoff, the fourth of five handled by Fort Wayne police this year, is typical of what hostage negotiators go through.

Eight officers of the Crisis Response Team are trained to talk a barricaded person out of a building and are on call 24 hours a day. They try to resolve such situations without using the Emergency Services Team, which includes sharpshooters and may have to use force.

The case on Bluffton Road ended 90 minutes after officers got the call. Negotiators persuaded the man to come out with promises to let him talk to his girlfriend and smoke a cigarette. The man walked out of the motel room and surrendered, and the woman called to the scene was allowed to talk to him later.

The man was given a mental evaluation and later arrested, but not because of the standoff. A warrant charging him with failure to appear in court had been filed in Kane County, Ill.

Power of negotiation

Onlookers at any standoff likely see a large white truck labeled "Tactical Operation Center."

During a brief meeting after arriving, the team decides who will be the primary negotiator.

The primary negotiator, chosen case by case, is accompanied by a second negotiator, often called a coach, who listens to the conversation and advises the primary negotiator. The other negotiators are in charge of record keeping, gathering information from police records and interviewing relatives and friends.

Communication with a person inside needs to be established as soon as possible. Police also want as much information as possible about that person.

The division of labor enables police to accomplish what might seem like contradicting goals to some people, Shrawder said.

"We want to let them know even though they may see all the police with guns surrounding them, there are people who are trying to give them a way to settle it peacefully," he said. "From a negotiator's point of view, you want to talk to them, give them options and let time go by while we talk so that, eventually, they will calm down."

Opening a channel of communication with the person inside is critical. The Crisis Response Team has "throw phones" that can be connected with a 1,000-foot line and loudspeakers.

"Just actively talking to somebody makes you think," Shrawder said. "We try to make them calm down and go back to thinking mode and hopefully reason with them, showing them that the situation they are in is a bad situation. But they have options that we can settle this."

If a barricaded person is demanding certain conditions, that can be a good sign. No demands indicate the person has no interest in dealing with the outside, Shrawder said.

Police might comply with the demands if they are reasonable, Shrawder said.

Police won't let barricaded people have alcohol, illegal drugs or weapons and/or talk to certain family members or friends.

"A lot of times, you really don't know why he is there," Shrawder said. "It could be because of the mother. You don't know what the mom or the friend is going to say. They could make the situation worse."

Use of force

When a cloistered person has nothing to demand and just won't come out, police have to find something they can negotiate.

A person who barricaded himself in a Riverhaven home told negotiators he just wanted to sleep.

"We made noise so he could not go to sleep," said Allen County SWAT Team Commander Lt. Kenneth C. Fries. "He agreed to put all the guns outside if we just stop making all the noise."

The county SWAT team also dealt with an Albion man holed up in a pickup truck with rifles near the Allen-Whitley county line in January. Randall Katz was on the run from Noble County police on warrants.

Police got Katz's cell phone number from a relative, but he refused to talk. An armored vehicle drove up to his pickup truck and police talked to him by loudspeaker.

"He was not communicating at all so we had no idea what his thought process was," Fries said. "We have little idea what his next move might be."

A decision to force Katz out was made when he fired a shot into the truck's roof that made police believe he was threatening to kill himself. Police fired beanbag rounds at the pickup to distract Katz. The SWAT team broke the glass and pulled him out.

"People often think the SWAT team is a bunch of thugs just busting doors and shooting people," Fries said. "That's not our function. We are there to save lives."

SWAT teams are armed with diversionary devices and weapons like flash bangs - tear gas or stinger grenades that explode, emitting hundreds of rubber balls - as well as lethal weapons. Sometimes, however, officers choose "silent entry" tactics.

The "silent entry" was used in a hostage rescue at a Bob Evans restaurant on Valentine's Day in 1998.

Michigan robbery suspect Jody L. Sinclair took refuge at the restaurant on East Dupont Road after a car chase that began in DeKalb County. While he drove south on Interstate 69 at high speed, Sinclair fired at DeKalb County sheriff and Waterloo police squad cars that were tailing him. When his car was disabled by stop sticks near the Allen-DeKalb county line, he abandoned the car, commandeered a van at a rest stop and continued to flee. He ran over stop sticks a second time and got off the interstate at Dupont Road.

There were 36 to 40 people in the restaurant when Sinclair rushed in, Fries said. He took four hostages - two employees and two patrons - in the back room. The rest fled, but the husbands of the two customers stayed in the dining area, refusing to leave without their wives.

"I anticipated the best we can hope for at the end of the day might be the hostage taker would be dead," Fries said.

Sinclair talked with a dispatcher, demanding drugs during the 2 1/2 -hour hostage situation. SWAT members entered the building after a gunshot was heard from inside.

"We did not know where he was in the restaurant. Yet, you could smell the gunpowder that gave us a way to locate him," Fries said. "He was reloading the gun when we came around the corner and he was tackled by two of our guys."

The SWAT team did not fire a single shot or use any diversionary device. "He did not even know we were in the restaurant," Fries said.

On the edge

The Fort Wayne Emergency Service Team's only fatal standoff occurred in 1992 when 26-year-old Leroy Ross-Church was shot after lunging at officers with a knife.

Ross-Church had barricaded himself in a closet in an apartment, threatening to commit suicide. Three negotiators went into the room, trying to talk.

With negotiations failed and Ross-Church's suicide threat imminent, police used tear gas to force him to come out.

The tactic worked to force him out, but Ross-Church came toward officers brandishing a knife instead of surrendering. He refused to drop the knife and officers shot him to death.

An Allen County grand jury cleared police of any wrongdoing in the death. A federal investigation found Ross-Church's civil rights were not violated in the shooting.

Ross-Church's death spurred arguments about how police handle people with possible mental problems.

The answer was the creation of yet another team - the Crisis Intervention Team consisting of officers trained by mental health professionals. The team includes patrol officers who are spread out in three working shifts. As first responders, they try to prevent people with mental illnesses from creating situations that might require the hostage negotiators and SWAT team.

Studies show more than 16 percent of adults and 75 percent of juveniles incarcerated in the United States have mental illnesses, said Teresa Hatten, vice president of the Fort Wayne affiliate of the National Alliance for Mentally Ill.

"People with mental illness deserve treatment, not a jail," said Park Center CEO Paul Wilson, who advises officers who undergo Crisis Intervention Team training. "If somebody is truly psychotic and cannot make a rational choice, committed a petty crime or whatever, it makes much more sense to get them appropriate treatment than giving them jail time."

The Crisis Intervention Team program, started in August 2001, has had success and was expanded to other police departments, including the Allen County Sheriff's Department, New Haven and Bluffton, Wilson said.

Six people were arrested in 955 cases Crisis Intervention Team officers responded to from Aug. 1, 2003, to July 31, according to police records. In 52 of those cases, a person was armed. Without the Crisis Intervention Team, some of those cases could have been worse, Wilson said.

The number of cases involving barricaded people declined to three in 2002, a year after the Crisis Intervention Team program was launched, but that number shot up to nine cases - two above the 12- year average of seven cases - the next year.

Shrawder couldn't explain the fluctuation, but believes in the long run the program may reduce the number of standoffs or hostage situations.

"Officers who recognize how and why those things happen to people," he said, "can effectively intervene with a lot of people and prevent situations from developing into a serious crisis."

Crisis response

Calls for service by the Fort Wayne police Crisis Response Team

2004 through September---5

2003---9

2002---3

2001---9

2000---4

1999---14

1998---12

1997---8

1996---3

1995---2

1994---7

1993---7

1992---4

ILLUSTRATION

Caption: Dean Musser Jr./ The Journal Gazette: A member of the Allen County Sheriff's Department's SWAT Team participates in a regular training session earlier this month. Photo 2: Officers with the Allen County Sheriff's Department's SWAT team engage in a monthly training exercise. Shrawder headshot

--- Index References ---

News Subject: (Legal (1LE33); Health & Family (1HE30); Government (1GO80); Government Litigation (1GO18); Health & Safety (1HE24))

Industry: (Critical & Intensive Care (1CR27); Healthcare (1HE06); Psychology (1PS96); Psychiatric Services (1PS61); Healthcare Services (1HE13); Healthcare Practice Specialties (1HE49))

Region: (USA (1US73); Americas (1AM92); Indiana (1IN12); North America (1NO39))

Language: EN

Other Indexing: (ALLEN; ALLEN WHITLEY; ALLEN COUNTY; ALLEN COUNTY SHERIFF; ALLEN COUNTY SHERIFFS DEPARTMENT; ALLEN COUNTY SWAT; CRISIS INTERVENTION TEAM; CRISIS RESPONSE TEAM; DEPARTMENT; EMERGENCY SERVICES TEAM; FAIR OAK MOTEL; FORT WAYNE; FORT WAYNE EMERGENCY SERVICE TEAM; FORT WAYNE POLICE DEPARTMENT; ILLUSTRATION; JOURNAL GAZETTE; LEROY ROSS; NATIONAL ALLIANCE FOR MENTALLY ILL; PARK CENTER; ROSS CHURCH; SWAT; SWAT TEAM; VALENTINE) (Bob Evans; Caption: Dean Musser Jr.; Fries; Jody L. Sinclair; Katz; Kenneth C. Fries; Michigan; Opening; Paul Shrawder; Paul Wilson; Photo; Randall Katz; Shrawder; Sinclair; Studies; Teresa Hatten; Wilson)

Company Terms: ROSS CHURCHS

Word Count: 2166

End of Document

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1999 WLNR 1663786

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November 5, 1999

Section: WORLD

BRAZILIAN OPENS FIRE IN THEATER, KILLING 3

Associated Press

SAO PAULO, BRAZIL:

The gun was American, and the violent movie was, too.

A 24-year-old medical student stood up in a theater during a screening of the Hollywood film Fight Club Wednesday night and opened fire with a U.S.-made 9 mm submachine gun, killing three people and wounding five.

"We're shocked," said Police Lt. Col. Fernando Franco de Paulo. "We're used to seeing this in the United States, but not here."

About 30 people were in the audience when Mateus da Costa Meira, son of a well-to-do family, went into the bathroom of Cinema 5 in the Morumbi shopping mall and fired a few shots at the mirror, police inspector Miguel Pinheiro said. Apparently, no one noticed.

"Then he walked back into the theater and started firing at random," Pinheiro said.

After emptying the Cobray M-11's 40-round clip, he paused to reload and was tackled by audience members, Pinheiro said.

Meira was arrested and charged with first-degree murder. Authorities said Meira had psychiatric problems and apparently was addicted to cocaine.

---- Index References ----

News Subject: (Violent Crime (1VI27); Crime (1CR87); Social Issues (1SO05))

Industry: (Entertainment (1EN08))

Region: (Brazil (1BR84); Americas (1AM92); South America (1SO03); Latin America (1LA15))

Language: EN

Other Indexing: (FIGHT CLUB; HOLLYWOOD; MATEUS; MORUMBI) (BRAZILIAN; Costa Meira; Fernando Franco; Meira; Miguel Pinheiro; OPENS FIRE; Pinheiro)

Edition: 1 STAR

Word Count: 207

End of Document

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1999 WLNR 3447590

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July 1, 1999

Section: Local News

MALL MERCHANT WAS SHOT OVER A BURGER, POLICE SAY

Peter Scott; Staff

An argument over a hamburger apparently led to the shooting of an Avondale Mall food court store manager and the arrest of one of his customers, police said Wednesday.

Stanley Lewis Barge, 34, of Lithonia is in the DeKalb County Jail charged with two counts of aggravated assault.

Food merchant Meherhad Panahiofai, 43, is in fair condition following emergency surgery at a local hospital. The shooting occurred about 6:40 p.m. Tuesday, police said.

Earlier Tuesday, Barge had gone to his former place of employment, G&P Trucking in Conley, where he was "very threatening toward us, but we couldn't figure out why," said Steve Farris, a dispatcher who knew Barge.

He characterized the former trucker, who left the company in 1995, as a good worker.

"I've known him for years and he has never been a liability or a problem," said Farris. "I tried to talk to him and he told us to get out of his face and left. . . . We had to call police, but he left before they got here."

The shooting at the mall took place four hours later.

"He (Barge) had beat on several counters in the mall's food court demanding a hamburger," said Lt. Winston Harper of the Safety Network security force that monitors the mall at the intersection of Memorial Drive and Columbia Drive in central DeKalb.

Witnesses told police that Barge got into an argument with Panahiofai, a manager at the Shake and Burger in the food court, over an order he had placed.

Panahiofai jumped over the counter to confront Barge, police said.

Barge pulled out a revolver, shot Panahiofai twice in the hip and exchanged gunfire with security guard Shaheed Bay, according to police. Barge was apprehended by mall security officers and police as he tried to reload, authorities said.

On Wednesday, merchants and shoppers were "trying to get back to normal" at the 350,000-square-foot mall, said Tom Wheeler, president of Wheeler Cobb Management Co., which operates the mall. "We are committed to a high security profile. In every case at the mall, our security has been right there on top of it."

Early indications were that while security weighed on the minds of some shoppers, others were taking the incident in stride.

"This can happen anywhere," said Brenda Eatmon. "I plan to be back."

Metro version is longer. 7/2/99, Page A/2: Mehrdad Panahiofat: In Local News Wednesday and Thursday, the name of the victim in Tuesday's shooting at Avondale Mall was misspelled. His name is Mehrdad Panahiofat.

---- **Index References** ----

Language: EN

Other Indexing: (AVONDALE MALL; SHAKE AND BURGER; WHEELER COBB MANAGEMENT CO) (Barge; Brenda Eatmon; Earlier Tuesday; Farris; G Trucking; Lithonia; MALL MERCHANT; Meherhad Panahiofai; Metro; Panahiofai; Stanley Lewis Barge; Steve Farris; Tom Wheeler; Winston Harper)

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Word Count: 500

End of Document

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1/17/99 St. Louis Post-Dispatch B1
1999 WLNR 964432

St. Louis Post-Dispatch (MO)
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January 17, 1999

Section: NEWS ANALYSIS

SHOOTING DOESN'T MINIMIZE MAN'S LOVE FOR HIS SON

Gregory Freeman

Unwavering love

Stan Greer still feels the pain from being shot in the back.

Even worse is the pain of knowing that his wife is dead and that his then-15-year-old son shot them both.

But Greer continues fighting back - against the pain and for his son.

It was a morning in November 1997 when Vince Greer ambushed his father with a .22-caliber rifle and shot him in the back in his basement bedroom. He then marched upstairs and shot his mother at close range. He was reloading his gun when Stan Greer broke through a locked door and tackled him before he could finish reloading.

Slowly but surely, Stan Greer has been trying to rebuild his life. Part of that rebuilding has included efforts to get help for his son, who a court-ordered psychiatrist has concluded is schizophrenic.

In his evaluation, Dr. John Rabun said Vince was schizophrenic and was following the orders of "voices" when he killed his mother, Donna Greer, and shot his father.

Stan says signs of his son's schizophrenia developed for about nine months before the shooting, but that the family was in denial. A bright, popular student, Vince began to change. He started skipping school, lying habitually and his grades dropped. Friends said he'd begun hallucinating and hearing voices. Teachers had noticed the problem and had urged his parents to get help for him. But they kept denying that anything was wrong.

Stan regrets that now. "I think Vince was battling the problem for a while and it simply blew up," he said.

Stan still hopes to get help for his son, who is now in St. Louis County jail awaiting trial. Last week his attorney, Ron Rothman, filed an appeal to get Vince decertified as an adult. Stan would like to see his son moved back into the juvenile system and treated for his disease. County prosecutors, who claim that Vince did not suffer from a mental disease when he shot his parents, continue to push for trial.

Vince's family remains supportive of him. Last month, two days before Christmas, about 40 people, many of them family and friends, held a candlelight vigil for him outside the county jail. "We hope he doesn't have to spend another Christmas behind bars in an adult facility without the care he needs for mental illness," Stan said.

Stan still suffers from physical pain caused by nerve damage from the shooting, and he takes medication for it. Meanwhile, he's raising his daughters, Jenny, 9, and Lindsey, 14. "On the surface, at least, the girls seem to be holding up pretty well," he said.

The family continued to live in their St. Ann home for several months after the incident. "We didn't move out right away," he said. "We didn't want to run away from our problems." Ultimately, though, the family moved to a new home in Bridgeton.

Of great satisfaction to Stan is that he remarried in August, and his new wife, Kelly, has been very supportive. "It wasn't an easy situation for her to walk into something like this," he said. "But she's wonderful. She does so much for the girls, and she and Vince have a good relationship. Vince loved his mom and is still grieving for her, and he feels that Kelly is there for him as a mother figure."

Stan visits his son once a week. "He likes to draw, and he's gotten very good," Stan said. "He draws Betty Boop and Tweety Bird. He's hanging in there."

Considering the damage that Vince has done to his family, it might seem unusual that Stan remains so supportive of his son. Not at all, Stan says.

"My son suffers from a disease, like cancer or heart disease," he said. "Who would abandon their kid because he had a disease? He's a good kid and a loving kid with a disease."

---- Index References ----

Language: EN

Other Indexing: (Betty Boop; Donna Greer; Greer; Jenny; John Rabun; Kelly; Lindsey; Ron Rothman; SHOOTING DOESN; Slowly; Stan; Stan Greer; Teachers; Tweety Bird; Ultimately; Unwavering; Vince)

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2001 WLNR 13138085

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November 3, 2001

Section: NEWS

Witnesses describe bar killings
'It was like a war zone,' bartender says of Elgin spree

Dan Rozek

Don Michella Gallaher recognized the man as soon as he stormed in to the Elgin nightclub that night last April carrying two shotguns and two pistols.

It was Luther "Luke" Casteel, who had crudely propositioned her and several of her friends earlier that evening, before bouncers threw him out of JB's Pub.

When the gunman opened fire in the bar, people dived under tables. They ran, screaming, for the door.

But Gallaher couldn't move.

"I looked into his eyes. I just froze. I sat there," the 31-year-old, married mother of three testified Friday in a voice so low it could hardly be heard in the St. Charles courtroom where Casteel went on trial for murder, accused of killing two people and wounding 16 more in a drunken shooting spree last April 14.

In an instant, someone knocked her off her bar stool to the floor, and she and her girlfriends escaped unhurt and crawled out a back door of the popular club.

But the man who got her out of the line of fire did not.

Bar manager Jeff "Whitey" Weides, 38, was killed in the rampage, along with Richard Bartlett, 48, of Elgin, a bar patron who was gunned down as he sat near the front entrance.

Casteel, 43, of Elgin, a construction worker who has served two prison terms for armed robbery, faces a possible death sentence if convicted.

Kane County State's Attorney Meg Gorecki told jurors that testimony would show Casteel came back to JB's looking for payback an hour after he was ejected for harassing women.

Gorecki said witnesses will testify that when he returned, Casteel walked across the dance floor, firing at anyone who moved, and shouting lines from movies. "I'm a natural-born killer," Casteel screamed as he shot, Gorecki said, quoting witnesses. "I'm the king of the world."

Casteel, firing all four weapons, was tackled by bar employees and customers when he stopped to reload, she said.

Several witnesses who testified Friday described a chaotic scene as the gunman started shooting inside the crowded nightclub.

"It was like a war zone," said Dale Koehring, a bartender who worked with Weides. "The shots were 'pop, pop, pop.' Just rapid-fire."

Earlier that night, Casteel had gone home and changed from the sport coat and white dress shirt he'd worn earlier at the bar into military fatigues, shaved his head, leaving clumps of hair sticking up, slung a gas mask around his neck, and strapped on holsters and ammunition belts, Gorecki said testimony would show.

The gunman pulled in to JB's parking lot, leaving his car running and his door open, and fired two shotgun blasts at cars pulling in, then stepped inside and fired as people ran, Gorecki said.

"People were screaming. Everybody was yelling, 'Get down, get down!'" Gallaher testified.

Koehring was heading to the men's room when the shooting began. He said he ducked out a back door, then hesitated, worried about co-workers, including his friend Weides.

"Once I got out, all I wanted to do was get back in," said Koehring, who testified he never saw the gunman in the commotion.

Inside, he said he saw Weides on the floor and grabbed a towel to try to stanch the bleeding.

Kane County Public Defender David Kliment said he would show Casteel wasn't legally responsible for his actions, that he was under stress and had been drinking all day, and that an anti-depressant medication he was taking worsened the effects of the alcohol, leaving him unable to control his own actions.

"What happened that night was not something done by the Luke Casteel that everybody knew," Kliment told jurors, describing Casteel as "a normal guy, living a normal life."

---- Index References ----

Company: SHANGHAI JIABAO INDUSTRY AND COMMERCE (GROUP) CO LTD

News Subject: (Social Issues (1SO05); Violent Crime (1VI27); Top World News (1WO62); Crime (1CR87))

Industry: (Entertainment (1EN08); Bars & Nightclubs (1BA02))

Language: EN

Other Indexing: (ELGIN; JB; KANE COUNTY PUBLIC; KANE COUNTY STATES) (Casteel; Dale Koehring; David Kliment; Gallaher; Gorecki; Kliment; Koehring; Meg Gorecki; Michella Gallaher; Richard Bartlett)

Keywords: Elgin murder trial (CRIME LEGAL SUBURBS); (NEWS)

Word Count: 618

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2001 WLNR 10866670

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April 21, 2001

Section: A SECTION

VICTIMS OF SCHOOL ATTACK REMEMBERED A SERVICE PAID TRIBUTE TO THE 12 STUDENTS AND ONE TEACHER WHO WERE KILLED IN LITTLETON, COLO.

Compiled From Wire Reports

LITTLETON, Colo. -- Holding hands and wiping away tears, about 350 people marked the second anniversary Friday of the Columbine High tragedy by listening as the names of the 13 people gunned down by two students were read aloud.

During the brief service at a park near Columbine, school officials asked the crowd to remember that the attack does not define the school or its students. Relatives, friends, survivors and students walked past 13 6-foot wooden crosses temporarily erected in a parking lot in honor of the victims.

"It's just a time to remember," Chris Bernall said, pausing at a cross bearing the name of his sister, Cassie. "I've moved on. I've had a sense of peace about it, knowing where Cassie is. She's up in heaven."

It was lunchtime on April 20, 1999, when students Eric Harris and Dylan Klebold opened fire. They killed 12 classmates and a teacher and wounded 26 others before committing suicide in the school's library.

There were scattered reports of threats at schools elsewhere in the country Friday.

Two schools in the Mattituck-Cutchogue district on New York's Long Island were closed Friday because of threatening e-mail. The content of the e-mail was not disclosed.

And in Monroe, La., a 14-year-old student at a disciplinary school drew a semiautomatic handgun and fired five shots that missed a principal and other school workers. The shooting at the Monroe City Alternative Center happened before classes as about 20 students lined up to be routinely scanned for weapons. All had been expelled from other schools.

Police said the boy drew a .38-caliber semiautomatic pistol out of a zippered binder notebook, pointed it toward a group of faculty members and pulled the trigger. But it either misfired or there was no round in the chamber.

Students and school workers ran into the auditorium and teachers held the door closed. The youth tried to open the door, then fired several times through a window in the door. He eventually re-entered the school and fired another shot, but students and school workers escaped. The youth was subdued by police as he reloaded.

As Friday's service began, low clouds settled in and light rain sprinkled the crowd. The sun broke through moments later. "When the sun came out, I knew that was Dave warming us up," said Cindy Thirouin, whose father, teacher Dave Sanders, was killed in the attack.

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---- **Index References** ----

Region: (USA (1US73); Americas (1AM92); Colorado (1CO26); North America (1NO39); New York (1NE72))

Language: EN

Other Indexing: (LITTLETON; MATTITUCK CUTCHOGUE; TEACHER) (Cassie; Chris Bernall; Cindy Thirouin; Dave Sanders; Dylan Klebold; Eric Harris)

Edition: METRO

Word Count: 480

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NewsRoom

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3/27/02 Evening Standard (London, UK) 14
2002 WLNR 3024584

Evening Standard (London, UK)
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March 27, 2002

MASSACRE IN A TOWN HALL

PATRICK SAWER; TOBY ROSE

AT LEAST eight people are dead and many others critically injured after a crazed gunman today opened fire on a Paris town hall meeting with a machinegun and an automatic pistol.

In what the French prime minister described as a moment of "raging madness" the man took careful aim at his victims after sitting through a meeting.

As council members rose to put on their coats he stood up in the public gallery and calmly opened fire with a submachinegun and a Magnum 357 automatic pistol.

He said nothing throughout the bloodbath and even methodically recharged his weapons. One man was seriously injured trying to tackle the gunman as he reloaded.

Survivors bravely grappled the gunman to the ground and held him until he was arrested.

The 33-year-old man knew the Green Party officials he shot in the western Paris suburb of Nanterre, but the party denied reports that he was a member of their organisation. There was pandemonium as dozens of police vehicles and more than 100 rescue officials flooded the town hall. A helicopter took some of the injured to hospital while firemen checked the large modern complex for other victims.

At least 14 of the 30 wounded were in a serious condition, some critical.

"This is murderous madness," said premier Lionel Jospin at the scene this morning. "It's unimaginable drama, I'm horrified. These are inhuman acts. It is a horrifying tragedy that harms democracy - a city council meeting in action. Many officials reacted with great courage to overpower the lunatic."

President Jacques Chirac expressed his "very great emotion" at the news.

Fire chief Captain Laurent Vibert said. "This was like a scene of a terrorist attack. It was a battlefield." A witness told France Info radio: "He had two or three guns and started shooting with a gun under each arm. He was shooting at anything that moved, but he was completely calm."

The witness said the gunman shot Green representatives before opening fire indiscriminately on the rest of the room.

The reasons for his terrifying actions remain a mystery.

"He comes to all the council meetings and had no motive to do this," she said.

Samuel Rijik, a municipal official at the meeting, said: "I thought it was a joke at first.

Some people thought it was firecrackers. I crawled under my table and a bullet went through my jacket. I thought I was hit."

Weeping relatives of the victims arrived to identify the bodies, which remained in the council hall hours after the shooting.

The massacre has stunned France, already reeling from a series of bloody gun crimes and undergoing an intense debate about rising violent crime. This is one of the worst shootings in the country's history.

The gunman opened fire about 1.15am local time as the meeting in the middleclass neighbourhood drew to a close.

A rescue official, Laurent Vibert, confirmed the man used at least two automatic pistols. Some 50 empty shells lay scattered at the scene following the shooting.

Nanterre mayor Jacqueline Fraysse-Casalis, who was presiding, said: "I ended the session. A man got up. He had been sitting in the public area. He shot straight in front of him, and then he moved to where the council members were sitting.

He said nothing. It was long. It lasted many minutes."

With M Jospin at her side she continued: "I can't bear the sight of the bodies of my fellow councillors lying there. Many of them have families and young children."

Mme Fraysse-Casalis, who said she did not know the man, added that there had not been any unusually heated debate.

The injured are being treated at hospitals in Paris alongside 22 people suffering from shock.

"An emergency plan has been put into action and teams of surgeons specialising in gunshot wounds are in place. Most of the injured are suffering from chest wounds," said Yves Bot, the public prosecutor.

Rising crime has climbed to the top of France's political agenda in the run-up to the presidential elections this spring. Both President Chirac and M Jospin, who is waging a bitter campaign against his arch-rival, have promised a crackdown on crime.

Thousands of police officers held nationwide strikes in December, demanding more pay and better equipment because their jobs have become increasingly risky. The protests started after two officers were shot and killed during an armed robbery in a Paris suburb in October.

In the central French city of Tours, a masked gunman killed four people, also in October.

In an attack similar to today's, in Switzerland last September, a 57-year-old man opened fire with an assault rifle at a state legislature meeting, killing 14 people before shooting himself.

Terrorism expert Mike Yardley said gun controls in both France and Switzerland were far less strict than in Britain.

END

---- **Index References** ----

Company: MAGNUM AG

News Subject: (Accidents & Injuries (1AC02); Fires (1FI90); International Terrorism (1IN37); Crime (1CR87); Social Issues (1SO05); Violent Crime (1VI27); Top World News (1WO62); Health & Family (1HE30))

Region: (Central Europe (1CE50); France (1FR23); Europe (1EU83); Mediterranean (1ME20); Eurozone Countries (1EU86); Western Europe (1WE41); Switzerland (1SW77))

Language: EN

Other Indexing: (Jacqueline Fraysse-Casalis; Mike Yardley; Samuel Rijik; Lionel Jospin; Laurent Vibert; Yves Bot; Jacques Chirac)

Edition: A MERGE

Word Count: 799

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2002 WLNR 1382822

New Orleans Times Picayune
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May 28, 2002

Section: METRO

Woman shot at airport dies Pensacola man now charged with murder

Manuel Torres Staff writer

A California woman shot last week at Louis Armstrong International Airport died Monday morning, prompting authorities to upgrade charges against the man accused of shooting her.

The Jefferson Parish Sheriff Office said it now will book Patrick Gott of Pensacola, Fla., with first-degree murder in the death of the 45-year-old woman, whose name was not released. Police and the hospital said her relatives asked that she not be identified.

The woman, an employee of the Defense Department, was hit in the stomach Wednesday when Gott, 43, fired a 12-gauge shotgun inside the airport's terminal. Gott, who also hit an Southwest Airlines employee in the hand, faces an additional count of attempted murder and a count of illegally carrying of a weapon. Bystanders tackled him after he fired once, preventing him from reloading the shotgun.

The California woman had undergone surgery at Kenner Regional Medical Center on Wednesday, where she had been in critical condition in intensive care late last week. A hospital spokesman said the woman died Monday at 9:25 a.m.

Gott told authorities last week that he was a Muslim and that he opened fire because people made fun of his turban, though officials have said it is unclear when the taunting occurred. He remains in the Jefferson Parish Correctional Center with bail set at \$1 million.

Officials said Gott acted alone, and the shooting does not appear to be terrorism. But it is the most serious in a string of recent incidents that have raised questions about security at the airport.

Airport officials issued a statement offering their condolences to the victim's family. But Aviation Director Roy Williams did not indicate what actions, if any, the airport might consider to prevent similar incidents in the future. Authorities and Williams have said such incidents could be hard to prevent.

The airport, Williams said, "will continue to work closely with our colleagues at the responsible law enforcement agencies to do all that is possible to assure the safety of passengers, airport and airline personnel."

The Federal Aviation Administration is investigating the case.

---- Index References ----

Company: SOUTHWEST AIRLINES CO

News Subject: (Violent Crime (1VI27); Crime (1CR87); Judicial (1JU36); Legal (1LE33); Social Issues (1SO05); Criminal Law (1CR79); Police (1PO98))

Industry: (Transportation (1TR48); Air Transportation (1AI53); Airports (1AI61); Passenger Transportation (1PA35))

Region: (USA (1US73); Americas (1AM92); North America (1NO39))

Language: EN

Other Indexing: (CALIFORNIA; DEFENSE DEPARTMENT; FEDERAL AVIATION ADMINISTRATION; JEFFERSON PARISH CORRECTIONAL CENTER; JEFFERSON PARISH SHERIFF OFFICE; KENNER REGIONAL MEDICAL CENTER; SOUTHWEST AIRLINES; WOMAN) (Bystanders; Gott; Patrick Gott; Roy Williams; Williams)

Word Count: 423

End of Document

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5/27/02 Pitt. Post-Gazette B5
2002 WLNR 4251855

Pittsburgh Post-Gazette (PA)
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May 27, 2002

Section: LOCAL

OFFICER SHOT, SAVED BY BULLETPROOF VEST ASSAILANT IS WOUNDED BY MT. LEBANON POLICE

CINDI LASH AND JOHNNA A. PRO, POST-GAZETTE STAFF WRITERS

A Mt. Lebanon police officer was shot in the chest last night after responding to a domestic dispute, but escaped serious injury because he was wearing body armor.

Mt. Lebanon Officers Dan Rieg and Jeff Kite responded to a report of a domestic dispute at the home of Edward and Susan Constant on Piper Drive at about 10:40 p.m. The officers saw a man inside push a woman to the floor, then he came to the door and began firing at them.

Mt. Lebanon Deputy Police Chief Henry Egal said Edward Constant, 57, fired with a handgun, striking Rieg. Police returned fire, striking Constant in the hip and buttocks. Kite was not injured. Constant and the officers continued firing as the officers backed up across the yard and Constant followed them out of the house. Rieg emptied his gun and was reloading when police subdued Constant.

Egal said the bullet struck Rieg in the chest but was deflected by his bulletproof vest and slid sideways. "It was like he got a good, solid punch to the chest. If he hadn't been wearing the vest, he'd be dead, no question. He's going to be sore, but he'll be all right."

A nursing supervisor at Mercy Hospital, where both men were taken, concurred. "The police officer is going to be OK. He had his vest on. He would have been dead without it," she said. Rieg, 36, of Mt. Lebanon was being kept overnight for observation.

The supervisor said that Constant's injuries are not life-threatening.

Susan Constant has been taken into custody and will face charges, but Egal said police have not determined what they will be.

Police have recovered the handgun used in the shooting, he said.

Egal said he was not sure what provoked the call to the house or if police had been there before. But neighbors said the house has been the scene of frequent domestic disputes and screaming arguments that have been heard by homeowners a block away.

Janet Bodnar, who lives nearby on Oakwood, said her husband, Bill, had taken the dog out for a walk shortly before 10:40.

Right after he left, "I heard a loud boom boom! I thought it was fireworks. Then I heard a succession of four or five more booms, real fast. Then I heard loud noises, like men hollering."

Police said Rieg was conscious and, while being transported by ambulance to Mercy Hospital, used a police radio to broadcast his thanks to officers who rushed to the scene.

Allegheny County Police have been called to conduct an independent investigation of the incident, Egal said. County officers were on the scene early this morning.

Egal said the Mt. Lebanon Police Department has a policy requiring officers to wear bulletproof vests when they are on the road.

Staff writer Laura Pace contributed to this article.

---- Index References ----

Region: (Middle East (1MI23); Lebanon (1LE68); Arab States (1AR46))

Language: EN

Other Indexing: (ALLEGHENY COUNTY POLICE; CONSTANT; COUNTY; EDWARD AND SUSAN CONSTANT; EDWARD CONSTANT; LEBANON POLICE DEPARTMENT; MERCY HOSPITAL; MT; MT LEBANON; MT LEBANON DEPUTY POLICE; MT LEBANON OFFICERS DAN RIEG; PIPER; RIEG; SAVED; SUSAN CONSTANT) (Bill; BULLETPROOF VEST ASSAILANT; Egal; Henry Egal; Janet Bodnar; Jeff Kite; Kite; Laura Pace; Staff)

Edition: SOONER

Word Count: 542

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2003 WLNR 7649508

AUSTRALIAN
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September 12, 2003

Section: LOCAL

Monash accused 'out to kill all WWs'

Gosia Kaszubska

A MAN accused of gunning down two people in a shooting rampage at Monash University was a paranoid loner who believed it was his destiny to kill a fellow student and anyone like him, a court heard yesterday.

Huan Yun Xiang, 37, developed a fixation on classmate William Wu, who died after being shot in the neck in the attack last October, and believed people at the university were trying to kill him, the Melbourne Magistrates Court heard.

A note found stuck on Mr Xiang's wardrobe door detailed his paranoid hatred for Mr Wu, 26, who lived opposite the flat Mr Xiang shared with his mother in Clayton, in Melbourne's southeast.

The court was told that the note read in part: "Just pick up a gun, kill all those WWs, until there is no WW in the world any more! ... To kill WWs is the responsibility defined in my destiny".

Student Steven Chan, 26, also died and five others were wounded in the shooting last October, which led to a national handgun buyback scheme.

A preliminary hearing was told that Mr Xiang yelled "you never understand me" after opening fire in a tutorial room about 11.15am on October 21.

Crown prosecutor Sue Pullen said Mr Xiang had four other pistols and two ammunition magazines strapped to his body but was tackled and pinned down by lecturer Lee Gordon-Brown, who had been wounded, and fellow econometrics student Alastair Boast as he tried to reload his weapon.

As Dr Gordon-Brown kept hold of his legs and Mr Boast pinned his arms to a desk, Mr Xiang kept repeating: "It was all I could do."

The court heard Mr Xiang, an excellent student who was due to give an oral presentation to the class on the day of the shooting, had a thick accent and often struggled to make himself understood.

He allegedly told a forensic medical officer a teacher had made "horrible eyes" at him and other students did not include him in their assignments. "I could see from their attitude that they wanted me to die," he allegedly said.

The court heard Mr Xiang had called his classmates "animals" and accused them of talking about him behind his back in an email to Dr Gordon-Brown, who dismissed it as "a hiccup due to the stress of work".

Lecturer Brett Inder said Mr Xiang's supervisor, Gail Martin, had told him she was worried about Mr Xiang's behaviour and thought he was the type of person to do something "drastic".

Dr Martin denied making such comments but said she expressed concerns about Mr Xiang when, 10 days before the shooting, he told her that if he looked his fellow students in the eyes during a presentation, they would kill him.

Mr Xiang is charged with two counts of murder and five of attempted murder. He has not yet been required to enter a plea. The committal hearing continues.

---- **Index References** ----

News Subject: (Violent Crime (1VI27); Crime (1CR87); Social Issues (1SO05))

Language: EN

Other Indexing: (LECTURER BRETT INDER; MELBOURNE; MELBOURNE MAGISTRATES COURT; MONASH UNIVERSITY; WW) (Alastair Boast; Boast; Brown; Crown; Gail Martin; Huan Yun Xiang; Lee Gordon-Brown; Martin; Monash; Steven Chan; Sue Pullen; William Wu; Wu; Xiang)

Edition: 1 - ALL-

Word Count: 544

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February 23, 2004

Section: NEWS

SIKH MEN SLAIN IN SAN JOSE PARK GUNMAN KILLED AFTER DEADLY RAMPAGE ON CARD PLAYERS

Demian Bulwa, Delfin Vigil, Simone Sebastian, Chronicle Staff Writers

A leisurely afternoon at a San Jose park turned violent Sunday, when a gunman opened fire on a group of mostly elderly Sikh men who were playing cards, striking six of them -- three fatally -- before the group turned on the attacker.

The assailant, a 43-year-old San Jose man whose name was not released, died at the scene after several witnesses wrestled him to the ground when his gun jammed or ran out of ammunition, San Jose police said.

Sarwan Singh Gill, 47, of San Jose witnessed the attack.

He said he was among about 15 friends who were playing cards at Overfelt Gardens in east San Jose when a man who was unfamiliar to them walked up to four of them, said something abusive in Punjabi, then started firing a semiautomatic weapon -- first at the four, then at the others.

Gill escaped the danger by hiding behind a tree. He said the shooter was reloading his weapon and began firing again when somebody tackled him from behind.

"I lost my friends, and I'm feeling very bad," Gill said in Punjabi at his home Sunday night, surrounded by family members.

Police responding to the 2:47 p.m. call about shooting at the usually tranquil park found a chaotic scene.

"This is very much unusual," said San Jose police spokesman Steve Dixon.

"These fellows play cards at this park regularly, and on typical Sunday afternoons we have never had any trouble before."

Two men died at the scene, and one died at San Jose Medical Center. They were 46, 65 and 70 years old, police said. Three others, ages 80, 78 and 62, were sent to Regional Medical Center in San Jose with non-life threatening injuries, according to Dixon.

The suspect was dead when police arrived, probably because he was beaten to death, Dixon said, though the cause of death will be determined by an autopsy by the Santa Clara County coroner.

Sunday evening, relatives, friends and associates of the shooting victims tried to make sense of the devastation and questioned why anyone would have wanted to kill them. The men -- most of whom attended Sikh Gurdwara temple in San Jose and who were between the ages of 46 and 80 years old -- were longtime friends who gathered almost daily at the park for card games.

Relatives identified the 46-year-old man who was killed as Kulwant Singh, a technician at Wintec Industries in Fremont, who came to the United States from India in 1999, leaving behind a small farm. He lived in San Jose with his wife and three daughters.

"He was a hard worker who was honest, loyal, committed, and family oriented," said Kulwant Singh's brother-in-law, Kirpal Singh Atwal.

Kulwant Singh's wife, Baljeet Kaur was walking in the park when she heard the gunshots, her brother said. It wasn't until three hours later that police told her that her husband was among the dead.

Sunday night, she was surrounded by friends and family at her San Jose apartment. Twenty friends packed onto the floor of Kaur's and Kulwant's bedroom, passing around pictures of the couple and grieving his loss.

At the Sikh Gurdwara temple on Quimby Road, where about 1,000 Sikhs worship, people gathered Sunday evening awaiting news of the victims' identities.

"Many families are calling, and they are very scared," said the vice president of the temple, Bob Dhillon, who spent several hours answering phone calls from concerned members. "This has scared the heck out of our community.

It is especially disturbing that this happened in a public place."

Temple secretary Jaswant Singh Hothi said the shooting brought back tension felt within the community following Sept. 11, 2001, when Sikhs were mistakenly targeted as followers of Osama bin Laden. Sikh men's traditional garb -- with long, thick beards and turbans -- cause them to resemble the widely publicized photographs of the Muslim terrorist.

Sikhs are not Muslims, though their traditional appearance causes confusion. Many are Punjabi natives, a tiny minority in their Indian homeland.

The 500-year-old Sikh Dharma monotheistic religion was founded in India, based in philosophies of social equality and truth.

"I'm feeling very scared," Hothi said.

"Those people just sit (at the park) every day. They don't have any problems," Hothi said. "We're just confused. Right now, we are nowhere."

The uncertainty about who the shooter was and what his motives were increased tension in the temple.

"Who has done these things? Why?" asked Billy Singh, 30, who searched the park Sunday evening for his father, Swarn Singh, who often joined in the card games.

"I haven't seen him. I've been looking for him everywhere," Billy Singh said, not knowing if his father was among the victims. He later learned his father was OK.

Swarn Singh said the group of friends had gathered at the park for years to play cards, joke around, and just talk.

PHOTO

A police officer checks over the homicide scene in Overfelt Gardens in east San Jose, where three Sikh men were shot and killed.
Kat Wade
The Chronicle

E-mail the writers at dbulwa@sfnchronicle.com, dvigil@sfnchronicle.com, and sisebastian@sfnchronicle.com.

---- **Index References** ----

Company: WINTEC INDUSTRIES INC

Region: (India (1IN24); USA (1US73); Americas (1AM92); Indian Subcontinent (1IN32); Southern Asia (1SO52); North America (1NO39); Asia (1AS61); California (1CA98))

Language: EN

Other Indexing: (KAUR; PHOTO; SIKH; SIKH DHARMA; SIKH GURDWARA; WINTEC INDUSTRIES) (Baljeet; Billy Singh; Bob Dhillon; Dixon; Gill; Hothi; Jaswant Singh; Kat Wade; Kirpal Singh Atwal; Kulwant; Kulwant Singh; Sarwan Singh Gill; SIKH MEN SLAIN; Steve Dixon; Swarn Singh; Twenty)

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Word Count: 1004

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NewsRoom

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6/22/04 AP Alert - TX 23:08:28

AP Alert - Texas

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June 22, 2004

Man charged in courthouse shooting

CORPUS CHRISTI, Texas_An 81-year-old Woodsboro man was charged Tuesday with opening fire on a federal courthouse.

Walter Edwin Kloesel, 81, is accused of firing the shots early Monday afternoon. Investigators say he used a single-shot gun he had just purchased at a pawn shop.

Police say no one was injured, but Kloesel may have damaged the courthouse's brick wall.

Witnesses reported seeing Kloesel standing next to a truck in a restricted area in front of the federal courthouse. A witness said Kloesel turned away from him, fired toward the bay, then reloaded to shoot at the courthouse.

An officer tackled Kloesel as he was reloading the gun and Kloesel was arrested. He has been charged with assault with a dangerous weapon.

A federal magistrate ordered Kloesel detained until a detention hearing scheduled for Thursday at 1:30 p.m.

---- Index References ----

Region: (USA (1US73); Americas (1AM92); North America (1NO39); Texas (1TE14))

Language: EN

Other Indexing: (WOODSBORO) (Kloesel; Police; Walter Edwin Kloesel)

Word Count: 166

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8/5/05 AP Worldstream 10:56:48

AP Worldstream

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August 5, 2005

Mourners gather to grieve as police gird for possible rioting over deadly attack on Israeli Arabs

By KRISTEN STEVENS

Associated Press Writer

SHFARAM, Israel_ Mourners heaped flowers and lit candles Friday on a makeshift altar fashioned from window frames ripped from the bus where a Jewish soldier opposed to Israel's impending Gaza Strip pullout gunned down four Israeli Arabs.

The soldier, 19-year-old Eden Natan-Zada, opened fire on the bus in this northern Arab town on Thursday, killing the driver and three passengers, and wounding 13. An enraged mob beat him to death, and prevented police from removing his body from the bus for hours.

Thousands of police fanned out across northern Israel and Jerusalem on Friday to prevent possible rioting as a grieving and angry Arab community prepared to bury the four victims later in the day.

Natan-Zada's body was being held in a morgue after the military, his hometown of Rishon Lezion and the extremist settlement where he recently moved refused to bury him.

In Shfaram, townspeople lit hundreds of candles and placed hundreds of flowers on the impromptu altar. Melted candle wax seeped onto high-heeled shoes, flip-flops, door handles, seat frames and other objects taken from the bus.

A fire burning in a small drum stood at the head of the altar. Behind it, children and adults held up banners in Hebrew and Arabic reading, "We are fed up with racism," "Search me, I'm an Arab," and "Bring those who allow racism to justice."

For months, Israeli security has been warning that extremists might try to sabotage the mid-August pullout from Gaza and four small northern West Bank settlements by attacking Arabs and diverting forces.

Natan-Zada's father said his son deserted his army unit after he was ordered to help prepare for the pullout, and moved to the West Bank settlement of Tapuah.

Wearing the skullcap, beard and sidelocks of an ultra-Orthodox Jew, Natan-Zada boarded the bus bound for Shfaram, a city of 35,000 Muslims, Christians and Druze, in a nearby northern town.

When the bus entered a Shfaram neighborhood, he opened fire on the driver, killing him instantly, witnesses said.

The bus rolled on for 50 meters (yards), until it hit a parked car and ground to a halt in front of a grocery store. Natan-Zada continued shooting inside the bus, emptying a magazine. When he tried reloading, he was tackled and disarmed.

Several people were involved in stopping the attack, including Husam Elian, a former soldier from Shfaram who was driving in a car directly behind the bus.

"I was driving when I heard rapid gunfire," Elian said. "I pulled out my gun, because I am a security guard, and went toward the bus. Someone told me there was a man, an Israeli soldier, with a gun, and then I saw him, and he started shooting at me and my neighbors. I saw some friends, and they ran with me onto the bus. And just as he was changing magazines, that's when we grabbed him."

Elian said his friend shouted at Natan-Zada, "Do you know Israeli soldiers could be on this bus?" And Natan-Zada replied, "There are Arabs on this bus."

Elian said he and his friends tried to shield Natan-Zada, but there weren't enough police officers to keep hordes from boarding the bus.

"Getting him out was impossible," he said.

The gunman's body lay on the bus floor, his head covered with a black plastic bag, for hours Thursday night until the crowd was subdued. His shirtless upper torso was heavily bruised and bloodied.

The windows of the bus were shattered by bullets and by rocks the mob threw at him. Blood stained bus seats, and rocks covered the vehicle's floor.

Police commissioner Moshe Karadi said forces in the north _ where many Israeli Arabs live _ had been short-handed because many had been diverted to deal with an anti-pullout demonstration in Israel's south this week.

Karadi cautioned that the attack could trigger additional violence. Forces were sent north, and in Jerusalem, ahead of Muslim Sabbath prayers on Friday, police raised their alert to the highest level and assigned SWAT teams and cavalry to the Old City, in anticipation of possible rioting.

Military chief Lt. Gen. Dan Halutz said he was "definitely worried that people on the fringes are going too far."

"There is no doubt that the unfolding reality, the comments, and the internal debates causes fringe elements to migrate even more toward the fringes," Halutz told Israel Radio.

Three juveniles from Tapuah, aged 15 to 17, were arrested in connection with the deadly attack, Channel 2 TV reported. The settlement is dominated by followers of U.S.-born Rabbi Meir Kahane, who advocated expelling Arabs from Israel and the West Bank. Kahane was assassinated in New York in 1990.

Prime Minister Ariel Sharon issued a statement condemning the attack as "a despicable act by a bloodthirsty terrorist."

Yitzhak Natan-Zada, 49, the soldier's father, said Thursday that he had asked the army to find his son, who fled from his unit after refusing to participate in the Gaza pullout. Natan-Zada said he was concerned his son's weapons would fall into the hands of fanatics in Tapuah.

"I wasn't afraid that he would do something. I was afraid of the others," Natan-Zada told The Associated Press in a telephone interview. He said he had no indication his son would carry out such an act.

It was the bloodiest such incident in Israel since 1990, when an Israeli opened fire at a bus stop where Palestinians gathered for job placements, killing seven.

In 1994, Baruch Goldstein, an American-born Jewish settler, entered a holy site in the West Bank city of Hebron and opened fire on Muslim worshippers, killing 29 _ the bloodiest attack by a Jewish extremist against Palestinians.

Palestinian leader Mahmoud Abbas called on Israel to prevent Jewish settlers from carrying weapons, "because they (the settlers) are dangerous to the security and peace between the two people." Many Jewish settlers have army-issue guns to protect them from Palestinians.

Israeli Arabs make up about 20 percent of Israel's population of 6.9 million. Though they are full citizens, they have suffered from discrimination by Jewish-dominated governments. Many of their towns and villages lack basic infrastructure, and Arab localities usually top of Israel's unemployment lists.

(at/sg)

---- Index References ----

Company: ASSOCIATED PRESS GMBH (THE)

News Subject: (Race Relations (1RA49); Minority & Ethnic Groups (1MI43); Top World News (1WO62); International Terrorism (1IN37); Social Issues (1SO05))

Industry: (Busing (1BU35); Energy & Fuel (1EN13); Land Transportation (1LA43); Automotive Fuels (1AU95); Transportation (1TR48); Automotive Environmental Initiatives (1AU68); Oil & Gas (1OI76); Automotive Alternative Fuels (1AU34); Passenger Transportation (1PA35))

Region: (Mediterranean (1ME20); Palestine (1PA37); Middle East (1MI23); Israel (1IS16))

Language: EN

Other Indexing: (Husam Elian; Meir Kahane; Baruch Goldstein; Ariel Sharon; Eden Natan-Zada; Dan Halutz; Tapuah; Mahmoud Abbas; Yitzhak Natan-Zada; Moshe Karadi) (Israel; ISR; MiddleEast; Asia; West Bank; PSE; United States; USA; NorthAmerica)

Keywords: (i); (WorldInternational); (Law)

Word Count: 1036

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5/29/06 Augusta Chron. B03
2006 WLNR 9333107

Augusta Chronicle, The (GA) (KRT)
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May 29, 2006

Section: METRO

ACROSS THE AREA

Forecast holds little rainfall

Homeowners whose lawns are turning brown, take heed. The rain situation might only be getting worse.

The next chance of rain for the Augusta area isn't until Thursday. Meanwhile, the forecast has temperatures in the low 90s Monday and Tuesday, dropping into the upper 80s on Wednesday and the mid-80s on Thursday, according to the National Weather Service in West Columbia, S.C.

The last rainfall recorded was 0.01 inch Saturday at Daniel Field, and only trace amounts Friday at Daniel and Bush Field, meteorologist Tina Morrison said.

The area isn't in a drought, she said. Not yet.

"Not officially, but it's looking like that, yes," she said.

Augusta is expected to have lower than normal rainfall throughout the summer, Ms. Morrison said.

Pain medication is stolen from pharmacy

An undetermined quantity of Percocet, a pain medication, was stolen Sunday morning from Brynwood Pharmacy in the 3000 block of Walton Way Extension.

According to a Richmond County sheriff's report, a witness saw a truck parked behind the pharmacy and two men standing beside the store's back door.

The truck was gone when deputies arrived. They found the back door damaged.

The truck is described as a small, red, square-body pickup with a white stripe on its side and white reflective tape on its tailgate.

Shots fired outside club; man subdued

Gunshots were fired outside Gunther's nightclub Sunday morning in the 2000 block of Milledgeville Road.

Maurice Jones told Richmond County sheriff's deputies he saw a man waving a silver .38-caliber revolver in the air. He said he heard two gunshots, and everyone in front of the club ran to the side.

According to the report, the man tried to reload his gun, but two men subdued him. One of the men threw the gun by a trash can in the parking lot, where a woman picked it up.

The shooting suspect was taken to Medical College of Georgia Hospital to be treated for injuries he got when the two men subdued him.

He had not been charged late Sunday.

Cash, checks, credit card taken from truck

Cash, checks and a credit card were stolen Friday night from a truck parked outside Travelodge on Washington Road.

According to a Richmond County sheriff's report, Richard Rodriguez told deputies that \$2,100, a Visa debit card, a book of checks and a brown briefcase valued at \$200 were stolen from his unlocked 2006 Chevrolet Silverado.

Mr. Rodriguez said he has canceled the debit card and checks.

Fife and Drum Corps plans performances

In addition to their participation in ceremonies commemorating the 225th anniversary of the Battle of Augusta, the U.S. Army's 3rd Infantry 'Old Guard' Fife and Drum Corps also will perform at Fort Gordon.

A 14-member unit of the group will perform at Fort Gordon's Freedom Park on Rice Road on Friday at 12:30 p.m. If it rains, the performance will be in Alexander Hall.

The 'Old Guard' Fife and Drum Corps will also perform at the following events: Friday at 7:30 p.m. at Augusta Common, 836 Reynolds St.; Saturday at noon during the "Under the Crown" event at the Living History Park, 299 W. Spring Grove Ave., off Georgia Avenue in North Augusta; and June 3 from 3 to 4 p.m. during the official ceremony and re-enactment marking the 225th anniversary of the Battle of Augusta in the vicinity of Sixth and Reynolds streets.

Thieves take money from supermarket

Thieves stole \$250 from a cash register and damaged an ATM Saturday night at Augusta Supermarket in the 2000 block of Martin Luther King Boulevard, according to a Richmond County sheriff's report.

Deputies searched outside the store and found a large hole on the north side of the building, the report says.

Butler plans meeting on education reform

Butler High School will hold a meeting for parents at 6 p.m. Thursday to answer questions about its educational reform pilot program.

The program, which will begin in the fall, will add 15 minutes to the school day and attempt to use time during the day more efficiently. Rather than disciplining students for small infractions by suspending them or sending them to in-school suspension, the program will keep them in class and isolate them during lunch.

For more information on the meeting, call (706) 796-4959.

Fort Gordon will hold day camp for students

Fort Gordon's Regimental Noncommissioned Officers Academy will hold Camp Semaphore - a day camp for area high school students enrolled in the Junior Reserve Officer Training Corps program - Tuesday through Friday.

About 150 students are expected to attend the camp, which begins at 6:30 a.m. each day and ends at 4:30 p.m.

The training includes instruction on land navigation, first aid, running an obstacle course and water safety.

For more information, call (706) 791-4993.

Washington Road lanes will be closed

Lanes heading east on Washington Road at Warren Road will be closed this week to construct a sewer manhole, according to the Augusta Engineering Department.

Two-way traffic will be maintained. Drivers should use River Watch Parkway, Wheeler Road, Walton Way or Woodland Road as detours.

Work will close one lane of Walton Way

The southbound lane of Walton Way at Heard Avenue will be closed Tuesday for tree removal, according to the Augusta Engineering Department.

The closure will be from 9 a.m. to 1 p.m. Two-way traffic will be maintained. Drivers can avoid the area by using Hickman Road, Highland Avenue or Baker Avenue.

Also, the westbound left turn lane of 12th Street near Greene Street will be closed from 9 a.m. to 4 p.m. Tuesday. Drivers wanting to go south toward Telfair Street should use 11th or 13th streets.

All other lanes will remain open.

First Steps panel schedules meeting

The Aiken County First Steps executive committee will meet Tuesday at the Aiken County First Steps office, 208-D The Alley.

Call Marcia Nash at (803) 643-3845 for further information.

- Edited from staff reports

---- **Index References** ----

Company: VISA INTERNATIONAL SERVICE ASSOCIATION

News Subject: (Weather & Climate (1WE93))

Industry: (Science & Engineering (1SC33); Meteorology (1ME62); Earth Science (1EA85); Science (1SC89))

Region: (United Kingdom (1UN38); Scotland (1SC90); Europe (1EU83); England (1EN10); Western Europe (1WE41))

Language: EN

Other Indexing: (3RD INFANTRY OLD GUARD; ARMY; ATM; AUGUSTA ENGINEERING DEPARTMENT; BAKER AVENUE; BRYNWOOD PHARMACY; BUTLER HIGH SCHOOL; DANIEL; DRUM CORPS; GEORGIA AVENUE; GEORGIA HOSPITAL; GUARD; HEARD AVENUE; HIGHLAND AVENUE; JUNIOR RESERVE; LIVING HISTORY PARK; MARTIN LUTHER; MEDICAL COLLEGE; NATIONAL WEATHER SERVICE; REGIMENTAL NONCOMMISSIONED OFFICERS ACADEMY; SPRING GROVE AVE; VISA) (Augusta; Augusta Common; Augusta Supermarket; Boulevard; Bush Field; Butler; Drivers; Fife; Homeowners; Marcia Nash; Maurice Jones; Morrison; Reynolds; Richard Rodriguez; Rodriguez; Shots; Thieves; Tina Morrison; Training Corps; Walton; Work) (AREA BRIEFS)

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Word Count: 1184

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7/9/07 AP Alert - CA 15:32:59

AP Alert - California

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July 9, 2007

Accused gunman in Las Vegas casino shooting due Tuesday in court

LAS VEGAS_A man accused of opening fire with a handgun inside a Las Vegas Strip casino was scheduled to make his first appearance before a judge on Tuesday.

Steven Zegrean, 51, of Las Vegas, remained jailed without bail on suicide watch at the Clark County jail Monday after his arrest early Friday at the New York-New York casino.

Four people were wounded in the shooting and a fifth person was hurt in a crush of people fleeing the casino, after authorities say Zegrean fired 16 shots from an indoor balcony at gamblers below. None of the injuries was reported to be life-threatening, and no one remained overnight in the hospital.

Zegrean was apprehended after he paused to reload his semiautomatic pistol and was tackled by off-duty military reservists and restrained with the help of two Florida state police agents, police said. A gun was confiscated, and police said Zegrean had more ammunition in his tan trench coat when he was arrested.

He is expected to face felony charges including attempted murder, battery with a deadly weapon, and discharging a firearm in an occupied structure, police said.

Family members described Zegrean as an unemployed house painter, a Hungarian immigrant who has been divorced for several years and estranged from most of his family since his ex-wife remarried.

Police characterized Zegrean as "greatly emotionally distressed." They said he walked the Las Vegas Strip for a day and a half before the shooting, after police and paramedics responded to a report that he attempted suicide July 4.

---- Index References ----

News Subject: (Violent Crime (1VI27); Legal (1LE33); Social Issues (1SO05); Crime (1CR87); Criminal Law (1CR79))

Industry: (Entertainment (1EN08); Casinos (1CA80); Travel & Tourism (1TR07); Gaming Industry (1GA25))

Region: (Americas (1AM92); North America (1NO39); USA (1US73); New York (1NE72); Nevada (1NE81))

Language: EN

Other Indexing: (Steven Zegrean; Zegrean) (Hungary; HUN; Europe; United States; USA; NorthAmerica)

Keywords: (n); (Crime); (Travel); (Defense); (Labor); (Gambling); (Legal); (Law)

Word Count: 305

End of Document

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8/8/08 Kan. City Star (Pg. Unavail. Online)
2008 WLNR 14809264

Kansas City Star (MO)
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August 8, 2008

Three shot at Kansas City bar

A gunman opened fire in a Kansas City tavern tonight, wounding three people before being disarmed by a bystander.

Police said the gunman opened fire at The Tool Shed at U.S. 40 and Phelps Road around 8:40 p.m.

Two of the victims were taken to a hospital, Kansas City police Capt. Mike Perne said. One suffered life-threatening wounds, and the other was in critical but stable condition. A third person suffered minor injuries and was treated at the scene.

Debbie Henry, who lives at the Hyline Inn next door to The Tool Shed, said the gunman began firing inside the bar, then went outside and continued to fire. When he stopped to reload his weapon, he was tackled by another man and disarmed. Patrons of the bar had the gunman pinned to the ground when police arrived.

Henry said she heard the gunshots and came out to see what happened. She said one of the victims was shot in the back.

She added that the shooter, who appeared to be extremely intoxicated, had two more guns in his truck.

The Tool Shed is in extreme eastern Kansas City, just south of the border with Independence.

---- Index References ----

Region: (North America (1NO39); Kansas (1KA13); Americas (1AM92); USA (1US73))

Language: EN

Other Indexing: (HYLINE INN; TOOL SHED) (Debbie Henry; Henry; Mike Perne) (Kansas City) (Kansas City) (Kansas City) (us; usa; na; us.mo; us.mo.kcity; us.mo.kancity)

Keywords: (CT/clj.crm); (CT/clj); (NT/Law+Crime); (SU/breaking.news)

Edition: 1

Word Count: 215

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NewsRoom

8/18/08 Ann Arbor News (Ann Arbor, MI) A5
2008 WLNR 15712292

Ann Arbor News (Ann Arbor, MI)
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August 18, 2008

POLICE BEAT

Woman injured in I-94 crash

A woman was taken to the University of Michigan Hospital after her car veered off I-94 and hit a tree early this morning.

Ann Arbor firefighters used extrication tools to free the woman, who suffered unknown injuries. The crash occurred at about 2:15 a.m. on the westbound side of the freeway near Jackson Avenue, said Ann Arbor Fire Battalion Chief Robert Vogel.

Fight results in neighbor's injuries

A 25-year-old Ypsilanti Township man was arrested when a fight in an apartment escalated, injuring a neighbor.

Several people inside an apartment in the 50 block of Riley Court in Ypsilanti Township began arguing late Sunday night. A chair and beer bottle were thrown through a neighbor's window. The neighbor, a 26-year-old woman, was cut on the leg, said Washtenaw County Sheriff's Department Cmdr. Dave Egeler.

Deputies are seeking a charge of felonious assault against the man, said Egeler.

Weapon fired outside hotel

A 19-year-old man reportedly fired an assault-style weapon in the parking lot of a hotel in the 3700 block of Washtenaw Avenue early Sunday morning.

Police received a call shortly after midnight about party-goers who would not leave and were hanging around the hotel's parking lot. At some point, the man fired several shots, which were heard by three patrol officers who found people fleeing the parking lot as they arrived.

Police received a description of the man and recovered several shell casings and live rounds in the parking lot. No one was injured.

Man charged with sex assault on child

A 48-year-old Sumpter Township man is in the Wayne County Jail, charged with two counts of first-degree criminal sexual conduct for alleged assaults on an 8-year-old relative.

Sumpter Police Detective Michael Czinski said Gary P. Hopkins was arrested after the girl's mother told police the girl reported the assaults occurred while Hopkins was baby-sitting. Police arrested Hopkins at his Rawsonville Woods mobile home.

He faces a maximum sentence of life in prison if convicted of either charge, and was held on \$150,000 bond.

Hopkins served about four years in prison on a 15- to 30-year sentence for similar charges relating to his former girlfriend's daughter before Washtenaw Circuit Judge Archie Brown overturned the conviction on the basis of ineffective counsel at trial. He ordered a new trial.

County prosecutors appealed, according to state records, but the Court of Appeals and Supreme Court upheld Brown's order for a new trial.

County prosecutors elected in 2005 not to reinstate the charges, and Hopkins was released.

Man arrested for attempted murder

Livingston County Sheriff's deputies arrested a 40-year-old Howell-area resident, whom they said killed a neighbor's dog, threatened to kill the neighbor and her children and pointed a gun at his brother, who was trying to disarm him.

Deputies said they were called to Clearview Drive near Pingree Road in Marion Township at 11:50 p.m. Sunday.

They said they had been told the man had killed the neighbor's dog.

As they headed toward the area, they took another call about additional shots being fired by a man who was using a rifle to try to settle a property-line dispute.

They said the man's brother rushed the suspect as he tried to reload the rifle, and took the rifle and subdued the suspect.

The man was held on attempted murder and other felony charges pending arraignment.

Compiled by Dave Gershman and Susan Oppat, News staff reporters.

---- Index References ----

Language: EN

Other Indexing: (COUNTY; COURT OF APPEALS; HOPKINS; LIVINGSTON COUNTY SHERIFF; RAWSONVILLE WOODS; RILEY COURT; SUMPTER; SUMPTER TOWNSHIP; SUPREME COURT; UNIVERSITY OF MICHIGAN HOSPITAL; WASHTENAW; WASHTENAW COUNTY SHERIFFS DEPARTMENT; YPSILANTI TOWNSHIP) (Ann Arbor; Archie Brown; Brown; Dave Egeler; Dave Gershman; Egeler; Gary P. Hopkins; Hopkins; Michael Czinski; POLICE BEAT; Robert Vogel; Susan Oppat)

Word Count: 687

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7/28/08 South Florida Sun-Sentinel 3A
2008 WLNR 14042385

South Florida Sun-Sentinel
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July 28, 2008

Section: News

SHOOTER KILLS 2 IN KNOXVILLE CHURCH CONGREGANTS SUBDUED MAN AS HE TRIED TO RELOAD SHOTGUN

A man armed with a shotgun entered a church in Knoxville, Tenn., on Sunday and opened fire as congregants were watching a youth performance, killing two people and leaving at least eight others wounded before he was subdued by church members, witnesses and police officials said.

Five people remained in hospitals last night, all in critical or serious condition.

Police officials said they had charged Jim Adkisson, 58, of Powell, Tenn., with first-degree murder.

Amira Parkey, 16, had just uttered her first lines as Miss Hannigan in Annie Jr., an adaptation of the musical, when the performance at Tennessee Valley Unitarian Universalist Church was interrupted by a loud pop, witnesses said.

"We were just, 'Oh my God, that's not part of the play,' " Parkey said, adding that she saw a man standing near the door of the sanctuary and firing into the room.

Sheila Bowen, 70, a church member, said, "The music director realized what was going on and she yelled, 'Get the hell out of here, everybody.' "

Parents dove under the pews with their children, and the cast of young actors, some of them as young as 6, was quickly herded out.

None of the victims were children.

Members of the church tackled the gunman and wrested his weapon, a 12 gauge, from him.

The police dispatcher received a call to the church at 10:18 a.m., and they took the gunman into custody four minutes later.

Chief Sterling Owen of the Knoxville Police Department said that investigators had not determined the motive but that they thought the gunman had acted alone.

Two of the wounded were treated at the hospital and discharged, Owen said.

The FBI is helping in the investigation, and Owen said all videotapes of the service had been collected and were under review.

There were about 200 people in the church when the gunman opened fire, according to church members.

Witnesses said that the gunman, carrying a guitar case, had first tried to enter the area where the children were preparing for the play, saying he was there to play music.

But he was told to use the public entrance to the sanctuary instead.

Bowen said that the gunman was a stranger to the church and that she had seen him in the entry hall fiddling with the guitar case.

She said she did not see him again until the shooting started.

It was when the man paused to reload that several congregants ran to stop him.

The police chief said John Bohstedt, a history professor at the University of Tennessee in Knoxville, was among them.

"He moved very quickly and he assessed the situation very quickly," Bowen said.

"He's sitting on this guy. He had a package with him, wrapped in brown paper and tied with string, and John was afraid that that might be a bomb, so John was screaming at everyone to get out."

The man slain was identified as Greg McKendry, 60, a longtime church member and usher. Linda Kreager, 61, died at the University of Tennessee Medical Center a few hours after the shooting, Knoxville city spokesman Randall Kenner said.

Information from The Associated Press was used in this report.

--- Index References ---

Company: UNIVERSITY OF TENNESSEE

Region: (North America (1NO39); Tennessee (1TE37); Americas (1AM92); USA (1US73))

Language: EN

Other Indexing: (FBI; KILLS; KNOXVILLE; KNOXVILLE POLICE DEPARTMENT; MEDICAL CENTER; SHOTGUN; TENNESSEE VALLEY UNITARIAN UNIVERSALIST CHURCH; UNIVERSITY OF TENNESSEE) (Amira Parkey; Bowen; Greg McKendry; Information; Jim Adkisson; John; John Bohstedt; Linda Kreager; Owen; Parents; Parkey; Randall Kenner; Sheila Bowen; Sterling Owen)

Edition: Broward Metro

Word Count: 605

NewsRoom

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1/3/10 Chi. Sun-Times A3
2010 WLNR 137103

Chicago Sun Times (IL)
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January 3, 2010

Section: News Crime

'It replays in my mind over and over'
Family elated to welcome home Fort Hood massacre survivor

Amy Lee

The massacre at Fort Hood in Texas in November replays in his mind over and over.

A gunman shouts in Arabic. Shots ring out. Then intense pain -- bullets tore through his left knee and other parts of his body -- and loud screams.

"It was surreal, just mass chaos," Army Pvt. 1st Class Najee Hull recalled last week. "Pain and people screaming. It replays in my mind over and over. I remember everything. . . . It's starting to mess with me."

For the first time since the shooting, Hull was able to return to his home in Homewood two weeks ago -- to spend Christmas with his family.

But he can't stop thinking about the events Nov. 5 at Darnall Army Medical Center, which is a part of Fort Hood -- where Hull, 20, was stationed.

Military authorities say a U.S. Army psychiatrist, Maj. Nidal Malik Hasan, walked into the center, shouted "Allahu Akbar" or "God is greatest," then targeted uniformed soldiers by firing more than 100 times with a semiautomatic pistol and a revolver. He allegedly killed 13 people and wounded 30.

Hasan was tackled as he paused to reload. Hasan, who remains hospitalized, is charged with 13 counts of premeditated murder and 32 counts of attempted murder.

Hull was prepping for a medical review ahead of his planned deployment to Afghanistan when the shooting began. The medical center was teeming with soldiers and civilians, including a group of nearly 600 gathered for an afternoon graduation ceremony. Hull was the first person hit in the massacre.

"He said some terrorist things, some Allah things, then just started shooting," Hull said.

"I do ask myself sometimes, 'Why me?' Of all the places to be that day, I had to be there."

While Hull said he's thrilled to be surrounded by doting friends and family members in Homewood, he struggles to accept that a member of the military turned on his comrades -- on a U.S. base -- and opened fire.

"It's like being betrayed by a family member, like someone in my family shot me," Hull said. "We die for the same cause, live by the same creed. I'm still kind of angry about it, but I try not to be angry because I'm here and a lot of people aren't. I know I'm lucky."

Hull, a 2007 graduate of Homewood-Flossmoor High School, has undergone three surgeries. One bullet destroyed his spleen, which was removed, but fragments of bullets remain lodged in his chest and knee.

"At Christmas, the whole time I kept thinking, I might have missed this. If that bullet would hit two inches higher or two inches lower, I might never have seen my family again, and I love my family," Hull said.

Hull lives with his mother, Yvonne, who works for the U.S. Postal Service, and sisters Nanette Hull, 34, and Nala Pearson, 13. He also has an older brother, Nathaniel Hull, 31.

The family was elated to finally welcome Najee home after he spent more than a month recovering at the base, Yvonne, a single mom, said.

"Christmas was truly Christmas, a celebration. We may have a sparse tree and sparse gifts, but you know we got our gift early, and we're at peace," Yvonne said. "Words cannot describe how thankful we are."

Hull, a mechanic, is part of the 36th Engineer Brigade, which will deploy this month to Afghanistan -- but without him. He'll return to Fort Hood on Friday.

"I love the Army. I love my buddies. I feel bad I won't be with them," said Hull, struggling to remain composed. "I have a lot of soul-searching to do. I really don't know what's next for me."

---- **Index References** ----

Company: US POSTAL SERVICE; UNITED STATES POSTAL SERVICE

News Subject: (Social Issues (1SO05); Violent Crime (1VI27); Crime (1CR87))

Region: (North America (1NO39); Americas (1AM92); USA (1US73))

Language: EN

Other Indexing: (1ST CLASS NAJEE HULL; 36TH ENGINEER BRIGADE; ARMY; ARMY PVT; DARNALL ARMY MEDICAL CENTER; HULL; NAJEE; NANETTE HULL; NATHANIEL HULL; US ARMY; US POSTAL SERVICE) (Hasan; Nala Pearson; Nidal Malik Hasan; Pain; Yvonne)

Edition: Final

Word Count: 682

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10/10/10 San Diego Union-Trib. A1
2010 WLNR 20372882

San Diego Union-Tribune
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October 10, 2010

Section: Main News

WORKMEN BEING HAILED AS HEROES

Trio subdued man who opened fire at school Friday; suspect described as angry loner

J. HARRY JONES, U-T

Neighbors of the Oceanside man accused of shooting two schoolchildren with a .357 Magnum revolver Friday described him as an angry loner who screamed racial insults and obscenities at all hours of the night from inside his apartment.

Brendan Liam O'Rourke, 41, remained in jail a day after three construction workers chased him down and subdued him near Kelly Elementary School in Carlsbad as he tried to reload his weapon.

Two second-grade girls, ages 6 and 7, were each shot in one arm. On Saturday afternoon, Carlsbad police Lt. Kelly Cain said he believed the youngsters were in good condition.

Meanwhile, the public took to websites to hail the construction workers — Mario Contreras, Stephen Kane and Carlos Partida — as heroes. The men were given a standing ovation at the Carlsbad Police Department on Friday afternoon. They appeared the next morning on the TV program "Good Morning America."

Saturday afternoon in Chula Vista, Contreras recounted how he and his two colleagues from Randall Construction disarmed the gunman. Contreras' left hand was swollen, the result of pounding O'Rourke in the face repeatedly as the suspect tried to escape.

Contreras said he, Kane and Partida were pouring concrete as part of a school cafeteria remodel when they heard gunshots. Contreras looked over a fence and saw O'Rourke standing perhaps a dozen feet away from some children and firing a gun. Kids were screaming and crying. Contreras said it looked like O'Rourke wasn't experienced with the gun because his arm kept jerking back and forth.

He and Kane (of Jamul) ran around some buildings toward O'Rourke, who saw them coming and fled, dropping bullets along the way.

O'Rourke jumped a fence and kept running until Partida jumped in his pickup, followed O'Rourke for about 400 feet and then rammed him with the vehicle, knocking him to the ground.

All three construction workers started hitting and kicking O'Rourke, who fought back. Partida said he took the revolver out of O'Rourke's hand.

"When we got control of the guy, we started looking through his jacket pockets. He had a bunch of bullets, a couple of extra (speed-loaders) for the gun and a flashlight," said Partida, who lives in the same apartment complex as Contreras.

Police showed up minutes later and took over. O'Rourke was arrested and is expected to be charged with six counts of attempted murder — one for each bullet he fired.

Contreras said he wasn't thinking about his own safety during the chase. "I think anybody would do that for the kids," he said.

When he got home late Friday night, his wife, Clara, had heard nothing about this day. She saw his swollen hand and Contreras told her he had been in a fight.

"She was mad and thought I might have been fired," he said. "Then I told her what happened and she started to cry and said I had done a good thing."

Clara Contreras said she thought her husband might have acted as he did because they have two children of their own. "They could have been one of ours," she said.

O'Rourke gave rambling statements after being arrested, nothing that explained a motive for his shooting, Cain said.

He also had spray-painted the walls of his apartment "with nonsensical writings," Cain added. Some of the material indicated that "he was mad at State Farm and AIG," two insurance companies. One wall had the word "Christian" emblazoned on it, while another had the word "destroy."

The apartment was relatively clean otherwise, Cain said. Investigators seized a few items from the second-floor unit, including a laptop computer.

"He was a loner as best as we can make out," Cain said. "Records show he had applied for a security guard license, but we didn't find any employer."

O'Rourke has lived in the Canyon Creek Apartments on Garrison Street near the intersection of Mesa Drive since March 2009. He was served with an eviction notice last month and told he would have to leave by December, neighbors said Saturday.

They described him as an odd man who often sat alone for hours at a picnic table sandwiched between two apartment buildings late at night, doing nothing but looking around.

They called police numerous times during the past 18 months because he would make tremendous amounts of noise in his apartment — as if he were hitting things with a baseball bat, one tenant said. Whenever officers showed up, they said, O'Rourke quieted down and wouldn't let them inside.

Vickie Rowe-Mitchell, who lives directly beneath O'Rourke's unit, said the stomping and banging would be so strong at times that her ceiling fan would shake and small parts of her ceiling would fall onto her bed. She also said O'Rourke would scream the "N" word over and over and yell obscenities for long periods of time.

"I just saw him yesterday morning," said Ashley Johnson, who lives directly across the hall from O'Rourke. "I was opening my door and he was just leaving. He closed his door really fast and there was this weird chemical smell."

Authorities said a propane tank was found next to O'Rourke's newer Crown Victoria parked near the school and that he had taken a small gas can onto the school grounds.

None of the neighbors knew what O'Rourke did for a living. Rowe-Mitchell said when he first moved in, he told her he was unemployed. A few months later, he apparently found a job and settled into a routine where he would leave the apartment early in the morning and return about 4 p.m. He stopped going to work this past week, the neighbors said.

Tenant Alex Sanchez said he was somewhat friendly with O'Rourke after they had a discussion about how O'Rourke had "hit on" his wife, not knowing she was married. He also said that a few months ago, O'Rourke got into a shouting match with some people who lived in the next building over.

"I guess he was trying to hit on a girl and some dudes got mad," Sanchez recalled. "Then I remember I spoke to him once and he said, 'I'm going to kill those guys.'"

On Friday, investigators stayed at the school until about 11 p.m. to collect evidence. They found four or five .357 rounds in the playground, the field, and possibly shattered against a piece of playground equipment. The authorities returned Saturday, combing the playground again and taking evidence photographs. They wrapped up at the school about 4 p.m.

Cain said investigators discovered no other weapons, no explosives other than a gas can and propane tank located Friday, no evidence of accomplices and no affiliation between O'Rourke and Kelly Elementary.

"We have no knowledge of any type of prior relationship with the school, its employees, parents, kids or teachers," Cain said. "Rumors circulated regarding the coincidence of this crime and the 'cancer cluster' issues at the site, but those have been unfounded."

jharry.jones@uniontrib.com (760) 752-6780 Twitter @jharryjones

--- Index References ---

Company: STATE FARM MUTUAL AUTOMOBILE INSURANCE CO; MAGNUM LTD; AMERICAN INTERNATIONAL GROUP INC

News Subject: (Fires (1FI90); Accidents & Injuries (1AC02); Crime (1CR87); Health & Family (1HE30); Burglary & Theft (1BU41); Violent Crime (1VI27); Social Issues (1SO05); Assault & Battery (1AS33))

Language: EN

Other Indexing: (Kelly Cain; Mario Contreras; Carlos Partida; Stephen Kane; Brendan Liam O'Rourke; Vickie Rowe-Mitchell; Ashley Johnson; Alex Sanchez; Clara Contreras)

Keywords: ARRESTS; ATTEMPT; CHILDREN; KILLINGS; SAN DIEGO; SCHOOLS (Mario Contreras)

Edition: First Edition

Word Count: 1159

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11/11/11 Denv. Post B02
2011 WLNR 23542464

Denver Post (CO)
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November 11, 2011

Section: DTW

School shooter gets max term of 18 months Bruco Eastwood, ruled legally insane in the Deer Creek attack, has already served his sentence.

Jessica Fender The Denver Post

Deer Creek Middle School shooter Bruco Eastwood got the maximum 18-month prison sentence Thursday for bringing a weapon onto school grounds, the single charge for which he was convicted after he shot two students in 2010.

He won't serve any time in prison, however. The 626 days Eastwood has already been held at the state mental hospital counts against the felony sentence.

Jefferson County District Judge Christopher Munch acknowledged his sentencing decision was largely "academic" but said it was important to send a message and to recognize the heroics of adults on campus Feb. 23, 2010, who prevented additional tragedy.

Eastwood, who will undergo treatment until doctors deem it safe to release him, spoke for the first time to a courtroom full of his victims' family members, his relatives and members of the school community.

"I'd like to say mea culpa," he said in rapid cadence. "Words can't express how sorry I am for my reaction to my mental illness. I'm really sorry for what's happened."

Jurors last month decided Eastwood was legally insane when he opened fire on students with his father's hunting rifle as school got out that day.

Thursday's sentencing brought some closure to the mothers of victims Matthew Thieu and Reagan Weber, if not satisfaction.

Patricia Nelson and Deborah Weber said Eastwood should spend time in prison. Nelson said her son Matthew occasionally has trouble breathing but that the toll the shooting has taken on his personality is more troubling.

"Matthew doesn't want to talk about it. He's got a lot of anger," Nelson said. "I'm just afraid that one day, he'll take it out in the wrong way."

Weber vowed to work to change state laws to allow criminals judged insane to spend time in prison once they're successfully treated.

Deer Creek math teacher David Benke, who tackled Eastwood as he reloaded the rifle, expressed some concern.

"I heard 'lifelong illness' and 'medication that doesn't always work,'" Benke said, referencing the defense's arguments. "I think those are all reasons why he should never get out. Who's going to follow him and makes sure he takes (his medications)?"

---- **Index References** ----

News Subject: (Criminal Law (1CR79); Judicial (1JU36); Crime (1CR87); Prisons (1PR87); Gun Rights & Regulations (1GU97); Violent Crime (1VI27); Death Penalty (1DE04); Social Issues (1SO05); Legal (1LE33); Murder & Manslaughter (1MU48))

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AP Alert - Texas

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January 23, 2010

Here is the latest Texas news from The Associated Press

AUSTIN, Texas_Bond is set at \$250,000 for a man who fired several shots outside the Texas Capitol. Court records show Fausto Cardenas was trying to reload his weapon when police confronted him and tackled him to the ground. He remained in Travis County's jail yesterday.

DALLAS (AP)_ Albert Reyes is the first non-Anglo president in Dallas-based Buckner International's 131-year history. Reyes will manage the social service agency's nearly \$100 million annual budget. The organization provides adoption and foster care, operates group homes, residential homes, community centers and retirement homes in Texas and internationally.

FORT WORTH, Texas (AP)_ Fort Worth-based American Airlines says the company will furlough up to 175 pilots _ about 2 percent of its 7,800 pilots _ in the first half of the year. American announced yesterday it sent notices to 80 pilots that they'll lose their jobs at the end of February.

AUSTIN, Texas (AP)_ A University of Texas library and museum has acquired 50 letters written by Jacqueline Kennedy Onassis to a colleague in the book publishing business. The letters, dated from 1978 to 1992, were written when Ray Roberts worked with the former first lady at Doubleday & Co. in New York, and when he was with Little, Brown and Company in Boston.

---- Index References ----

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November 15, 2013

Section: A

'I Was Just Sure They Just Wanted To Kill This Group of Persians'

J. DAVID GOODMAN and VIVIAN YEE

The first sound -- a muffled pop -- caused little alarm. It had come from somewhere on the third floor of a home in East Williamsburg, Brooklyn, shared by musicians from Iran.

The men had been unwinding with a routine video game of Internet pool, each comfortably ensconced in his own room, lazily playing before bed. The next sound came from one of the men, Arash Farazmand, who wondered aloud, "What's that?"

Two more blasts, now well inside the home, had the unmistakable thunder of weaponry. And then there was the sound of someone dying.

It was soon clear that a gunman was methodically moving through the house.

"He was stepping so fast," Pooya Hosseini recalled on Thursday, describing the deadly scene that unfolded just after midnight on Monday inside 318 Maujer Street and his confrontation with the gunman -- a fellow Iranian musician -- that enabled him to survive.

Three of his friends did not: two brothers who were members of the Yellow Dogs, a rock group of political refugees, and another musician.

When Mr. Hosseini, 28, began hearing the rampage unfold, he recalled, he feared that a man who had recently been renting a room in the house -- and who had spoken of his time in the Iraq war -- had gone crazy. He had no idea the gunman was Ali Akbar Mohammadi Rafie, a former member of Mr. Hosseini's band, the Free Keys.

All Mr. Hosseini knew, as he crouched in a corner of his third-floor room sheltered only by a laden coat rack, was that the gunman was now slowly climbing upstairs. He wanted to call the police but could only recall the 1-1-0 number for the police in Tehran.

"That was the worst moment in my life," he said. "I was just sure they just wanted to kill this group of Persians."

Mr. Hosseini listened to the gunfire. Then his door crashed open.

First all he saw was the gun, and then he focused on Mr. Rafie's face, wild-eyed, not with anger but with a strange beatific purpose, an almost happy demeanor.

" 'You think my bullets are not going to go through those coats and your body and the wall?' " Mr. Hosseini recalled, using English to recount Mr. Rafie's words, which had been spoken in Persian. "I said, 'Definitely, sure, but don't kill me. Just let me talk to you.' "

For the next several minutes, they spoke, Mr. Rafie, pointing the end of a .308 caliber, Spanish-made assault rifle at Mr. Hosseini, still crouched on the floor.

"He asked me, 'What happened to us?' " Mr. Hosseini recalled.

The two had been friends in Iran, playing music together and accompanying each other on mountain bike rides in the hills north of their Tehran homes. They came to the United States together, hoping to find musical freedom in Brooklyn.

But almost from the moment the men arrived together at Kennedy Airport in December 2011, relations were fraying. Mr. Rafie made little money as a bicycle messenger and began to steal things. He would hop turnstiles, frightening Mr. Hosseini and others who were seeking asylum and trying to assiduously follow the rules.

After about five months, the men kicked Mr. Rafie out of the band and stopped living with him. Mr. Hosseini said that, apart from a text message a few months ago, the two men had not spoken.

Amir Khosravani, 26, who was part of the same musical underground in Tehran, said he had spoken with Mr. Rafie recently. Though the others would complain that Mr. Rafie owed them money, Mr. Rafie always maintained he did not. "He told me, 'O.K., I have a job, and I have everything -- they don't have anything, I have a new job and I have a girlfriend,' " Mr. Khosravani recalled.

Recently things got worse.

Mr. Rafie began making extremely paranoid statements, Mr. Khosravani said, and described working for the Freemasons. Mr. Rafie said he was being prepared for a secret mission to blow up a government building in New York.

In the last few weeks, however, Mr. Khosravani thought Mr. Rafie was getting better; he did not call as he usually had when he was feeling despondent. When Mr. Rafie posted a photo of a rifle on Facebook and seemed to threaten Anthony Azar, the bassist who had replaced him in the Free Keys, Mr. Khosravani did not alert the others, assuming it was a joke.

It was not. Mr. Rafie walked across adjacent rooftops Monday night to get to the house on Maujer Street. Through a third-floor balcony window, he shot and killed Ali Eskandarian, 35. Then he marched through the home, killing Arash Farazmand, 28, on the third floor, and his brother Soroush Farazmand, 27, on the second floor, before returning upstairs.

Gripping the gun in Mr. Hosseini's room, Mr. Rafie rattled off personal grievances and a bizarre conspiracy theory. "He said, 'You had a plan to bring me here and put me in a band, but you did it just to bring me here and fix me with a group of Freemasonry,' " Mr. Hosseini recalled the gunman saying.

As Mr. Rafie's eyes settled on a spot just above Mr. Hosseini, he announced, "I need to kill you and then I need to kill myself. This is what I have to do. This is what I have to do."

Mr. Hosseini began speaking rapidly, certain that if he stopped, he would be killed. "I said, 'Don't kill me! Don't kill me! Let me talk and then do it,' " he said. After a minute, Mr. Rafie ordered him to "come out and stand up."

Chest to chest, only the gun between them, the men spoke for three or four more minutes, Mr. Hosseini said. "I was just saying whatever came to my mind. To just make the time pass because I heard the cops," he said.

Mr. Rafie heard the sirens, too. When Mr. Rafie turned his head, Mr. Hosseini grabbed the barrel of the gun and, as they wrestled over the weapon for several moments, bullets sprayed into the ceiling and the floor. "He was turning the gun everywhere," he said. Then the clip was empty and there was blood on both men. Mr. Hosseini knew he had not been hit but decided to seize the moment.

"I just screamed so bad in his face -- 'You shot me in my stomach!' -- and he got shocked," he said. Mr. Hosseini then tackled Mr. Rafie, knocking him onto a bed, and pressed his knee on his arm, preventing him from reloading. An extra magazine fell to the floor.

The men rose and Mr. Rafie, carrying additional ammunition, headed for the roof, trying unsuccessfully to drag Mr. Hosseini with him. But Mr. Rafie heard the police outside and instead ran alone through the roof door, which Mr. Hosseini rushed up to lock.

Mr. Hosseini then descended to the first floor where he encountered the police. A few moments later a single gunshot could be heard from the roof.

Mr. Rafie was dead.

"I really wish he didn't kill himself," Mr. Hosseini said. "When somebody kills himself, he makes it easy for himself. I didn't want it to be easy. I wish he was in jail for all of his life."

PHOTOS: Pooya Hosseini, who fought off a former bandmate who had already killed three men, speaking with the police after the shootings on Monday. (PHOTOGRAPH BY ELLEN MOYNIHAN); Ali Akbar Mohammadi Rafie

---- Index References ----

News Subject: (Crime (1CR87); Murder & Manslaughter (1MU48); Social Issues (1SO05); Violent Crime (1VI27))

Industry: (Entertainment (1EN08); Music (1MU57))

Region: (Americas (1AM92); Asia (1AS61); Gulf States (1GU47); Iran (1IR40); Middle East (1MI23); New York (1NE72); North America (1NO39); U.S. Mid-Atlantic Region (1MI18); USA (1US73); Western Asia (1WE54))

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EXHIBIT 6

**Declaration of Roderick M. Thompson in
Support of Sunnyvale's Opposition to
Plaintiffs' Motion for Preliminary
Injunction**



DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
WASHINGTON, D.C. 20226

JUL 06 1989

MEMORANDUM TO: Director

FROM: Associate Director (Compliance Operations)

SUBJECT: Report and Recommendation on the
Importability of Certain Semiautomatic Rifles

The working group has completed its evaluation of the semiautomatic rifles whose importation was suspended pending a determination as to whether these weapons are, as required by 18 U.S.C. § 925(d)(3), of a type "generally recognized as particularly suitable for or readily adaptable to sporting purposes".

Attached for your review and approval is the report and recommendation on the importability of these rifles.


Daniel Black

Attachment

Approved: Stephen E. Higgins 7/6/89

Disapprove: _____

**REPORT AND RECOMMENDATION OF THE ATF WORKING GROUP
ON THE IMPORTABILITY OF CERTAIN
SEMIAUTOMATIC RIFLES**

SUSPENSION OF ASSAULT-TYPE RIFLE IMPORTATIONS

On March 14, 1989, ATF announced that it was suspending, effective immediately, the importation of several makes of assault-type rifles, pending a decision as to whether these weapons meet the statutory test that they are of a type generally recognized as particularly suitable for or readily adaptable to sporting purposes. The announcement stated that ATF would not approve, until further notice, the importation of AKS-type weapons, Uzi carbines, FN/FAL-type weapons, FN/FNC-type weapons and Steyr Aug semiautomatic weapons. On April 5, 1989, the suspension was expanded to include all similar assault-type rifles.

For purposes of this suspension, assault-type rifles were rifles which generally met the following criteria:

- a. military appearance
- b. large magazine capacity
- c. semiautomatic version of a machinegun

Based on these criteria, ATF suspended action on pending applications and suspended outstanding permits covering certain firearms listed in Attachment 1. These included both centerfire and .22 rimfire caliber firearms. At that time, ATF indicated that the reexamination of these weapons would take approximately 90 days.

This ATF working group was established to conduct the reevaluation of the importability of these semiautomatic rifles. This report represents the findings and recommendations of the working group.

BACKGROUND

Section 925(d)(3) of Title 18, United States Code, as amended, provides in pertinent part that:

The Secretary shall authorize a firearm. . .to be imported or brought into the United States . . . if the firearm . . .

(3) is of a type that does not fall within the definition of a firearm as defined in section 5845(a) of the Internal Revenue Code of 1954 and is generally recognized as particularly suitable for or readily

adaptable to sporting purposes, excluding surplus
military firearms. . .

This provision was originally enacted by Title IV of the Omnibus Crime Control and Safe Streets Act of 1968, and was also contained in Title I of the Gun Control Act of 1968, which amended Title IV later that year. According to the Senate Report on Title IV, this provision was intended to “curb the flow of surplus military weapons and other firearms being brought into the United States which are not particularly suitable for target shooting or hunting.” S. Rep. No. 1097, 90th Cong. 2d Sess. 80, 1968 U.S. Code Cong. and Admin. News 2112, 2167.

Moreover, there is legislative history which indicates that Congress intended the standard to allow the importation of traditional sporting rifles, while excluding military-type rifles. The Senate Report on the Gun Control Act observed that the importation standards “. . . are designed and intended to provide for the importation of quality made, sporting firearms, including . . . rifles such as those manufactured and imported by Browning and other such manufacturers and importers of firearms.” S. Rep. No. 1501, 90th Cong. 2d Sess. 38 (1968). Significantly, the rifles being imported by Browning at that time were semiautomatic and manually operated traditional sporting rifles of high quality.¹

An explanation of the effect of this section by one of the sponsors of the bill specifically stated that military firearms would not meet the “sporting purposes” test for importation. The mere fact that a military firearm may be used in a sporting event does not make it importable as a sporting firearm².

There is a reference in the Senate Report on Title IV which notes that the importation prohibition “. . . would not interfere with the bringing in of currently produced firearms, such as rifles . . . of recognized quality which are used for hunting and for recreational purposes, or for personal protection.” S. Rep. No. 1097, 90th Cong. 2d Sess. 80, 1968 U.S. Code Cong. and Admin. News 2112, 2167. However, this language is not inconsistent with the expressed purpose of restricting importation to firearms particularly suitable for target shooting or hunting since firearms particularly suitable for those purposes can obviously be used for other purposes such as recreational shooting and personal protection.

The determination of a weapon’s suitability for sporting purposes “rest[s] directly with the Secretary of the Treasury.” 114 Cong. Rec. 27465 (1968) (Statement of Sen. Murphy). While the legislative history suggests that the term “sporting purposes” refers to the traditional sports of target shooting, trap and skeet shooting, and hunting, the statute itself provides no criteria beyond the “generally recognized” language of section 925(d)(3). S. Rep. No. 1097, 90th Cong. 2d Sess. 80, 1968 U.S. Code Cong. and Admin. News 2167. The Senate Report on the Gun Control Act stated:

The difficulty of defining weapons characteristics to meet this target [of eliminating importation of weapons used in crime] without discriminating against sporting quality firearms, was a major reason why the Secretary of the Treasury has been given fairly broad discretion in defining and administering the import prohibition.

S. Rep. No. 1501, 90th Cong. 2d Sess. 38 (1968).

Following enactment of the Gun Control Act in 1968, the Secretary established a Firearms Evaluation Panel to provide guidelines for implementation of the “sporting purposes” test of section 925(d)(3). This panel was composed of representatives from the military, law enforcement, and the firearms industry. The panel focused its attention on handguns and recommended the adoption of factoring criteria to evaluate the various types of handguns. These factoring criteria are based upon such considerations as overall length of the firearm, caliber, safety features, and frame construction. An evaluation sheet (ATF Form 4590) was developed thereafter by ATF and put into use for evaluating handguns pursuant to section 925(d)(3). Attachment 2.

The 1968 Firearms Evaluation Panel did not propose criteria for evaluating rifles and shotguns under section 925(d)(3). Other than surplus military firearms which Congress addressed separately, long guns being imported prior to 1968 were generally conventional rifles and shotguns specifically intended for sporting purposes. Thus, in 1968, there was no cause to develop criteria for evaluating the sporting purposes of rifles and shotguns. Until recently, all rifles and shotguns were approved for importation so long as they were not otherwise excluded by section 925(d)(3). Only rifles and shotguns covered by the National Firearms Act (NFA), 26 U.S.C. S 5845(a) (for example, machineguns and short-barreled rifles and short-barreled shotguns), and surplus military rifles and shotguns had been denied importation.

The Firearms Evaluation Panel did briefly comment on whether a model BM59 Beretta, 7.62mm NATO Caliber Sporter Version Rifle was suitable for sporting purposes. Minutes of the Firearms Advisory Panel, December 10, 1968. Attachment 3. It was the consensus of the Panel that this rifle did have a particular use in target shooting and hunting. Accordingly, it was recommended that importation of the Beretta BM59, together with the SIG-AMT 7.62mm NATO Caliber Sporting Rifle and the Cetme 7.62mm NATO Caliber Sporting Rifle, be authorized for importation. (The Beretta BM59 and the Cetme, the predecessor to the HK91, are two of the rifles whose importation has been suspended. The SIG-AMT is no longer being produced.) However, the Panel recommended that importation of these weapons should include the restriction that they not possess combination flash suppressors/grenade launchers.

The working group found the Panel’s consideration of these rifles to be superficial and unpersuasive. The vast majority of the work of the 1968 Panel was devoted to handguns and the establishment of the factoring criteria for the importation of handguns. Indeed, we found compelling evidence that these rifles are not generally recognized as particularly suitable for sporting purposes.

The first time that ATF looked beyond the restrictions on NFA and surplus military rifles and shotguns and undertook a meaningful analysis under the “sporting purposes” test was in 1984. At that time, ATF was faced with a new breed of imported shotgun. It was clear that the historical assumption that all shotguns were sporting was no longer viable. Specifically, ATF was asked to determine whether the Striker-12 shotgun was suitable for sporting purposes. This shotgun is a military/law enforcement weapon initially designed and manufactured in South Africa for riot control. When the importer was asked to provide evidence of sporting purposes for the weapon, ATF was provided information that the weapon was suitable for police/combat style competitions. ATF determined that this type of competition did not constitute “sporting purposes” under the statute, and that this shotgun was not suitable for traditional sporting purposes, such as hunting, and trap and skeet shooting. Accordingly, importation was denied. Attachment 4.

Thereafter, in 1986, the Gilbert Equipment Company requested that the USAS-12 shotgun be classified as a sporting firearm under section 925(d)(3). After examination and testing of the weapon, ATF found that it was a semiautomatic version of a selective fire military-type assault shotgun. In this case, ATF determined that, due to its weight, size, bulk, designed magazine capacity, configuration, and other factors, the USAS-12 was not particularly suitable for or readily adaptable to sporting purposes. Again, ATF refused to recognize police/combat competitions as a sporting purpose under section 925(d)(3). The shotgun was reviewed on the basis of its suitability for traditional shotgun sports of hunting, and trap and skeet shooting and its importation was denied. Attachment 5. This decision was upheld by the United States District Court in Gilbert Equipment Company, Inc. v. Higgins, 709 F. Supp. 1071 (S.D. Ala. 1989). The case is currently on appeal to the Eleventh Circuit.

These two cases involving shotguns represent ATF's first thorough examination of the suitability of certain combat-type weapons for sporting purposes. In these cases ATF adopted an interpretation of sporting as being limited to certain traditional sports and not simply any lawful activity in which the weapons might be employed.

ANALYSIS

A. Defining the type of weapon under review.

As noted above, section 925(d)(3) expressly provides that the Secretary shall authorize the importation of a firearm that is of a type that is generally recognized as particularly suitable for sporting purposes. The legislative history also makes it clear that the Secretary shall scrutinize types of firearms in exercising his authority under section 925(d). Specifically, in its explanation of section 925(d)(3), the Senate Report on the Gun Control Act stated:

This subsection gives the Secretary authority to permit the importation of ammunition and certain types of firearms--(1) those imported for scientific or research purposes or for use in competition or training under chapter 401 of title 10 of the United States Code; (2) an unserviceable firearm other than a machinegun; (3) those firearms not coming within the purview of the National Firearms Act (26 U.S.C. 5801, et seq.) and suitable for sporting purposes (in the case of surplus military weapons this type is limited to shotguns and rifles) and those taken out of the United States. (Emphasis added.)

S. Rep. No. 1501, 90th Cong. 2d Sess. 38 (1968).

In light of the statutory mandate that types of firearms be scrutinized, the working group first attempted to determine whether the semiautomatic rifles suspended from importation fall within a type of firearm.

The working group determined that the semiautomatic rifles in question are generally semiautomatic versions of true selective fire military assault rifles.³ As a class or type of firearm they are often referred to as "assault rifles," "assault-type rifles," "military style rifles," or "paramilitary rifles."⁴ Since we are only concerned with semiautomatic rifles, it is somewhat of a misnomer to refer to these weapons as "assault rifles." True assault rifles are selective fire

weapons that will fire in a fully automatic mode.⁵ For the purposes of this paper, it was necessary to settle on one term that best describes the weapons under consideration, and we will refer to these weapons as “semiautomatic assault rifles.” They represent a distinctive type of rifle distinguished by certain general characteristics which are common to the modern military assault rifle. The modern military assault rifle, such as the U.S. M16, German G3, Belgian FN/FAL, and Soviet AK47, is a weapon designed for killing or disabling the enemy and, as described below, has characteristics designed to accomplish this purpose.

We found that the modern military assault rifle contains a variety of physical features and characteristics designed for military applications which distinguishes it from traditional sporting rifles.⁶ These military features and characteristics (other than selective fire) are carried over to the semiautomatic versions of the original military rifle. These features and characteristics are as follows:

1. Military Configuration.

- a. Ability to accept a detachable magazine. Virtually all modern military firearms are designed to accept large, detachable magazines.⁷ This provides the soldier with a fairly large ammunition supply and the ability to rapidly reload. Thus, large capacity magazines are indicative of military firearms. While detachable magazines are not limited to military firearms, most traditional semiautomatic sporting firearms, designed to accommodate a detachable magazine, have a relatively small magazine capacity. In addition, some States have a limit on the magazine capacity allowed for hunting, usually 8 rounds or less.⁸ That a firearm is designed and sold with a large capacity magazine, e.g., 20-30 rounds, is a factor to be considered in determining whether a firearm is a semiautomatic assault rifle.
- b. Folding/telescoping stocks. Many military firearms incorporate folding or telescoping stocks.⁹ The main advantage of this item is portability, especially for airborne troops. These stocks allow the firearm to be fired from the folded position, yet it cannot be fired nearly as accurately as with an open stock. With respect to possible sporting uses of this feature, the folding stock makes it easier to carry the firearm when hiking or backpacking. However, its predominant advantage is for military purposes, and it is normally not found on the traditional sporting rifle.
- c. Pistol grips. The vast majority of military firearms employ a well-defined pistol grip that protrudes conspicuously beneath the action of the weapon.¹⁰ In most cases, the “straight line design” of the military weapon dictates a grip of this type so that the shooter can hold and fire the weapon. Further, a pistol grip can be an aid in one-handed firing of the weapon in a combat situation. Further, such grips were designed to assist in controlling machineguns during automatic fire. On the other hand, the vast majority of sporting firearms employ a more traditional pistol grip built into the wrist of the stock of the firearm since one-handed shooting is not usually employed in hunting or competitive target competitions.
- d. Ability to accept a bayonet. A bayonet has distinct military purposes.¹¹ First, it has a psychological affect on the enemy. Second, it enables soldiers to fight in close quarters

with a knife attached to their rifles. We know of no traditional sporting application for a bayonet.

- e. Flash suppressor. A flash suppressor generally serves one or two functions. First, in military firearms it disperses the muzzle flash when the firearm is fired to help conceal the shooter's position, especially at night. A second purpose of some flash suppressors is to assist in controlling the "muzzle climb" of the rifle, particularly when fired fully automatic.¹² From the standpoint of a traditional sporting firearm, there is no particular benefit in suppressing muzzle flash. Those flash suppressors which also serve to dampen "muzzle climb" have a limited benefit in sporting uses by allowing the shooter to reacquire the target for a second shot. However, the barrel of a sporting rifle can be modified by "magna-porting" to achieve the same result. There are also muzzle attachments for sporting firearms to assist in the reduction of muzzle climb. In the case of military-style weapons that have flash suppressors incorporated in their design, the mere removal of the flash suppressor may have an adverse impact on the accuracy of the firearm.
- f. Bipods. The majority of military firearms have bipods as an integral part of the firearm or contain specific mounting points to which bipods may be attached.¹³ The military utility of the bipod is primarily to provide stability and support for the weapon when fired from the prone position, especially when fired fully automatic. Bipods are available accessory items for sporting rifles and are used primarily in long-range shooting to enhance stability. However, traditional sporting rifles do not come equipped with bipods, nor are they specifically designed to accommodate them. Instead, bipods for sporting firearms are generally designed to attach to a detachable "sling swivel mount" or simply clamp onto the firearm.
- g. Grenade launcher. Grenade launchers are incorporated in the majority of military firearms as a device to facilitate the launching of explosive grenades.¹⁴ Such launchers are generally of two types. The first type is a flash suppressor designed to function as a grenade launcher. The second type attaches to the barrel of the rifle either by screws or clamps. We are not aware of any particular sporting use for grenade launchers.
- h. Night sights. Many military firearms are equipped with luminous sights to facilitate sight alignment and target acquisition in poor light or darkness.¹⁵ Their uses are generally for military and law enforcement purposes and are not usually found on sporting firearms since it is generally illegal to hunt at night.

2. Whether the weapon is a semiautomatic version of a machinegun.

The vast majority of modern military firearms are selective fire, *i.e.*, they can shoot either fully automatic or semiautomatic. Since machineguns are prohibited from importation (except for law enforcement use) the manufacturers of such weapons have developed semiautomatic versions of these firearms.¹⁶

3. Whether the rifle is chambered to accept a centerfire cartridge case having a length of 2.25 inches or less.

Modern military assault rifles and submachineguns are generally chambered to accept a centerfire cartridge case of 2.25 inches or less.¹⁷ On the other hand, while many traditional sporting rifles will fire a cartridge of 2.25 inches or less, such firearms usually do not have the other military features outlined in Items 1a-h.

These features and characteristics are not usually found on traditional sporting firearms.¹⁸ This is not to say that a particular rifle having one or more of the listed features should necessarily be classified as a semiautomatic assault rifle. Indeed, many traditional sporting firearms are semiautomatic or have detachable magazines. Thus, the criteria must be viewed in total to determine whether the overall configuration places the rifle fairly within the semiautomatic assault rifle category.

Using these criteria, we determined that, on balance, all of the firearms on the original suspension list are properly included in the semiautomatic assault rifle category, with the exception of the .22 rimfire caliber rifles and the Valmet Hunter. While the .22 rimfire caliber rifles bear a striking resemblance to the true assault rifle, these rifles employ, by and large, conventional .22 rimfire caliber semiautomatic mechanisms.¹⁹ Moreover, they are not semiautomatic versions of a machinegun and contain only a few of the other relevant characteristics. Further, the working group determined that, in general, .22 caliber rifles are generally recognized as suitable for small game hunting. The Valmet Hunter, while based on the operating mechanism of the AK47 assault rifle, has been substantially changed so that it is now akin to a traditional sporting rifle and does not properly fall within the semiautomatic assault rifle category. More specifically, its receiver has been modified and its pistol grips, bayonet, and flash suppressor have been removed. The trigger mechanism has been moved to the rear of the modified receiver to facilitate its use with a traditional sporting stock. Also, its military-style sights have been replaced with traditional sporting-style sights. See Attachment 6.

B. Scope of “Sporting Purposes”.

The second step of our process was to determine the scope of “sporting purposes” as used in the statute. This is a critical aspect of the process. The broadest interpretation could take in virtually any lawful activity or competition which any person or groups of persons might undertake. Under this interpretation, any rifle could meet the “sporting purposes” test. A narrower interpretation which focuses on the traditional sports of hunting and organized marksmanship competition would result in a more selective importation process.²⁰

To determine the proper interpretation, we consulted the statute itself, its legislative history, applicable case law, the work of the original Firearms Evaluation Panel, and prior interpretations by ATF. In terms of the statute itself, the structure of the importation provisions would suggest a somewhat narrow interpretation. In this regard, firearms are prohibited from importation (section 922(1)) with certain specific exceptions (section 925(d)(3)). A broad interpretation which permits virtually any firearm to be imported because someone may wish to use it in some lawful shooting activity would render the statute meaningless.

As discussed earlier, the legislative history suggests a narrow meaning and indicates that the term “sporting purposes” refers to the traditional sports of target shooting, skeet and trap shooting, and hunting. Moreover, the history discussed earlier strongly suggests that Congress intended the provision to allow the importation of traditional sporting type rifles while excluding military type rifles. There is nothing in its history to indicate that it was intended to recognize every conceivable

type of activity or competition which might employ a firearm. To the contrary, the history indicates that mere use in some competition would not make the rifle a sporting rifle.

Finally, the 1968 Firearms Evaluation Panel specifically addressed at least one informal shooting activity and determined that it was not a legitimate sporting purpose under the statute. The panel addressed what is commonly referred to as “plinking” (shooting at randomly selected targets such as bottles and cans). It was the Panel’s view that “while many persons participated in this type of activity and much ammunition was expended in such endeavors, it was primarily a pastime and could not be considered a sport for the purposes of importation. . .” See Attachment 3.

Based on the above, the working group determined that the term “sporting purpose” should properly be given a narrow reading. It was determined that while hunting has been a recognized rifle sport for centuries, and competitive target shooting is a recognized rifle sport, the so-called activity of plinking is not a recognized sport. Moreover, we believe that reference to sporting purposes was intended also to stand in contrast to military and law enforcement applications. Consequently, the working group does not

believe that police/combat-type competitions should be treated as sporting activities. This position is supported by the court’s decision in Gilbert Equipment Company, Inc., v Higgins, 709 F. Supp. 1071 (S.D. Ala. 1989) and is consistent with prior interpretations of ATF as noted on pages 4 and 5 in discussing the Striker-12 shotgun and USAS-12 shotgun.

C. Suitability.

The final step in our review involved an evaluation of whether semiautomatic assault rifles are a type of rifle generally recognized as particularly suitable for or readily adaptable to the traditional sporting applications discussed above.

The criminal misuse of semiautomatic assault rifles is a matter of significant public concern and was an important factor in the decision to suspend their importation. Nevertheless, the working group did not consider criminal misuse as a factor in its analysis of the importability of this type of rifle. Instead, the working group confined its analysis to the question of whether this type of rifle meets the test provided in section 925(d)(3).

Rather than criminal misuse, our comprehensive examination of this issue focused on the legal analysis and technical assessment of these firearms discussed earlier. In addition, the working group used the information gathered under Items 1-7 outlined in the next section in determining whether this type of firearm is generally recognized as particularly suitable for sporting purposes. These items take into account technical and marketing data, expert opinions, the recommended uses of the firearms, and data on the actual uses for which the weapons are employed in this country.

In evaluating these firearms, we believe that all rifles which are fairly typed as semiautomatic assault rifles should be treated the same. Therefore, the fact that there may be some evidence that a particular rifle of this type is used or recommended for sporting purposes should not control its importability.²¹ Rather, all findings as to suitability of these rifles as a whole should govern each rifle within this type.

This is consistent with the approach taken with respect to handguns since 1968. Although certain handguns may be used or recommended for sporting purposes, they may fall within the type of easily concealable handguns barred from importation by the administrative factoring criteria used by ATF to determine the importability of handguns. Furthermore, a pistol specifically designed for target shooting, but lacking a safety as required by the factoring criteria, would be a type of handgun prohibited from importation as not particularly suitable for sporting purposes for this reason. Finally, just as ATF allows handguns to be modified so as to meet the factoring criteria, a semiautomatic assault rifle could be modified into a sporting configuration and be importable, as was done in the case of the Valmet Hunter referred to earlier.

D. Evaluation of Information from Outside Sources

As part of our comprehensive analysis as to whether semiautomatic assault rifles meet the statutory criteria for importation, the following sources of information were also considered:

1. How has the weapon been advertised, marketed and categorized by the manufacturer and/or importer?
2. How has the use of the rifle been described by firearms technical writers?
3. What is the rifle's reported use by importers?
4. Do hunting guides recommend the rifle?
5. Do editors of hunting magazines recommend the rifle?
6. Is the rifle used in target shooting competitions?
7. Do State game commissions allow the use of the rifle to hunt?

Items 1-6 focus upon how the rifles are marketed, advertised, and recommended for use. Item 7 addresses the legal restrictions pertaining to the use of the weapons for sporting purposes.

The working group reviewed the advertising and marketing literature concerning each of the weapons (Item 1) and reviewed evaluations of the firearms by technical writers (Item 2). In addition, the working group solicited information from the importers of the weapons and other knowledgeable sources (Items 3-6).

Questionnaires were drafted and sent out to licensed hunting guides, State game and fish commissions, local hunting associations, competitive shooting groups, and hunting/shooting magazine editors to determine the extent to which the weapons are used for sporting purposes or recommended for such use. The working group believed that the actual uses of the weapons for sporting purposes would be a factor to be considered in determining whether this type of rifle meets the sporting purposes test.

The review of advertising and marketing literature indicates that these rifles are not generally marketed for hunting or competitive shooting. The review of the technical evaluations revealed that these rifles are not regarded as suitable for these sporting activities.²²

To the extent that the technical evaluations made recommendations with respect to the use of the rifles suspended from importation, the majority recommended them for law enforcement or military use or for activities such as collecting, plinking, home and self-defense, and combat target shooting. Only 5 of over 50 evaluations reviewed contained recommendations for the use of these firearms for hunting purposes.

The importers were asked to submit information concerning the sporting uses of the semiautomatic rifles they import. Thirty-nine importers were asked to submit this information and 19 responded. In general, their comments were conclusory and stated that their weapons could be used for sporting purposes. A small number of importers, e.g., Gun South, Inc., and Heckler & Koch, Inc., provided more specific data showing the sporting uses made of their firearms by their customers.

Of 3 hunting associations to whom questionnaires were sent, 2 responded. They stated that they place no restrictions on the use of semiautomatic rifles by their members, on the minimum caliber of ammunition used to hunt large game, or on the number of rounds allowed in semiautomatic rifle magazines. However, over 1,800 hunting guides were sent questionnaires and, of these, 706 responded. Over 73 percent of those responding indicated that their patrons used either bolt or lever action rifles for hunting. Only 10 of the 706 guides indicated that their patrons had used any of the rifles whose importation had been temporarily suspended.

Of the 20 hunting/shooting editors to whom questionnaires were sent, 14 responded. Nine of the fourteen editors recommended semiautomatic rifles for use in hunting large game, including 5 who recommended use of any of the rifles subject to the temporary suspension. Eleven of the fourteen editors recommended semiautomatic rifles for target competitions, including 7 who recommended semiautomatic assault rifles for such use.

The recommendations of editors were contradictory. One editor pointed out that what made the assault rifle successful as a military weapon made the semiautomatic version totally unfit for any other use. On the other hand, another editor stated that semiautomatic rifles had certain advantages over conventional sporting rifles especially for the physically disabled and left-handed shooters. While this may be true, there appears to be no advantage to using a semiautomatic assault rifle as opposed to a semiautomatic sporting rifle.

A total of 54 competitive shooting groups were sent a questionnaire and 53 groups responded (some of the responses were from unsolicited groups). Fifty of these groups indicated that they sponsor high power rifle competition events. While none of the groups prohibited the use of the semiautomatic assault rifles in their competitions, none stated that any of the rifles covered by the temporary suspension were used in a specific event.

Finally, the information gathered under Item 7 reveals that most of these weapons could legally be used in most States for most hunting purposes.

The working group reviewed all of the information gathered under Items 1-6 and determined that while these weapons may legally be used for sporting purposes in most States, the evidence was compelling that, as a type of firearm, the semiautomatic assault rifle is not generally recognized as particularly suitable for sporting purposes. The working group found persuasive the technical and expert evaluations of these firearms which generally did not recommend them as particularly suitable for sporting purposes. The group was also impressed by the comments of the hunting guides which showed that these rifles were not widely used for hunting purposes. The comments of the hunting guides are consistent with the opinion of the technical experts who generally do not recommend the rifles for hunting purposes.

The opinions of the editors were fairly divided with respect to the sporting uses of these rifles. The importers generally recommended their own weapons for such uses. The competitive shooting groups indicated that the rifles could be used in certain shooting events. Thus, while there was some evidence that these rifles could be used for hunting and target shooting, there was no evidence of any widespread use for such purposes. The mere fact that they are not generally prohibited from use for sporting purposes does not mean that the rifles meet the test for importation.

CONCLUSIONS

The working group has dealt with a complex issue, the resolution of which has required the group to take into account interpretations of law, technical assessments of firearms and their physical characteristics, marketing data, the assessment of data compiled from responses to questionnaires and, finally, Bureau expertise with respect to firearms. We fully recognize that particular findings as well as the results will be controversial.

From the cross section of representation within ATF, we have brought to bear our technical, legal, and administrative expertise to resolve the issues in what we believe to be a fair manner, taking into consideration all points of view. While some of the issues were difficult to resolve, in the end we believe that the ultimate conclusion is clear and compelling. These semiautomatic assault rifles were designed and intended to be particularly suitable for combat rather than sporting applications. While these weapons can be used, and indeed may be used by some, for hunting and target shooting, we believe it is clear that they are not generally recognized as particularly suitable for these purposes.

The purpose of section 925(d)(3) was to make a limited exception to the general prohibition on the importation of firearms, to preserve the sportsman's right to sporting firearms. This decision will in no way preclude the importation of true sporting firearms. It will only prevent the importation of military-style firearms which, although popular among some gun owners for collection, self-defense, combat competitions, or plinking, simply cannot be fairly characterized as sporting rifles.

Therefore, it is the finding of the working group that the semiautomatic assault rifle is not a type of firearm generally recognized as particularly suitable for or readily adaptable to sporting purposes and that importation of these rifles should not be authorized under 18 U.S.C. § 925(d)(3).

Based on our evaluation, we recommend that the firearms listed on Attachment 7 not be authorized for importation. For the reasons discussed in this report, we recommend that the firearms listed on Attachment 8 be authorized for importation. These are the .22 rimfire caliber rifles and the Valmet Hunter which we do not believe are properly included in the category of semiautomatic assault rifles. Attachment 9 is a compilation of the responses from the questionnaires. Attachment 10 combines the criteria for identifying semiautomatic assault rifles and the items considered in assessing suitability. Attachments 11 and 12 contain the data compiled for each of the criteria listed in Attachment 10. Finally, Attachment 13 contains the source materials used in locating persons and organizations who were sent questionnaires.

NOTES

1. Paul Wahl, ed., Gun Trader's Guide, 13th Edition, (South Hackensack, NJ. 1987), 155-162.
2. Although a firearm might be recognized as "suitable" for use in traditional sports, it would not meet the statutory criteria unless it were recognized as particularly suitable for such use. Indeed, Senator Dodd made clear that the intent of the legislation was to "[regulate] the importation of firearms by excluding surplus military handguns; and rifles and shotguns that are not truly suitable for sporting purposes." 114 Cong. Rec. 13325 (1968) (Statement of Sen. Dodd) [emphasis added].

Similarly, it is apparent that the drafters of the legislation did not intend for "sports" to include every conceivable type of activity or competition which might employ a firearm; otherwise a "sporting purpose" could be advanced for every firearm sought to be imported. For example, in response to Sen. Hansen's question concerning the meaning of "sporting purposes" in the bill which became section 925(d), Senators Dodd and Hansen engaged in the following colloquy:

Mr. HANSEN. Would the Olympic shooting competition be a "sporting purpose?"

Mr. DODD. I would think so.

Mr. HANSEN. What about trap and skeet shooting?

Mr. DODD. I would think so. I would think trap and skeet shooting would certainly be a sporting activity.

Mr. HANSEN. Would the Camp Perry national matches be considered a "sporting purpose?"

Mr. DODD. Yes: that would not [sic] fall in that arena. It should be described as a sporting purpose.

Mr. HANSEN. I understand the only difference is in the type of firearms used at Camp Perry which includes a wide variety of military types as well as commercial.

Would all of these firearms be classified as weapons constituting a “sporting purpose?”

Mr. DODD. No. I would not say so. I think when we get into that, we definitely get into military type of weapon for use in matches like these at Camp Perry; but I do not think it is generally described as a sporting weapon. It is a military weapon. I assume they have certain types of competition in which they use these military weapons as they would in an otherwise completely sporting event. I do not think that fact would change the nature of the weapon from a military to a sporting one.

Mr. HANSEN. Is it not true that military weapons are used in Olympic competition also?

Mr. DODD. I do not know. Perhaps the Senator can tell me. I am not well informed on that.

Mr. HANSEN. It is my understanding that they are. Would the Senator be inclined to modify his response if I say that is true? (27461)

Mr. DODD. It is not that I doubt the Senator’s word. Here again I would have to say that if a military weapon is used in a special sporting event, it does not become a sporting weapon. It is a military weapon used in a special sporting event. I think the Senator would agree with that. I do not know how else we could describe it.

Mr. HANSEN. If I understand the Senator correctly, he said that despite the fact that a military weapon may be used in a sporting event it did not, by that action become a sporting rifle Is that correct?

Mr. DODD. That would seem right to me As I said previously the language says no firearms will be admitted into this country unless they are genuine sporting weapons..... I think the Senator and I know what a genuine sporting gun is.

114 Cong. Rec. 27461-62 (1968).(Emphasis added.)

3. Ken Warner, ed., Gun Digest 1989, (Northbrook, Il. 1988), pp. 293-300; William S. Jarrett, ed., Shooter’s Bible, No. 80, (Hackensack, NJ. 1988), pp. 345-363; Edward Clinton Ezell, Small Arms of the World, (Harrisburg, Pa. 1983), p. 844; Pete Dickey, “The Military Look-Alikes,” American Rifleman, (April 1980), p. 31. Also, see generally, Ian V. Hogg, ed., Jane’s Infantry Weapons, 1987-88, (New York 1987); Jack Lewis, ed., The Gun Digest Book of Assault Weapons, (Northbrook, Il. 1986).
4. Art Blatt, “Tomorrow’s State-of-the-Art Sporting Rifle,” Guns & Ammo, (July 1981), p. 48; Jarrett, pp. 345-363; Warner, pp. 293-300.
5. Daniel D. Musgrave and Thomas B.Nelson, The World’s Assault Rifles, (Virginia, 1967), p. 1.
6. See generally, Angus Laidlaw, ed., Paul Wahl’s Big Gun Catalog/1, (Bogota, NJ. 1988); Musgrave and Nelson; Hogg; Jarrett; and Warner.

7. Ibid.
8. Arizona, 5 rounds; Colorado, 6 rounds; Michigan 6 rounds; New Hampshire, 5 rounds; New York, 6 rounds; North Carolina, 6 rounds; North Dakota, 8 rounds; Oregon, 5 rounds; Pennsylvania, semiautomatic rifles prohibited; Vermont, 6 rounds.
9. See generally, Hogg; Musgrave and Nelson; Ezell; Warner; Jarrett; Laidlaw; and Lewis.
10. Ibid.
11. Ibid.
12. Ibid.
13. Ibid.
14. Ibid.
15. Ibid.
16. Ezell, p. 844; Dickey, p. 31.
17. Musgrave and Nelson, pp. 11-29; and, see generally, Hogg; and Ezell.
18. Ezell, pp.844-866; and, see generally, Warner; Jarrett; and Laidlaw.
19. See, for example, Walter Rickell, "The Plinker's AK GunsMagazine, (July 1986) p. 21; John Lachuk, "Bantam Battle Rifles," Guns & Ammo, (January 1987), p. 37; John Lachuk, ".22 Erma Carbine," Guns & Ammo, (May 1968), p. 58; JackLewis, "Something New: The AK in Twenty-Two," Gun World, (July 1985), p. 32; Roger Combs, "A Most Unique Carbine," Gun World, (December 1985), p. 28; Garry James, "Mitchell Arms AK-22," Guns & Ammo, (November 1985), p. 72.
20. See note 2, colloquy between Senators Dodd and Hansen.
21. Ibid.
22. See generally, bibliography.

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NOTE: This information was extracted from the document titled, “**Report and Recommendation of the ATF Working Group on the Importability of Certain Semiautomatic Rifles**”, published in a memorandum to the Director, Stephen E. Higgins from the Associate Director, Daniel R. Black and approved on July 6, 1989.

EXHIBIT 7

Declaration of Roderick M. Thompson in Support of Sunnyvale's Opposition to Plaintiffs' Motion for Preliminary Injunction



DEPARTMENT OF
THE TREASURY
STUDY ON
THE SPORTING
SUITABILITY
OF MODIFIED
SEMI-AUTOMATIC
ASSAULT RIFLES

APRIL 1998

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EXECUTIVE SUMMARY

On November 14, 1997, the President and the Secretary of the Treasury ordered a review of the importation of certain modified versions of semiautomatic assault rifles into the United States.¹ The decision to conduct this review stemmed in part from concerns expressed by members of Congress and others that the rifles being imported were essentially the same as semiautomatic assault rifles previously determined to be nonimportable in a 1989 decision by the Bureau of Alcohol, Tobacco and Firearms (ATF). The decision also stemmed from the fact that nearly 10 years had passed since the last comprehensive review of the importation of rifles, and many new rifles had been developed during this time.

Under 18 U.S.C. section 925(d)(3), the Secretary shall approve applications for importation only when the firearms are generally recognized as particularly suitable for or readily adaptable to sporting purposes (the “sporting purposes test”). In 1989, ATF denied applications to import a series of semiautomatic versions of automatic-fire military assault rifles. When ATF examined these semiautomatic assault rifles, it found that the rifles, while no longer machineguns, still had a military configuration that was designed for killing and disabling the enemy and that distinguished the rifles from traditional sporting rifles. This distinctively military configuration served as the basis for ATF’s finding that the rifles were not considered sporting rifles under the statute.

The military configuration identified by ATF incorporated eight physical features: ability to accept a detachable magazine, folding/telescoping stocks, separate pistol grips, ability to accept a bayonet, flash suppressors, bipods, grenade launchers, and night sights. In 1989, ATF took the position that any of these military configuration features, other than the ability to accept a detachable magazine, would make a semiautomatic rifle not importable.

Subsequent to the 1989 decision, certain semiautomatic assault rifles that failed the 1989 sporting purposes test were modified to remove all of the military configuration features other than the ability to accept a detachable magazine. Significantly, most of these modified rifles not only still had the ability to accept a detachable magazine but, more specifically, still had the ability to accept a detachable large capacity magazine that

¹ The President and the Secretary directed that all pending and future applications for importation of these rifles not be acted upon until completion of the review. They also ordered that outstanding permits for importation of the rifles be suspended for the duration of the review period. The existence of applications to import 1 million new rifles and outstanding permits for nearly 600,000 other rifles threatened to defeat the purpose of the expedited review unless the Department of the Treasury deferred action on additional applications and temporarily suspended the outstanding permits. (See exhibit 1 for a copy of the November 14, 1997, memorandum directing this review.)

The rifles that are the subject of this review are referred to in this report as “study rifles.”

was originally designed and produced for the military assault rifles from which they were derived. These magazines are referred to in this report as “large capacity military magazines.” Study rifles with the ability to accept such magazines are referred to in this report as “large capacity military magazine rifles,” or “LCMM rifles.” It appears that only one study rifle, the VEPR caliber .308 (an AK47 variant), is not an LCMM rifle. Based on the standard developed in 1989, these modified rifles were found to meet the sporting purposes test. Accordingly, the study rifles were approved for import into the United States.

These modified rifles are the subject of the present review. Like the rifles banned in 1989, the study rifles are semiautomatic rifles based on AK47, FN-FAL, HK91 and 93, Uzi, and SIG SG550 military assault rifles. While there are at least 59 specific model designations of the study rifles, they all fall within the basic designs listed above. There are at least 39 models based on the AK47 design, 8 on the FN-FAL design, 7 on the HK91 and 93 designs, 3 on the Uzi design, and 2 on the SIG SG550 design (see exhibit 2 for a list of the models). Illustrations of some of the study rifles are included in exhibit 3 of this report.

This review takes another look at the entire matter to determine whether the modified rifles approved for importation since 1989 are generally recognized as particularly suitable for or readily adaptable to sporting purposes.² We have explored the statutory history of the sporting purposes test and prior administrative and judicial interpretations; reexamined the basic tenets of the 1989 decision; analyzed the physical features of the study rifles, as well as information from a wide variety of sources relating to the rifles’ use and suitability for sporting purposes; and assessed changes in law that might have bearing on the treatment of the rifles.

This review has led us to conclude that the basic finding of the 1989 decision remains valid and that military-style semiautomatic rifles are not importable under the sporting purposes standard. Accordingly, we believe that the Department of the Treasury correctly has been denying the importation of rifles that had any of the distinctly military configuration features identified in 1989, other than the ability to accept a detachable magazine. Our review, however, did result in a finding that the ability to accept a detachable large capacity magazine originally designed and produced for a military assault weapon should be added to the list of disqualifying military configuration features identified in 1989.

Several important changes have occurred since 1989 that have led us to reevaluate the importance of this feature in the sporting purposes test. Most significantly, by passing the 1994 bans on semiautomatic assault weapons and large capacity ammunition feeding

² The study was carried out by a working group composed of ATF and Treasury representatives. The working group’s activities and findings were overseen by a steering committee composed of ATF and Treasury officials.

devices, Congress sent a strong signal that firearms with the ability to expel large amounts of ammunition quickly are not sporting; rather, firearms with this ability have military purposes and are a crime problem. Specifically, Congress found that these magazines served “combat-functional ends” and were attractive to criminals because they “make it possible to fire a large number of rounds without reloading, then to reload quickly when those rounds are spent.”³ Moreover, we did not find any evidence that the ability to accept a detachable large capacity military magazine serves any sporting purpose. Accordingly, we found that the ability to accept such a magazine is a critical factor in the sporting purposes test, which must be given the same weight as the other military configuration features identified in 1989.

In addition, the information we collected on the use and suitability of LCMM rifles for hunting and organized competitive target shooting demonstrated that the rifles are not especially suitable for sporting purposes. Although our review of this information indicated that, with certain exceptions, the LCMM rifles sometimes are used for hunting, their actual use in hunting is limited. There are even some general restrictions and prohibitions on the use of semiautomatic rifles for hunting game. Similarly, although the LCMM rifles usually may be used, with certain exceptions, and sometimes are used for organized competitive target shooting, their suitability for this activity is limited. In fact, there are some restrictions and prohibitions on their use.

Furthermore, the information we gathered demonstrated that the LCMM rifles are attractive to certain criminals. We identified specific examples of the LCMM rifles’ being used in violent crime and gun trafficking. In addition, we found some disturbing trends involving the LCMM rifles, including a rapid and continuing increase in crime gun trace requests after 1991 and a rapid “time to crime.” Their ability to accept large capacity military magazines likely plays a role in their appeal to these criminals.

After weighing all the information collected, we found that the LCMM rifles are not generally recognized as particularly suitable for or readily adaptable to sporting purposes and are therefore not importable. However, this decision will in no way preclude the importation of true sporting firearms.

³ H. Rep. No. 103-489, at 18-19.

BACKGROUND

Importation of Firearms Under the Gun Control Act

The Gun Control Act of 1968 (GCA)⁴ generally prohibits the importation of firearms into the United States.⁵ However, the GCA creates four narrow categories of firearms that the Secretary of the Treasury shall authorize for importation. The category that is relevant to this study is found at 18 U.S.C. section 925(d)(3).

The Secretary shall authorize a firearm . . . to be imported or brought into the United States . . . if the firearm . . .

(3) is of a type that does not fall within the definition of a firearm as defined in section 5845(a) of the Internal Revenue Code of 1954 and **is generally recognized as particularly suitable for or readily adaptable to sporting purposes**, excluding surplus military firearms, except in any case where the Secretary has not authorized the importation of the firearm pursuant to this paragraph, it shall be unlawful to import any frame, receiver, or barrel of such firearm which would be prohibited if assembled. (Emphasis added)

This provision originally was enacted, in a slightly different form, by Title IV of the Omnibus Crime Control and Safe Streets Act of 1968⁶ and also was contained in Title I of the GCA, which amended Title IV later that year.

The GCA was enacted in large part "to assist law enforcement authorities in the States and their subdivisions in combating the increasing prevalence of crime in the United States." However, the Senate Report to the act also made clear that Congress did not intend the GCA to place any undue or unnecessary restrictions or burdens on responsible, law-abiding citizens with respect to acquiring, possessing, transporting, or using firearms for lawful activities.⁷

⁴ Pub. L. No. 90-618.

⁵ 18 U.S.C. section 922(l).

⁶ Pub. L. No. 90-351.

⁷ S. Rep. No. 1501, 90th Cong. 2d Sess. 22 (1968).

Consistent with this general approach, legislative history indicates that Congress intended the importation standard provided in section 925(d)(3) to exclude military-type weapons from importation to prevent such weapons from being used in crime, while allowing the importation of high-quality sporting rifles. According to the Senate Report, section 925(d)(3) was intended to "curb the flow of surplus military weapons and other firearms being brought into the United States which are not particularly suitable for target shooting or hunting."⁸ The report goes on to explain that "[t]he importation of certain foreign-made and military surplus nonsporting firearms has an important bearing on the problem which this title is designed to alleviate [crime]. Thus, the import provisions of this title seem entirely justified."⁹ Indeed, during debate on the bill, Senator Dodd, the sponsor of the legislation, stated that "Title IV prohibits importation of arms which the Secretary determines are not suitable for . . . sport The entire intent of the importation section is to get those kinds of weapons that are used by criminals and have no sporting purpose."¹⁰

The Senate Report, however, also makes it clear that the importation standards "are designed and intended to provide for the importation of quality made, sporting firearms, including . . . rifles such as those manufactured and imported by Browning and other such manufacturers and importers of firearms."¹¹ (The rifles being imported by Browning at that time were semiautomatic and manually operated traditional sporting rifles of high quality.) Similarly, the report states that the importation prohibition "would not interfere with the bringing in of currently produced firearms, such as rifles . . . of recognized quality which are used for hunting and for recreational purposes."¹² The reference to recreational purposes is not inconsistent with the expressed purpose of restricting importation to firearms particularly suitable for target shooting or hunting, because firearms particularly suitable for these purposes also can be used for other purposes such as recreational shooting.

During debate on the bill, there was discussion about the meaning of the term "sporting purposes." Senator Dodd stated:

[h]ere again I would have to say that if a military weapon is used in a

⁸ S. Rep. No. 1501, 90th Cong. 2d Sess. 22 (1968).

⁹ S. Rep. No. 1501, 90th Cong. 2d Sess. 24 (1968).

¹⁰ 114 Cong. Rec. S 5556, 5582, 5585 (1968).

¹¹ S. Rep. No. 1501, 90th Cong. 2d. Sess. 38 (1968).

¹² S. Rep. No. 1501, 90th Cong. 2d. Sess. 22 (1968).

special sporting event, it does not become a sporting weapon. It is a military weapon used in a special sporting event As I said previously the language says no firearms will be admitted into this country unless they are genuine sporting weapons.¹³

Legislative history also shows that the determination of a weapon's suitability for sporting purposes is the direct responsibility of the Secretary of the Treasury. The Secretary was given this discretion largely because Congress recognized that section 925(d)(3) was a difficult provision to implement. Immediately after discussing the large role cheap imported .22 caliber revolvers were playing in crime, the Senate Report stated:

[t]he difficulty of defining weapons characteristics to meet this target without discriminating against sporting quality firearms, was a major reason why the Secretary of the Treasury has been given fairly broad discretion in defining and administering the import prohibition.¹⁴

Indeed, Congress granted this discretion to the Secretary even though some expressed concern with its breadth:

[t]he proposed import restrictions of Title IV would give the Secretary of the Treasury unusually broad discretion to decide whether a particular type of firearm is generally recognized as particularly suitable for, or readily adaptable to, sporting purposes. If this authority means anything, it permits Federal officials to differ with the judgment of sportsmen expressed through consumer preference in the marketplace¹⁵

Section 925(d)(3) provides that the Secretary shall authorize the importation of a firearm if it is of a "type" that is generally recognized as particularly suitable for or readily adaptable to sporting purposes. The legislative history also makes it clear that the Secretary shall scrutinize types of firearms in exercising his authority under section 925(d). Specifically, the Senate Report to the GCA states that section 925(d) "gives the

Secretary authority to permit the importation of ammunition and certain types of firearms."¹⁶

¹³ 114 Cong. Rec. 27461-462 (1968).

¹⁴ S. Rep. No. 1501, 90th Cong. 2d Sess. 38 (1968).

¹⁵ S. Rep. No. 1097, 90th Cong. 2d. Sess. 2155 (1968) (views of Senators Dirksen, Hruska, Thurmond, and Burdick). In Gun South, Inc. v. Brady, F.2d 858, 863 (11th Cir. 1989), the court, based on legislative history, found that the GCA gives the Secretary "unusually broad discretion in applying section 925(d)(3)."

¹⁶ S. Rep. No. 1501, 90th Cong. 2d. Sess. 38 (1968).

The Senate Report to the GCA also recommended that the Secretary establish a council that would provide him with guidance and assistance in determining which firearms meet the criteria for importation into the United States.¹⁷ Accordingly, following the enactment of the GCA, the Secretary established the Firearms Evaluation Panel (FEP) (also known as the Firearms Advisory Panel) to provide guidelines for implementation of the "sporting purposes" test. This panel was composed of representatives from the military, the law enforcement community, and the firearms industry. At the initial meeting of the FEP, it was understood that the panel's role would be advisory only.¹⁸ The panel focused its attention on handguns and recommended the adoption of factoring criteria to evaluate the various types of handguns. These factoring criteria are based upon such considerations as overall length of the firearm, caliber, safety features, and frame construction. ATF thereafter developed an evaluation sheet (ATF Form 4590) that was put into use for evaluating handguns pursuant to section 925(d)(3). (See exhibit 4.)

The FEP did not propose criteria for evaluating rifles and shotguns under section 925(d)(3). Other than surplus military firearms, which Congress addressed separately, the rifles and shotguns being imported prior to 1968 were generally conventional rifles and shotguns specifically intended for sporting purposes. Therefore, in 1968, there was no cause to develop criteria for evaluating the sporting purposes of rifles and shotguns.

1984 Application of the Sporting Purposes Test

The first time that ATF undertook a meaningful analysis of rifles or shotguns under the sporting purposes test was in 1984. At that time, ATF was faced with a new breed of imported shotgun, and it became clear that the historical assumption that all shotguns were sporting was no longer viable. Specifically, ATF was asked to determine whether the Striker-12 shotgun was suitable for sporting purposes. This shotgun is a military/law enforcement weapon initially designed and manufactured in South Africa for riot control. When the importer was asked to submit evidence of the weapon's sporting purposes, it provided information that the weapon was suitable for police/combat-style competitions. ATF determined that this type of competition did not constitute a sporting purpose

under the statute, and that the shotgun was not suitable for the traditional shotgun sports of hunting, and trap and skeet shooting.

¹⁷ S. Rep. No. 1501, 90th Cong. 2d Sess. 38 (1968).

¹⁸ Gilbert Equipment Co. v. Higgins, 709 F. Supp. 1071, 1083, n. 7 (S.D. Ala. 1989), aff'd without op., 894 F.2d 412 (11th Cir. 1990).

1986 Firearms Owners Protection Act

On May 19, 1986, Congress passed the Firearms Owners Protection Act,¹⁹ which amended section 925(d)(3) to provide that the Secretary "shall" (instead of "may") authorize the importation of a firearm that is of a type that is generally recognized as particularly suitable for or readily adaptable to sporting purposes. The Senate Report to the law stated "it is anticipated that in the vast majority of cases, [the substitution of 'shall' for 'may' in the authorization section] will not result in any change in current practices."²⁰ As the courts have found, "[r]egardless of the changes made [by the 1986 law], the firearm must meet the sporting purposes test and it remains the Secretary's obligation to determine whether specific firearms satisfy this test."²¹

1986 Application of the Sporting Purposes Test

In 1986, ATF again had to determine whether a shotgun met the sporting purposes test, when the Gilbert Equipment Company requested that the USAS-12 shotgun be classified as a sporting firearm under section 925(d)(3). Again, ATF refused to recognize police/combat-style competitions as a sporting purpose. After examining and testing the weapon, ATF determined its weight, size, bulk, designed magazine capacity, configuration, and other factors prevented it from being classified as particularly suitable for or readily adaptable to the traditional shotgun sports of hunting, and trap and skeet shooting. Accordingly, its importation was denied.

When this decision was challenged in Federal court, ATF argued, in part, that large magazine capacity and rapid reloading ability are military features. The court accepted this argument, finding "the overall appearance and design of the weapon (especially the detachable box magazine . . .) is that of a combat weapon and not a sporting weapon."²² In reaching this decision, the court was not persuaded by the importer's argument that box magazines can be lengthened or shortened depending on desired shell capacity.²³ The court also agreed with ATF's conclusion that police/combat-style competitions were not considered sporting purposes.

¹⁹ Pub. L. No. 99-308.

²⁰ S. Rep. No. 98-583, 98th Cong. 1st Sess. 27 (1984).

²¹ Gilbert Equipment Co., 709 F. Supp. at 1083.

²² Id. at 1089.

²³ Id. at 1087, n. 20 and 1089.

1989 Report on the Importability of Semiautomatic Assault Rifles

In 1989, after five children were killed in a California schoolyard by a gunman with a semiautomatic copy of an AK47, ATF decided to reexamine whether certain semiautomatic assault-type rifles met the sporting purposes test. This decision was reached after consultation with the Director of the Office of National Drug Control Policy.

In March and April 1989, ATF announced that it was suspending the importation of certain "assault-type rifles." For the purposes of this suspension, assault-type rifles were those rifles that generally met the following criteria: (1) military appearance; (2) large magazine capacity; and (3) semiautomatic version of a machinegun. An ATF working group was established to reevaluate the importability of these assault-type rifles. On July 6, 1989, the group issued its Report and Recommendation of the ATF Working Group on the Importability of Certain Semiautomatic Rifles (hereinafter 1989 report).

In the 1989 report, the working group first discussed whether the assault-type rifles under review fell within a "type" of firearm for the purposes of section 925(d)(3). The working group concluded that most of the assault-type rifles under review represented "a distinctive type of rifle [which it called the "semiautomatic assault rifle"] distinguished by certain general characteristics which are common to the modern military assault rifle."²⁴ The working group explained that the modern military assault rifle is a weapon designed for killing or disabling the enemy and has characteristics designed to accomplish this purpose. Moreover, it found that these characteristics distinguish modern military assault rifles from traditional sporting rifles.

The characteristics of the modern military assault rifle that the working group identified were as follows: (1) military configuration (which included: ability to accept a detachable magazine, folding/telescoping stocks, separate pistol grips, ability to accept a bayonet, flash suppressors, bipods, grenade launchers, and night sights) (see exhibit 5 for a thorough discussion of each of these features); (2) ability to fire automatically (i.e., as a machinegun); and (3) chambered to accept a centerfire cartridge case having a length of 2.25 inches or less.²⁵ In regards to the ability to accept a detachable magazine, the working group explained that:

[v]irtually all modern military firearms are designed to accept large, detachable magazines. This provides the soldier with a fairly large ammunition supply and the ability to rapidly reload. Thus, large capacity magazines are indicative of military firearms. While detachable

²⁴ 1989 report at 6.

²⁵ 1989 report at 6.

magazines are not limited to military firearms, most traditional semiautomatic sporting firearms, designed to accommodate a detachable magazine, have a relatively small magazine capacity.²⁶

The working group emphasized that these characteristics had to be looked at as a whole to determine whether the overall configuration of each of the assault-type rifles under review placed the rifle fairly within the semiautomatic assault rifle type. The semiautomatic assault rifles shared all the above military assault rifle characteristics other than being machineguns.²⁷

The working group also addressed the scope of the term "sporting purposes." It concluded that the term should be given a narrow interpretation that focuses on the traditional sports of hunting and organized competitive target shooting. The working group made this determination by looking to the statute, its legislative history, applicable case law, the work of the FEP, and prior interpretations by ATF. In addition, the working group found that the reference to sporting purposes was intended to stand in contrast to military and law enforcement applications. Consequently, it determined that police/combat-type competitions should not be treated as sporting activities.²⁸

The working group then evaluated whether the semiautomatic assault rifle type of firearm is generally recognized as particularly suitable for or readily adaptable to traditional sporting applications. This examination took into account technical and marketing data, expert opinions, the recommended uses of the firearms, and information on the actual uses for which the weapons are employed in this country. The working group, however, did not consider criminal use as a factor in its analysis of the importability of this type of firearm.

After analyzing this information, the working group concluded that semiautomatic assault rifles are not a type of firearm generally recognized as particularly suitable for or readily adaptable to sporting purposes. Accordingly, the working group concluded that semiautomatic assault rifles should not be authorized for importation under section 925(d)(3). However, the working group found that some of the assault-type rifles under review (the Valmet Hunter and .22 rimfire caliber rifles), did not fall within the semiautomatic assault rifle type. In the case of the Valmet Hunter, the working group found that although it was based on the operating mechanism of the AK47 assault rifle, it had been substantially

²⁶ 1989 report at 6 (footnote omitted).

²⁷ The semiautomatic assault rifles were semiautomatic versions of machineguns.

²⁸ 1989 report at 9-11.

changed so that it was similar to a traditional sporting rifle.²⁹ Specifically, it did not have any of the military configuration features identified by the working group, except for the ability to accept a detachable magazine.

Following the 1989 study, ATF took the position that a semiautomatic rifle with any of the eight military configuration features identified in the 1989 report, other than the ability to accept a detachable magazine, failed the sporting purposes test and, therefore, was not importable.

Gun South, Inc. v. Brady

Concurrent with its work on the 1989 report, ATF was involved in litigation with Gun South, Inc. (GSI). In October 1988 and February 1989, ATF had granted GSI permits to import AUG-SA rifles. As mentioned previously, in March and April of 1989, ATF imposed a temporary suspension on the importation of rifles being reviewed in the 1989 study, which included the AUG-SA rifle. GSI filed suit in Federal court, seeking to prohibit the Government from interfering with the delivery of firearms imported under permits issued prior to the temporary suspension.

The court of appeals found that the Government had the authority to suspend temporarily the importation of GSI's AUG-SA rifles because the GCA "impliedly authorizes" such action.³⁰ In addition, the court rejected GSI's contention that the suspension was arbitrary and capricious because the AUG-SA rifle had not physically changed, explaining the argument "places too much emphasis on the rifle's structure for determining whether a firearm falls within the sporting purpose exception. While the Bureau must consider the rifle's physical structure, the [GCA] requires the Bureau to equally consider the rifle's use."³¹ In addition, the court found that ATF adequately had considered sufficient evidence before imposing the temporary suspension, citing evidence ATF had considered

demonstrating that semiautomatic assault-type rifles were being used with increasing frequency in crime.³²

²⁹ This finding reflects the fact that the operating mechanism of the AK47 assault rifle is similar to the operating mechanism used in many traditional sporting rifles.

³⁰ Gun South, Inc. v. Brady, 877 F.2d 858 (11th Cir. 1989). The court of appeals issued its ruling just days before the 1989 report was issued. However, the report was complete before the ruling was issued.

³¹ Id.

³² Id.

Although GSI sued ATF on the temporary suspension of its import permits, once the 1989 report was issued, no one pursued a lawsuit challenging ATF's determination that the semiautomatic assault rifles banned from importation did not meet the sporting purposes test.³³

Violent Crime Control and Law Enforcement Act of 1994

On September 13, 1994, Congress passed the Violent Crime Control and Law Enforcement Act of 1994,³⁴ which made it unlawful, with certain exceptions, to manufacture, transfer, or possess semiautomatic assault weapons as defined by the statute.³⁵ The statute defined semiautomatic assault weapons to include 19 named models of firearms (or copies or duplicates of the firearms in any caliber);³⁶ semiauto-matic rifles that have the ability to accept detachable magazines and have at least two of five features specified in the law; semiautomatic pistols that have the ability to accept detachable magazines and have at least two of five features specified in the law; and semiautomatic shotguns that have at least two of four features specified in the law.³⁷ However, Congress

³³ After the 1989 report was issued, Mitchell Arms, Inc. asserted takings claims against the Government based upon the suspension and revocation of four permits allowing for the importation of semiautomatic assault rifles and ATF's temporary moratorium on import permits for other rifles. The court found for the Government, holding the injury complained of was not redressable as a taking because Mitchell Arms did not hold a property interest within the meaning of the Just Compensation Clause of the Fifth Amendment. Mitchell Arms v. United States, 26 Cl. Ct. 1 (1992), aff'd, 7 F.3d 212 (Fed. Cir. 1993), cert. denied, 511 U.S. 1106 (1994).

³⁴ Pub. L. No. 103-22. Title XI, Subtitle A of this act may be cited as the "Public Safety and Recreational Firearms Use Protection Act."

³⁵ 18 U.S.C. section 922(v).

³⁶ Chapter 18 U.S.C. section 921(a)(30)(A) states that the term "semiautomatic assault weapon" means "any of the firearms, or copies or duplicates of the firearms in any caliber, known as -, " followed by a list of named firearms. Even though section 921(a)(3) defines "firearm" as used in chapter 18 to mean, in part, "the frame or receiver of any such weapon," the use of "firearm" in section 921(a)(30)(A) has not been interpreted to mean a frame or receiver of any of the named weapons, except when the frame or receiver actually is incorporated in one of the named weapons.

Any other interpretation would be contrary to Congress' intent in enacting the assault weapon ban. In the House Report to the assault weapon ban, Congress emphasized that the ban was to be interpreted narrowly. For example, the report explained that the present bill was more tightly focused than earlier drafts which gave ATF authority to ban any weapon which "embodies the same configuration" as the named list of guns in section 921(a)(30)(A); instead, the present bill "contains a set of specific characteristics that must be present in order to ban any additional semiautomatic assault weapons [beyond the listed weapons]." H. Rep. 103-489 at 21.

³⁷ 18 U.S.C. section 921(a)(30).

exempted from the assault weapon ban any semiautomatic rifle that cannot accept a detachable magazine that holds more than five rounds of ammunition and any semiautomatic shotgun that cannot hold more than five rounds of ammunition in a fixed or detachable magazine.³⁸

Although the 1994 law was not directly addressing the sporting purposes test in section 925(d)(3), section 925(d)(3) had a strong influence on the law's content. The technical work of ATF's 1989 report was, to a large extent, incorporated into the 1994 law. The House Report to the 1994 law explained that although the legal question of whether semiautomatic assault weapons met section 925(d)(3)'s sporting purposes test "is not directly posed by [the 1994 law], the working group's research and analysis on assault weapons is relevant on the questions of the purposes underlying the design of assault weapons, the characteristics that distinguish them from sporting guns, and the reasons underlying each of the distinguishing features."³⁹ As in the 1989 study, Congress focused on the external features of firearms, rather than on their semiautomatic operating mechanism.

The 1994 law also made it unlawful to possess and transfer large capacity ammunition feeding devices manufactured after September 13, 1994.⁴⁰ A large capacity ammunition feeding device was generally defined as a magazine, belt, drum, feed strip, or similar device that has the capacity of, or that can be readily restored or converted to accept, more than 10 rounds of ammunition.⁴¹

Congress passed these provisions of the 1994 law in response to the use of semiautomatic assault weapons and large capacity ammunition feeding devices in crime. Congress had been presented with much evidence demonstrating that these weapons were "the weapons of choice among drug dealers, criminal gangs, hate groups, and mentally deranged persons bent on mass murder."⁴² The House Report to the 1994 law recounts numerous crimes that had occurred involving semiautomatic assault weapons and large capacity magazines that were originally designed and produced for military assault rifles.⁴³

³⁸ 18 U.S.C. sections 922(v)(3)(C)&(D).

³⁹ H. Rep. No. 103-489, at 17, n. 19.

⁴⁰ 18 U.S.C. section 922(w).

⁴¹ 18 U.S.C. section 921(a)(31).

⁴² H. Rep. No. 103-489, at 13.

⁴³ H. Rep. No. 103-489, at 14-15.

In enacting the semiautomatic assault weapon and large capacity ammunition feeding device bans, Congress emphasized that it was not preventing the possession of sporting firearms. The House Report, for example, stated that the bill differed from earlier bills in that "it is designed to be more tightly focused and more carefully crafted to clearly exempt legitimate sporting guns."⁴⁴ In addition, Congress specifically exempted 661 long guns from the assault weapon ban which are "most commonly used in hunting and recreational sports."⁴⁵

Both the 1994 law and its legislative history demonstrate that Congress recognized that ammunition capacity is a factor in determining whether a firearm is a sporting firearm. For example, large capacity ammunition feeding devices were banned, while rifles and shotguns with small ammunition capacities were exempted from the assault weapon ban. Moreover, the House Report specifically states that the ability to accept a large capacity magazine was a military configuration feature which was not "merely cosmetic," but "serve[d] specific, combat-functional ends."⁴⁶ The House Report also explains that, while "[m]ost of the weapons covered by the [ban] come equipped with magazines that hold 30 rounds [and can be replaced with magazines that hold 50 or even 100 rounds], . . . [i]n contrast, hunting rifles and shotguns typically have much smaller magazine capabilities--from 3-5."⁴⁷

Finally, it must be emphasized that the semiautomatic assault weapon ban of section 922(v) is distinct from the sporting purposes test governing imports of section 925(d)(3). Clearly, any weapon banned under section 922(v) cannot be imported into the United States because its possession in the United States would be illegal. However, it is possible that a weapon not defined as a semiautomatic assault weapon under section 922(v) still would not be importable under section 925(d)(3). In order to be importable, the firearm must be of a type generally recognized as particularly suitable for or readily adaptable to sporting purposes regardless of its categorization under section 922(v). The

Secretary's discretion under section 925(d)(3) remains intact for all weapons not banned by the 1994 statute.

The Present Review

Prior to the November 14, 1997, decision to conduct this review, certain members of

⁴⁴ H. Rep. No. 103-489, at 21.

⁴⁵ H. Rep. No. 103-489, at 20. None of these 661 guns are study rifles.

⁴⁶ H. Rep. No. 103-489, at 18.

⁴⁷ H. Rep. No. 103-489, at 19 (footnote omitted).

Congress strongly urged that it was necessary to review the manner in which the Treasury Department is applying the sporting purposes test to the study rifles, in order to ensure that the present practice is consistent with section 925(d)(3) and current patterns of gun use. The fact that it had been nearly 10 years since the last comprehensive review of the importation of rifles (with many new rifles being developed during this time) also contributed to the decision to conduct this review.

DEFINING THE TYPE OF WEAPON UNDER REVIEW

Section 925 (d) (3) provides that the Secretary shall authorize the importation of a firearm if it is of a "type" that meets the sporting purposes test. Given this statutory mandate, we had to determine whether the study rifles suspended from importation fell within one type of firearm. Our review of the study rifles demonstrated that all were derived from semiautomatic assault rifles that failed to meet the sporting purposes test in 1989 but were later found to be importable when certain military features were removed.

Within this group, we determined that virtually all of the study rifles shared another important feature: The ability to accept a detachable large capacity magazine (e.g., more than 10 rounds) that was originally designed and produced for one of the following military assault rifles: AK47, FN-FAL, HK91 or 93, SIG SG550, or Uzi. (This is the only military configuration feature cited in the 1989 study that remains with any of the study rifles).

We determined that all of the study rifles that shared both of these characteristics fell within a type of firearm which, for the purposes of this report, we call "large capacity military magazine rifles" or "LCMM rifles." It appears that only one study rifle, the VEPR caliber .308--which is based on the AK47 design--does not fall within this type because it does not have the ability to accept a large capacity military magazine.

SCOPE OF "SPORTING PURPOSES"

As in the 1989 study, we had to determine the scope of "sporting purposes" as used in section 925(d)(3). Looking to the statute, its legislative history, the work of the Firearms Evaluation Panel (see exhibit 6), and prior ATF interpretations, we determined sporting purposes should be given a narrow reading, incorporating only the traditional sports of hunting and organized competitive target shooting (rather than a broader interpretation that could include virtually any lawful activity or competition.)

In terms of the statute itself, the structure of the importation provisions suggests a somewhat narrow interpretation. Firearms are prohibited from importation (section 922(l)), with four specific exceptions (section 925(d)). A broad interpretation permitting a firearm to be imported because someone may wish to use it in some lawful shooting activity would render the general prohibition of section 922(l) meaningless.

Similarly, as discussed in the "Background" section, the legislative history of the GCA indicates that the term sporting purposes narrowly refers to the traditional sports of hunting and organized competitive target shooting. There is nothing in the history to indicate that it was intended to recognize every conceivable type of activity or competition that might employ a firearm.

In addition, the FEP specifically addressed the informal shooting activity of "plinking" (shooting at randomly selected targets such as bottles and cans) and determined that it was not a legitimate sporting purpose under the statute. The panel found that, "while many persons participate in this type of activity and much ammunition was expended in such endeavors, it was primarily a pastime and could not be considered a sport for the purposes of importation. . . ." (See exhibit 6.)

Finally, the 1989 report determined that the term sporting purposes should be given a narrow reading incorporating the traditional rifle sports of hunting and organized competitive target shooting. In addition, the report determined that the statute's reference to sporting purposes was intended to stand in contrast with military and law enforcement applications. This is consistent with ATF's interpretation in the context of the Striker-12 shotgun and the USAS-12 shotgun. It is also supported by the court's decision in Gilbert Equipment Co. v. Higgins.

We received some comments urging us to find "practical shooting" is a sport for the purposes of section 925(d)(3).⁴⁸ Further, we received information showing that practical shooting is gaining in popularity in the United States and is governed by an organization that has sponsored national events since 1989. It also has an international organization.

While some may consider practical shooting a sport, by its very nature it is closer to police/combat-style competition and is not comparable to the more traditional types of sports, such as hunting and organized competitive target shooting. Therefore, we are not convinced that practical shooting does, in fact, constitute a sporting purpose under section 925(d)(3).⁴⁹ However, even if we were to assume for the sake of argument that practical shooting is a sport for the purposes of the statute, we still would have to decide whether a firearm that could be used in practical shooting meets the sporting purposes test. In other words, it still would need to be determined whether the firearm is of a type that is generally recognized as particularly suitable for or readily adaptable to practical shooting and other sporting purposes.⁵⁰ Moreover, the legislative history makes clear that the use of a military weapon in a practical shooting competition would not make that weapon

⁴⁸ Practical shooting involves moving, identifying, and engaging multiple targets and delivering a number of shots rapidly. In doing this, practical shooting participants test their defensive skills as they encounter props, including walls and barricades, with full or partial targets, "no-shoots," steel reaction targets, movers, and others to challenge them.

⁴⁹ As noted earlier, ATF has taken the position that police/combat-style competitions do not constitute a "sporting purpose." This position was upheld in Gilbert Equipment Co., 709 F. Supp. at 1077.

⁵⁰ Our findings on the use and suitability of the LCMM rifles in practical shooting competitions are contained in the "Suitability for Sporting Purposes" section of this report.

sporting: “if a military weapon is used in a special sporting event, it does not become a sporting weapon. It is a military weapon used in a special sporting event.”⁵¹ While none of the LCMM rifles are military weapons, they still retain the military feature of the ability to accept a large capacity military magazine.

⁵¹ 114 Cong. Rec. 27461-462 (1968) (Sen. Dodd).

METHOD OF STUDY

As explained in the “Executive Summary” section of this report, the purpose of this study is to review whether modified semiautomatic assault rifles are properly importable under 18 U.S.C. section 925(d)(3). More specifically, we reexamined the conclusions of the 1989 report as applied today to determine whether we are correct to allow importation of the study rifles that have been modified by having certain military features removed. To determine whether such rifles are generally recognized as particularly suitable for or readily adaptable to sporting purposes, the Secretary must consider both the physical features of the rifles and the actual uses of the rifles.⁵² Because it appears that all of the study rifles that have been imported to date have the ability to accept a large capacity military magazine,⁵³ all of the information collected on the study rifles’ physical features and actual uses applies only to the LCMM rifles.

Physical features:

The discussion of the LCMM rifles’ physical features are contained in the “Suitability for Sporting Purposes” section of this report.

Use:

We collected relevant information on the use of the LCMM rifles. Although the 1989 study did not consider the criminal use of firearms in its importability analysis, legislative history demonstrates and the courts have found that criminal use is a factor that can be considered in determining whether a firearm meets the requirements of section 925(d)(3).⁵⁴ Accordingly, we decided to consider the criminal use of the LCMM rifles in the present analysis.

The term “generally recognized” in section 925(d)(3) indicates that the Secretary should base his evaluation of whether a firearm is of a type that is particularly suitable for or readily adaptable to sporting purposes, in part, on a “community standard” of the firearm’s use.⁵⁵ The community standard “may change over time even though the firearm remains the same. Thus, a changing pattern of use may significantly affect whether a firearm is generally recognized as particularly suitable for or readily adaptable to a sporting purpose.”⁵⁶ Therefore, to assist the Secretary in determining whether the LCMM rifles presently are of a type generally recognized as particularly suitable for or readily adaptable to sporting purposes, we gathered information from the relevant “community.” The relevant community was defined as persons and groups who are

⁵² Gun South, Inc., 877 F.2d at 866.

⁵³ The VEPR caliber .308 discussed on page 16 has not yet been imported.

⁵⁴ 114 Cong. Rec. S 5556, 5582, 5585 (1968)(“[t]he entire intent of the importation section [of the sporting purposes test] is to get those kinds of weapons that are used by criminals and have no sporting purposes”) (Sen. Dodd); Gun South, Inc., 877 F.2d at 866.

⁵⁵ Gun South, Inc., 877 F.2d at 866.

⁵⁶ Id.

knowledgeable about the uses of these firearms or have relevant information about whether these firearms are particularly suitable for sporting purposes. We identified more than 2,000 persons or groups we believed would be able to provide relevant, factual information on these issues. The individuals and groups were selected to obtain a broad range of perspectives on the issues. We conducted surveys to obtain specific information from hunting guides, editors of hunting and shooting magazines, organized competitive shooting groups, State game commissions, and law enforcement agencies and organizations. Additionally, we asked industry members, trade associations, and various interest and information groups to provide relevant information.⁵⁷ A detailed presentation of the surveys and responses is included as an appendix to this report.

We also reviewed numerous advertisements and publications, both those submitted by the editors of hunting and shooting magazines and those collected internally, in our search for material discussing the uses of the LCMM rifles. Further, we collected importation data, tracing data, and case studies.⁵⁸

Our findings on use are contained in the “Suitability for Sporting Purposes” section of this report.

⁵⁷ **Hunting guides:** Guides were asked about specific types of firearms used by their clients. The guides were an easily definable group, versus the entire universe of hunters. We obtained the names of the hunting guides surveyed from the States.

Editors of hunting and shooting magazines: Editors were surveyed to determine whether they recommended the LCMM rifles for hunting or organized competitive target shooting and whether they had written any articles on the subject. The list of editors we surveyed was obtained from a directory of firearms-related organizations.

Organized competitive shooting groups: Organized groups were asked whether they sponsored competitive events with high-power semiautomatic rifles and whether the LCMM rifles were allowed in those competitions. We felt it was significant to query those who are involved with organized events rather than unofficial activities with no specific rules or guidelines. As with the editors above, the list of groups was obtained from a directory of firearms-related organizations.

State game commissions: State officials were surveyed to determine whether the use of the LCMM rifles was prohibited or restricted for hunting in each State.

Law enforcement agencies and organizations: Specific national organizations and a sampling of 26 police departments across the country were contacted about their knowledge of the LCMM rifles’ use in crime. The national organizations were surveyed with the intent that they would gather input from the wide range of law enforcement agencies that they represent or that they would have access to national studies on the subject.

Industry members and trade associations: These groups were included because of their knowledge on the issue.

Interest and information groups: These organizations were included because of their wide range of perspectives on the issue.

⁵⁸ To assist us with our review of the crime-related information we collected, we obtained the services of Garen J. Wintemute, MD, M.P.H. Director of the Violence Prevention Research Program, University of California, Davis, and Anthony A. Braga, Ph.D., J.F.K. School of Government, Harvard University.

SUITABILITY FOR SPORTING PURPOSES

The next step in our review was to evaluate whether the LCMM rifles, as a type, are generally recognized as particularly suitable for or readily adaptable to hunting and organized competitive target shooting.⁵⁹ The standard applied in making this determination is high. It requires more than a showing that the LCMM rifles may be used or even are sometimes used for hunting and organized competitive target shooting; if this were the standard, the statute would be meaningless. Rather, the standard requires a showing that the LCMM rifles are especially suitable for use in hunting and organized competitive target shooting.

As discussed in the “Method of Study” section, we considered both the physical features of the LCMM rifles and the actual uses of the LCMM rifles in making this determination.

Physical Features

The ability to accept a detachable large capacity magazine that was originally designed and produced for one of the following military assault rifles: AK47, FN-FAL, HK91 or 93, SIG SG550, or Uzi.

Although the LCMM rifles have been stripped of many of their military features, they all still have the ability to accept a detachable large capacity magazine that was originally designed and produced for one of the following military assault rifles: AK47, FN-FAL, HK91 and 93, SIG SG550, or Uzi; in other words, they still have a feature that was designed for killing or disabling an enemy. As the 1989 report explains:

Virtually all modern military firearms are designed to accept large, detachable magazines. This provides the soldier with a fairly large ammunition supply and the ability to rapidly reload. Thus, large capacity magazines are indicative of military firearms. While detachable magazines are not limited to military firearms, most traditional

⁵⁹ One commenter suggests that the Secretary has been improperly applying the “readily adaptable to sporting purposes” provision of the statute. Historically, the Secretary has considered the “particularly suitable for or readily adaptable to” provisions as one standard. The broader interpretation urged by the commenter would make the standard virtually unenforceable. If the Secretary allowed the importation of a firearm which is readily adaptable to sporting purposes, without requiring it actually to be adapted prior to importation, the Secretary would have no control over whether the adaptation actually would occur following the importation.

semiautomatic sporting firearms, designed to accommodate a detachable magazine, have a relatively small magazine capacity.⁶⁰

Thus, the 1989 report found the ability to accept a detachable large capacity magazine originally designed and produced for a military assault rifle was a military, not a sporting, feature. Nevertheless, in 1989 it was decided that the ability to accept such a large capacity magazine, in the absence of other military configuration features, would not be viewed as disqualifying for the purposes of the sporting purposes test. However, several important developments, which are discussed below, have led us to reevaluate the weight that should be given to the ability to accept a detachable large capacity military magazine in the sporting purposes test.

Most significantly, we must reevaluate the significance of this military feature because of a major amendment that was made to the GCA since the 1989 report was issued. In 1994, as discussed in the “Background” section of this report, Congress passed a ban on large capacity ammunition feeding devices and semiautomatic assault weapons.⁶¹ In enacting these bans, Congress made it clear that it was not preventing the possession of sporting firearms.⁶² Although the 1994 law was not directly addressing the sporting purposes test, section 925(d)(3) had a strong influence on the law's content. As discussed previously, the technical work of ATF's 1989 report was, to a large extent, incorporated into the 1994 law.

Both the 1994 law and its legislative history demonstrate that Congress found that ammunition capacity is a factor in whether a firearm is a sporting firearm. For example, large capacity ammunition feeding devices were banned, while rifles and shotguns with small ammunition capacities were exempted from the assault weapon ban. In other words, Congress found magazine capacity to be such an important factor that a semiautomatic rifle that cannot accept a detachable magazine that holds more than five rounds of ammunition will not be banned, even if it contains all five of the assault

⁶⁰ 1989 report at 6 (footnote omitted). This was not the first time that ATF considered magazine capacity to be a relevant factor in deciding whether a firearm met the sporting purposes test. See Gilbert Equipment Co., 709 F. Supp. at 1089 (“the overall appearance and design of the weapon (especially the detachable box magazine . . .) is that of a combat weapon and not a sporting weapon.”)

⁶¹ The ban on large capacity ammunition feeding devices does not include any such device manufactured on or before September 13, 1994. Accordingly, there are vast numbers of large capacity magazines originally designed and produced for military assault weapons that are legal to transfer and possess (“grandfathered” large capacity military magazines). Presently these grandfathered large capacity military magazines fit the LCMM rifles.

⁶² See, for example, H. Rep. No. 103-489, at 21.

weapon features listed in the law. Moreover, unlike the assault weapon ban in which a detachable magazine and at least two physical features are required to ban a rifle, a large capacity magazine in and of itself is banned.

In addition, the House Report specifically states that the ability to accept a large capacity magazine is a military configuration characteristic that is not "merely cosmetic," but "serve[s] specific, combat-functional ends."⁶³ The House Report also explains that large capacity magazines

make it possible to fire a large number of rounds without re-loading, then to reload quickly when those rounds are spent. Most of the weapons covered by the proposed legislation come equipped with magazines that hold 30 rounds. Even these magazines, however, can be replaced with magazines that hold 50 or even 100 rounds. Furthermore, expended magazines can be quickly replaced, so that a single person with a single assault weapon can easily fire literally hundreds of rounds within minutes. . . . In contrast, hunting rifles and shotguns typically have much smaller magazine capabilities--from 3-5.⁶⁴

Congress specifically exempted 661 long guns from the assault weapon ban that are "most commonly used in hunting and recreational sports."⁶⁵ The vast majority of these long guns do not use large capacity magazines. Although a small number of the exempted long guns have the ability to accept large capacity magazines, only four of these exempted long guns were designed to accept large capacity military magazines.⁶⁶

The 1994 law also demonstrates Congress' concern about the role large capacity magazines and firearms with the ability to accept these large capacity magazines play in

⁶³ H. Rep. No. 103-489, at 18.

⁶⁴ H. Rep. No. 103-489, at 19 (footnote omitted). The fact that 12 States place a limit on the magazine capacity allowed for hunting, usually 5 or 6 rounds, is consistent with this analysis. (See exhibit 7).

⁶⁵ H. Rep. 103-489, at 20.

⁶⁶ These four firearms are the Iver Johnson M-1 carbine, the Iver Johnson 50th Anniversary M-1 carbine, the Ruger Mini-14 autoloading rifle (without folding stock), and the Ruger Mini Thirty rifle. All of these weapons are manufactured in the United States and are not the subject of this study. In this regard, it should also be noted that Congress can distinguish between domestic firearms and foreign firearms and impose different requirements on the importation of firearms. For example, Congress may ban the importation of certain firearms although similar firearms may be produced domestically. See, for example, B-West Imports v. United States, 75 F.3d 633 (Fed. Cir. 1996).

crime. The House Report for the bill makes reference to numerous crimes involving these magazines and weapons, including the following:⁶⁷

The 1989 Stockton, California, schoolyard shooting in which a gunman with a semiautomatic copy of an AK47 and 75-round magazines fired 106 rounds in less than 2 minutes. Five children were killed and twenty-nine adults and children were injured.

The 1993 shooting in a San Francisco, California, office building in which a gunman using 2 TEC DC9 assault pistols with 50-round magazines killed 8 people and wounded 6 others.

A 1993 shooting on the Long Island Railroad that killed 6 people and wounded 19 others. The gunman had a Ruger semiautomatic pistol, which he reloaded several times with 15-round magazines, firing between 30 to 50 rounds before he was overpowered.

The House Report also includes testimony from a representative of a national police officers' organization, which reflects the congressional concern with criminals' access to firearms that can quickly expel large amounts of ammunition:

In the past, we used to face criminals armed with a cheap Saturday Night Special that could fire off six rounds before [re]loading. Now it is not at all unusual for a cop to look down the barrel of a TEC-9 with a 32 round clip. The ready availability of and easy access to assault weapons by criminals has increased so dramatically that police forces across the country are being required to upgrade their service weapons merely as a matter of self-defense and preservation. The six-shot .38 caliber service revolver, standard law enforcement issue for years, is just no match against a criminal armed with a semiautomatic assault weapon.⁶⁸

Accordingly, by passing the 1994 law, Congress signaled that firearms with the ability to accept detachable large capacity magazines are not particularly suitable for sporting purposes. Although in 1989 we found the ability to accept a detachable large capacity military magazine was a military configuration feature, we must give it more weight, given this clear signal from Congress.

The passage of the 1994 ban on large capacity magazines has had another effect. Under the 1994 ban, it generally is unlawful to transfer or possess a large capacity magazine

⁶⁷ H. Rep. No. 103-489, at 15 (two of these examples involve handguns).

⁶⁸ H. Rep. 103-489, at 13-14 (footnote omitted).

manufactured after September 13, 1994. Therefore, if we require the LCMM rifles to be modified so that they do not accept a large capacity military magazine in order to be importable, a person will not be able to acquire a newly manufactured large capacity magazine to fit the modified rifle. Thus, the modified rifle neither will be able to accept a grandfathered large capacity military magazine, nor can a new large capacity magazine be manufactured to fit it. Accordingly, today, making the ability to accept a large capacity military magazine disqualifying for importation will prevent the importation of firearms which have the ability to expel large amounts of ammunition quickly without reloading.

This was not the case in 1989 or prior to the 1994 ban.

It is important to note that even though Congress reduced the supply of large capacity military magazines by passing the 1994 ban, there are still vast numbers of grandfathered large capacity military magazines available that can be legally possessed and transferred. These magazines currently fit in the LCMM rifles. Therefore, the 1994 law did not eliminate the need to take further measures to prevent firearms imported into the United States from having the ability to accept large capacity military magazines, a nonsporting factor.

Another impetus for reevaluating the existing standard is the development of modified weapons. The 1989 report caused 43 different models of semiautomatic assault rifles to be banned from being imported into the United States. The effect of that determination was that nearly all semiautomatic rifles with the ability to accept detachable large capacity military magazines were denied importation. Accordingly, at the time, there was no need for the ability to accept such a magazine to be a determining factor in the sporting purposes test. This is no longer the case. As discussed earlier, manufacturers have modified the semiautomatic assault rifles disallowed from importation in 1989 by removing all of their military configuration features, except for the ability to accept a detachable magazine. As a result, semiautomatic rifles with the ability to accept detachable large capacity military magazines (and therefore quickly expel large amounts of ammunition) legally have been entering the United States in significant numbers. Accordingly, the development of these modified weapons necessitates reevaluating our existing standards.

Thus, in order to address Congress' concern with firearms that have the ability to expel large amounts of ammunition quickly, particularly in light of the resumption of these weapons coming into the United States, the ability to accept a detachable large capacity military magazine must be given greater weight in the sporting purposes analysis of the LCMM rifles than it presently receives.⁶⁹

⁶⁹ A firearm that can be easily modified to accept a detachable large capacity military magazine with only minor adjustments to the firearm or the magazine is considered to be a firearm with the ability to accept these magazines. The ROMAK4 is an example of such a firearm: With minor modifications to either the

Derived from semiautomatic assault rifles that failed to meet the sporting purposes test in 1989 but were later found importable when certain military features were removed.

All rifles that failed to meet the sporting purposes test in 1989 were found to represent a distinctive type of rifle distinguished by certain general characteristics that are common to the modern military assault rifle. Although the LCMM rifles are based on rifle designs excluded from importation under the 1989 standard, they all were approved for import when certain military features were removed. However, the LCMM rifles all still maintain some characteristics common to the modern military assault rifle. Because the outward appearance of most of the LCMM rifles continues to resemble the military assault rifles from which they are derived, we have examined the issue of outward appearance carefully. Some might prefer the rugged, utilitarian look of these rifles to more traditional sporting guns. Others might recoil from using these rifles for sport because of their nontraditional appearance. In the end, we concluded that appearance alone does not affect the LCMM rifles' suitability for sporting purposes. Available information leads us to believe that the determining factor for their use in crime is the ability to accept a detachable large capacity military magazine.

Use

In the 1989 study, ATF found that all rifles fairly typed as semiautomatic assault rifles should be treated the same. Accordingly, the report stated "[t]he fact that there may be some evidence that a particular rifle of this type is used or recommended for sporting purposes should not control its importability. Rather, all findings as to suitability of these rifles as a whole should govern each rifle within this type."⁷⁰ We adopt the same approach for the present study.

Use for hunting:

The information we collected on the actual use of the LCMM rifles for hunting medium or larger game suggests that, with certain exceptions, the LCMM rifles sometimes are used for hunting; however, their actual use in hunting is limited.⁷¹ In fact, there are some

firearm or a large capacity magazine that was originally designed and produced for a semiautomatic assault rifle based on the AK47 design, the ROMAK4 has the ability to accept the magazine.

⁷⁰ 1989 report at 11.

⁷¹ We targeted the surveys toward the hunting of medium and larger game (e.g., turkey and deer) because the LCMM rifles chamber centerfire cartridges and therefore likely would be most suitable for hunting this type of game. We also learned that the LCMM rifles were used to shoot certain varmints (e.g., coyotes and groundhogs), which are generally considered to be pests, not game. Many commented that the LCMM

general restrictions and prohibitions on the use of any semiautomatic rifle for hunting game. Almost half of the States place restrictions on the use of semiautomatic rifles in hunting, mostly involving magazine capacity (5-6 rounds) and what can be hunted with the rifles (see exhibit 7).

Of the 198 hunting guides who responded to our survey, only 26 stated that they had clients who used the LCMM rifles on hunting trips during the past 2 hunting seasons and only 10 indicated that they recommend the LCMM rifles for hunting. In contrast, the vast majority of the guides (152) indicated that none of their clients used the LCMM rifles on hunting trips during the past 2 hunting seasons. In addition, the hunting guides indicated that the most common semiautomatic rifles used by their clients were those made by Browning and Remington.⁷² We found significant the comments of the hunting guides indicating that the LCMM rifles were not widely used for hunting.

Of the 13 editors of hunting and shooting magazines who responded to our survey, only 2 stated that their publications recommend specific types of centerfire semiautomatic rifles for use in hunting medium or larger game. These two respondents stated that they recommend all rifles that are safe and of appropriate caliber for hunting, including the LCMM rifles. However, they did not recommend the LCMM rifles based on the Uzi design for hunting big game; these rifles use a 9mm cartridge, which is not an appropriate caliber for this type of game, according to the editors. It is important to note that the LCMM rifles use different cartridges. The LCMM rifles based on the FN-FAL, SIG SG550, and HK91 and 93 designs are chambered for either the .308 Winchester cartridge or the .223 Remington cartridge, depending on the specific model; the LCMM rifles based on the Uzi design are chambered for the 9mm Parabellum cartridge; and the majority of the LCMM rifles based on the AK47 design are chambered for the 7.62 x 39mm cartridge (some are chambered for the .223 Remington cartridge).

Of the five interest and information groups that responded to our survey, three supported the use of the LCMM rifles for hunting. However, one of these groups stated that the

rifles were particularly useful on farms and ranches because of their ruggedness, utilitarian design, and reliability.

⁷² According to a 1996 study conducted for the Fish and Wildlife Service, only 2 percent of big game hunters surveyed used licensed hunting guides. Therefore, it should be noted that the information provided by the guides we surveyed may not be representative of all hunters. However, we believe that the hunting guides' information is reliable and instructive because of their high degree of experience with and knowledge of hunting.

ammunition used by the LCMM rifle models based on the Uzi design were inadequate for shooting at long distances (i.e., more than 100 yards).

Out of the 70 published articles reviewed from various shooting magazines, only 5 contained relevant information. One of these five articles stated that, in the appropriate calibers, the LCMM rifles could make “excellent” hunting rifles. Two of the articles stated that the 7.62 x 39mm cartridge (used in LCMM rifles based on the AK47 design) could be an effective hunting cartridge. One of the articles that recommended the rifles also recommended modifications needed to improve their performance in hunting. None of the articles suggested that LCMM rifles based on the Uzi design were good hunting rifles. Thus, although the LCMM rifles could be used in hunting, the articles provided limited recommendations for their use as hunting weapons.

In their usage guides, ammunition manufacturers recommend the .308 and the 7.62 x 39mm cartridges (used in LCMM rifles based on the FN-FAL and HK 91 designs, and the AK47 design respectively) for medium game hunting. However, the usage guides do not identify the 9mm cartridge (used in the Uzi design rifles) as being suitable for hunting.

A majority of the importers who provided information said that the LCMM rifles they import are used for hunting deer and similar animals. However, they provided little evidence that the rifles were especially suitable for hunting these animals. Two of the importers who responded also provided input from citizens in the form of letters supporting this position. The letters show a wide variety of uses for the LCMM rifles, including deer hunting, plinking, target shooting, home defense, and competitive shooting.

Our review of all of this information indicates that while these rifles are used for hunting medium and larger game, as well as for shooting varmints, the evidence was not persuasive that there was widespread use for hunting. We did not find any evidence that the ability to accept a large capacity military magazine serves any hunting purpose. Traditional hunting rifles have much smaller magazine capabilities. Furthermore, the mere fact that the LCMM rifles are used for hunting does not mean that they are particularly suitable for hunting or meet the test for importation.

Use for organized competitive target shooting:

Of the 31 competitive shooting groups we surveyed that stated they have events using high-power semiautomatic rifles, 18 groups stated that they permit the use of the LCMM rifles for all competitions. However, 13 respondents stated that they restrict or prohibit the LCMM rifles for some competitions, and one group stated that it prohibits the LCMM

rifles for all competitions. These restrictions and prohibitions generally were enacted for the following reasons:

1. High-power rifle competitions generally require accuracy at ranges beyond the capabilities of the 9mm cartridge, which is used by the LCMM rifles based on the Uzi design.
2. The models based on the AK47 design are limited to competitions of 200 yards or less because the 7.62 x 39mm cartridge, which is used by these models, generally has an effective range only between 300 and 500 yards.
3. Certain matches require U.S. military service rifles, and none of the LCMM rifles fall into this category.

The LCMM rifles are permitted in all United States Practical Shooting Association (USPSA) rifle competitions. The USPSA Practical Shooting Handbook, Glossary of Terms, states that “[y]ou can use any safe firearm meeting the minimum caliber (9mm/.38) and power factor (125PF) requirements.” The USPSA has stated that “rifles with designs based on the AR15, AK47, FN-FAL, HK91, HK93, and others are allowed and must be used to be competitive.” Moreover, we received some information indicating that the LCMM rifles actually are used in practical shooting competitions.⁷³ However, we did not receive any information demonstrating that an LCMM rifle’s ability to accept large capacity military magazines was necessary for its use in practical shooting competitions.

A couple of the interest groups recommended the LCMM rifles for organized competitive target shooting.

None of the 70 published articles read mentioned the use of the LCMM rifles in organized competitive target shooting.

All of the major ammunition manufacturers produce .308 Winchester ammunition (which is used in the LCMM rifle models based on the HK 91 and FN-FAL designs) and .223 Remington ammunition (which is used in the HK 93, the SIG SG550, and some of the study rifle models based on the AK47 design) specifically for competitive shooting for rifles. The major manufacturers and advertisers of 9mm ammunition (which is used in the LCMM rifles based on the Uzi design) identify it as being suitable for pistol target shooting and self-defense.

⁷³ Merely because a rifle is used in a sporting competition, the rifle does not become a sporting rifle. 114 Cong. Rec. 27461-462 (1968).

A majority of the importers who provided information stated that the LCMM rifles they import are permitted in and suitable for organized competitive target shooting. Two of the importers who responded also provided input from citizens in the form of letters and petitions supporting this position. However, the importers provided little evidence that the rifles were especially suitable for organized competitive target shooting.

The information collected on the actual use of the LCMM rifles for organized competitive target shooting suggests that, with certain exceptions, the LCMM rifles usually may be used and sometimes are used for organized competitive target shooting; however, their suitability for this activity is limited. In fact, there are some restrictions and prohibitions on their use. The use of the rifles in competitive target shooting appears more widespread than for hunting and their use for practical shooting was the most significant. Although we are not convinced that practical shooting does in fact constitute a sporting purpose under section 925(d), we note that there was no information demonstrating that rifles with the ability to accept detachable large capacity military magazines were necessary for use in practical shooting. Once again, the presence of this military feature on LCMM rifles suggests that they are not generally recognized as particularly suitable for or readily adaptable to sporting purposes.

Use in crime:

To fully understand how the LCMM rifles are used, we also examined information available to us on their use in crime. Some disturbing trends can be identified, and it is clear the LCMM rifles are attractive to criminals.

The use of LCMM rifles in violent crime and firearms trafficking is reflected in the cases cited below. It should be noted that the vast majority of LCMM rifles imported during the period 1991-1997 were AK47 variants, which explains their prevalence in the cited cases.

North Philadelphia, Pennsylvania

From April 1995 to November 1996, a convicted felon used a straw purchaser to acquire at least 55 rifles, including a number of MAK90s. The rifles were then trafficked by the prohibited subject to individuals in areas known for their high crime rates. In one case, the rifles were sold from the parking lot of a local elementary school.

Oakland, California

On July 8, 1995, a 32-year-old Oakland police officer assisted a fellow officer with a vehicle stop in a residential area. As the first officer searched the rear compartment of the stopped vehicle, a subject from a nearby residence used a Norinco model NMH 90 to shoot the 32-year old officer in the back. The officer later died from the wound.

El Paso, Texas

On April 15, 1996, after receiving information from the National Tracing Center, ATF initiated an undercover investigation of a suspected firearms trafficker who had purchased 326 MAK90 semiautomatic rifles during a 6-month period. The individual was found to be responsible for illegally diverting more than 1,000 firearms over the past several years. One of the MAK90 rifles that the subject had purchased was recovered from the scene of a 1996 shootout in Guadalajara, Mexico, between suspected drug traffickers and Mexican authorities. Another MAK90 was recovered in 1997 from the residence of a former Mexican drug kingpin following his arrest for drug-related activities.

Charlotte, North Carolina

On May 24, 1996, four armed subjects—one with a MAK90 rifle—carried out a home invasion robbery during which they killed the resident with a 9mm pistol. All four suspects were arrested.

Dallas, Texas

In September 1997, an investigation was initiated on individuals distributing crack cocaine from a federally subsidized housing community. During repeated undercover purchases of the narcotics, law enforcement officials noticed that the suspects had firearms in their possession. A search warrant resulted in the seizure of crack cocaine, a shotgun, and a North China Industries model 320 rifle.

Chesterfield, Virginia

In November 1997, a MAK90 rifle was used to kill two individuals and wound three others at a party in Chesterfield, Virginia.

Orange, California

In December 1997, a man armed with an AKS 762 rifle and two other guns drove to where he was previously employed and opened fire on former coworkers, killing four and injuring three, including a police officer.

Baltimore, Maryland

In December 1997, a search warrant was served on a homicide suspect who was armed at the time with three pistols and a MAK90 rifle.

We also studied import and trace information to learn whether the LCMM rifles are used in crime.

Between 1991 and 1997, there were 425,114 LCMM rifles imported into the United States. This represents 7.6 percent of the approximately 5 million rifles imported during this period. The breakdown of the specific variants of LCMM rifles imported follows:

AK-47 variants:	377,934
FN-FAL variants:	37,534
HK variants:	6,495
Uzi variants:	3,141
SIG SG550 variants:	10

During this same time period, ATF traced 632,802 firearms.⁷⁴ This included 81,842 rifles of which approximately 3,176 were LCMM rifles.⁷⁵ While this number is relatively low compared to the number of total traces, it must be viewed in light of the small number of LCMM rifles imported during this time period and the total number of rifles, both imported domestic, that were available in the United States. A more significant trend is reflected in figure 1.

⁷⁴ ATF traces crime guns recovered and submitted by law enforcement officials. A crime gun is defined, for purposes of firearms tracing, as any firearm that is illegally possessed, used in a crime, or suspected by law enforcement of being used in a crime. Trace information is used to establish links between criminals and firearms, to investigate illegal firearm trafficking, and to identify patterns of crime gun traces by jurisdiction. A substantial number of firearms used in crime are not recovered by law enforcement agencies and therefore not traced. In addition, not all recovered crime guns are traced. Therefore, trace requests substantially underestimate the number of firearms involved in crimes, and trace numbers contain unknown statistical biases. These problems are being reduced as more law enforcement agencies institute policies of comprehensive crime gun tracing.

⁷⁵ The vast majority of LCMM rifles traced during this time period were AK47 variants. Specifically, AK47 variants comprised 95.6 percent of the LCMM rifles traced. This must be viewed within the context that 88 percent of the LCMM rifles imported during this period were AK47 variants.

Firearms Traces 1991-1997

Year	Total Firearms Traced	Total Rifles Traced	Total Assault ⁷⁶ Rifles Traced	Total LCMM Rifles Traced
1991	42,442	6,196	656	7
1992	45,134	6,659	663	39
1993	54,945	7,690	852	182
1994	83,137	9,201	735	596
1995	76,847	9,988	717	528
1996	136,062	17,475	1,075	800
1997	194,235	24,633	1,518	1,024
Cumulative Total	632,802	81,842	6,216	3,176

Figure 1

The figures in this table show that between 1991 and 1994, trace requests involving LCMM rifles increased rapidly, from 7 to 596. During the same period, trace requests for assault rifles increased at a slower rate, from 656 to 735. The years 1991 to 1994 are significant because they cover a period between when the ban on the importation of semiautomatic assault rifles was imposed and before the September 13, 1994, ban on semiautomatic assault weapons was enacted. Thus, during the years leading up to the 1994 ban, traces of LCMM rifles were increasing much more rapidly than the traces of the rifles that had been the focus of the 1989 ban, as well as the rifles that were the focus of the 1994 congressional action.

We also compared patterns of importation with trace requests to assess the association of LCMM rifles with criminal involvement. The comparison shows that importation of LCMM rifles in the early 1990s was followed immediately by a rapid rise in the number of trace requests involving LCMM rifles. This is shown in figures 2 and 3.

⁷⁶ For purposes of this table, assault rifles include (1) semiautomatic assault rifles banned from importation in 1989 but still available domestically because they had been imported into the United States prior to the ban, (2) domestically produced rifles that would not have qualified for importation after 1989, and (3) semiautomatic assault rifles that were banned in 1994.

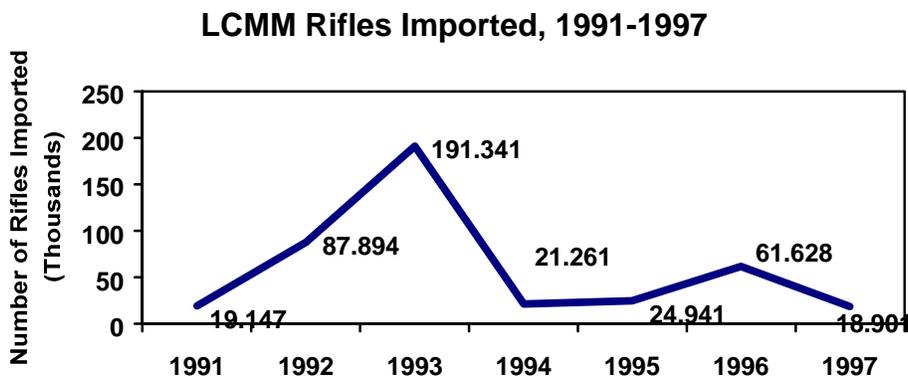


Figure 2

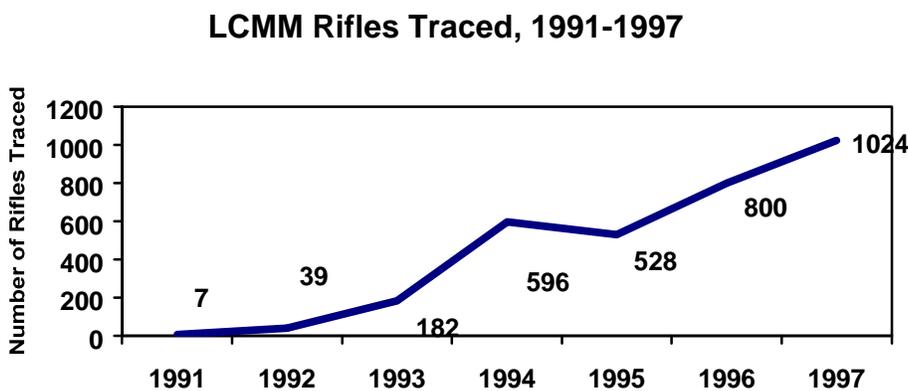


Figure 3

Two aspects of the relationship between importation and trace request patterns are significant. First, the rapid rise in traces following importation indicates that, at least in some cases, very little time elapsed between a particular LCMM rifle's importation and its recovery by law enforcement. This time lapse is known as "time to crime." A short time to crime can be an indicator of illegal trafficking. Therefore, trace patterns suggest what the case examples show: LCMM rifles have been associated with illegal trafficking. Second, while LCMM rifles have not been imported in large numbers since 1994,⁷⁷ the number of trace requests for LCMM rifles continues to rise. This reflects a sustained and

⁷⁷ One reason is that there has been an embargo on the importation of firearms from China since May 1994.

continuing pattern of criminal association for LCMM rifles despite the fact that there were fewer new LCMM rifles available.⁷⁸ Moreover, it is reasonable to conclude that if the importation of LCMM rifles resumes, the new rifles would contribute to the continuing rise in trace requests for them.⁷⁹

All of the LCMM rifles have the ability to accept a detachable large capacity military magazine. Thus, they all have the ability to expend large amounts of ammunition quickly. In passing the 1994 ban on semiautomatic assault rifles and large capacity ammunition feeding devices, Congress found that weapons with this ability are attractive to criminals.⁸⁰ Thus, we can infer that the LCMM rifles may be attractive to criminals because in some ways they remain akin to military assault rifles, particularly in their ability to accept a detachable large capacity military magazine.

⁷⁸ The increase in trace requests also reflects the fact that law enforcement officials were making trace requests for all types of firearms much more frequently beginning in 1996. There were 76,847 trace requests in 1995, 136,062 trace requests in 1996, and 194,235 trace requests in 1997. Traces for assault rifles were increasing by approximately the same percentage as traces for LCMM rifles during these years.

⁷⁹ In addition to looking at case studies and tracing and import information, we attempted to get information on the use of the LCMM rifles in crime by surveying national law enforcement agencies and organizations, as well as metropolitan police departments. Twenty-three national law enforcement agencies and organizations were surveyed and five responded. Three of the respondents stated they had no information. The other two provided information that was either outdated or not specific enough to identify the LCMM rifles.

The 26 metropolitan police departments surveyed provided the following information:

17 departments had no information to provide.

5 departments stated that the LCMM rifles were viewed as crime guns.

1 department stated that the LCMM rifles were nonsporting.

2 departments stated that the LCMM rifles were used to hunt coyotes in their areas.

1 department stated that the LCMM rifles were used for silhouette target shooting.

⁸⁰ H. Rep. No. 103-489, at 13, 18, 19.

DETERMINATION

In 1989, ATF determined that the type of rifle defined as a semiautomatic assault rifle was not generally recognized as particularly suitable for or readily adaptable to sporting purposes. Accordingly, ATF found that semiautomatic assault rifles were not importable into the United States. This finding was based, in large part, on ATF's determination that semiautomatic assault rifles contain certain general characteristics that are common to the modern military assault rifle. These characteristics were designed for killing and disabling the enemy and distinguish the rifles from traditional sporting rifles. One of these characteristics is a military configuration, which incorporates eight physical features: Ability to accept a detachable magazine, folding/telescoping stocks, separate pistol grips, ability to accept a bayonet, flash suppressors, bipods, grenade launchers, and night sights. In 1989, ATF decided that any of these military configuration features, other than the ability to accept a detachable magazine, would make a semiautomatic assault rifle not importable.

Certain semiautomatic assault rifles that failed the 1989 sporting purposes test were modified to remove all of the military configuration features, except for the ability to accept a detachable magazine. Significantly, most of these modified rifles not only still have the ability to accept a detachable magazine but, more specifically, still have the ability to accept a large capacity military magazine. It appears that only one of the current study rifles, the VEPR caliber .308 (an AK47 variant), does not have the ability to accept a large capacity military magazine and, therefore, is not an LCMM rifle. Based on the standard developed in 1989, these modified rifles were found not to fall within the semiautomatic assault rifle type and were found to meet the sporting purposes test. Accordingly, these rifles were approved for import into the United States.

Members of Congress and others have expressed concerns that these modified semiautomatic assault rifles are essentially the same as the semiautomatic assault rifles determined to be not importable in 1989. In response to such concerns, the present study reviewed the current application of the sporting purposes test to the study rifles to determine whether the statute is being applied correctly and to ensure that the current use of the study rifles is consistent with the statute's criteria for importability.

Our review took another look at the entire matter. We reexamined the basic tenets of the 1989 study, conducted a new analysis of the physical features of the rifles, surveyed a wide variety of sources to acquire updated information relating to use and suitability, and assessed changes in law that might have bearing on the treatment of the study rifles.

This review has led us to conclude that the basic finding of the 1989 decision remains valid and that military-style semiautomatic rifles are not importable under the sporting purposes standard. Accordingly, we believe that the Department of the Treasury correctly has been denying the importation of rifles that had any of the distinctly military

configuration features identified in 1989, other than the ability to accept a detachable magazine. Our review, however, did result in a finding that the ability to accept a detachable large capacity magazine originally designed and produced for a military assault weapon should be added to the list of disqualifying military configuration features identified in 1989.

Several important changes have occurred since 1989 that have led us to reevaluate the importance of this feature in the sporting purposes test. Most significantly, by passing the 1994 bans on semiautomatic assault weapons and large capacity ammunition feeding devices, Congress sent a strong signal that firearms with the ability to expel large amounts of ammunition quickly are not sporting; rather, firearms with this ability have military purposes and are a crime problem. The House Report to the 1994 law emphasizes that the ability to accept a large capacity magazine “serve[s] specific, combat-functional ends.”⁸¹ Moreover, this ability plays a role in increasing a firearm’s “capability for lethality,” creating “more wounds, more serious, in more victims.”⁸² Furthermore, the House Report noted semiautomatic assault weapons with this ability are the “weapons of choice among drug dealers, criminal gangs, hate groups, and mentally deranged persons bent on mass murder.”⁸³

Moreover, we did not find any evidence that the ability to accept a detachable large capacity military magazine serves any sporting purpose. The House Report to the 1994 law notes that, while most of the weapons covered by the assault weapon ban come equipped with detachable large capacity magazines, hunting rifles and shotguns typically have much smaller magazine capabilities, from 3 to 5 rounds.⁸⁴ Similarly, we found that a number of States limit magazine capacity for hunting to 5 to 6 rounds. We simply found no information showing that the ability to accept a detachable large capacity military magazine has any purpose in hunting or organized competitive target shooting.

Accordingly, we find that the ability to accept a detachable large capacity military magazine is a critical factor in the sporting purposes test that must be given the same weight as the other military configuration features identified in 1989.

The information we collected on the use and suitability of the LCMM rifles for hunting and organized competitive target shooting demonstrated that the rifles are not especially suitable for sporting purposes. Although our study found that the LCMM rifles, as a type, may sometimes be used for hunting, we found no evidence that they are commonly used for hunting. In fact, some of the rifles are unsuitable for certain types of hunting.

⁸¹ H. Rep. No. 103-489, at 18.

⁸² H. Rep. No. 103-489, at 19.

⁸³ H. Rep. No. 103-489, at 13.

⁸⁴ H. Rep. No. 103-489, at 19 (footnote omitted).

The information we collected also demonstrated that although the LCMM rifles, as a type, may be used for organized competitive target shooting, their suitability for these competitions is limited. There are even some restrictions or prohibitions on their use for certain types of competitions. In addition, we believe that all rifles which are fairly typed as LCMM rifles should be treated the same. Therefore, the fact that there may be some evidence that a particular rifle of this type is used or recommended for sporting purposes should not control its importability. Rather, all findings as to suitability of LCMM rifles as a whole should govern each rifle within this type. The findings as a whole simply did not satisfy the standard set forth in section 925(d)(3).

Finally, the information we gathered demonstrates that the LCMM rifles are attractive to certain criminals. We find that the LCMM rifles' ability to accept a detachable large capacity military magazine likely plays a role in their appeal to these criminals. In enacting the 1994 bans on semiautomatic assault weapons and large capacity ammunition feeding devices, Congress recognized the appeal large magazine capacity has to the criminal element.

Weighing all this information, the LCMM rifles, as a type, are not generally recognized as particularly suitable for or readily adaptable to sporting purposes. As ATF found in conducting its 1989 study, although some of the issues we confronted were difficult to resolve, in the end we believe the ultimate conclusion is clear and compelling. The ability of all of the LCMM rifles to accept a detachable large capacity military magazine gives them the capability to expel large amounts of ammunition quickly; this serves a function in combat and crime, but serves no sporting purpose. Given the high standard set forth in section 925(d)(3) and the Secretary's discretion in applying the sporting purposes test, this conclusion was clear.

This decision will in no way preclude the importation of true sporting firearms. It will prevent only the importation of firearms that cannot fairly be characterized as sporting rifles.

Individual importers with existing permits for, and applications to import involving, the LCMM rifles will be notified of this determination in writing. Each of these importers will be given an opportunity to respond and present additional information and arguments. Final action will be taken on permits and applications only after an affected importer has an opportunity to make its case.

THE WHITE HOUSE
WASHINGTON

November 14, 1997

MEMORANDUM FOR THE SECRETARY OF THE TREASURY

SUBJECT: Importation of Modified Semiautomatic
Assault-Type Rifles

The Gun Control Act of 1968 restricts the importation of firearms unless they are determined to be particularly suitable for or readily adaptable to sporting purposes. In 1989, the Department of the Treasury (the Department) conducted a review of existing criteria for applying the statutory test based on changing patterns of gun use. As a result of that review, 43 assault-type rifles were specifically banned from importation. However, manufacturers have modified many of those weapons banned in 1989 to remove certain military features without changing their essential operational mechanism. Examples of such weapons are the Galil and the Uzi.

In recent weeks, Members of Congress have strongly urged that it is again necessary to review the manner in which the Department is applying the sporting purposes test, in order to ensure that the agency's practice is consistent with the statute and current patterns of gun use. A letter signed by 30 Senators strongly urged that modified assault-type weapons are not properly importable under the statute and that I should use my authority to suspend temporarily their importation while the Department conducts an intensive, expedited review. A recent letter from Senator Dianne Feinstein emphasized again that weapons of this type are designed not for sporting purposes but for the commission of crime. In addition, 34 Members of the House of Representatives signed a letter to Israeli Prime Minister Binyamin Netanyahu requesting that he intervene to stop all sales of Galils and Uzis into the United States. These concerns have caused the Government of Israel to announce a temporary moratorium on the exportation of Galils and Uzis so that the United States can review the importability of these weapons under the Gun Control Act.

The number of weapons at issue underscores the potential threat to the public health and safety that necessitates immediate action. Firearms importers have obtained permits to import nearly 600,000 modified assault-type rifles. In addition, there are pending before the Department applications to import more than 1 million additional such weapons. The number of rifles covered by outstanding permits is comparable to that which existed in 1989 when the Bush Administration temporarily suspended import permits for assault-type rifles. The number of weapons for which permits for importation are being sought through pending applications is approximately 10 times greater than in 1989. The number of such firearms for which import applications have been filed has skyrocketed from 10,000 on October 9, 1997, to more than 1 million today.

My Administration is committed to enforcing the statutory restrictions on importation of firearms that do not meet the sporting purposes test. It is necessary that we ensure that the statute is being correctly applied and that the current use of these modified weapons is consistent with the statute's criteria for importability. This review should be conducted at once on an expedited basis. The review is directed to weapons such as the Uzi and Galil that failed to meet the sporting purposes test in 1989, but were later found importable when certain military features were removed. The results of this review should be applied to all pending and future applications.

The existence of outstanding permits for nearly 600,000 modified assault-type rifles threatens to defeat the purpose of the expedited review unless, as in 1989, the Department temporarily suspends such permits. Importers typically obtain authorization to import firearms in far greater numbers than are actually imported into the United States. However, gun importers could effectively negate the impact of any Department determination by simply importing weapons to the maximum amount allowed by their permits. The public health and safety require that the only firearms allowed into the United States are those that meet the criteria of the statute.

Accordingly, as we discussed, you will:

- 1) Conduct an immediate expedited review not to exceed 120 days in length to determine whether modified semiautomatic assault-type rifles are properly importable under the statutory sporting purposes test. The results of this review will govern action on pending and future applications for import permits, which shall not be acted upon until the completion of this review.

Exhibit 1

3

2) Suspend outstanding permits for importation of modified semiautomatic assault-type rifles for the duration of the 120-day review period. The temporary suspension does not constitute a permanent revocation of any license. Permits will be revoked only if and to the extent that you determine that a particular weapon does not satisfy the statutory test for importation, and only after an affected importer has an opportunity to make its case to the Department.

William J. Curran

Exhibit 2

STUDY RIFLE MODELS

AK47 Variants:

MAK90*	SA2000
314*	ARM
56V*	MISR
89*	MISTR
EXP56A*	SA85M
SLG74	Mini PSL
NHM90*	ROMAK 1
NHM90-2*	ROMAK 2
NHM91*	ROMAK 4
SA85M	Hunter rifle
SA93	386S
A93	PS/K
AKS 762	VEPR caliber
VEPR	7.62 x 39mm
caliber .308	

FN-FAL Variants:

Saiga rifle	L1A1 Sporter
Galil Sporter	FAL Sporter
Haddar	FZSA
Haddar II	SAR4800
WUM 1	X FAL
WUM 2	C3
SLR95	C3A
SLR96	LAR Sporter
SLR97	
SLG94	
SLG95	
SLG96	

HK Variants:

BT96
Centurian 2000
SR9
PSG1
MSG90
G3SA
SAR8

Uzi Variants:

Officers 9*
320 carbine*
Uzi Sporter

SIG SG550 Variants:

SG550-1
SG550-2

- These models were manufactured in China and have not been imported since the 1994 embargo on the importation of firearms from China.

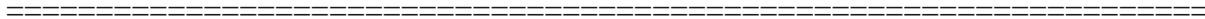
STUDY RIFLES

The study rifles are semiautomatic firearms based on the AK47, FN-FAL, HK 91 and 93, Uzi, and SIG SG550 designs. Each of the study rifles is derived from a semiautomatic assault rifle. The following are some examples of specific study rifle models grouped by design type. In each instance, a semiautomatic assault rifle is shown above the study rifles for comparison.

AK47 Variants



AK47 semiautomatic assault rifle



MISR



ARM



MAK90



WUM 1

Exhibit 3

FN-FAL Variants



FN-FAL semiautomatic assault rifle



L1A1 Sporter



SAR 4800

HK 91 and 93 Variants



HK91 semiautomatic assault rifle



SR9



SAR 8

Exhibit 3

Uzi Variants



Uzi semiautomatic assault rifle



320 carbine

SIG SG550 Variants

The following illustration depicts the configuration of a semiautomatic assault rifle based on the SIG SG550 design. No illustrations of modified semiautomatic versions are available.



SIG SG550 semiautomatic assault rifle

DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

FACTORING CRITERIA FOR WEAPONS

NOTE: The Bureau of Alcohol, Tobacco and Firearms reserves the right to preclude importation of any revolver or pistol which achieves an apparent qualifying score but does not adhere to the provisions of section 925(d)(3) of Amended Chapter 44, Title 18, U.S.C.

PISTOL			REVOLVER		
MODEL:			MODEL:		
PREREQUISITES			PREREQUISITES		
1. The pistol must have a positive manually operated safety device. 2. The combined length and height must not be less than 10" with the height (right angle measurement to barrel without magazine or extension) being at least 4" and the length being at least 6"			1. Must pass safety test. 2. Must have overall frame (with conventional grips) length (not diagonal) of 4 1/2" minimum. 3. Must have a barrel length of at least 3".		
INDIVIDUAL CHARACTERISTICS	POINT VALUE	POINT SUB-TOTAL	INDIVIDUAL CHARACTERISTICS	POINT VALUE	POINT SUB-TOTAL
OVERALL LENGTH			BARREL LENGTH <i>(Muzzle to Cylinder Face)</i>		
FOR EACH 1/4" OVER 6"	1		LESS THAN 4"	0	
FRAME CONSTRUCTION			FOR EACH 1/4" OVER 4"	1/2	
INVESTMENT CAST OR FORGED STEEL	15		FRAME CONSTRUCTION		
INVESTMENT CAST OR FORGED HTS ALLOY	20		INVESTMENT CAST OR FORGED STEEL	15	
WEAPON WEIGHT W/MAGAZINE <i>(Unloaded)</i>			INVESTMENT CAST OR FORGED HTS ALLOY	20	
PER OUNCE	1		WEAPON WEIGHT <i>(Unloaded)</i>		
CALIBER			PER OUNCE	1	
.22 SHORT AND .25 AUTO	0		CALIBER		
.22 LR AND 7.65mm TO .380 AUTO	3		.22 SHORT TO .25 ACP	0	
9mm PARABELLUM AND OVER	10		.22 LR AND .30 TO .38 S&W	3	
SAFETY FEATURES			.38 SPECIAL	4	
LOCKED BREECH MECHANISM	5		.357 MAG AND OVER	5	
LOADED CHAMBER INDICATOR	5		MISCELLANEOUS EQUIPMENT		
GRIP SAFETY	3		ADJUSTABLE TARGET SIGHTS <i>(Drift or Click)</i>	5	
MAGAZINE SAFETY	5		TARGET GRIPS	5	
FIRING PIN BLOCK OR LOCK	10		TARGET HAMMER AND TARGET TRIGGER	5	
MISCELLANEOUS EQUIPMENT			SAFETY TEST		
EXTERNAL HAMMER	2		A Double Action Revolver must have a safety feature which automatically (or in a Single Action Revolver by manual operation) causes the hammer to retract to a point where the firing pin does not rest upon the primer of the cartridge. The safety device must withstand the impact of a weight equal to the weight of the revolver dropping from a distance of 36" in a line parallel to the barrel upon the rear of the hammer spur, a total of 5 times.		
DOUBLE ACTION	10				
DRIFT ADJUSTABLE TARGET SIGHT	5				
CLICK ADJUSTABLE TARGET SIGHT	10				
TARGET GRIPS	5				
TARGET TRIGGER	2				
SCORE ACHIEVED <i>(Qualifying score is 75 points)</i>			SCORE ACHIEVED <i>(Qualifying score is 45 points)</i>		

Exhibit 5

MILITARY CONFIGURATION

1. Ability to accept a detachable magazine. Virtually all modern military firearms are designed to accept large, detachable magazines. This provides the soldier with a fairly large ammunition supply and the ability to rapidly reload. Thus, large capacity magazines are indicative of military firearms. While detachable magazines are not limited to military firearms, most traditional semiautomatic sporting firearms, designed to accommodate a detachable magazine, have a relatively small magazine capacity. Additionally, some States have a limit on the magazine capacity allowed for hunting, usually five or six rounds.
2. Folding/telescoping stock. Many military firearms incorporate folding or telescoping stocks. The main advantage of this item is portability, especially for airborne troops. These stocks allow the firearm to be fired from the folded position, yet it cannot be fired nearly as accurately as with an open stock. With respect to possible sporting uses of this feature, the folding stock makes it easier to carry the firearm when hiking or backpacking. However, its predominant advantage is for military purposes, and it is normally not found on the traditional sporting rifle.
3. Pistol grips. The vast majority of military firearms employ a well-defined separate pistol grip that protrudes conspicuously beneath the action of the weapon. In most cases, the "straight line design" of the military weapon dictates a grip of this type so that the shooter can hold and fire the weapon. Further, a pistol grip can be an aid in one-handed firing of the weapon in a combat situation. Further, such grips were designed to assist in controlling machineguns during automatic fire. On the other hand, the vast majority of sporting firearms employ a more traditional pistol grip built into the wrist of the stock of the firearm since one-handed shooting is not usually employed in hunting or organized competitive target competitions.
4. Ability to accept a bayonet. A bayonet has distinct military purposes. First, it has a psychological effect on the enemy. Second, it enables soldiers to fight in close quarters with a knife attached to their rifles. No traditional sporting use could be identified for a bayonet.
5. Flash suppressor. A flash suppressor generally serves one or two functions. First, in military firearms it disperses the muzzle flash when the firearm is fired to help conceal the shooter's position, especially at night. A second purpose of some flash suppressors is to assist in controlling the "muzzle climb" of the rifle, particularly when fired as a fully automatic weapon. From the standpoint of a traditional sporting firearm, there is no particular benefit in suppressing muzzle flash. Flash suppressors that also serve to dampen muzzle climb have a limited benefit in sporting uses by allowing the shooter to reacquire

Exhibit 5

the target for a second shot. However, the barrel of a sporting rifle can be modified by "magna-ported" to achieve the same result. There are also muzzle attachments for sporting firearms to assist in the reduction of muzzle climb. In the case of military-style weapons that have flash suppressors incorporated in their design, the mere removal of the flash suppressor may have an adverse impact on the accuracy of the firearm.

6. Bipods. The majority of military firearms have bipods as an integral part of the firearm or contain specific mounting points to which bipods may be attached. The military utility of the bipod is primarily to provide stability and support for the weapon when fired from the prone position, especially when fired as a fully automatic weapon. Bipods are available accessory items for sporting rifles and are used primarily in long-range shooting to enhance stability. However, traditional sporting rifles generally do not come equipped with bipods, nor are they specifically designed to accommodate them. Instead, bipods for sporting firearms are generally designed to attach to a detachable "slingswivel mount" or simply clamp onto the firearm.
7. Grenade launcher. Grenade launchers are incorporated in the majority of military firearms as a device to facilitate the launching of explosive grenades. Such launchers are generally of two types. The first type is a flash suppressor designed to function as a grenade launcher. The second type attaches to the barrel of the rifle by either screws or clamps. No traditional sporting application could be identified for a grenade launcher.
8. Night sights. Many military firearms are equipped with luminous sights to facilitate sight alignment and target acquisition in poor light or darkness. Their uses are generally for military and law enforcement purposes and are not usually found on sporting firearms since it is generally not legal to hunt at night.

[This document has been retyped for clarity.]

MEMORANDUM TO FILE

FIREARMS ADVISORY PANEL

The initial meeting of the Firearms Advisory Panel was held in Room 3313, Internal Revenue Building, on December 10, 1968, with all panel members present. Internal Revenue Service personnel in attendance at the meeting were the Director, Alcohol and Tobacco Tax Division, Harold Serr; Chief, Enforcement Branch, Thomas Casey; Chief, Operations Coordination Section, Cecil M. Wolfe, and Firearms Enforcement Officer, Paul Westenberger. Deputy Assistant Commissioner Compliance, Leon Green, visited the meeting several times during the day.

The Director convened the meeting at 10:00 a.m. by welcoming the members and outlining the need for such an advisory body. He then introduced the Commissioner of Internal Revenue, Mr. Sheldon Cohen, to each panel member.

Mr. Cohen spoke to the panel for approximately fifteen minutes. He thanked the members for their willingness to serve on the panel, explained the role of the panel and some of the background which led to the enactment of the Gun Control Act of 1968. Commissioner Cohen explained to the panel members the conflict of interest provisions of regulations pertaining to persons employed by the Federal Government and requested that if any member had any personal interest in any matter that came under discussion or consideration, he should make such interest known and request to be excused during consideration of the matter.

Mr. Seer then explained to the panel the areas in which the Division would seek the advice of the panel and emphasized that the role of the panel would be advisory only, and that it was the responsibility of the Service to make final decisions. He then turned the meeting over to the moderator, Mr. Wolfe.

Mr. Wolfe explained the responsibility of the Service under the import provisions of the Gun Control Act and under the Mutual Security Act. The import provisions were read and discussed.

The panel was asked to assist in defining sporting purposes as used in the Act. It was generally agreed that firearms designed and intended for hunting and all types of organized competitive target shooting would fall within the sporting purpose category. A discussion was held on the so-called sport of plinking. It was the consensus that, while many persons

Exhibit 6

participated in the type of activity and much ammunition was expended in such endeavors, it was primarily a pastime and could not be considered a sport for the purposes of importation since any firearm that could expel a projectile could be used for this purpose without having any characteristics generally associated with target guns.

The point system that had been developed by the Division and another point system formula suggested and furnished by the Southern Gun Distributors through Attorney Michael Desalle, was explained and demonstrated to the panel by Paul Westenberger. Each panel member was given copies of the formulas and requested to study them and endeavor to develop a formula he believed would be equitable and could be applied to all firearms sought to be imported.

A model BM59 Beretta, 7.62 mm, NATO Caliber Sporter Version Rifle was presented to the panel and their advice sought as to their suitability for sporting purposes. It was the consensus that these rifles do have a particular use in target shooting and hunting. Accordingly, it was recommended that importation of this rifle together with the SIG-AMT 7.62mm NATO Caliber Sporting Rifle and the Cetme 7.62mm NATO Caliber Sporting Rifle be authorized for importation. Importation, however, should include the restriction that these weapons must not possess combination flash suppressors/grenade adaptors with outside diameters greater than 20mm (.22 mm is the universal grade adaptor size).

The subject of ammunition was next discussed. Panel members agreed that incendiary and tracer small arms ammunition have no use for sporting purposes. Accordingly, the Internal Revenue Service will not authorize these types of small arms ammunition importation. All other conventional small arms ammunition for pistols, revolvers, rifles and shotguns will be authorized.

The meeting was adjourned at 4:00 p.m.

C.M. Wolfe

Exhibit 7

STATE FISH AND GAME COMMISSION REVIEW

STATE RESTRICTION	RIFLE RESTRICTION	MAGAZINE RESTRICTION
Alabama	Not for turkey	
Alaska		
Arizona		Not more than five rounds
Arkansas	Not for turkey	
California		
Colorado		Not more than six rounds
Connecticut*	No rifles on public land	
Delaware	No rifles	
Florida		Not more than five rounds
Georgia	Not for turkey	
Hawaii		
Idaho	Not for turkey	
Illinois	Not for deer or turkey	
Indiana*	Not for deer or turkey	
Iowa	Not for deer or turkey No restrictions on coyote or fox	
Kansas		
Kentucky		
Louisiana	Not for turkey	
Maine*	Not for turkey	
Maryland*		

Exhibit 7

STATE RESTRICTION	RIFLE RESTRICTION	MAGAZINE RESTRICTION
Massachusetts	Not for deer or turkey	
Michigan	Not for turkey	Not more than six rounds
Minnesota		
Mississippi	Not for turkey	
Missouri	Not for turkey	Chamber and magazine not more than 11 rounds
Montana		
Nebraska		Not more than six rounds
Nevada	Not for turkey	
New Hampshire*	Not for turkey	Not more than five rounds
New Jersey	No rifles	
New Mexico	Not for turkey	
New York*		Not more than six rounds
North Carolina	Not for turkey	
North Dakota	Not for turkey	
Ohio	Not for deer or turkey	
Oklahoma		Not more than seven rounds for .22 caliber
Oregon*		Not more than five rounds
Pennsylvania*	No semiautomatics	

Exhibit 7

STATE RESTRICTION	RIFLE RESTRICTION	MAGAZINE RESTRICTION
Rhode Island	Prohibited except for woodchuck in summer	
South Carolina	Not for turkey	
South Dakota		Not more than five rounds
Tennessee	Not for turkey	
Texas		
Utah	Not for turkey	
Vermont		Not more than six rounds
Virginia*		
Washington	Not for turkey	
West Virginia		
Wisconsin		
Wyoming		

* Limited restrictions (e.g., specified areas, county restrictions, populated areas, time of day).



DIRECTOR

DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
WASHINGTON, D.C. 20226

O:F:S:DMS
3310

Dear Sir or Madam:

On November 14, 1997, the President and the Secretary of the Treasury decided to conduct a review to determine whether modified semiautomatic assault rifles are properly importable under Federal law. Under 18 U.S.C. section 925(d)(3), firearms may be imported into the United States only if they are determined to be of a type generally recognized as particularly suitable for or readily adaptable to sporting purposes. The firearms in question are semiautomatic rifles based on the AK47, FN-FAL, HK91, HK93, SIG SG550-1, and Uzi designs.

As part of the review, the Bureau of Alcohol, Tobacco and Firearms (ATF) is interested in receiving information that shows whether any or all of the above types of semiautomatic rifles are particularly suitable for or readily adaptable to hunting or organized competitive target shooting. We are asking that you voluntarily complete the enclosed survey to assist us in gathering this information. We anticipate that the survey will take approximately 15 minutes to complete.

Responses must be received no later than January 9, 1998; those received after that date cannot be included in the review. Responses should be forwarded to the Bureau of Alcohol, Tobacco and Firearms, Department HG, P.O. Box 50860, Washington, DC 20091. We appreciate any information you care to provide.

Sincerely yours,


John W. Magaw
Director

Enclosure

ATF SURVEY OF HUNTING GUIDES FOR RIFLE USAGE

Page 1 of 2

Please report only on those clients who hunted medium game (for example, turkey) or larger game (for example, deer) with a rifle.

For the purposes of this survey, please count only individual clients and NOT the number of trips taken by a client. For example, if you took the same client on more than one trip, count the client only once.

1. What is the approximate number of your clients who have ever used **manually operated rifles** during the past two hunting seasons of 1995 and 1996?

_____ number of clients.

2. What is the approximate number of your clients who have ever used **semiautomatic rifles** during the past two hunting seasons of 1995 and 1996?

_____ number of clients.

3. What is the approximate number of your clients who have ever used semiautomatic rifles whose design is based on the **AK 47, FN-FAL, HK91, HK93, SIG 550-1, or Uzi** during the past two hunting seasons of 1995 and 1996?

_____ number of clients.

4. From your knowledge, for your clients who use **semiautomatic rifles**, please list the three most commonly used rifles.

Make

Model

Caliber

5. Do you **recommend** the use of any specific rifles by your clients?

_____ Yes (Continue to #6)

_____ No (You are finished with the survey. Thank you.)

An agency may not conduct or sponsor, and a person is not required to respond to, the collection of information unless it displays a currently valid OMB control number.

ATF SURVEY OF HUNTING GUIDES
FOR RIFLE USAGE

Page 2 of 2

6. If your answer to item 5 is "Yes", please identify the specific rifles you **recommend**.

Make

Model

Caliber

7. Do you **recommend** the use of any semiautomatic rifles whose design is based on the **AK 47, FN-FAL, HK91, HK93, SIG 550-1, or Uzi**?

_____ Yes (*Continue to #8*)

_____ No (*You are finished with the survey. Thank you.*)

8. If your answer to item 7 is "Yes", please identify the specific rifles whose design is based on the **AK 47, FN-FAL, HK91, HK93, SIG 550-1, or Uzi** that you recommend.

Make

Model

Caliber

Hunting Guides

case	Number of clients Using			Recommend	
	Manual	Semiauto	AK47 et.al.	Any	AK47 et.al.
A 1	28	0	0	No	
A 2	100	10	0	Yes	No
A 3	18	0	0	No	
A 4	120	40	0	Yes	No
A 5	12	0	0	Yes	No
A 6	80	40	0	No	
A 7	275	25	0	No	
A 8					
A 9	0	0	0		
A 10	0				
A 11	2	5	0	Yes	Yes
A 12	12	0	0	Yes	No
A 13	10	6	0	No	No
A 14	5	7	0	No	
A 15	0	0	0		
A 16	20	0	0	No	No
A 17					
A 18	0	0	0	No	
A 19	17	6	0	No	
A 20	30	8	0	No	
A 21	117	7	0	Yes	No
A 22	160	0	0	Yes	No
A 23	23	1	0	Yes	No
A 24	100	5	0	Yes	No
A 25	210	10	0	Yes	No
A 26	12	4	1	Yes	Yes
A 27	24	3	0	Yes	No
A 28	20	15	0	Yes	No
A 29	4	0	0	No	No
A 30	4	0	0	Yes	No
A 31	100	5	0	No	No
A 32	1	0	0	No	No
A 33			0	No	No
A 34	142	1	0	No	
A 35	78	2	0	Yes	No
A 36	600	200		No	
A 37	20	13	1	No	
A 38	45	15	0	No	
A 39	100	10	0	No	
A 40	80	6	2	Yes	No
A 41	250	25	0	Yes	No
A 42	4	0	0	No	
A 43	14	2	0	No	No
A 44	171	15	0	Yes	No
A 45	54	6	0	Yes	No
A 46	10	6	0	No	
A 47	0	0	0	No	No
A 48	24	0	0	No	
A 49	180	2	0	Yes	No
A 50					
A 51					

Hunting Guides

case	Number of clients Using			Recommend	
	Manual	Semiauto	AK47 et.al.	Any	AK47 et.al.
A 52	24	16	0	No	
A 53	600	100	12	No	
A 54	18	6	0	No	
A 55	0	0	0	No	
A 56	0	0	0	No	
A 57	40	4	0	No	
A 58					
A 59	40	10	0	No	No
A 60	60	2	0	No	No
A 61	63	4	0	Yes	No
A 62	40	4	0	No	
A 63	8	0	0	Yes	No
A 64	27	1	0	Yes	No
A 65	50	9	0	Yes	No
A 66	35	2	0	No	
A 67	6	0	0	Yes	No
A 68	6	3		No	
A 69	50	20	0	No	
A 70		0	0	Yes	No
A 71	27	1	0	Yes	
A 72	85	0	0	Yes	No
A 73	56	24	0	Yes	No
A 74	25	25	0	Yes	No
A 75	100	20	0	No	
A 76	50	15	3	No	
A 77	15	4	0	No	
A 78	12	0	0	Yes	No
A 79	75	0	0	No	
A 80					
A 81	0	0	0	No	
A 82	0	0	0	No	
A 83	12	4	0	No	No
A 84	40	0	0	Yes	No
A 85	24	0	0	No	
A 86	17	0	0	No	No
A 87	16	3	0	Yes	No
A 88	45	10	0	No	
A 89	11	7	7	Yes	Yes
A 90	35	1	0	Yes	No
A 91	25	2	0	Yes	No
A 92	0	0	0		
A 93	75	40	0	Yes	No
A 94	60	2	0	Yes	No
A 95	26	0	0	No	
A 96	20	0		No	No
A 97	65	11	0	Yes	No
A 98	40	5	0	Yes	No
A 99	26	5	0	No	
A 100	13	2	0	No	
A 101					
A 102	45	6	0	No	No

-Hunting Guides

case	Number of clients Using			Recommend	
	Manual	Semiauto	AK47 et.al.	Any	AK47 et.al.
A 103	120	4	0	No	
A 104				Yes	
A 105	150	50	0	No	No
A 106	80	20	0	Yes	No
A 107	40	0	0	No	No
A 108	10	0	0	No	
A 109	160	40	0	Yes	No
A 110	10	10	0	No	No
A 111	6	0	0	No	
A 112					
A 113	150	150	100	Yes	Yes
A 114	50	25	0	No	No
A 115	19	0	0	Yes	No
A 116	80	3	0	No	
A 117	40	10	0	Yes	No
A 118					
A 119	50	0	0	Yes	No
A 120	0	0	0	No	
A 121	0	0	0		
A 122	120	15	0	Yes	No
A 123	10	0	0	Yes	No
A 124	22	0	0	Yes	No
A 125	40	40	20	No	
A 126	50	10	0	Yes	No
A 127	60	20	0	Yes	No
A 128	14	0	0	No	No
A 129	13	16	4	No	
A 130	80	4	0	Yes	No
A 131	12	2	0	Yes	No
A 132		4	0	Yes	No
A 133	50	26	7	No	No
A 134	12	0	0	No	
A 135	2	10	3	No	
A 136	2	1	1	Yes	No
A 137	28	0	0	Yes	No
A 138	45	10		No	
A 139	46	59	0	Yes	No
A 140			0	Yes	No
A 141	40	10	0	No	No
A 142	70	20	0	Yes	No
A 143	50	3	0	No	No
A 144	60	6	0	Yes	No
A 145	140	0	0	Yes	No
A 146	20	4	1	Yes	No
A 147	10	1	0	Yes	No
A 148	0	0	0	No	No
A 149	37	0	0	Yes	No
A 150			0	Yes	No
A 151	6	10	0	No	No
A 152	110	5	0	No	
A 153	15	17		Yes	No

Hunting Guides

case	Number of clients Using			Recommend	
	Manual	Semiauto	AK47 et.al.	Any	AK47 et.al.
A 154	18	4	0	No	
A 155	25	3	0	Yes	No
A 156	60	6	3	No	
A 157	20	0	0	No	
A 158	88	46	0	No	No
A 159	68	19	3	Yes	Yes
A 160	25	5	0	No	
A 161	15	0	0	No	
A 162	75	10	0	No	
B 1				No	
C 1	25	0	0	Yes	No
C 2	55	10	6	Yes	Yes
C 3	60	30	0	No	
C 4	80	20	0	No	
C 5	10	0	0	No	No
C 6	25	6	0	No	
C 7	66	10	1	No	
C 8	24	0	0	Yes	No
C 9	10	15	15	No	
C 10	35	15	9	Yes	Yes
C 11			0	No	
C 12					No
C 13	25	10	0	No	
C 14	60	20	0	Yes	No
C 15	20	0	0	Yes	No
C 16	14	0	0	No	
C 17		0	0	Yes	No
C 18	18	25	5	Yes	Yes
C 19	125	50	5	Yes	No
C 20	20	5	2	No	
C 21		0	0	Yes	No
C 22	30	0	0	No	No
C 23	150	20	0	Yes	No
C 24	60	0	0	No	
C 25	16	7	6	Yes	Yes
C 26	300	650	400	No	
C 27	20	15	8	Yes	Yes
C 28	3	5	2	No	
C 29	45	6	0	Yes	No
C 30				No	
C 31	30	0	0	Yes	No
C 32			0	Yes	No
C 33	35	4	0	Yes	No
C 34	25	5	0	Yes	No
C 35				Yes	No

Hunting Guides

Q4. Three most commonly used rifles				
case	Make	Other Make	Model	Caliber
A 1				
A 2				
A 3				
A 4	Browning		BAR	300
A 5				
A 6	Remington		742	30.06
A 7	Browning		BAR	30.06, .270, 7MM, 300 Mag
A 8				
A 9				
A 10				
A 11	Remington		740-7400	20, 30
A 12				
A 13	Remington		700	7 mm mag
A 14	Remington		7400	270
A 15				
A 16				
A 17				
A 18				
A 19	Browning			30.06
A 20	Remington		742	30.06
A 21				
A 22				
A 23	Browning		?	300 mag
A 24	Remington			30.06
A 25	Remington			30.06
A 26	Browning		BAR	30.06
A 27	Remington			30.06
A 28		?	?	06
A 29				
A 30				
A 31	Browning		automatics	
A 32				
A 33				
A 34	Remington			.3006
A 35	Browning			7 mm
A 36	Browning			30.06
A 37	Browning		BAR	30.06
A 38	Browning		br	7 mm, 300win, 30.06
A 39	Remington		7600	.270 win, .30-06, .280 rem
A 40	Browning		Bar mark II	300 win mag
A 41	Remington			
A 42				
A 43	Remington		7600	243 - 7 mm mag
A 44				30.06, 300 winmag, .338, 270
A 45	Browning		BAR Automatic	30.06

Hunting Guides

Q4. Three most commonly used rifles				
A 46	Browning		BAR	7 mm, 30.06
A 47				
A 48				
A 49				
A 50				
A 51				
A 52	Browning		BAR	7 mm mag/30.06
A 53	Browning		BAR	30.06, 300 wm
A 54	Browning		BAR	30.06
A 55				
A 56				
A 57	Browning		semi-auto	300 mag
A 58				
A 59				
A 60				
A 61	Browning			30.06
A 62	Browning			7 mm
A 63	Browning		BAR	.270 - 300 win mag
A 64	Browning		BAR	30.06
A 65	Browning		semi-auto	.308
A 66	Browning			
A 67				
A 68	Remington		7400	30.06
A 69	Browning			
A 70				
A 71	Browning		Not sure	
A 72				
A 73	Browning		BARR	30.06
A 74	Browning		BAR	300
A 75	Remington		7400 old 752	270 and 30.06
A 76	Browning		BAR	308, 30.06, 300win, 338 win
A 77	Remington			308
A 78	Browning			300, 270, 30.06
A 79				
A 80				
A 81				
A 82				
A 83				30 caliber or bigger for elk
A 84				
A 85				
A 86				
A 87	Browning			30.06 and 7 mm
A 88	Browning		BAR	7 mm, .300, .270
A 89	Other	Russian	SKS	7.62
A 90	Browning			1 or 2 in over 50 years
A 91	Browning			300 win mag

Hunting Guides

Q4. Three most commonly used rifles				
A 92				
A 93				
A 94	Browning		BAR	
A 95				
A 96				
A 97	Browning		BAR	300-06-270
A 98	Browning			300, 30.06
A 99	Other	Savage		7 mm
A 100	Browning		?	7 mm mag
A 101				
A 102	Browning	Only 1 I recall	BAR	30.06
A 103				
A 104				
A 105				
A 106	Browning		BAR	300 win mag
A 107				
A 108				
A 109	Browning			30.06
A 110	Remington		700	30.06, 270, 7 mm
A 111				
A 112				
A 113	Other	Weatherby		300 mag
A 114	Browning			7 m mag
A 115				
A 116				
A 117	Browning			
A 118				
A 119				
A 120				
A 121				
A 122	Browning		U/K	.338 mag
A 123				
A 124				
A 125				
A 126	Remington		742	243, 30.06
A 127	Winchester		?	30.06
A 128	Winchester			270, 306
A 129	Browning		BAR	7 mm and 243
A 130	Browning			30.06
A 131	Browning		BAR	.7 mm mag
A 132	Remington			30.06
A 133			AK 47	223
A 134				
A 135	Remington			270
A 136	Browning		BAR	
A 137				

Hunting Guides

Q4. Three most commonly used rifles				
A	138	Winchester		30.06
A	139	Browning	BAR	270, 7 mm
A	140	Browning		7 mm
A	141			
A	142	Browning		7 mm mag
A	143			
A	144	Browning		30.06
A	145			
A	146	Browning	BDL	7mg
A	147	Browning	BAR	308
A	148			
A	149			
A	150	Remington		
A	151	Browning	BAR	308
A	152	Remington		various 270 - 338
A	153	Browning		30
A	154	Browning	BAR	7 mm mag
A	155			30.06
A	156	Other	BAR	
A	157			
A	158	Remington	280	280
A	159	Browning		7 mm mag
A	160	Remington	Semiauto	30.06
A	161			
A	162	Browning		30.06
B	1			.308, 30-06, .270
C	1			
C	2	Other	AK-47	Antelope Hunter 30
C	3	Browning	Auto	30.06
C	4	Browning	Bar	7mm
C	5			
C	6			
C	7	Browning		30.06
C	8			
C	9	Other	FN-FAL	308
C	10	Remington	742	30.06
C	11	Browning		306
C	12			
C	13	Remington		.06 - 7mm
C	14	Browning	BAR	7mm
C	15			
C	16			
C	17			
C	18	Ruger	Ranch Rifle	223
C	19	Other	AK47	
C	20	Browning	BAR	300 win mag

Hunting Guides

Q4. Three most commonly used rifles				
C 21	Other	Bolt-action or pump		
C 22				
C 23	Browning			30.06
C 24				
C 25	Other	AK47		7.62-39
C 26	Other	HK	93	.308
C 27	Browning		BAR	7mm
C 28	Other	Norinco	SKS Type 56	7.62X39
C 29	Browning		BAR	30.06 -.300
C 30				
C 31				
C 32	Browning			3.06 - 7mm
C 33	Remington			30.06
C 34	Remington		741	.270 - 30.06
C 35	Remington			.270
A 1				
A 2				
A 3				
A 4	Remington		7400	30.06
A 5				
A 6	Browning			30.06
A 7	Remington		700	30.03, 270, 7 mm
A 8				
A 9				
A 10				
A 11	Winchester		100	30
A 12				
A 13	Winchester		70	300 mag
A 14	Remington		7400	30.06
A 15				
A 16				
A 17				
A 18				
A 19	Remington		7400	30.06
A 20	Browning			7 mm mag
A 21				
A 22				
A 23				
A 24	Browning			30.06
A 25	Browning			30.03 to 300 mag
A 26	Remington		Fieldmaster	30.06
A 27				
A 28				
A 29				
A 30				
A 31	Remington		automatics	

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Q4. Three most commonly used rifles				
A 32				
A 33				
A 34				
A 35				
A 36	Remington			270 - 30.06
A 37	Remington		7400	30.06
A 38				
A 39	Browning		BAR	.270 win, 7 mm mag
A 40	Remington		7400	30.06
A 41	Browning			
A 42				
A 43	Browning		BAR	243 - 7 mm mag
A 44				
A 45				
A 46	Remington		1100	12 gauge
A 47				
A 48				
A 49				
A 50				
A 51				
A 52	Remington		7400	30.06
A 53	Remington		7400/742	30.06
A 54				
A 55				
A 56				
A 57	Remington		semi-auto	30.06
A 58				
A 59				
A 60				
A 61	Other	Savage		7 mm mag
A 62	Remington			30.06
A 63	Remington		742	.270 - 30.06
A 64				
A 65	Winchester		semi-auto	.308
A 66	Remington			
A 67				
A 68	Remington		7400	.308
A 69	Remington			
A 70				
A 71	Remington		742	30.06
A 72				
A 73	Remington			30.06
A 74	Remington		7600	30.06
A 75	Browning		BAR	270/338 and 30.06
A 76	Other	AK-47		30
A 77	Remington			30.06

Hunting Guides

Q4. Three most commonly used rifles				
A 78	Remington		?	300, 270, 30.06
A 79				
A 80				
A 81				
A 82				
A 83				
A 84				
A 85				
A 86				
A 87	Remington			30.06
A 88	Remington		742, 7400	30.06, .270
A 89	Other	Heckler-Koch	HK91	308
A 90	Remington			
A 91	Remington			30.06
A 92				
A 93				
A 94				
A 95				
A 96				
A 97				
A 98	Remington		760	.300, 30.06, 270
A 99	Browning			7 mm
A 100	Remington		742	30.06
A 101				
A 102				
A 103				
A 104				
A 105				
A 106				
A 107				
A 108				
A 109	Winchester			308
A 110				
A 111				
A 112				
A 113	Remington		700	7 mm mag
A 114	Remington		742 Wingmaster	30.06
A 115				
A 116				
A 117	Remington			
A 118				
A 119				
A 120				
A 121				
A 122				
A 123				

Hunting Guides

Q4. Three most commonly used rifles				
A 124				
A 125				
A 126	Ruger		22	
A 127	Marlin		?	.308
A 128	Remington			7 m
A 129				
A 130				
A 131	Browning		BAR	30.06
A 132				
A 133	Ruger		Mini 14	223
A 134				
A 135	Remington			243
A 136	Other	HK 91		
A 137				
A 138	Browning			308
A 139	Remington		742	30.06 - 6 mm
A 140	Remington			30.06
A 141				
A 142	Browning			300 win mag
A 143				
A 144	Browning			7 mm mag
A 145				
A 146	Browning		BDL	300
A 147				
A 148				
A 149				
A 150	Winchester			
A 151	Remington		742	30.06
A 152	Ruger			various 270 - 338
A 153	Winchester			30
A 154	Browning		BAR	30.06
A 155				
A 156	Other	AK-47		
A 157				
A 158	Winchester			338
A 159	Remington			30.06
A 160				
A 161				
A 162	Remington		742	30.06, 270
B 1				
C 1				
C 2				
C 3	Winchester		Auto	30.06
C 4	Browning		Bar	338
C 5				
C 6				

Hunting Guides

Q4. Three most commonly used rifles				
C 7	Remington			30.06
C 8				
C 9	Other	Uzi		9mm
C 10	Other	AK-47	Hunter	7.62x39
C 11	Other	Weatherby		300
C 12				
C 13	Winchester			.06 - 7mm
C 14	Browning			300
C 15				
C 16				
C 17				
C 18	Other	AK-47		
C 19	SigArms		550-1	
C 20	Ruger		Mini 14	.223
C 21				
C 22				
C 23	Remington		742	30.06
C 24				
C 25	Other	MAK-90		7.62-39
C 26	Other	HK	91	0.223
C 27	Remington		7400 Series	30.06
C 28	Remington		7600	30.06
C 29	Remington		742	.308 - 3.06
C 30				
C 31				
C 32	Remington			30.06 - 7mm
C 33	Browning			300 win
C 34	Browning			.270 - 30.06
C 35	Browning			300
A 1				
A 2				
A 3				
A 4	Ruger		Mini 14	223
A 5				
A 6	Other	Savage		270
A 7				
A 8				
A 9				
A 10				
A 11				
A 12				
A 13	Browning		A-bolt	270
A 14				
A 15				
A 16				
A 17				

Hunting Guides

Q4. Three most commonly used rifles				
A 18				
A 19				
A 20				
A 21				
A 22				
A 23				
A 24				
A 25				
A 26	Other	China	SKS	7.62x37
A 27				
A 28				
A 29				
A 30				
A 31				
A 32				
A 33				
A 34				
A 35				
A 36	Winchester			270 - 30.06
A 37				
A 38				
A 39				
A 40	Ruger			44 mag
A 41				
A 42				
A 43	Ruger			223 - 30.06
A 44				
A 45				
A 46				
A 47				
A 48				
A 49				
A 50				
A 51				
A 52				
A 53	Ruger		Mini-14	.223
A 54				
A 55				
A 56				
A 57	Ruger		semi-auto	35 cal
A 58				
A 59				
A 60				
A 61				
A 62	Ruger		Mini 14	223
A 63				

Hunting Guides

Q4. Three most commonly used rifles				
A 64				
A 65				
A 66				
A 67				
A 68				
A 69				
A 70				
A 71				
A 72				
A 73				
A 74	Browning		BAR	30.06
A 75				
A 76	Remington			30.06, 270
A 77	Browning			300
A 78				
A 79				
A 80				
A 81				
A 82				
A 83				
A 84				
A 85				
A 86				
A 87				
A 88				
A 89	Other	Springfield Armory	FNG	308
A 90				
A 91				
A 92				
A 93				
A 94				
A 95				
A 96				
A 97				
A 98				
A 99				
A 100				
A 101				
A 102				
A 103				
A 104				
A 105				
A 106				
A 107				
A 108				
A 109				

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Q4. Three most commonly used rifles				
A 110				
A 111				
A 112				
A 113	Other	All		30.06
A 114	Remington		721	270
A 115				
A 116				
A 117				
A 118				
A 119				
A 120				
A 121				
A 122				
A 123				
A 124				
A 125				
A 126	Browning	Remington	Shotguns	12 gauge
A 127	Remington			.308 or 30.06
A 128	Other	Savage		308
A 129				
A 130				
A 131				
A 132				
A 133	Browning		BAR	7 mm
A 134				
A 135	Browning		742	30.06
A 136	Other	AK 47		
A 137				
A 138				
A 139	Other	Weatherby		300 m
A 140				
A 141				
A 142				
A 143				
A 144				
A 145				
A 146	Ruger		#1	7 mag
A 147				
A 148				
A 149				
A 150	Browning			
A 151				
A 152	Browning			various 270 - 338
A 153				
A 154	Browning		BAR	8 mm mag
A 155				

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Q4. Three most commonly used rifles				
A 156	Other	Uzi		
A 157				
A 158	Browning			300
A 159				
A 160				
A 161				
A 162				
B 1				
C 1				
C 2				
C 3	Browning		Auto	270
C 4	Browning		Bar	300
C 5				
C 6				
C 7				
C 8				
C 9	Other	HK91		
C 10	Browning		BAR	30.06
C 11				
C 12				
C 13	Browning			300
C 14				
C 15				
C 16				
C 17				
C 18				
C 19				
C 20	Other	AK47		7.62 x 39
C 21				
C 22				
C 23	Remington		742	308, 270
C 24				
C 25		M1-A1		.223
C 26				
C 27	Winchester	Various	M1 Garand	30.06
C 28				
C 29			M1A1	30.06
C 30				
C 31				
C 32				
C 33				
C 34				
C 35				

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Q 6. Rifles recommended for clients				
case	Make	Other Make	Model	Caliber
A 1				
A 2	Ruger			30.06
A 3				
A 4	Other	Weatherby	Mark V	300
A 5				30.06
A 6				
A 7				
A 8				
A 9				
A 10				
A 11				
A 12				
A 13				
A 14				
A 15				
A 16				
A 17				
A 18				
A 19				
A 20				
A 21	Winchester			30.06, .270
A 22	Remington		700	7 mm or larger
A 23	Winchester		70	25 to 30
A 24	Remington		710	30.06
A 25		Any make	Bolt action	Does not recommend
A 26	Winchester		70	30.06 or larger
A 27	Other	Weatherby		300
A 28	Other	bolt action		270 and up
A 29				
A 30		hunter's choice		.270
A 31				
A 32				
A 33				
A 34				
A 35	Winchester		70	300 win mag
A 36				
A 37				
A 38				
A 39				
A 40	Remington			30.06 - 300 win mag
A 41				
A 42				
A 43				
A 44				30.06, 300winmag, 338, 270
A 45	Browning		Bolt Action	25.06 - 328

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Q 6. Rifles recommended for clients				
case	Make	Other Make	Model	Caliber
A 46				
A 47				
A 48				
A 49	Other	Weatherby		300 mag
A 50				
A 51				
A 52				
A 53				
A 54				
A 55				
A 56				
A 57				
A 58				
A 59				
A 60				
A 61	Remington		Bolt Action	300 mag
A 62				
A 63	Other	bolt action repeating rifles		30.06 to .338 winmag
A 64	Winchester		70	338
A 65	Remington		bolt action	308,25-06,243,7 mm mag,30.06,22-250,300 mag all
A 66				
A 67	Ruger		#1	7 mm, 30.06, 7 mm mag
A 68				
A 69				
A 70	Other		Bolt Action	30.06
A 71				300 mag
A 72	Other	Any make	Any model	7 mm, 270, 30.06, 25.06
A 73				
A 74	Browning		BAR	300 win mag
A 75				
A 76				
A 77				
A 78	Browning		Bolt action	
A 79				
A 80				
A 81				
A 82				
A 83				
A 84				
A 85				
A 86				
A 87	Remington		700	30.06, 7 mm, 270
A 88				
A 89	Other	Russian	SKS	7.62
A 90	Other	Weatherby		7 mm mag

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Q 6. Rifles recommended for clients				
case	Make	Other Make	Model	Caliber
A 91	Remington		700	7 mag
A 92				
A 93	Winchester		70	300 mag
A 94	Other	Any bolt action		270 or larger
A 95				
A 96				
A 97	Other	Any bolt action		30 or larger, on semiauto same
A 98				
A 99				
A 100				
A 101				
A 102				
A 103				
A 104				
A 105				
A 106	Other	Weatherby		300 magnum
A 107				
A 108				
A 109	Remington		70	7 mm
A 110				
A 111				
A 112				
A 113				
A 114				
A 115				
A 116				
A 117				magnum
A 118				
A 119	Remington		700	7 mm
A 120				
A 121				
A 122				
A 123				
A 124				
A 125				
A 126				300 mag, 338 mag, 30.06
A 127				
A 128				
A 129				
A 130	Remington		700	7 mm magnum
A 131				
A 132	Other	Weatherby		300 mag
A 133				
A 134				
A 135				

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Q 6. Rifles recommended for clients				
case	Make	Other Make	Model	Caliber
A 136				
A 137	Remington		700	7 mm
A 138				
A 139	Browning		BAR	7 m or 270
A 140				
A 141				
A 142				30.06
A 143				
A 144	Browning			from 7 mm mag to 338 mag for deer and elk
A 145	Winchester			30.06
A 146	Browning		BDL	7 mag
A 147	Remington		700 BDL	7 mm
A 148				
A 149				
A 150	Browning		Bolt action	
A 151				
A 152				
A 153	Remington		700	30
A 154				
A 155	Other	Weatherby		300
A 156				
A 157				
A 158				
A 159	Browning	Ruger		243, 30.06, 7 mm mag, 340 weather, .338
A 160				
A 161				
A 162				
B 1				7.62 x 39
C 1	Other	Manually operated		
C 2	Ruger		77	300
C 3				
C 4				
C 5				
C 6				
C 7				
C 8	Remington		700	270
C 9				
C 10	Other	HK	91	.308
C 11				
C 12				
C 13				
C 14	Other	Bolt-action w/ belted mag		Calibers, make and model mean nothing
C 15	Other	Bolt-action		30.06-7mm
C 16				
C 17	Other	Bolt-action		

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Q 6. Rifles recommended for clients				
case	Make	Other Make	Model	Caliber
C 18	Ruger		Ranch Rifle	223
C 19				.243 and larger
C 20				
C 21				
C 22				
C 23	Other	Bolt-action		7mm mag
C 24				
C 25	Other	Savage		7mm mag
C 26				
C 27	Winchester		70	30.06
C 28				
C 29	Winchester		70	30.06 - .338
C 30				
C 31	Winchester		Manual, bolt	300
C 32	Remington		All	270 - 7mm
C 33	Winchester		70	30.06 - .300 win
C 34	Other	Bolt-action		270 or larger for elk and deer
C 35	Other	Bolt-action or semiautos		.270 or larger
A 1				
A 2	Remington			7 mm
A 3				
A 4	Winchester		70	300
A 5				
A 6				
A 7				
A 8				
A 9				
A 10				
A 11				
A 12				
A 13				
A 14				
A 15				
A 16				
A 17				
A 18				
A 19				
A 20				
A 21	Remington		70	30.06
A 22	Winchester		70	7 mm or larger
A 23	Remington		700	25 to 30
A 24	Remington			300 Mag
A 25				
A 26	Browning		A bolt	30.06 or larger
A 27				300 win mag, 30.06 or 270

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Q 6. Rifles recommended for clients				
case	Make	Other Make	Model	Caliber
A 28				
A 29				
A 30		hunter's choice		.308
A 31				
A 32				
A 33				
A 34				
A 35	Remington		700 BDL	7 mm
A 36				
A 37				
A 38				
A 39				
A 40	Winchester			30.06 - 300 win mag
A 41				
A 42				
A 43				
A 44				
A 45	Remington		Bolt Action	25.06 - 328
A 46				
A 47				
A 48				
A 49				
A 50				
A 51				
A 52				
A 53				
A 54				
A 55				
A 56				
A 57				
A 58				
A 59				
A 60				
A 61	Other	Savage	Bolt Action	7 mm mag
A 62				
A 63				
A 64	Remington		700	300 win mag
A 65	Other	Weatherby		
A 66				
A 67	Remington		Bolt Action	7 mm, 30.06, 7 mm mag
A 68				
A 69				
A 70			Pump	30.06
A 71				7 mm mag
A 72				

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Q 6. Rifles recommended for clients				
case	Make	Other Make	Model	Caliber
A 73				
A 74	Winchester		7C	300 win mag
A 75				
A 76				
A 77				
A 78	Remington		Bolt Action	
A 79				
A 80				
A 81				
A 82				
A 83				
A 84				
A 85				
A 86				
A 87	Browning			308, 7 mm, 30.06
A 88				
A 89	Other	Heckler-Koch	HK-91	308
A 90				
A 91	Winchester		70	300 mag
A 92				
A 93	Browning		Mark II	300 mag, 280-270-25.06
A 94				
A 95				
A 96				
A 97	Other	Semi-auto		30 cal or larger
A 98				
A 99				
A 100				
A 101				
A 102				
A 103				
A 104				
A 105				
A 106	Remington		700	300 win mag
A 107				
A 108				
A 109	Winchester			300 mag, 30.06
A 110				
A 111				
A 112				
A 113				
A 114				
A 115				
A 116				
A 117				

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Q 6. Rifles recommended for clients				
case	Make	Other Make	Model	Caliber
A 118				
A 119	Other	Weatherby		300
A 120				
A 121				
A 122				
A 123				
A 124				
A 125				
A 126				
A 127				
A 128				
A 129				
A 130				
A 131				
A 132	Other	Weatherby		700 mag
A 133				
A 134				
A 135				
A 136				
A 137	Other	Weatherby		300
A 138				
A 139	Remington		742	30.06 or 6 mm
A 140				
A 141				
A 142				7 mm recommended for deer and elk
A 143				
A 144	Other	Weatherby		from 7 mm mag to 338 for deer
A 145	Other	Weatherby		300
A 146	Browning		BDC	300
A 147				
A 148				
A 149				
A 150	Winchester		Bolt Action	
A 151				
A 152				
A 153	Remington		700	7 mm
A 154				
A 155	Other	Weatherby		7 mm
A 156				
A 157				
A 158				
A 159	Winchester	Remington		340 Weather - .338 mag
A 160				
A 161				
A 162				

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Q 6. Rifles recommended for clients				
case	Make	Other Make	Model	Caliber
B 1				
C 1				
C 2	Browning			300
C 3				
C 4				
C 5				
C 6				
C 7				
C 8	Remington		700	280
C 9				
C 10	Winchester		70	.270
C 11				
C 12				
C 13				
C 14				
C 15				
C 16				
C 17	Other	Pump		
C 18	Other	AK-47		
C 19				6mm
C 20				
C 21				
C 22				
C 23	Other	Bolt-action		.30
C 24				
C 25	Other	Bolt-action		30.06
C 26				
C 27	Ruger		77	.300 win mag
C 28				
C 29	Remington		700	30.06-.338
C 30				
C 31	Remington		Manual bolt	300
C 32	Browning		All	.270 - 7mm
C 33	Ruger		77	30.06 - .300 win
C 34				
C 35				
A 1				
A 2	Winchester			375
A 3				
A 4	Winchester		70	270
A 5				
A 6				
A 7				
A 8				
A 9				

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Q 6. Rifles recommended for clients				
case	Make	Other Make	Model	Caliber
A 10				
A 11				
A 12				
A 13				
A 14				
A 15				
A 16				
A 17				
A 18				
A 19				
A 20				
A 21	Remington		70	.270
A 22				
A 23	Other	Any bolt action	1-5 shotmag	25 to 30
A 24	Other	Weatherby		300 mag
A 25				
A 26				
A 27				
A 28				
A 29				
A 30				
A 31				
A 32				
A 33				
A 34				
A 35				
A 36				
A 37				
A 38				
A 39				
A 40	Ruger			30.06 - 300 win mag
A 41				
A 42				
A 43				
A 44				
A 45	Winchester		Bolt Action	25.06 - 328
A 46				
A 47				
A 48				
A 49				
A 50				
A 51				
A 52				
A 53				
A 54				

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Q 6. Rifles recommended for clients				
case	Make	Other Make	Model	Caliber
A 55				
A 56				
A 57				
A 58				
A 59				
A 60				
A 61	Other	Weatherby	Bolt Action	338 mag
A 62				
A 63				
A 64	Other	Weatherby Mark V		300 Wea Mag
A 65	Winchester	Browning		
A 66				
A 67	Winchester	Bolt Action		
A 68				
A 69				
A 70			Bolt Action	7 mm
A 71				
A 72				
A 73				
A 74	Browning		A Bolt	300 win mag
A 75				
A 76				
A 77				
A 78				
A 79				
A 80				
A 81				
A 82				
A 83				
A 84				
A 85				
A 86				
A 87	Other	Weatherby		300, 7 mm, 338
A 88				
A 89	Other	Springfield Armory	FNG	308
A 90				
A 91	Ruger		77	300 mag
A 92				
A 93	Ruger		M77	270, 26-06, 300 mag
A 94				
A 95				
A 96				
A 97				
A 98				
A 99				

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Q 6. Rifles recommended for clients				
case	Make	Other Make	Model	Caliber
A 100				
A 101				
A 102				
A 103				
A 104				
A 105				
A 106	Browning		1895	45-70 govt
A 107				
A 108				
A 109				
A 110				
A 111				
A 112				
A 113				
A 114				
A 115				
A 116				
A 117				
A 118				
A 119	Other	Savage		270 or 30.06
A 120				
A 121				
A 122				
A 123				
A 124				
A 125				
A 126				
A 127				
A 128				
A 129				
A 130				
A 131				
A 132				
A 133				
A 134				
A 135				
A 136				
A 137				
A 138				
A 139				
A 140				
A 141				
A 142				300 winmag recommended
A 143				
A 144	Remington	Weatherby		from 270 to 338 for deer and elk

Hunting Guides

Q 6. Rifles recommended for clients				
case	Make	Other Make	Model	Caliber
A 145	Remington			270
A 146	Ruger		#1	7 mag
A 147				
A 148				
A 149				
A 150				All bolt action with a round nose point
A 151				
A 152				
A 153				
A 154				
A 155				
A 156				
A 157				
A 158				
A 159				300mag,416Rigby,375mag,270 mag,500 nitroexpress
A 160				
A 161				
A 162				
B 1				
C 1				
C 2	Other	Sako		300
C 3				
C 4				
C 5				
C 6				
C 7				
C 8				
C 9				
C 10	Winchester		100	.308
C 11				
C 12				
C 13				
C 14				
C 15				
C 16				
C 17	Other	Weatherby		243 to 300
C 18				
C 19				
C 20				
C 21				
C 22				
C 23				
C 24				
C 25				
C 26				

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Q 6. Rifles recommended for clients				
case	Make	Other Make	Model	Caliber
C 27	Springfield		M Garard	30.06 - 308
C 28				
C 29	Browning		A bolt	30.06 - .338
C 30				
C 31				
C 32	Ruger		All	.270 - 7 mm
C 33	Browning		A bolt	30.06 - 300 win
C 34				
C 35				

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Q 8. Recommended rifles based on AK47 et.al.					
case	Make	Other Make	Model	Caliber	
A	26	AK47		7.62x37	
A	89	Other	Russian	SKS	7.62
A	113	FN-FAL			
A	159	AK47			
C	2	AK47		Antelope and Varmints and Target Shooters	30
C	10	AK47			7.62x39
C	18	AK47			
C	25	AK47			7.62
C	27	FN-FAL			308
A	26		SKS		7.62x37
A	89	HK91			308
A	113		HK 99		
C	2	AK47		Antelope and Varmints and Target Shooters	243
C	10	HK91			308
C	25		MAK 90		7.62
C	27		Century	L1A1	308
A	89	Other	Springfield Armory	FNG	308
A	113	HK93			
C	10	HK93			223
C	25		M-15		223
C	27	HK91	And clones		308

Additional Comments by Hunting Guides

Additional comments:

- (8) The respondent answered questions 1, 2, 3, and 5 with "None of your business." He then stated in question 4: "It's none of your business what kind, make, model or how many guns law abiding citizens of the U.S. own, prefer to shoot."
- (9) The respondent wrote that he was no longer in business but that he had owned a waterfowl operation and upland bird operation (shotguns only). He added that assault rifles were not true sporting rifles and that they should be limited to use by the military and law enforcement agencies. However, he felt that true sporting weapons that can be modified into some "quasi-assault weapons" should not be restricted. He stated that he supported the effort to get military weapons off the streets but did not want the rights of true sportsmen to be affected.
- (10) Although licensed, the respondent did not guide anyone during the past year.
- (11) The respondent stated in question 6 that he recommends any legal caliber rifle that client is comfortable with and that is capable of killing the desired game.
- (12) For question 6, the respondent replied that he didn't recommend any specific make or model, other than whatever his clients are most comfortable using so long as the weapons are legal for the particular game.
- (15) The respondent stated that his organization was solely recreational wildlife watching and photography.
- (17) The respondent did not answer the questions but informed us that it is illegal in Hawaii to hunt turkey with a rifle.
- (23) The respondent stated that the study rifles were more suitable for militants than sportsmen. He added, "If they want to use these weapons let them go back to the service and use them to defend our country, not against it."
- (25) The respondent stated that, in his 35 years of conducting big game hunts, he had never seen any of the study rifles used for hunting. He suggested that the rifles are made to kill people, not big game.
- (26) The respondent recommended bolt-action rifles for his clients but stated that he doesn't demand that they use such rifles. The respondent recommended the study rifles in close-range situations in which there are multiple targets that may pose a danger to the hunter (e.g., coyotes, foxes, mountain lions, and bears).
- (27) The respondent stated that he recommended the study rifles for hunting but not any specific make.

- (32) The respondent said that most of his clients are bow or pistol hunters. He said that there is little if any use for the study rifles in his outfitting service because it focuses on hunts of mountain lions and bighorn sheep. However, he did recommend the study rifles on target ranges and in competitive shooting situations and cited his right to bear arms.
- (35) The respondent recommended bolt-action rifles for his clients.
- (40) The respondent stated that semiautomatic rifles (such as the AK47) and others are useful for predator hunting.
- (41) The respondent said that he recommended only ranges of calibers deemed suitable but not makes and models of specific rifles.
- (44) The respondent recommended the following calibers for hunting without any specific makes or models: 30.06, 300 Win mag, 338, and 270.
- (47) The respondent stated: "You are asking questions about certain makes of assault rifles, but you are going to end up going after ALL semiautomatic guns. I've spent about 21 years HUNTING with shotguns and I've used semiautomatic models. If you go down the list of times that one new law didn't end up being a whole sloo [sic] of other laws I would be surprised. Maybe some face-to-face with these weapons would be a good thing for politicians. If they see how they are used in 'the Real World' then they may make better amendments."
- (49) The respondent specifically recommended the study rifles only for grizzly bears or moose.
- (50) The respondent stated that his business involved waterfowl hunting, which uses only shotguns.
- (51) The respondent replied: "It is my opinion this is a one sided survey, and does not tell the real meaning and purpose of the survey. And that is to ban all sporting arms in the future. The way this survey is presented is out of line."
- (53) The respondent stated: "I recommend to all my hunters that they join the NRA, vote Republican, and buy a good semi-auto for personal defense."
- (57) The respondent stated that most of his clients use bolt-action rifles. He suggested that semiautomatics are not as accurate as bolt-action rifles.
- (58) The respondent stated that the survey did not pertain to his waterfowl hunting business since only shotguns are used. He added that he did not believe semiautomatics in general present any more threat to the public than other weapons or firearms. However, he suggested that cheaply made assault-type rifles imported from China and other countries are inaccurate and not suitable for hunting.
- (59) The respondent stated that he had no knowledge of the semiautomatic rifles beyond 30.06 or similar calibers for hunting. He added that he did not have a use for "automatic" weapons.

- (64) The respondent stated: "We need to look at weapons and determine what the designer's intent was for the weapon. We really don't need combat weapons in the hunting environment. I personally would refuse to guide for anyone carrying such a weapon."
- (65) The respondent recommended the following calibers for hunting: 7mm, 30.06, .308, .708, 25.06, .243, 22.250, and 300 mag. However, he stated that the study rifles are of no use to the sporting or hunting community whatsoever.
- (71) The respondent stated that he mainly hunts elk but did not recommend any additional information about specific firearms except for using 300 mag and 7 mm mag calibers.
- (73) The respondent recommended any bolt-action or semiautomatic in the 30 or 7mm calibers. However, he stated that he doesn't allow his clients to use any models based on assault rifles: "They are not needed for hunting. A good hunter does not have these."
- (78) The respondent recommended bolt-action rifles for hunting, particularly Browning and Remington.
- (80) Although the respondent stated that he does not conduct guides, he did not see a reason to allow any rifles other those manufactured specifically for hunting and sport shooting: "All assault rifles are for fighting war and killing humans."
- (82) The respondent stated that he used shotguns only.
- (84) The respondent said that he did not allow semiautomatic or automatic rifles in his business. He specifically recommended manually operated rifles.
- (90) The respondent stated that all the semiautomatics like AK47s are absolutely worthless and that he found no redeeming hunting value in any AK47 type of rifle. He further explained that the purpose of hunting is to use the minimum number of shells, not the maximum: "I have only known 1 [person] in 50 years to use an AK47. He shot the deer about 30 times. That wasn't hunting, it was murder." He suggested that he would be willing to testify in Congress against such weapons.
- (92) The respondent stated that he had been contacted in error, as he was not in the hunting guide business.
- (98) The respondent recommended any rifle that a client can shoot the best.
- (101) The respondent wrote a letter saying that his business was too new to provide us with useful information about client use; however, he stated that the Chinese AK47 does a proficient job on deer and similar sizes of game and may be the only rifle that some poor people could afford. He said that he is willing to testify to Congress about the outrageous price of certain weapons.
- (102) The respondent did not recommend rifles but recommended calibers .270, 30.06, .300, and 7mm.

- (103) The respondent stated that he had clients who used semiautomatic rifles, but he didn't know which makes or models.
- (104) The respondent recommended any legal weapons capable of killing game, "including the types mentioned under the 2nd amendment."
- (105) The respondent stated that the semiautomatic rifles used by his clients were Remingtons.
- (112) The respondent stated that he could not provide any useful information because his business was too new.
- (113) The respondent recommended whatever is available to knock down an elk. He recommended specific calibers: 30.06, 300, or 338.
- (115) The respondent questioned why anyone would use a semiautomatic firearm to hunt game: "Anyone using such horrible arms should be shot with one themselves. Any big game animal does not have a chance with a rifle and now you say people can use semiautomatic rifles."
- (116) The respondent had had three clients who used semiautomatics with 30.06 and 270-caliber ammunition; however, he didn't know the makes or models.
- (118) The survey questions were not answered, but the respondent wrote: "This is a stupid survey. No one contends they hunt much for big game with an AK47. The debate is over the right to own one, which the 2nd amendment says we can."
- (119) The respondent recommended bolt-action rifles for hunting.
- (121) The respondent stated that he uses only shotguns in his operation.
- (122) The respondent recommended rifles with the calibers of .270 - 30.06 or larger to the .300 mag or .338 mag. However, he said that anything other than a standard semiautomatic sporting rifle is illegal in Colorado, where his business is conducted.
- (123) The respondent, who is a bighorn sheep outfitter, stated that the semiautomatic rifles have no place in big game hunting. He recommended basic hunting rifles with calibers of 270 or 30.06.
- (124) The respondent, who hunts mainly deer and elk, recommended calibers 270, 30.06, 300 mag, 7mm, 8mm, or 338.
- (125) The respondent said that his clients did use semiautomatics, but he didn't have any specific information about which ones.
- (126) The respondent stated that the study rifles should remain in one's home or on private property. He would like to have some for personal use but would not recommend them for hunting. He further expressed his displeasure with the Brady bill and stated that criminals need to be held accountable for their actions.
- (127) The respondent, who hunts mostly elk and deer, said that the AK47 is not powerful enough to hunt elk; however, it may be ideal for smaller game, like deer or antelope. He recommended any rifles of 30.06 caliber or larger for hunting.

- (131) The respondent recommended bolt-action rifles for his clients with calibers .24, .25, 7 mm, or .30. He cited his preference because of fewer moving parts, their ease to fix, and their lack of sensitivity to weather conditions in the field. He added, however, that he had seen the study rifles used with good success.
- (132) The respondent stated that the study rifles are not worth anything in cold weather.
- (133) The respondent recommended handguns for hunting in calibers 41 or 44 mag.
- (136) The respondent did not recommend any rifles by make, but he did recommend a caliber of .308 or larger for elk.
- (140) The respondent recommended any good bolt or semiautomatic in 270 caliber and up. He added: "I feel the government is too involved in our lives and seek too much control over the people of our country. I am 65 yrs old and see more of our freedom lost every day. I believe in our country but I have little faith in [organizations] like the A.T.F."
- (145) The respondent stated: "Don't send these guns out west. Thanks!"
- (148) The respondent did not hunt turkey or deer and had no additional information to provide.
- (149) The respondent said that he recommends specific rifles to his clients if they ask, usually 270 to 7mm caliber big game rifles.
- (150) The respondent recommended Winchester, Remington, or any other autoloading hunting rifle.
- (152) The respondent said that he recommended caliber sizes but not specific rifles.
- (159) The respondent recommended any gun with which a client can hit a target. He stated that the AK47 could be used for hunting and target shooting.
- (174) The respondent recommended bolt-action rifles to his clients.
- (175) The respondent said that most of his deer-hunting clients use bolt-action rifles, such as Rugers and Remingtons, in calibers of 30.06, 270, or 243. In his duck guide service, only shotguns are used.
- (180) The respondent wrote: "We agree people should not be allowed to have semiautomatics and automatics. This does not mean that you silly bastards in Washington need to push complete or all gun control."
- (182) The respondent felt that the survey is biased because it didn't ask about hunting varmints. He stated that many of the study rifles are suitable for such activity.
- (184) The respondent did not recommend single shots or automatics and only allows bolt action or pumps for use by his clients.

- (188) The respondent wrote that the study guns are good for small game hunting: "I have very good luck with them as they are small, easy to handle, fast-shooting and flat firing guns."
- (192) The respondent submitted a letter with the survey: "I do not recommend the use of semiautomatic weapons for hunting in my area. Most of these weapons are prone to be unreliable because the owner does not know how to properly care for them in adverse weather. The FN-FAL, HK91, HK93, and SIG SG550-1 are excellent and expensive weapons very much suited to competition shooting.
- "Have you surveyed the criminal element on their choice of weapons? I suspect the criminal use of the six weapons you mentioned do law-abiding citizens compare a very small percentage to the same weapon used. I realize that even one wrongful death is too many but now can you justify the over 300,000 deaths per year from government supported tobacco?
- "Gun control does not work - it never has and it never will. What we need are police that capture criminals and a court system with the fortitude to punish them for their crimes."
- (198) The respondent stated that this was his first year in and that it was mainly a bow-hunting business.



DIRECTOR

DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
WASHINGTON, D.C. 20226

DEC 10 1997

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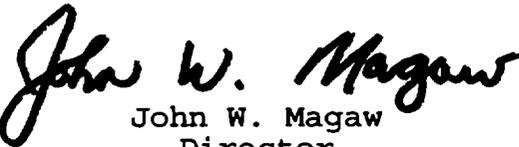
Dear Sir or Madam:

On November 14, 1997, the President and the Secretary of the Treasury decided to conduct a review to determine whether modified semiautomatic assault rifles are properly importable under Federal law. Under 18 U.S.C. section 925(d)(3), firearms may be imported into the United States only if they are determined to be of a type generally recognized as particularly suitable for or readily adaptable to sporting purposes. The firearms in question are semiautomatic rifles based on the AK47, FN-FAL, HK91, HK93, SIG SG550-1, and Uzi designs.

As part of the review, the Bureau of Alcohol, Tobacco and Firearms (ATF) is interested in receiving information that shows whether any or all of the above types of semiautomatic rifles are particularly suitable for or readily adaptable to hunting or organized competitive target shooting. We are asking that your organization voluntarily complete the enclosed survey to assist us in gathering this information. We anticipate that the survey will take approximately 15 minutes to complete.

Responses must be received no later than 30 days following the date of this letter; those received after that date cannot be included in the review. Responses should be forwarded to the Bureau of Alcohol, Tobacco and Firearms, Department HSE, P.O. Box 50860, Washington, DC 20091. We appreciate any information you care to provide.

Sincerely yours,


John W. Magaw
Director

Enclosure

**ATF SURVEY OF HUNTING/SHOOTING EDITORS
FOR RIFLE USAGE**

Page 2 of 2

6. If your answer to item 5 is "Yes", please identify the specific centerfire semiautomatic rifles you recommend.

Make

Model

Caliber

7. Does your publication recommend **against** the use of any semiautomatic rifles whose design is based on the AK 47, FN-FAL, HK91, HK93, SIG 550-1, or Uzi for use in **high-power rifle competition**?

Yes (*Continue*) No (*Skip to #9*)

Yes, in certain circumstances. Please explain _____

(*Continue*)

8. If your answer to item 7 is "Yes" or "Yes, in certain circumstances", please identify the specific rifles your publication recommends **against** using for **high-power rifle competition**.

Make

Model

Caliber

9. Have you or any other author who contributes to your publication written any articles since 1989 concerning the use of semiautomatic rifles and their suitability for use in hunting or organized competitive shooting? (*Exclude Letters to the Editor.*)

Yes (*Continue*) No (*You are finished with the survey. Thank you.*)

10. If your answer to item 9 is "Yes", please submit a copy of the applicable article(s). Any material you are able to provide will be very beneficial to our study. Please indicate the publication, issue date and page for each article.

An agency may not conduct or sponsor, and a person is not required to respond to, the collection of information unless it displays a currently valid OMB control number.

Editors

Comments:

2. If your answer to item 1 is "Yes," please identify the specific centerfire rifles you recommend:
 - (8) Anything except Uzis.
 - (9) All study rifles except Uzi.
 - (12) See attached articles.
3. Please explain circumstances to question 3: Does your publication recommend against the use of any semiautomatic rifles whose design is based on the AK 47, FN-FAL, HK91, HK93, SIG 550-1, or Uzi for use in hunting medium game (for example, turkey) or larger game (for example, deer)?
 - (12) When the caliber is inappropriate or illegal for the specific game species.
4. Other rifle make recommendations in response to question 4: If your answer to item 3 is "Yes" or "Yes, in certain circumstances," please identify the specific rifles that you recommend against using for hunting medium game (for example, turkey) or larger game (for example, deer)?
 - (12) See attached articles.

The following two items are for the responses to question 6: If your answer to item 5 is "Yes," please identify the specific centerfire semiautomatic rifles you recommend:

Model

- (5) Springfield M1A and Colt AR-15.

Caliber

- (5) 7.62m (M1A) and .223 (Colt).

The following items are for questions 9 and 10 on articles written and the submission of these articles with the survey.

Article 1

- (8) No articles enclosed.
- (9) Semiautomatic Takes Tubb to HP Title.
- (10) No articles attached.

Article 2

- (9) AR-15 Spaceguns Invading Match.



DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
WASHINGTON, D.C. 20226

DIRECTOR

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Dear Sir or Madam:

On November 14, 1997, the President and the Secretary of the Treasury decided to conduct a review to determine whether modified semiautomatic assault rifles are properly importable under Federal law. Under 18 U.S.C. section 925(d)(3), firearms may be imported into the United States only if they are determined to be of a type generally recognized as particularly suitable for or readily adaptable to sporting purposes. The firearms in question are semiautomatic rifles based on the AK47, FN-FAL, HK91, HK93, SIG SG550-1, and Uzi designs.

As part of the review, the Bureau of Alcohol, Tobacco and Firearms (ATF) is interested in receiving information that shows whether any or all of the above types of semiautomatic rifles are particularly suitable for or readily adaptable to hunting or organized competitive target shooting. We are asking that your organization voluntarily complete the enclosed survey to assist us in gathering this information. We anticipate that the survey will take approximately 15 minutes to complete.

Responses must be received no later than 30 days following the date of this letter; those received after that date cannot be included in the review. Responses should be forwarded to the Bureau of Alcohol, Tobacco and Firearms, Department FG, P.O. Box 50860, Washington, DC 20091. We appreciate any information you care to provide.

Sincerely yours,

John W. Magaw
Director

Enclosure

ATF SURVEY OF STATE FISH AND GAME COMMISSIONS
FOR RIFLE USAGE

Page 1 of 2

State: _____

1. Do the laws in your state place any prohibitions or restrictions (other than seasonal) on the use of high-power rifles for hunting medium game (for example, turkey) or larger game (for example, deer)?

_____ Yes (Continue) _____ No (Skip to #2)

1a. If "Yes", please cite law(s) and briefly describe the restrictions.

2. Do the laws in your state place any prohibitions or restrictions (other than seasonal) on the use of semiautomatic rifles for hunting medium game (for example, turkey) or larger game (for example, deer)?

_____ Yes (Continue) _____ No (Skip to #3)

2a. If "Yes", please cite law(s) and briefly describe the restrictions.

ATF SURVEY OF STATE FISH AND GAME COMMISSIONS
FOR RIFLE USAGE

Page 2 of 2

(Continue)

3. What, if any, is the minimum caliber or cartridge dimensions that may be used for **hunting medium game (for example, turkey) or larger game (for example, deer)?**

Caliber: _____ OR Dimensions: _____

____ There is no minimum.

4. Does your commission or state collect any data on the types of rifles used in your state for **hunting medium game (for example, turkey) or larger game (for example, deer)?**

____ Yes *(Continue)* ____ No *(You are finished with the survey. Thank you.)*

4a. If "Yes", please provide hard copies of any such available data for the past two hunting seasons of 1995 and 1996. Any data that you provide will be most beneficial to our study.

If you would like us to contact you regarding the data, please provide your name and phone number.

Name: _____ Phone: _____

Survey Fish and Game Commissions for Rifle Usage

STATE	Restrictions		Minimum Caliber or Cartridge		Q5
	Q1	Q2	Q3	Q4	
	HiPwr	Semiauto	Minimum Caliber	Minimum Cartridge	Collect Data
Alabama	Yes	Yes	Any center fire rifle	None	No
Alaska	Yes	No	No Centerfire for big game		No
Arizona	No	Yes	.22 mag or larger		No
Arkansas	Yes	No	None	None	No
California	No	No	See Question 1a	See Question 1a	No
Colorado	Yes	Yes	0.24		No
Connecticut	Yes	Yes			
Delaware	Yes	Yes			
Florida	Yes	Yes	No rimfire for deer		No
Georgia	Yes	No	.22 Centerfire or larger		No
Hawaii	No	No			
Idaho	Yes	Yes	.22 rimfire		No
Illinois	Yes	Yes	None	None	No
Indiana	Yes	Yes	None		No
Iowa	Yes	Yes	not provided		No
Kansas	Yes	Yes	.23 caliber or larger		No
Kentucky	No	No			
Louisiana	Yes	No	.22 Centerfire		No
Maine	Yes	No	.22 mag or larger		No
Maryland	Yes	Yes			
Massachusetts	Yes	No	None	None	Yes
Michigan	Yes	Yes	.23 or larger		No
Minnesota	Yes	No	0.23	1.285"	No
Mississippi	Yes	No	None	None	No
Missouri	Yes	Yes	None	None	No
Montana	No	No	None		No
Nebraska	No	No			
Nevada	No	No			No
New Hampshire	Yes	Yes		above .22 rimfire	No
New Jersey	Yes	Yes	None	None	No
New Mexico	Yes	No	.24 centerfire or larger		No
New York	Yes	Yes	Must be centerfire		No
North Carolina	Yes	No	None	None	No
North Dakota	Yes	Yes	.22 Centerfire or larger		No
Ohio	Yes	No	None	None	No
Oklahoma	Yes	Yes	.22 magnum		No
Oregon	Yes	Yes	.22 or .24 or larger		No
Pennsylvania	Yes	Yes	None	None	No
Rhode Island	Yes	Yes		.229 maximum	No
South Carolina	Yes	No	Must be larger than .22		No
South Dakota	Yes	No	None	None	No
Tennessee	Yes	Yes	.24 or larger caliber		No
Texas	Yes	No	None	None	No
Utah	Yes	No		None	No
Vermont	Yes	No			No
Virginia	Yes	Yes	.23 caliber for deer		No
Washington	Yes	Yes	.240 or larger for coyote		No
West Virginia	No	No		Any centerfire	No
Wisconsin	Yes	No	.22 caliber or larger		No
Wyoming	Yes	No		23/100 bullet dia.	No

State Fish and Game Commissions

Restrictions for High Powered Rifles

1a. Please cite law(s) and briefly describe the restrictions.

Alabama

(19) No automatic weapons, no silenced weapons.

Alaska

(23) Bison hunters must use a caliber capable of firing a 200-grain bullet having 2,000 pounds of energy at 100 yards.

Arkansas

(11) No rifles for turkey.

California

(22) Centerfire for big game, 10 gauge or smaller for resident small game.

Colorado

(10) Semiautomatic rifle may not hold more than 6 rounds.

Connecticut

(39) Shotgun only on public lands. Can use any type of rifle on private land.

Delaware

(40) No rifles - shotguns/muzzle loaders only.

Florida

(25) Machine guns and silencers not permitted for any hunting.

Georgia

(29) No hi-power rifles allowed for turkey hunting.

Hawaii

(49) Must have discharge of 1200 foot pounds.

Idaho

(30) No hi-power rifles allowed for hunting turkey.

Illinois

(12) Turkey or deer may not be hunted with rifle. Deer may not be hunted with muzzle loading rifle. No restriction on rifles for coyote, fox, and woodchuck, etc.

Indiana

(34) No hi-power rifles allowed for deer or turkey hunting. Limited restrictions for specified areas.

Iowa

(26) Cannot use rifles for turkey or deer, only shotgun or bow and arrow. No difference if public or private lands. For coyote or fox, there is no restriction on rifles, magazine size, or caliber.

Kansas

(33) Must use ammunition specifically designed for hunting.

Louisiana

(6) No rifles for turkey hunting. Rifles for deer hunting must be no smaller than .22 centerfire.

Maine

(32) No hi-power rifles for turkey and water fowl. Some limited restrictions for specific areas.

Maryland

(42) Some restrictions based on county. They are allowed in western and southern Maryland. Shotguns only in and around Baltimore and Washington, D.C.

Massachusetts

(14) Rifles not permitted for hunting deer and turkey.

Michigan

(27) No turkey hunting with hi-power rifle. No night hunting with hi-power rifle. Deer hunting with hi-power rifle allowed only in lower southern peninsula. Limited restrictions for specific areas.

Minnesota

(13) Caliber must be at least .23. Ammunition must have a case length of at least 1.285". .30 caliber M1 carbine cartridge may not be used.

Mississippi

(15) Restricts turkey hunting to shotguns. However quadriplegics may hunt turkey with a rifle.

Missouri

(5) Rifles not permitted for turkey. Self loading firearms for deer may not have a combined magazine + chamber capacity of more than 11 cartridges.

Nebraska

(43) Allowed and frequently used, but magazine capacity maximum is six rounds.

Nevada

(1) Answer to #3 refers to NAS 501.150 and NAS 503.142. Not for turkey.

New Hampshire

(7) Magazine capacity no more than 5 rounds. Prohibits full metal jacket bullets for hunting. Prohibits deer hunting with rifles in certain towns.

New Jersey

(17) No rifles.

New Mexico

(31) No hi-power rifles allowed for hunting turkey.

New York

(24) No semiautomatics with a magazine capacity of greater than 6 rounds; machineguns and silencers not permitted for any hunting. Limited restrictions for specific areas.

North Carolina

(20) Centerfire rifles not permitted for turkey hunting.

North Dakota

(28) No hi-power rifles for turkey hunting.

Ohio

(3) Prohibits high power rifles for turkey, deer and migratory birds. High power rifles can be used on all other legal game animals.

Oklahoma

(8) Centerfire rifles only for large game. Magazines for .22 centerfire rifles may not hold more than 7 rounds.

Oregon

(2) OAR 635-65-700(1) must be .24 caliber or larger center fire rifle, no full automatic; OAR 635-65-700(2) hunters shall only use centerfire rifle .22 caliber; OAR-65-700(5) no military or full jacket bullets in original or altered form. Limited restrictions for specific areas.

Pennsylvania

(16) Rifles not permitted in Philadelphia & Pittsburgh areas.

Rhode Island

(44) .22 center fire during the summer for woodchucks.

South Carolina

(18) No rifle for turkey, rifle for deer must be larger than .22 caliber

South Dakota

(50) Magazine not more than five rounds.

Tennessee

(37) No hi-power rifles allowed for turkey hunting.

Texas

(21) Rimfire ammunition not permitted for hunting deer, antelope, and bighorn sheep; machine guns and silencers not permitted for hunting any game animals.

Utah

(9) No rifles for turkey hunting.

Vermont

(47) Turkey size less than 10 gauge. Deer/moose/beer, no restriction on caliber.

Virginia

(48) 23 caliber or larger for deer and bear. No restrictions for turkey. No magazine restrictions, shotgun limited to 3 shells. Restrictions vary from county to county - approximately 90 different rifle restrictions in the State of Virginia based on the county restrictions. Sawed-off firearms are illegal to own unless with a permit, if barrel less than 16 inches for rifle, and 18 inches for shotgun.

Washington

(46) Hunting turkey limited to shotguns. Small game limited to shotguns.

Wisconsin

(36) No .22 rimfire rifles for deer hunting.

Wyoming

(4) Big game and trophy animals, firearm must have a bore diameter of at least 23/100 of an inch.

Restrictions for Semiautomatic Rifles

2a. Please cite law(s) and briefly describe the restrictions.

Alabama

(19) Turkey may not be hunted with a centerfire rifle or rimfire rifle. Semiautomatic rifles of proper caliber are legal for all types of hunting. No restrictions on magazine capacity, except wildlife management areas where centerfire rifles are restricted to 10 round max.

Arizona

(38) Magazine cannot hold more than 5 rounds.

Colorado

(10) Semiautomatic rifle may not hold more than 6 rounds.

Connecticut

(39) Shotgun only on public lands. Any type of rifle can be used on private land.

Delaware

(40) No rifles - shotguns/muzzle loaders only.

Florida

(25) No semiautomatic centerfire rifles having a magazine capacity greater than 5 rounds.

Idaho

(30) No hi-power rifles (including semiautomatic) allowed for turkey hunting.

Illinois

(12) See #1.

Indiana

(34) No hi-power rifles allowed for turkey hunting.

Iowa

(26) Cannot use rifles for turkey or deer, only shotgun or bow and arrow. No difference in public or private land. For coyote or fox, there is no restriction on rifle, magazine size, or caliber.

Kansas

(33) Must use ammunition specifically designed for hunting.

Maryland

(42) Some restrictions. Based on county. Shotguns only in and around Baltimore and Washington, D.C.

Michigan

(27) Unlawful to hunt with semiautomatic rifles capable of holding more than 6 rounds in magazine and barrel. Rimfire (.22 cal) rifles excluded from restrictions.

Missouri

(5) Combined magazine + chamber capacity may not be more than 11 cartridges.

New Hampshire

(7) Turkey may not be hunted with rifles. Rifles may not have magazine capacity of more than 5 cartridges.

New Jersey

(17) No rifles.

New York

(24) No semiautomatics with a magazine capacity of greater than 6 rounds.

North Dakota

(28) No hi-power rifles (including semiautomatics) may be used for hunting turkey.

Oklahoma

(8) See #1.

Oregon

(2) OAR 635-65-700(1) and (2) limits magazine capacity to no more than 5 cartridges.

Pennsylvania

(16) Semiautomatic rifles are not lawful for hunting in Pennsylvania.

Rhode Island

(44) Cannot use semiautomatic during the winter, only during the summer months for woodchucks (during daylight from April 1 to September 30).

Tennessee

(37) No hi-power rifles, including semiautomatics, allowed for turkey hunting.

Vermont

(47) Semiautomatic 5 rounds or less.

Virginia

(48) Semiautomatics are legal wherever rifles can be used. 23 caliber or larger for deer and bear. No restrictions for turkey. No magazine restrictions, shotgun limited to 3 shells. Restrictions vary from county to county - approximately 90 different rifle restrictions in the State of Virginia based on the county restrictions. Sawed-off firearms are illegal to own unless with a permit, if barrel less than 16 inches for rifle, and 18 inches for shotgun. Striker 12 - drums holds 12 or more rounds and is illegal.

Washington

(46) Cannot use fully automatic for hunting.

West Virginia

(45) Cannot use fully automatic firearms for hunting.

Comments Provided by Law Enforcement Agencies

- (1) No research.
- (2) No research.
- (3) NOBLE and others forwarded information to a U.S. Senator on circumstances concerning police officers killed or injured by these weapons. No data was provided.
- (4) No research.
- (7) The organization stated: "Most of the data available on guns and crime does not provide the detail needed to identify the types of guns listed. . . . We have conducted several surveys that refer to assault rifles generically, including the Survey of Inmates in State Correctional Facilities 1991, Survey of Inmates in Local Jails 1995, and the Survey of Adults on Probation 1995. The data on assault weapons has not been analyzed in the recently released Survey of Adults on Probation 1995 or in the yet to be released Survey of Inmates in Local Jails 1995.

"Our report Guns Used in Crime includes the results of an analysis of the stolen data from the FBI's National Crime Information Center database. Our analysis was limited to general categories of guns and calibers of handguns. The recent evaluation of the assault weapons ban funded by the National Institute of Justice analyzed a more recent set of the same data with an emphasis on assault weapons. The results of this evaluation were reported in Impact Evaluation of the Public Safety and Recreational Firearms Use Protection Act of 1994."

"BJS [Bureau of Justice Statistics] supports the Firearms Research Information System (FARIS). . . . This database contains firearms-related information from surveys, research, evaluations, and statistical reports. . . . We queried this database for any research on assault weapons. The results of the query include both the reports listed above, as well as several others. Please note that in BJS's report Guns Used in Crime refers to the report Assault Weapons and Homicide in New York City prepared by one of our grantees. While the data are from 1993, the report provides interesting insights into the use of assault weapons and homicide. Another source of data on assault weapons and crime is the FBI's Law Enforcement Officers Killed and Assaulted series, which records the type of gun used in killings of police officers. Several of the reports listed in the FARIS query used these data, including Cop Killers: Assault Weapons Attacks on America's Police, and Cops Under Fire: Law Enforcement Officers Killed with Assault Weapons or Guns with High Capacity Magazines."

- (9) Guns in America: National Survey on Private Ownership and Use of Firearms (May 1997) states: The 1994 NSPOF (National Survey of Private Ownership of Firearms) estimates for the total number of privately owned firearms is 192 million: 65 million handguns, 70 million rifles, 49 million shotguns, and 8 million other long guns.



DIRECTOR

DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
WASHINGTON, D.C. 20226

DEC 10 1997

O:F:S:DMS
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Dear Sir or Madam:

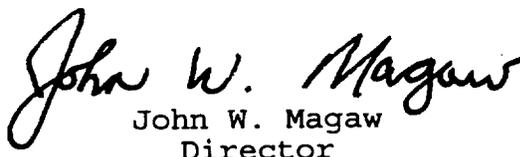
On November 14, 1997, the President and the Secretary of the Treasury decided to conduct a review to determine whether modified semiautomatic assault rifles are properly importable under Federal law. Under 18 U.S.C. section 925(d)(3), firearms may be imported into the United States only if they are determined to be of a type generally recognized as particularly suitable for or readily adaptable to sporting purposes. The firearms in question are semiautomatic rifles based on the AK47, FN-FAL, HK91, HK93, SIG SG550-1, and Uzi designs.

As part of the review, the Bureau of Alcohol, Tobacco and Firearms (ATF) is interested in receiving information that shows whether any or all of the above types of semiautomatic rifles are particularly suitable for or readily adaptable to hunting or organized competitive target shooting.

Although ATF is not required to seek public comment on this study, the agency would appreciate any factual, relevant information concerning the sporting use suitability of the rifles in question.

Your voluntary response must be received no later than 30 days from the date of this letter; those received after that date cannot be included in the review. Please forward your responses to the Bureau of Alcohol, Tobacco and Firearms, Department TA, P.O. Box 50860, Washington, DC 20091.

Sincerely yours,


John W. Magaw
Director

Comments Provided by Industry Members and Trade Associations

- (12) The respondent felt that definitions and usage should be subject to rulemaking. The respondent stated that limits on "sporting" use do not take into account firearms technology and its derivative uses among millions of disparate consumers. Millions of gun owners currently engage in informal target competition.

The respondent stated that the firearms are suitable for sporting purposes and that ATF's practice of making "ad hoc" revisions to import criteria disrupts legitimate commerce. The respondent recommends that all changes to criteria should be subject to rulemaking.

- (19) The respondent submitted a brochure and a statement supported by seven letters from FFL's who sell the SLR-95 and 97 and ROMAK 1 and 2. The respondent and all the supporting letters attest to the suitability of these guns for hunting because (1) they are excellent for deer or varmint hunting; (2) they are used by many for target shooting; (3) their ammunition is readily available and affordable; and (4) they are excellent for young/new hunters because of low recoil, an inexpensive purchase price, durability, and light weight, as well as being designed only for semiautomatic fire.
- (20) One respondent submitted results of its independently conducted survey, which consisted of 30 questions. The results of the survey suggest that 36 percent of those queried actually use AK47-type rifles for hunting or competition, 38 percent use L1A1-type rifles for hunting or competition, and 38 percent use G3-type rifles for hunting or competition. Other uses include home defense, noncompetitive target shooting, and plinking. Of those queried who do not currently own these types of rifles, 35 percent would use AK-type rifles for hunting or competition, 36 percent would use L1A1-type rifles for hunting or competition, and 37 percent would use G3-type rifles for hunting or competition.
- (22) The respondent claims that the majority of the study rifles' length and calibers can be used only for sporting purposes. The respondent asserts that the only technical detail remaining after the 1989 decision that is similar to a military rifle is the locking system. After 1989, the imported rifles have no physical features of military assault rifles. All have features which can be found on any semiautomatic sporting/hunting rifle.

However, the respondent writes that the Uzi-type carbines are "not suitable for any kind of sporting events other than law enforcement and military competitions because the caliber and locking system do not allow precise shooting over long distances."

- (23) One respondent, who imports the SAR-8 and SAR-4800 that are chambered for .308 Winchester ammunition, states that neither rifle possesses any of the characteristics of either the 1989 determination or the 1994 law. The respondent states that both are permitted in match rifle and other competitions. The respondent states that only two questions should be considered to determine hunting suitability of a rifle: Whether the caliber is adequate to take one or more game species and whether the gun is safe and reliable. The respondent states that there is no factual or legal basis to conclude that the rifles are not "particularly suitable" for sporting purposes.
- (24) The respondent writes: "The particular firearms differ from other guns that are universally acceptable only in cosmetic ways. There is no functional difference between semiautomatic firearms based on the external features that have been keyed on in an attempt to implement the import restrictions of the 1994 Crime Bill. As further attempts to differentiate functionally identical firearms by these features for the purposes of culling out those that might be politically suitable for an administrative import ban is wrong."
- (25) The respondent writes that the SLG95 was developed exclusively for hunting and competitive shooting. The respondent points out that it is capable of single firing only and cannot be reassembled for use as an automatic weapon. It is made for endurance and accuracy to 300 meters.
- (26) The respondent recommends AK47 variants specifically, but believes all study rifles are suitable or adaptable for sporting. The respondent states that a Galil-chambered .308/.223 with a two-position rear sight, adjustable front sight, or scope mount channel, are reliable, durable, accurate, and suitable for hunting and organized competitive shooting. The respondent states that the Uzi, which chambers 9mm and 40 S&W, two-position rear sight, and an adjustable front sight is suitable for organized competitive target shooting.
- (27) The respondent states that the SIG-SG550-1, in its original configuration, never possessed assault rifle features. The respondent states that it was built as a semiautomatic, not a fully automatic that was converted or modified to semiautomatic. It does have protruding pistol grip, and its ergonomics are geared toward its original design of goal-precision shooting. The respondent says that the name "Sniper" was a marketing decision, and it is extremely popular in .223 competitions. Its price isolates the gun to the competitor/collector.

- (28) Letters from H&K users were submitted in support of their continued importation and use as sporting arms. Specifically, the SR9 and PSG1 were said to be clearly suitable and utilized daily for hunting and target shooting. The respondent states that sport is defined as "an active pastime, diversion, recreation" and that the use of these is all the justification needed to allow their importation. The PSG1 has been imported since 1974, and the SR9 since 1990. The semiautomatic feature dates to turn of the century.

The respondent states that the cost would dissuade criminals from using them. The respondent refers to ATF's reports "Crime Gun Analysis (17 Communities)" and "Trace Reports 1993-1996" to show that the H&K SR9 and PSG1 are not used in crime. In the 4-year period covered by the reports, not one was traced.

- (29) The respondent faults the 1989 report both for not sufficiently addressing the issue of ready adaptability, as well as for the limited definition of sporting purposes. The respondent states that sport is defined as "that which diverts, and makes mirth; pastime, diversion." The respondent says that the NRA sponsors many matches, and personally attests to the FN-FAL and HK91 as being perfectly suitable for such matches. The respondent states that the rifles are also used for hunting deer, rabbits, and varmints. Further, the respondent remarks that the use of these rifles in crime is minuscule.

Importer/Individual Letters

On January 15, 1998, the study group received a second submission from Heckler and Koch, dated January 14, 1998. It transmitted 69 letters from individuals who appeared to be answering an advertisement placed in Shotgun News by Heckler and Koch. The study group obtained a copy of the advertisement, which requested that past and current owners of certain H&K rifles provide written accounts of how they use or used these firearms. The advertisement stated that the firearms in question, the SR9 and the PSG1, were used for sporting purposes such as hunting, target shooting, competition, collecting, and informal plinking. The advertisement also referred to the 120-day study and the temporary ban on importation, indicating that certain firearms may be banned in the future.

Synopses of Letters:

1. The writer used his SR9 to hunt deer (photo included).
2. The writer used his SR9 to hunt deer (photo included).
3. The writer used his SR9 for informal target shooting and plinking.
4. The writer used his SR9 for target practice and recreation.
5. The writer (a police officer) used SR9 to hunt. Said that it's too heavy and expensive for criminals.

6. The writer used his SR9 for competition.
7. The writer used H&K rifles such as these around the farm to control wild dog packs.
8. The writer used his SR9 to hunt deer.
9. The writer used his SR9 to hunt, participate in target practice, and compete.
10. The writer used his H&K rifles for informal target shooting.
11. The writer used his SR9 to hunt elk because it's rugged, and to shoot targets.
12. The writer used his SR9 to target practice.
13. The writer used his HK91 to hunt varmints and compete in military rifle matches.
14. The writer does not use the firearms but is familiar with their use for target shooting, hunting, and competition.
15. The writer uses HK firearms for DCM marksmanship competition.
16. The writer used his HK93 for 100-yard club matches and NRA-high power rifle matches.
17. The writer does not own the firearms but enjoys shooting sports and collecting.
18. The writer used his HK91 to hunt deer, boar, and mountain goat and in high-power match competitions.
19. The writer used his SR9 to shoot targets and for competitions.
20. The writer used his HK91 to shoot varmints, hunt small and big game, and shoot long-range silhouettes.
21. The writer used his SR8 to hunt deer, target shoot, and plink.
22. The writer used his HK93 to shoot in club competitions.
23. The writer used his SR9 to shoot targets because the recoil does not impact his arthritis.
24. The writer (a police officer) does not own the firearm but never sees HKs used in crime.
25. The writer used his HKs for target shooting, competition, and collection.
26. The writer does not own the firearms but likes recreational target shooting.
27. Writer does not own the firearms but states, "Don't ban."

28. The writer used his SR9 for hunting deer, varmints, and groundhogs; for target shooting; and for occasional competitions.
29. The writer used his SR9 to hunt deer because it's accurate, rugged, and reliable.
30. The writer used his SR9 to hunt deer and elk.
31. The writer used his SR9 to target shoot.
32. The writer used his SR9 to hunt deer and target shoot.
33. The writer used his HK91 to shoot military rifle 100-yard competitions.
34. The writer used his SR9 for hunting varmints and coyotes, for target shooting, and for competitions.
35. The writer used his SR9 to hunt deer and target shoot.
36. The writer (a former FBI employee) used his SR9 for hunting varmints and for precision and target shooting.
37. The writer used his HK for target shooting and competition.
38. The writer used his SR9 for informal target shooting and plinking and his HK91 for bowling pin matches, high-power rifle competitions, informal target shooting, and plinking.
39. The writer used his SR9 to plink and shoot targets, saying it's too heavy for hunting.
40. The writer has an HK91 as part of his military collection and indicates it may be used for hunting.
41. The writer used his SR9 to target shoot.
42. The writer used his SR9 to hunt deer and target shoot.
43. The writer does not own the firearms but says, "Don't ban."
44. The writer used his SR9 and HK93 for hunting deer, for target shooting, and for home defense.
45. The writer states, "Don't ban."
46. Writer states, "Don't ban."
47. Writer states, "Don't ban."
48. The writer owns an SR9; no use was reported.
49. Writer used his SR9 to compete in club matches and "backyard competitions."
50. The writer used his HK to hunt boar and antelope.

51. The writer states, "Don't ban."
52. The writer (a police officer) does not own the firearms but states that the are not used by criminals.
53. The writer used his HK91 to hunt deer.
54. The writer (a police trainer) says that the PSG1 is used for police sniping and competitive shooting because it's accurate. He says that it's too heavy to hunt with and has attached an article on the PSG1.
55. The writer used her two PSG1s for target shooting and fun.
56. The writer used his SR9 and PSG1 to hunt and target shoot.
57. The writer used his two PSG1s to hunt and target shoot.
58. The writer provides an opinion that the SR9 is used to hunt and target shoot.
59. The writer used his PSG1 for hunting deer and informal target shooting.
60. The writer used his PSG1 to target shoot and plink.
61. The writer states, "Don't ban."
62. The writer used his HK91 to target shoot.
63. The writer used his HK91 to target shoot.
64. The writer (a U.S. deputy marshall) used his SR9 to shoot at the range.
65. The writer used his SR9 to hunt deer and coyotes.
66. The writer used his SR9 to competitively target shoot.
67. The writer used his SR9 to hunt deer and bear.
68. The writer uses military-type rifles like these for predator control on the farm.
69. The writer used his SR9 to target shoot, plink, and compete in DCM matches.

Comments Provided by Interest Groups

- (7) Impact Evaluation of the Public Safety and Recreational Firearms Use Protection Act of 1994, Final Report. March 13, 1997.
- (8) Identical comments were received from five members of the JPFO. They are against any form of gun control or restriction regardless of the type of firearm. References are made comparing gun control to Nazi Germany.
- (9) The respondent contends that police/military-style competitions, "plinking," and informal target shooting should be considered sporting. Note: The narrative was provided in addition to survey that Century Arms put on the Internet.

The respondent questions ATF's definition of "sporting" purposes. The respondent contends that neither the Bill of Rights nor the Second Amendment places restrictions on firearms based on use.

- (13) Citing the 1989 report, the respondent states that the drafters of the report determined what should be acceptable sports, thus excluding "plinking."

The respondent states that appearance (e.g., military looking) is not a factor in determining firearms' suitability for sporting purposes. It is their function or action that should determine a gun's suitability. Over 50 percent of those engaged in Practical Rifle Shooting use Kalashnikov variants. Further, citing U.S. vs. Smith (1973), the "readily adaptable" determination would fit all these firearms.

- (14) The respondent states that the vast majority of competitive marksmen shoot either domestic or foreign service rifles. Only 2-3 participants at any of 12 matches fire bolt-action match rifles. If service rifles have been modified, they are permitted under NRA rule 3.3.1.

The respondent says that attempts to ban these rifles "is a joke."

- (15) The respondent states that these firearms are used by men and women alike throughout Nebraska. All of the named firearms are used a lot all over the State for hunting. The AK47 has the same basic power of a 30/30 Winchester. All of these firearms function the same as a Browning BAR or a Remington 7400. Because of their design features, they provide excellent performance.
- (16) The respondent states that the Bill of Rights does not show the second amendment connected to "sporting purposes." The respondent says that all of the firearms in question are "service rifles," all can be used in highpower rifle competition (some better than others), but under no circumstances should "sporting use" be used as a test to determine whether they can be sold to the American public. The respondent states that "sporting use" is a totally bogus question.

- (17) The respondent's basic concern is that the scope of our survey is significantly too narrow (i.e., not responsive to the Presidential directive, too narrow to address the problem, and inadequate to the task). The respondent states, "We do not indicate that our determination will impact modifications made to skirt law. We rely on the opinions of the 'gun press.' At a minimum, the Bureau should deny importation of: any semiautomatic capable of accepting with a capacity of more than 10 rounds, and any semiautomatic rifle with a capacity to accept more rounds than permitted by the State with the lowest number of permitted rounds. Deny any semiautomatic that incorporates cosmetically altered 'rule-beating' characteristics. Deny any semiautomatic that can be converted by using parts available domestically to any of the 1994 banned guns/characteristics. Deny any semiautomatic manufactured by any entity controlled by a foreign government. OR manufactured by a foreign entity that also manufactures, assembles or exports assault-type weapons. Deny any semiautomatic that contains a part that is a material component of any assault type weapon made, assembled, or exported by the foreign entity which is the source of the firearm proposed to be imported."

"A material component of any assault type weapon, assembled or exported by the foreign entity, which is, the source of the firearms proposed to be imported. The gun press has fabricated 'sporting' events to justify these weapons. The manner in which we are proceeding is a serious disservice to the American people."

Attachments: That Was Then, This is Now: Assault Weapons: Analysis, New Research, and Legislation: Assault Weapons and Accessories in America; and Cop Killers. All authored by the Violence Policy Center.

- (30) The respondent states, "At least for handguns, and among young adult purchasers who have a prior criminal history, the purchase of an assault-type firearm is an independent risk factor for later criminal activity on the part of the purchaser."

NOTE: The above study was for assault-type handguns used in criminal activity versus other handguns. The study involved only young adults, and caution should be used in extending these results to other adults and purchasers of rifles. However, the respondent states, it is plausible that findings for one class of firearms may pertain to another closely related class.

- (31) The 1996 National Survey of Fishing, Hunting and Wildlife-Associated Recreation. The publication outlines 1996 expenditures for guide use and percentage of hunters using guides for both big game and small game hunting.

- (32) In a memo from the Center to Prevent Handgun Violence the sections are Legal Background, History of Bureau Application of the "Sporting Purposes" Test, The Modified Assault Rifles under Import Suspension Should Be Permanently Barred from Importation, [The Galils and Uzis Should Be Barred from Importation Because They Are Banned by the Federal Assault Weapon Statute, and All the Modified Assault Rifles Should Be Barred from Importation Because They Fail the Sporting Purposes Test]. The conclusion states: "The modified assault rifles currently under suspended permits should be permanently barred from importation because they do not meet the sporting purposes test for importation under the Gun Control Act of 1968 and because certain of the rifles [Galils and Uzis] also are banned by the 1994 Federal assault weapon law."

Comments Provided by Individuals

- (10) The respondent does not recommend the Uzi, but he highly recommends the others for small game and varmints. He feels that the calibers of these are not the caliber of choice for medium or large game; however, he believes that the SIG and H&K are the best-built semiautomatics available.

He can not and will not defend the Uzi, referring to it as a "piece of junk."

The respondent feels that because of their expense and their being hard to find, the study rifles (excluding the Uzi) would not be weapons of choice for illegal activities.

- (11) The respondent questions ATF's definition of "sporting" and "organized shooting." He feels that ATF's definition is too narrow and based on "political pressure."

The respondent feels that the firearms are especially suitable for competitive shooting and hunting and that the restrictions on caliber and number of cartridges should be left to the individual States. He has shot competitively for 25 years.

- (18) The respondent specifically recommends the MAK90 for hunting because its shorter length makes for easier movement through covered areas, it allows for quicker follow-up shots, its open sights allow one to come up upon a target more quickly, and it provides a quicker determination of whether a clear shot exists through the brush than with telescopic sighting.

- (21) The respondent states that the second amendment discusses "arms," not "sporting arms." The respondent further states that taxpayer money was spent on this survey and ATF has an agenda. A gun's original intent (military) has nothing to do with how it is used now. "The solution to today's crime is much the same as it always has been, proper enforcement of existing laws, not the imposition of new freedom-restricting laws on honest people."

Information on Articles Reviewed

- (1) Describes limited availability of Uzi Model B sporter with thumbhole stock.
- (2) Describes rifle and makes political statement concerning 1989 ban.
- (3) Describes Chinese copy of Uzi with thumbhole stock.
- (4) Quality sporting firearms from Russia.
- (5) Short descriptions of rifles and shotguns available. Lead-in paragraph mentions hunting. Does not specifically recommend any of the listed weapons for hunting.
- (6) Geared to retail gun dealers, provides list of available products. States L1A1 Sporter is pinpoint accurate and powerful enough for most North American big game hunting.
- (7) Discusses the use of the rifle for hunting bear, sheep, and coyotes. Describes accuracy and ruggedness. NOTE: The rifle is a pre-1989 ban assault rifle.
- (8) Deals primarily with performance of the cartridge. Makes statement that AK 47-type rifle is adequate for deer hunting at woods ranges.
- (9) Discusses gun ownership in the United States. Highlighted text (not by writers) includes the National Survey of Private Ownership of Firearms that was conducted by Chilton Research Services of Drexel Hill, Pennsylvania during November and December 1994: 70 million rifles are privately held, including 28 million semiautomatics.
- (10) Discusses pre-1989 ban configuration. Describes use in hunting, and makes the statement that "in the appropriate calibers, the military style autoloaders can indeed make excellent rifles, and that their ugly configuration probably gives them better handling qualities than more conventional sporters as the military discovered a long time ago."
- (15) Not article - letter from Editor of Gun World magazine discussing "sport" and various competitions. Note: Attached submitted by Century Arms.
- (16) Letter addressed to "To Whom It May Concern" indicating HK91 (not mentioned but illustrated in photos) is suitable for hunting and accurate enough for competition. Note: Submitted by Century Arms.
- (17) Describes a competition developed to test a hunter's skill. Does not mention any of the rifles at issue.
- (18) Not on point - deals with AR 15.
- (19) Describes function, makes political statement.
- (20) Discusses function and disassembly of rifle.
- (21) Not on point - deals with AR 15 rifle.

- (22) Discusses competition started to show sporting use of rifles banned for sale in California. Unknown if weapons in study were banned in California in 1990.
- (23) Not on point - deals with national matches.
- (24) Not on point - deals with various surplus military rifles.
- (25) Deals with 7.62x39mm ammunition as suitable for deer hunting and mentions the use in SKS rifles, which is a military style semiautomatic but not a part of the study.
- (26) Not on point - deals with reloading.
- (27) Not on point - deals with reloading.
- (28) Not on point - deals with AR15 rifles in competition.
- (29) Not on point - deals with the SKS rifle.
- (30) Not on point - deals with national matches.
- (31) Not on point - deals with national matches.
- (32) Not on point - deals with national matches.
- (33) Not on point - deals with national matches at Camp Perry.
- (34) Not on point - deals with national matches at Camp Perry.
- (35) Not on point - deals with 1989 national matches at Camp Perry.
- (36) Not on point - deals with Browning BAR sporting semiautomatic rifles.
- (38) Not on point - deals with AR15, mentions rifle in caliber 7.62 x 39.
- (39) Not on point - deals with bullet types.
- (40) Not on point - deals with reloading.
- (41) Discusses tracking in snow. Rifles mentioned do not include any rifles in study.
- (42) Deals with deer hunting in general.
- (43) Deals with rifles for varmint hunting. Does not mention rifles in study.
- (44) Not on point - deals with hunting pronghorn antelope.
- (45) Deals with various deer rifles.
- (46) Not on point - deals with two Browning rifles' recoil reducing system.
- (47) Not on point - deals with bolt-action rifles.
- (48) Not on point - deals with ammunition.

- (49) Deals with modifications to AR15 trigger for target shooting.
- (50) Not on point - deals with M1 Garand as a target rifle.
- (51) Not on point - deals with reloading.
- (52) Deals with impact of banning semiautomatic rifles would have on competitors at Camp Perry.
- (53) Deals with economic impact in areas near Camp Perry if semiautomatic rifles banned. Reprint from Akron Beacon Journal.
- (54) Deals with training new competitive shooters - mentions sporting use of assault rifles, i.e., AR15.
- (55) Not on point - article about Nelson Shew.
- (56) Not on point - deals with reloading.
- (57) Not on point - deals with shooting the AR15.
- (58) Not on point - article about AR15 as target rifle.
- (59) Not on point - article about well known competitive shooter.
- (67) Not on point - deals with reloading.
- (68) Discusses semiautomatic versions of M14.
- (69) Discusses gas operation.
- (70) Discusses right adjustment on M1 and M1A rifles.
- (71) Discusses M1A and AR15-type rifles modified to remove them from assault weapon definition, and their use in competition.
- (72) Deals with AR15 type rifle.
- (73) Not on point - deals with AR15.
- (74) Not on point - deals with target rifle based on AR15/M16.
- (75) Not on point - deals with SKS rifle.
- (76) Not on point - deals with reloading 7.62x39mm cartridge.
- (77) Not on point - deals with reloading. Mentions 7.62x39mm.
- (78) Not on point - deals with ammunition performance.
- (79) Deals with .223 Remington caliber ammunition as a hunting cartridge.
- (80) Describes M1A (semiautomatic copy of M14) as a target rifle.
- (81) Not on point - deals with bullet design.
- (82) Not on point - deals with ammunition performance.

Information on Advertisements Reviewed

- (11) Indicates rifles are rugged, reliable and accurate.
- (12) Describes rifles, lists price.
- (13) Sporting versions of AK 47 and FAL.
- (14) Sporting version of AK 47, reliable, accurate.
- (61) Catalog of ammunition - lists uses for 7.62x39mm ammunition.
- (62) Catalog of ammunition - lists uses for 7.62x39mm ammunition.
- (63) Catalog of ammunition - lists uses for 7.62x39mm ammunition.
- (64) Catalog of ammunition - lists uses for 9mm ammunition.
- (65) Catalog of ammunition - lists uses for 9mm ammunition.
- (66) Catalog of ammunition - lists recommended uses for 9mm ammunition.

EXHIBIT 8

**Declaration of Roderick M. Thompson in
Support of Sunnyvale's Opposition to
Plaintiffs' Motion for Preliminary
Injunction**

H.R. REP. 103-489, H.R. Rep. No. 489, 103RD Cong., 2ND Sess.
1994, 1994 WL 168883, 1994 U.S.C.C.A.N. 1820 (Leg.Hist.)
, VIOLENT CRIME CONTROL AND LAW ENFORCEMENT ACT OF 1994

PUBLIC SAFETY AND RECREATIONAL FIREARMS USE PROTECTION ACT

DATES OF CONSIDERATION AND PASSAGE

House: November 3, 1993; March 23, April 14, 19, 20, 21, May 5, August 19, 21, 1994
Senate: November 3, 4, 5, 8, 9, 10, 11, 16, 17, 18, 19, 1993; May 19, August 22, 23, 24, 25, 1994
Cong. Record Vol. 139 (1993)
Cong. Record Vol. 140 (1994)
House Report (Judiciary Committee) No. 103-324,
Nov. 3, 1993 (To accompany H.R. 3355)
House Report (Judiciary Committee) No. 103-489,
May 2, 1994 (To accompany H.R. 4296)
[House Conference Report No. 103-694](#),
Aug. 10, 1994 (To accompany H.R. 3355)
[House Conference Report No. 103-711](#),
Aug. 21, 1994 (To accompany H.R. 3355)

RELATED REPORTS

House Report (Judiciary Committee) No. 103-45,
Mar. 29, 1993 (To accompany H.R. 829)
House Report (Judiciary Committee) No. 103-245,
Sept. 21, 1993 (To accompany H.R. 1385)
House Report (Judiciary Committee) No. 103-320,
Nov. 3, 1993 (To accompany H.R. 3350)
House Report (Judiciary Committee) No. 103-321,
Nov. 3, 1993 (To accompany H.R. 3351)
House Report (Judiciary Committee) No. 103-322,
Nov. 3, 1993 (To accompany H.R. 3353)
House Report (Judiciary Committee) No. 103-323,
Nov. 3, 1993 (To accompany H.R. 3354)
House Report (Judiciary Committee) No. 103-389,
Nov. 20, 1993 (To accompany H.R. 3098)
House Report (Judiciary Committee) No. 103-392,
Nov. 20, 1993 (To accompany H.R. 324)
House Report (Judiciary Committee) No. 103-395,
Nov. 20, 1993 (To accompany H.R. 1130)
House Report (Natural Resources Committee) No. 103-444,
Mar. 21, 1994 (To accompany H.R. 4034)
House Report (Judiciary Committee) No. 103-459,
Mar. 24, 1994 (To accompany H.R. 4033)
House Report (Judiciary Committee) No. 103-460,
Mar. 24, 1994 (To accompany H.R. 3979)
House Report (Judiciary Committee) No. 103-461,

Mar. 25, 1994 (To accompany H.R. 1120)
House Report (Judiciary Committee) No. 103-462,
Mar. 25, 1994 (To accompany H.R. 3968)
House Report (Judiciary Committee) No. 103-463,
Mar. 25, 1994 (To accompany H.R. 3981)
House Report (Judiciary Committee) No. 103-464,
Mar. 25, 1994 (To accompany H.R. 4030)
House Report (Judiciary Committee) No. 103-465,
Mar. 25, 1994 (To accompany H.R. 4031)
House Report (Judiciary Committee) No. 103-466,
Mar. 25, 1994 (To accompany H.R. 4032)
House Report (Judiciary Committee) No. 103-468,
Mar. 25, 1994 (To accompany H.R. 665)
House Report (Judiciary Committee) No. 103-469,
Mar. 25, 1994 (To accompany H.R. 3993)
House Report (Judiciary Committee) No. 103-489,
May 2, 1994 (To accompany H.R. 4296)
House Report (Judiciary Committee) No. 103-138,
Sept. 10, 1994 (To accompany S. 11)

HOUSE REPORT NO. 103-489

May 2, 1994
[To accompany H.R. 4296]

The Committee on the Judiciary, to whom was referred the bill (H.R. 4296) to make unlawful the transfer or possession of assault weapons, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Public Safety and Recreational Firearms Use Protection Act”.

SEC. 2. RESTRICTION ON MANUFACTURE, TRANSFER, AND POSSESSION OF CERTAIN SEMIAUTOMATIC ASSAULT WEAPONS.

(a) Restriction.—Section 922 of title 18, United States Code, is amended by adding at the end the following:

“(v)(1) It shall be unlawful for a person to manufacture, transfer, or possess a semiautomatic assault weapon.

“(2) Paragraph (1) shall not apply to the possession or transfer of any semiautomatic assault weapon otherwise lawfully possessed on the date of the enactment of this subsection.

“(3) Paragraph (1) shall not apply to—

“(A) any of the firearms, or replicas or duplicates of the firearms, specified in Appendix A to this section, as such firearms were manufactured on October 1, 1993;

“(B) any firearm that—

“(i) is manually operated by bolt, pump, lever, or slide action;

“(ii) has been rendered permanently inoperable; or

“(iii) is an antique firearm;

“(C) any semiautomatic rifle that cannot accept a detachable magazine that holds more than 5 rounds of ammunition; or

“(D) any semiautomatic shotgun that cannot hold more than 5 rounds of ammunition in a fixed or detachable magazine.

The fact that a firearm is not listed in Appendix A shall not be construed to mean that paragraph (1) applies to such firearm. No firearm exempted by this subsection may be deleted from Appendix A so long as this Act is in effect.

“(4) Paragraph (1) shall not apply to—

“(A) the United States or a department or agency of the United States or a State or a department, agency, or political subdivision of a State;

“(B) the transfer of a semiautomatic assault weapon by a licensed manufacturer, licensed importer, or licensed dealer to an entity referred to in subparagraph (A) or to a law enforcement officer authorized by such an entity to purchase firearms for official use;

“(C) the possession, by an individual who is retired from service with a law enforcement agency and is not otherwise prohibited from receiving a firearm, of a semiautomatic assault weapon transferred to the individual by the agency upon such retirement; or

“(D) the manufacture, transfer, or possession of a semiautomatic assault weapon by a licensed manufacturer or licensed importer for the purposes of testing or experimentation authorized by the Secretary.”.

(b) Definition of Semiautomatic Assault Weapon.—Section 921(a) of such title is amended by adding at the end the following:

“(30) The term ‘semiautomatic assault weapon’ means—

“(A) any of the firearms, or copies or duplicates of the firearms, known as—

“(i) Norinco, Mitchell, and Poly Technologies Avtomat Kalashnikovs (all models);

“(ii) Action Arms Israeli Military Industries UZI and Galil;

“(iii) Beretta Ar70 (SC-70);

“(iv) Colt AR-15;

“(v) Fabrique National FN/FAL, FN/LAR, and FNC;

“(vi) SWD M-10, M-11, M-11/9, and M-12;

“(vii) Steyr AUG;

“(viii) INTRATEC TEC-9, TEC-DC9 and TEC-22; and

“(ix) revolving cylinder shotguns, such as (or similar to) the Street Sweeper and Striker 12;

“(B) a semiautomatic rifle that has an ability to accept a detachable magazine and has at least 2 of–

“(i) a folding or telescoping stock;

“(ii) a pistol grip that protrudes conspicuously beneath the action of the weapon;

“(iii) a bayonet mount;

“(iv) a flash suppressor or threaded barrel designed to accommodate a flash suppressor; and

“(v) a grenade launcher;

“(C) a semiautomatic pistol that has an ability to accept a detachable magazine and has at least 2 of–

“(i) an ammunition magazine that attaches to the pistol outside of the pistol grip;

“(ii) a threaded barrel capable of accepting a barrel extender, flash suppressor, forward handgrip, or silencer;

“(iii) a shroud that is attached to, or partially or completely encircles, the barrel and that permits the shooter to hold the firearm with the nontrigger hand without being burned;

“(iv) a manufactured weight of 50 ounces or more when the pistol is unloaded; and

“(v) a semiautomatic version of an automatic firearm; and

“(D) a semiautomatic shotgun that has at least 2 of–

“(i) a folding or telescoping stock;

“(ii) a pistol grip that protrudes conspicuously beneath the action of the weapon;

“(iii) a fixed magazine capacity in excess of 5 rounds; and

“(iv) an ability to accept a detachable magazine.”.

(c) Penalties.–

(1) Violation of [section 922\(v\)](#).–[Section 924\(a\)\(1\)\(B\)](#) of such title is amended by striking “or (q) of [section 922](#)” and inserting “(r), or (v) of [section 922](#)”.

(2) Use or possession during crime of violence or drug trafficking crime.—Section 924(c)(1) of such title is amended in the first sentence by inserting “, or semiautomatic assault weapon,” after “short-barreled shotgun.”

(d) Identification Markings for Semiautomatic Assault Weapons.—Section 923(i) of such title is amended by adding at the end the following: “The serial number of any semiautomatic assault weapon manufactured after the date of the enactment of this sentence shall clearly show the date on which the weapon was manufactured.”

SEC. 3. RECORDKEEPING REQUIREMENTS FOR TRANSFERS OF GRANDFATHERED FIREARMS.

(a) Offense.—Section 922 of title 18, United States Code, as amended by section 2(a) of this Act, is amended by adding at the end the following:

“(w)(1) It shall be unlawful for a person to sell, ship, or deliver a semiautomatic assault weapon to a person who has not completed a form 4473 in connection with the transfer of the semiautomatic assault weapon.

“(2) It shall be unlawful for a person to receive a semiautomatic assault weapon unless the person has completed a form 4473 in connection with the transfer of the semiautomatic assault weapon.

“(3) If a person receives a semiautomatic assault weapon from anyone other than a licensed dealer, both the person and the transferor shall retain a copy of the form 4473 completed in connection with the transfer.

“(4) Within 90 days after the date of the enactment of this subsection, the Secretary shall prescribe regulations ensuring the availability of form 4473 to owners of semiautomatic assault weapons.

“(5) As used in this subsection, the term ‘form 4473’ means—

“(A) the form which, as of the date of the enactment of this subsection, is designated by the Secretary as form 4473; or

“(B) any other form which—

“(i) is required by the Secretary, in lieu of the form described in subparagraph (A), to be completed in connection with the transfer of a semiautomatic assault weapon; and

“(ii) when completed, contains, at a minimum, the information that, as of the date of the enactment of this subsection, is required to be provided on the form described in subparagraph (A).”

(b) Penalty.—Section 924(a) of such title is amended by adding at the end the following:

“(6) A person who knowingly violates section 922(w) shall be fined not more than \$1,000, imprisoned not more than 6 months, or both. Section 3571 shall not apply to any offense under this paragraph.”

SEC. 4. BAN OF LARGE CAPACITY AMMUNITION FEEDING DEVICES.

(a) Prohibition.—Section 922 of title 18, United States Code, as amended by sections 2 and 3 of this Act, is amended by adding at the end the following:

“(x)(1) Except as provided in paragraph (2), it shall be unlawful for a person to transfer or possess a large capacity ammunition feeding device.

“(2) Paragraph (1) shall not apply to the possession or transfer of any large capacity ammunition feeding device otherwise lawfully possessed on the date of the enactment of this subsection.

“(3) This subsection shall not apply to—

“(A) the United States or a department or agency of the United States or a State or a department, agency, or political subdivision of a State;

“(B) the transfer of a large capacity ammunition feeding device by a licensed manufacturer, licensed importer, or licensed dealer to an entity referred to in subparagraph (A) or to a law enforcement officer authorized by such an entity to purchase large capacity ammunition feeding devices for official use;

“(C) the possession, by an individual who is retired from service with a law enforcement agency and is not otherwise prohibited from receiving ammunition, of a large capacity ammunition feeding device transferred to the individual by the agency upon such retirement; or

“(D) the manufacture, transfer, or possession of any large capacity ammunition feeding device by a licensed manufacturer or licensed importer for the purposes of testing or experimentation authorized by the Secretary.”.

(b) Definition of Large Capacity Ammunition Feeding Device.—Section 921(a) of such title, as amended by section 2(b) of this Act, is amended by adding at the end the following:

“(31) The term ‘large capacity ammunition feeding device’—

“(A) means—

“(i) a magazine, belt, drum, feed strip, or similar device that has a capacity of, or that can be readily restored or converted to accept, more than 10 rounds of ammunition; and

“(ii) any combination of parts from which a device described in clause (i) can be assembled; but

“(B) does not include an attached tubular device designed to accept, and capable of operating only with, .22 caliber rimfire ammunition.”.

(c) Large Capacity Ammunition Feeding Devices Treated as Firearms.—Section 921(a)(3) of such title is amended in the first sentence by striking “or (D) any destructive device.” and inserting “(D) any destructive device; or (E) any large capacity ammunition feeding device.”.

(d) Penalty.—Section 924(a)(1)(B) of such title, as amended by section 2(c) of this Act, is amended by striking “or (v)” and inserting “(v), or (x)”.

(e) Identification Markings for Large Capacity Ammunition Feeding Devices.—Section 923(i) of such title, as amended by section 2(d) of this Act, is amended by adding at the end the following: “A large capacity ammunition feeding device manufactured after the date of the enactment of this sentence shall be identified by a serial number that clearly shows that the device was manufactured or imported after the effective date of this subsection, and such other identification as the Secretary may by regulation prescribe.”.

SEC. 5. STUDY BY ATTORNEY GENERAL.

(a) Study.—The Attorney General shall investigate and study the effect of this Act and the amendments made by this Act, and in particular shall determine their impact, if any, on violent and drug trafficking crime. The study shall be conducted over a period of 18 months, commencing 12 months after the date of enactment of this Act.

(b) Report.—Not later than 30 months after the date of enactment of this Act, the Attorney General shall prepare and submit to the Congress a report setting forth in detail the findings and determinations made in the study under subsection (a).

SEC. 6. EFFECTIVE DATE.

This Act and the amendments made by this Act—

- (1) shall take effect on the date of the enactment of this Act; and
- (2) are repealed effective as of the date that is 10 years after that date.

SEC. 7. APPENDIX A TO SECTION 922 OF TITLE 18.

Section 922 of title 18, United States Code, is amended by adding at the end the following appendix:

“APPENDIX A

.....
Centerfire Rifles—Autoloaders
.....

- Browning BAR Mark II Safari Semi-Auto Rifle
- Browning BAR Mark II Safari Magnum Rifle
- Browning High-Power Rifle
- Heckler & Koch Model 300 Rifle
- Iver Johnson M-1 Carbine
- Iver Johnson 50th Anniversary M-1 Carbine
- Marlin Model 9 Camp Carbine
- Marlin Model 45 Carbine
- Remington Nylon 66 Auto-Loading Rifle
- Remington Model 7400 Auto Rifle
- Remington Model 7400 Rifle

Remington Model 7400 Special Purpose Auto Rifle
Ruger Mini-14 Autoloading Rifle (w/o folding stock)
Ruger Mini Thirty Rifle

Centerfire Rifles—Lever & Slide

Browning Model 81 BLR Lever-Action Rifle
Browning Model 81 Long Action BLR
Browning Model 1886 Lever-Action Carbine
Browning Model 1886 High Grade Carbine
Cimarron 1860 Henry Replica
Cimarron 1866 Winchester Replicas
Cimarron 1873 Short Rifle
Cimarron 1873 Sporting Rifle
Cimarron 1873 30” Express Rifle
Dixie Engraved 1873 Rifle
E.M.F. 1866 Yellowboy Lever Actions
E.M.F. 1860 Henry Rifle
E.M.F. Model 73 Lever-Actions Rifle
Marlin Model 336CS Lever-Action Carbine
Marlin Model 30AS Lever-Action Carbine
Marlin Model 444SS Lever-Action Sporter
Marlin Model 1894S Lever-Action Carbine
Marlin Model 1894CS Carbine
Marlin Model 1894CL Classic
Marlin Model 1895SS Lever-Action Rifle
Mitchell 1858 Henry Replica
Mitchell 1866 Winchester Replica
Mitchell 1873 Winchester Replica

Navy Arms Military Henry Rifle
Navy Arms Henry Trapper
Navy Arms Iron Frame Henry
Navy Arms Henry Carbine
Navy Arms 1866 Yellowboy Rifle
Navy Arms 1873 Winchester-Style Rifle
Navy Arms 1873 Sporting Rifle
Remington 7600 Slide Action
Remington Model 7600 Special-Purpose Slide Action
Rossi M92 SRC Saddle-Ring Carbine
Rossi M92 SRS Short Carbine
Savage 99C Leber-Action Rifle
Uberti Henry Rifle
Uberti 1866 Sporting Rifle
Uberti 1873 Sporting Rifle
Winchester Model 94 Side Eject Lever-Action Rifle
Winchester Model 94 Trapper Side Eject
Winchester Model 94 Big Bore Side Eject
Winchester Model 94 Ranger Side Eject Lever-Action Rifle
Winchester Model 94 Wrangler Side Eject

Centerfire Rifles—Bolt Action

Alpine Bolt-Action Rifle
A-Square Caesar Bolt-Action Rifle
A-Square Hannibal Bolt-Action Rifle
Anschutz 1700D Classic Rifles
Anschutz 1700D Custom Rifles
Anschutz 1700D Bavarian Bolt-Action Rifle

Anschutz 1733D Mannlicher Rifle

Barret Model 90 Bolt-Action Rifle

Beeman/HW 60J Bolt-Action Rifle

Blaser R84 Bolt-Action Rifle

BRNO 537 Sporter Bolt-Action Rifle

BRNO ZKB 527 Fox Bolt-Action Rifle

BRNO ZKK 600, 601, 602 Bolt-Action Rifles

Browning A-Bolt Rifle

Browning A-Bolt Stainless Stalker

Browning A-Bolt Left Hand

Browning A-Bolt Short Action

Browning Euro-Bolt Rifle

Browning A-Bolt Gold Medallion

Browning A-Bolt Micro Medallion

Century Centurion 14 Sporter

Century Enfield Sporter #4

Century Swedish Sporter #38

Century Mauser 98 Sporter

Cooper Model 38 Centerfire Sporter

Dakota 22 Sporter Bolt-Action Rifle

Dakota 76 Classic Bolt-Action Rifle

Dakota 76 Short Action Rifles

Dakota 76 Safari Bolt-Action Rifle

Dakota 416 Rigby African

E.A.A./Sabatti Rover 870 Bolt-Action Rifle

Auguste Francotte Bolt-Action Rifles

Carl Gustaf 2000 Bolt-Action Rifle

Heym Magnum Express Series Rifle

Howa Lightning Bolt-Action Rifle

Howa Realtree Camo Rifle
Interarms Mark X Viscount Bolt-Action Rifle
Interarms Mini-Mark X Rifle
Interarms Mark X Whitworth Bolt-Action Rifle
Interarms Whitworth Express Rifle
Iver Johnson Model 5100A1 Long-Range Rifle
KDF K15 American Bolt-Action Rifle
Krico Model 600 Bolt-Action Rifle
Krico Model 700 Bolt-Action Rifle
Mauser Model 66 Bolt-Action Rifle
Mauser Model 99 Bolt-Action Rifle
McMillan Signature Classic Sporter
McMillan Signature Super Varminter
McMillan Signature Alaskan
McMillan Signature Titanium Mountain Rifle
McMillan Classic Stainless Sporter
McMillan Talon Safari Rifle
McMillan Talon Sporter Rifle
Midland 1500S Survivor Rifle
Navy Arms TU-33/40 Carbine
Parker-Hale Model 81 Classic Rifle
Parker-Hale Model 81 Classic African Rifle
Parker-Hale Model 1000 Rifle
Parker-Hale Model 1000M African Rifle
Parker-Hale Model 1100 Lightweight Rifle
Parker-Hale Model 1200 Super Rifle
Parker-Hale Model 1200 Super Clip Rifle
Parker-Hale Model 1300C Scout Rifle
Parker-Hale Model 2100 Midland Rifle

Parker-Hale Model 2700 Lightweight Rifle
Parker-Hale Model 2800 Midland Rifle
Remington Model Seven Bolt-Action Rifle
Remington Model Seven Youth Rifle
Remington Model Seven Custom KS
Remington Model Seven Custom MS Rifle
Remington 700 ADL Bolt-Action Rifle
Remington 700 BDL Bolt-Action Rifle
Remington 700 BDL Varmint Special
Remington 700 BDL European Bolt-Action Rifle
Remington 700 Varmint Synthetic Rifle
Remington 700 BDL SS Rifle
Remington 700 Stainless Synthetic Rifle
Remington 700 MTRSS Rifle
Remington 700 BDL Left Hand
Remington 700 Camo Synthetic Rifle
Remington 700 Safari
Remington 700 Mountain Rifle
Remington 700 Custom KS Mountain Rifle
Remington 700 Classic Rifle
Ruger M77 Mark II Rifle
Ruger M77 Mark II Magnum Rifle
Ruger M77RL Ultra Light
Ruger M77 Mark II All-Weather Stainless Rifle
Ruger M77 RSI International Carbine
Ruger M77 Mark II Express Rifle
Ruger M77VT Target Rifle
Sako Hunter Rifle
Sako Fiberclass Sporter

Sako Hunter Left-Hand Rifle
Sako Classic Bolt Action
Sako Hunter LS Rifle
Sako Deluxe Lightweight
Sako Super Deluxe Sporter
Sako Mannlicher-Style Carbine
Sako Varmint Heavy Barrel
Sako TRG-S Bolt-Action Rifle
Sauer 90 Bolt-Action Rifle
Savage 110G Bolt-Action Rifle
Savage 110CY Youth/Ladies Rifle
Savage 110WLE One of One Thousand Limited Edition Rifle
Savage 110GXP3 Bolt-Action Rifle
Savage 110F Bolt-Action Rifle
Savage 110FXP3 Bolt-Action Rifle
Savage 110GV Varmint Rifle
Savage 110FV Varmint Rifle
Savage Model 110FVS Varmint Rifle
Savage Model 112BV Heavy Barrel Varmint Rifle
Savage 116FSS Bolt-Action Rifle
Savage Model 116SK Kodiak Rifle
Savage 110FP Polic Rifle
Steyr-Mannlicher Sporter Models SL, L, M, S, S/T
Steyr-Mannlicher Luxus Model L, M, S
Steyr-Mannlicher Model M Professional Rifle
Tikka Bolt-Action Rifle
Tikka Premium Grade Rifle
Tikka Varmint/Continental Rifle
Tikka Whitetail/Battue Rifle

Ultra Light Arms Model 20 Rifle

Ultra Light Arms Model 28, Model 40 Rifles

Voere VEC 91 Lightning Bolt-Action Rifle

Voere Model 2166 Bolt-Action Rifle

Voere Model 2155, 2150 Bolt-Action Rifles

Weatherby Mark V Deluxe Bolt-Action Rifle

Weatherby Lasermark V Rifle

Weatherby Mark V Crown Custom Rifles

Weatherby Mark V Safari Grade Custom Rifle

Weatherby Mark V Sporter Rifle

Weatherby Mark V Safari Grade Custom Rifles

Weatherby Weathermark Rifle

Weatherby Weathermark Alaskan Rifle

Weatherby Classicmark No. 1 Rifle

Weatherby Weatherguard Alaskan Rifle

Weatherby Vanguard VGX Deluxe Rifle

Weatherby Vanguard Classic Rifle

Weatherby Vanguard Classic No. 1 Rifle

Weatherby Vanguard Weathermark Rifle

Wichita Classis Rifle

Wichita Varmint Rifle

Winchester Model 70 Sporter

Winchester Model 70 Sporter WinTuff

Winchester Model 70 SM Sporter

Winchester Model 70 Stainless Rifle

Winchester Model 70 Varmint

Winchester Model 70 Synthetic Heavy Varmint Rifle

Winchester Model 70 DBM Rifle

Winchester Model 70 DBM-S Rifle

Winchester Model 70 Featherweight
Winchester Model 70 Featherweight WinTuff
Winchester Model 70 Featherweight Classic
Winchester Model 70 Lightweight Rifle
Winchester Ranger Rifle
Winchester Model 70 Super Express Magnum
Winchester Model 70 Super Grade
Winchester Model 70 Custom Sharpshooter
Winchester Model 70 Custom Sporting Sharpshooter Rifle

Centerfire Rifles—Single Shot

Armsport 1866 Sharps Rifle, Carbine
Brown Model One Single Shot Rifle
Browning Model 1885 Single Shot Rifle
Dakota Single Shot Rifle
Desert Industries G-90 Single Shot Rifle
Harrington & Richardson Ultra Varmint Rifle
Model 1885 High Wall Rifle
Navy Arms Rolling Block Buffalo Rifle
Navy Arms #2 Creedmoor Rifle
Navy Arms Sharps Cavalry Carbine
Navy Arms Sharps Plains Rifle
New England Firearms Handi-Rifle
Red Willow Armory Ballard No. 5 Pacific
Red Willow Armory Ballard No. 1.5 Hunting Rifle
Red Willow Armory Ballard No. 8 Union Hill Rifle
Red Willow Armory Ballard No. 4.5 Target Rifle
Remington-Style Rolling Block Carbine

Ruger No. 1B Single Shot

Ruger No. 1A Light Sporter

Ruger No. 1H Tropical Rifle

Ruger No. 1S Medium Sporter

Ruger No. 1 RSI International

Ruger No. 1V Special Varminter

C. Sharps Arms New Model 1874 Old Reliable

C. Sharps Arms New Model 1875 Rifle

C. Sharps Arms 1875 Classic Sharps

C. Sharps Arms New Model 1875 Target & Long Range

Shiloh Sharps 1874 Long Range Express

Shiloh Sharps 1874 Montana Roughrider

Shiloh Sharps 1874 Military Carbine

Shiloh Sharps 1874 Business Rifle

Shiloh Sharps 1874 Military Rifle

Sharps 1874 Old Reliable

Thompson/Center Contender Carbine

Thompson/Center Stainless Contender Carbine

Thompson/Center Contender Carbine Survival System

Thompson/Center Contender Carbine Youth Model

Thompson/Center TCR '87 Single Shot Rifle

Uberti Rolling Block Baby Carbine

Drillings, Combination Guns, Double Rifles

Baretta Express SSO O/U Double Rifles

Baretta 455 SxS Express Rifle

Chapuis RGExpress Double Rifle

Auguste Francotte Sidelock Double Rifles

Auguste Francotte Boxlock Double Rifle
Heym Model 55B O/U Double Rifle
Heym Model 55FW O/U Combo Gun
Heym Model 88b Side-by-Side Double Rifle
Kodiak Mk. IV Double Rifle
Kreighoff Teck O/U Combination Gun
Kreighoff Trumpf Drilling
Merkel Over/Under Combination Guns
Merkel Drillings
Merkel Model 160 Side-by-Side Double Rifles
Merkel Over/Under Double Rifles
Savage 24F O/U Combination Gun
Savage 24F-12T Turkey Gun
Springfield Inc. M6 Scout Rifle/Shotgun
Tikka Model 412s Combination Gun
Tikka Model 412S Double Fire
A. Zoli Rifle-Shotgun O/U Combo

Rimfire Rifles—Autoloaders

AMT Lightning 25/22 Rifle
AMT Lightning Small-Game Hunting Rifle II
AMT Mannum Hunter Auto Rifle
Anschutz 525 Deluxe Auto
Armscor Model 20P Auto Rifle
Browning Auto-22 Rifle
Browning Auto-22 Grade VI
Krico Model 260 Auto Rifle
Lakefield Arms Model 64B Auto Rifle

Marlin Model 60 Self-Loading Rifle
Marlin Model 60ss Self-Loading Rifle
Marlin Model 70 HC Auto
Marlin Model 990I Self-Loading Rifle
Marlin Model 70P Papoose
Marlin Model 922 Magnum Self-Loading Rifle
Marlin Model 995 Self-Loading Rifle
Norinco Model 22 ATD Rifle
Remington Model 522 Viper Autoloading Rifle
Remington 522BDL Speedmaster Rifle
Ruger 10/22 Autoloading Carbine (w/o folding stock)
Survival Arms AR-7 Explorer Rifle
Texas Remington Revolving Carbine
Voere Model 2115 Auto Rifle

Rimfire Rifles—Lever & Slide Action

Browning BL-22 Lever-Action Rifle
Marlin 39TDS Carbine
Marlin Model 39AS Golden Lever-Action Rifle
Remington 572BDL Fieldmaster Pump Rifle
Norinco EM-321 Pump Rifle
Rossi Model 62 SA Pump Rifle
Rossi Model 62 SAC Carbine
Winchester Model 9422 Lever-Action Rifle
Winchester Model 9422 Magnum Lever-Action Rifle

Rimfire Rifles—Bolt Actions & Single Shots

Anschutz Achiever Bolt-Action Rifle

Anschutz 1416D/1516D Classic Rifles

Anschutz 1418D/1518D Mannlicher Rifles

Anschutz 1700D Classic Rifles

Anschutz 1700D Custom Rifles

Anschutz 1700 FWT Bolt-Action Rifle

Anschutz 1700D Graphite Custom Rifle

Anschutz 1700D Bavarian Bolt-Action Rifle

Armstrong Model 14P Bolt-Action Rifle

Armstrong Model 1500 Rifle

BRNO ZKM-452 Deluxe Bolt-Action Rifle

BRNO ZKM 452 Deluxe

Beeman/HW 60-J-ST Bolt-Action Rifle

Browning A-Bolt 22 Bolt-Action Rifle

Browning A-Bolt Gold Medallion

Cabanas Phaser Rifle

Cabanas Master Bolt-Action Rifle

Cabanas Espronceda IV Bolt-Action Rifle

Cabanas Leyre Bolt-Action Rifle

Chipmunk Single Shot Rifle

Cooper Arms Model 36S Sporter Rifle

Dakota 22 Sporter Bolt-Action Rifle

Krico Model 300 Bolt-Action Rifles

Lakefield Arms Mark II Bolt-Action Rifle

Lakefield Arms Mark I Bolt-Action Rifle

Magtech Model MT-22C Bolt-Action Rifle

Marlin Model 880 Bolt-Action Rifle

Marlin Model 881 Bolt-Action Rifle

Marlin Model 882 Bolt-Action Rifle

Marlin Model 883 Bolt-Action Rifle
Marlin Model 883SS Bolt-Action Rifle
Marlin Model 25MN Bolt-Action Rifle
Marlin Model 25N Bolt-Action Repeater
Marlin Model 15YN “Little Buckaroo”
Mauser Model 107 Bolt-Action Rifle
Mauser Model 201 Bolt-Action Rifle
Navy Arms TU-KKW Training Rifle
Navy Arms TU-30/40 Carbine
Navy Arms TU-KKW Sniper Trainer
Norinco JW-27 Bolt-Action Rifle
Norinco JW-15 Bolt-Action Rifle
Remington 541-T
Remington 40-XR Rimfire Custom Sporter
Remington 541-T HB Bolt-Action Rifle
Remington 581-S Sportsman Rifle
Ruger 77/22 Rimfire Bolt-Action Rifle
Ruger K77/22 Varmint Rifle
Ultra Light Arms Model 20 RF Bolt-Action Rifle
Winchester Model 52B Sporting Rifle

Competition Rifles—Centerfire & Rimfire

Anschutz 64-MS Left Silhouette
Anschutz 1808D RT Super Match 54 Target
Anschutz 1827B Biathlon Rifle
Anschutz 1903D Match Rifle
Anschutz 1803D Intermediate Match
Anschutz 1911 Match Rifle

Anschutz 54.18MS REP Deluxe Silhouette Rifle
Anschutz 1913 Super Match Rifle
Anschutz 1907 Match Rifle
Anschutz 1910 Super Match II
Anschutz 54.18MS Silhouette Rifle
Anschutz Super Match 54 Targe Model 2013
Anschutz Super Match 54 Targe Model 2007
Beeman/Feinwerkbau 2600 Target Rifle
Cooper Arms Model TRP-1 ISU Standard Rifle
E.A.A./Weihrauch HW 60 Target Rifle
E.A.A./HW 60 Match Rifle
Finnish Lion Standard Target Rifle
Krico Model 360 S2 Biathlon Rifle
Krico Model 400 Match Rifle
Krico Model 360S Biathlon Rifle
Krico Model 500 Kricotronic Match Rifle
Krico Model 600 Sniper Rifle
Krico Model 600 Match Rifle
Lakefield Arms Model 90B Target Rifle
Lakefield Arms Model 91T Target Rifle
Lakefield Arms Model 92S Silhouette Rifle
Marlin Model 2000 Target Rifle
Mauser Model 86-SR Specialty Rifle
McMillan M-86 Sniper Rifle
McMillan Combo M-87/M-88 50-Caliber Rifle
McMillan 300 Phoenix Long-Range Rifle
McMillan M-89 Sniper Rifle
McMillan National Match Rifle
McMillan Long-Range Rifle

Parker-Hale M-87 Target Rifle
Parker-Hale M-85 Sniper Rifle
Remington 40-XB Rangemaster Target Centerfire
Remington 40-XR KS Rimfire Position Rifle
Remington 40-XBBR KS
Remington 40-XC KS National Match Course Rifle
Sako TRG-21 Bolt-Action Rifle
Steyr-Mannlicher Match SPG-UIT Rifle
Steyr-Mannlicher SSG P-I Rifle
Steyr-Mannlicher SSG P-III Rifle
Steyr-Mannlicher SSG P-IV Rifle
Tanner Standard UIT Rifle
Tanner 50 Meter Free Rifle
Tanner 300 Meter Free Rifle
Wichita Silhouette Rifle

Shotguns—Autoloaders

American Arms/Franchi Black Magic 48/AL
Benelli Super Black Eagle Shotgun
Benelli Super Black Eagle Slug Gun
Benelli M1 Super 90 Field Auto Shotgun
Benelli Montefeltro Super 90 20-Gauge Shotgun
Benelli Montefeltro Super 90 Shotgun
Benelli M1 Sporting Special Auto Shotgun
Benelli Black Eagle Competition Auto Shotgun
Beretta A-303 Auto Shotgun
Beretta 390 Field Auto Shotgun
Beretta 390 Super Trap, Super Skeet Shotguns

Beretta Vittoria Auto Shotgun
Beretta Model 1201F Auto Shotgun
Browning BSA 10 Auto Shotgun
Browning Bsa 10 Stalker Auto Shotgun
Browning A-500R Auto Shotgun
Browning A-500G Auto Shotgun
Browning A-500G Sporting Clays
Browning Auto-5 Light 12 and 20
Browning Auto-5 Stalker
Browning Auto-5 Magnum 20
Browning Auto-5 Magnum 12
Churchill Turkey Automatic Shotgun
Cosmi Automatic Shotgun
Maverick Model 60 Auto Shotgun
Mossberg Model 5500 Shotgun
Mossberg Model 9200 Regal Semi-Auto Shotgun
Mossberg Model 9200 USST Auto Shotgun
Mossberg Model 9200 Camo Shotgun
Mossberg Model 6000 Auto Shotgun
Remington Model 1100 Shotgun
Remington 11-87 Premier shotgun
Remington 11-87 Sporting Clays
Remington 11-87 Premier Skeet
Remington 11-87 Premier Trap
Remington 11-87 Special Purpose Magnum
Remington 11-87 SPS-T Camo Auto Shotgun
Remington 11-87 Special Purpose Deer Gun
Remington 11-87 SPS-BG-Camo Deer/Turkey Shotgun
Remington 11-87 SPS-Deer Shotgun

Remington 11-87 Special Purpose Synthetic Camo

Remington SP-10 Magnum-Camo Auto Shotgun

Remington SP-10 Magnum Auto Shotgun

Remington SP-10 Magnum Turkey Combo

Remington 1100 LT-20 Auto

Remington 1100 Special Field

Remington 1100 20-Gauge Deer Gun

Remington 1100 LT-20 Tournament Skeet

Winchester Model 1400 Semi-Auto Shotgun

Shotguns—Slide Actions

Browning Model 42 Pump Shotgun

Browning BPS Pump Shotgun

Browning BPS Stalker Pump Shotgun

Browning BPS Pigeon Grade Pump Shotgun

Browning BPS Pump Shotgun (Ladies and Youth Model)

Browning BPS Game Gun Turkey Special

Browning BPS Game Gun Deer Special

Ithaca Model 87 Supreme Pump Shotgun

Ithaca Model 87 Deerslayer Shotgun

Ithaca Deerslayer II Rifled Shotgun

Ithaca Model 87 Turkey Gun

Ithaca Model 87 Deluxe Pump Shotgun

Magtech Model 586-VR Pump Shotgun

Maverick Models 88, 91 Pump Shotguns

Mossberg Model 500 Sporting Pump

Mossberg Model 500 Camo Pump

Mossberg Model 500 Muzzleloader Combo

Mossberg Model 500 Trophy Slugger
Mossberg Turkey Model 500 Pump
Mossberg Model 500 Bantam Pump
Mossberg Field Grade Model 835 Pump Shotgun
Mossberg Model 835 Regal Ulti-Mag Pump
Remington 870 Wingmaster
Remington 870 Special Purpose Deer Gun
Remington 870 SPS-BG-Camo Deer/Turkey Shotgun
Remington 870 SPS-Deer Shotgun
Remington 870 Marine Magnum
Remington 870 TC Trap
Remington 870 Special Purpose Synthetic Camo
Remington 870 Wingmaster Small Gauges
Remington 870 Express Rifle Sighted Deer Gun
Remington 879 SPS Special Purpose Magnum
Remington 870 SPS-T Camo Pump Shotgun
Remington 870 Special Field
Remington 870 Express Turkey
Remington 870 High Grades
Remington 870 Express
Remington Model 870 Express Youth Gun
Winchester Model 12 Pump Shotgun
Winchester Model 42 High Grade Shotgun
Winchester Model 1300 Walnut Pump
Winchester Model 1300 Slug Hunter Deer Gun
Winchester Model 1300 Ranger Pump Gun Combo & Deer Gun
Winchester Model 1300 Turkey Gun
Winchester Model 1300 Ranger Pump Gun

Shotguns—Over/Unders

American Arms/Franchi Falconet 2000 O/U
American Arms Silver I O/U
American Arms Silver II Shotgun
American Arms Silver Skeet O/U
American Arms/Franchi Sporting 2000 O/U
American Arms Silver Sporting O/U
American Arms Silver Trap O/U
American Arms WS/OU 12, TS/OU 12 Shotguns
American Arms WT/OU 10 Shotgun
Armsport 2700 O/U Goose Gun
Armsport 2700 Series O/U
Armsport 2900 Tri-Barrel Shotgun
Baby Bretton Over/Under Shotgun
Beretta Model 686 Ultralight O/U
Beretta ASE 90 Competition O/U Shotgun
Beretta Over/Under Field Shotguns
Beretta Onyx Hunder Sport O/U Shotgun
Beretta Model SO5, SO6, SO9 Shotguns
Beretta Sporting Clay Shotguns
Beretta 687EL Sporting O/U
Beretta 682 Super Sporting O/U
Beretta Series 682 Competition Over/Unders
Browning Citori O/U Shotgun
Browning Superlight Citori Over/Under
Browning Lightning Sporting Clays
Browning Micro Citori Lightning
Browning Citori Plus Trap Combo

Browning Citori Plus Trap Gun
Browning Citori O/U Skeet Models
Browning Citori O/U Trap Models
Browning Special Sporting Clays
Browning Citori GTI Sporting Clays
Browning 325 Sporting Clays
Centurion Over/Under Shotgun
Chapuis Over/Under Shotgun
Connecticut Valley Classics Classic Sporter O/U
Connecticut Valley Classics Classic Field Waterfowler
Charles Daly Field Grade O/U
Charles Daly Lux O/U
E.A.A./Sabatti Sporting Clays Pro-Gold O/U
E.A.A./Sabatti Falcon-Mon Over/Under
Kassnar Grade I O/U Shotgun
Krieghoff K-80 Sporting Clays O/U
Krieghoff K-80 Skeet Shotgun
Krieghoff K-80 International Skeet
Krieghoff K-80 Four-Barrel Skeet Set
Krieghoff K-80/RT Shotguns
Krieghoff K-80 O/U Trap Shotgun
Laurona Silhouette 300 Sporting Clays
Laurona Silhouette 300 Trap
Laurona Super Model Over/Unders
Ljubic LM-6 Deluxe O/U Shotgun
Marocchi Conquista Over/Under Shotgun
Marocchi Avanza O/U Shotgun
Merkel Model 200E O/U Shotgun
Merkel Model 200E Skeet, Trap Over/Unders

Merkel Model 203E, 303E Over/Under Shotguns
Perazzi Mirage Special Sporting O/U
Perazzi Mirage Special Four-Gauge Skeet
Perazzi Sporting Classic O/U
Perazzi MX7 Over/Under Shotguns
Perazzi Mirage Special Skeet Over/Under
Perazzi MX8/MX8 Special Trap, Skeet
Perazzi MX8/20 Over/Under Shotgun
Perazzi MX9 Single Over/Under Shotguns
Perazzi MX12 Hunting Over/Under
Perazzi MX28, MX410 Game O/U Shotguns
Perazzi MX20 Hunting Over/Under
Piotti Boss Over/Under Shotgun
Remington Peerless Over/Under Shotgun
Ruger Red Label O/U Shotgun
Ruger Sporting Clays O/U Shotgun
San Marco 12-Ga. Wildflower Shotgun
San Marco Field Special O/U Shotgun
San Marco 10-Ga. O/U Shotgun
SKB Model 505 Deluxe Over/Under Shotgun
SKB Model 685 Over/Under Shotgun
SKB Model 885 Over/Under Trap, Skeet, Sporting Clays
Stoeger/IGA Condor I O/U Shotgun
Stoeger/IGA ERA 2000 Over/Under Shotgun
Techni-Mec Model 610 Over/Under
Tikka Model 412S Field Grade Over/Under
Weatherby Athena Grade IV O/U Shotguns
Weatherby Athena Grade V Classic Field O/U
Weatherby Orion O/U Shotguns

Weatherby II, III Classic Field O/Us

Weatherby Orion II Classic Sporting Clays O/U

Weatherby Orion II Sporting Clays O/U

Winchester Model 1001 O/U Shotgun

Winchester Model 1001 Sporting Clays O/U

Pietro Zanoletti Model 2000 Field O/U

Shotguns—Side by Sides

American Arms Brittany Shotgun

American Arms Gentry Double Shotgun

American Arms Derby Side-by-Side

American Arms Grulla #2 Double Shotgun

American Arms WS/SS 10

American Arms TS/SS 10 Double Shotgun

American Arms TS/SS 12 Side-by-Side

Arrieta Sidelock Double Shotguns

Armsport 1050 Series Double Shotguns

Arizaga Model 31 Double Shotgun

AYA Boxlock Shotguns

AYA Sidelock Double Shotguns

Beretta Model 452 Sidelock Shotgun

Beretta Side-by-Side Field Shotguns

Crucelegui Hermanos Model 150 Double

Chapuis Side-by-Side Shotgun

E.A.A./Sabatti Sabe-Mon Double Shotgun

Charles Daly Model Dss Double

Ferlib Model F VII Double Shotgun

Auguste Francotte Boxlock Shotgun

Auguste Francotte Sidelock Shotgun

Garbi Model 100 Double

Garbi Model 100 Side-by-Side

Garbi Model 103A, B Side-by-Side

Garbi Model 200 Side-by-Side

Bill Hanus Birdgun Doubles

Hatfield Uplander Shotgun

Merkell Model 8, 47E Side-by-Side Shotguns

Merkel Model 47LSC Sporting Clays Double

Merkel Model 47S, 147S Side-by-Sides

Parker Reproductions Side-by-Side

Piotti King No. 1 Side-by-Side

Piotti Lunik Side-by-Side

Piotti King Extra Side-by-Side

Piotti Piuma Side-by-Side

Precision Sports Model 600 Series Doubles

Rizzini Boxlock Side-by-Side

Rizzini Sidelock Side-by-Side

Stoeger/IGA Side-by-Side Shotgun

Ugartechea 10-Ga. Magnum Shotgun

Shotguns—Bolt Actions & Single Shots

Armsport Single Barrel Shotgun

Browning BT-99 Competition Trap Special

Browning BT-99 Plus Trap Gun

Browning BT-99 Plus Micro

Browning Recoilless Trap Shotgun

Browning Micro Recoilless Trap Shotgun

Desert Industries Big Twenty Shotgun
Harrington & Richardson Topper Model 098
Harrington & Richardson Topper Classic Youth Shotgun
Harrington & Richardson N.W.T.F. Turkey Mag
Harrington & Richardson Topper Deluxe Model 098
Krieghoff KS-5 Trap Gun
Krieghoff KS-5 Special
Krieghoff KS-80 Single Barrel Trap Gun
Ljutic Mono Gun Single Barrel
Ljutic LTX Super Deluxe Mono Gun
Ljutic Recoilless Space Gun Shotgun
Marlin Model 55 Goose Gun Bolt Action
New England Firearms Turkey and Goose Gun
New England Firearms N.W.T.F. Shotgun
New England Firearms Tracker Slug Gun
New England Firearms Standard Pardner
New England Firearms Survival Gun
Perazzi TM1 Special Single Trap
Remington 90-T Super Single Shotgun
Snake Charmer II Shotgun
Stoeger/IGA Reuna Single Barrel Shotgun
Thompson/Center TCR '87 Hunter Shotgun.”.

SUMMARY AND PURPOSE

The purpose of this bill is to create criminal penalties for the manufacture, transfer, or possession of certain firearms within the category of firearms known as “semiautomatic assault weapons.” It also creates such penalties for certain ammunition feeding devices, as well as any combination of parts from which such a device can be assembled.

In reporting legislation banning certain assault weapons last Congress, the Committee on the Judiciary said:

The threat posed by criminals and mentally deranged individuals armed with semi-automatic assault weapons has been tragically widespread.¹

Since then, the use of semiautomatic assault weapons by criminal gangs, drug-traffickers, and mentally deranged persons continues to grow.²

H.R. 4296 will restrict the availability of such weapons in the future. The bill protects the rights of persons who lawfully own such weapons on its date of enactment by a universal “grandfathering” clause and specifically exempts certain firearms traditionally used for hunting and other legitimate support. It contains no confiscation or registration provisions; however, it does establish record-keeping requirements for transfers involving grandfathered semiautomatic assault weapons. Such record-keeping is not required for transfers of grandfathered ammunition feeding devices (or their component parts.) H.R. 4296 expires (“sunsets”) on its own terms after 10 years.

BACKGROUND

A series of hearings over the last five years on the subject of semiautomatic assault weapons has demonstrated that they are a growing menace to our society of proportion to their numbers:³ As this Committee said in its report to the last Congress:

The carnage inflicted on the American people by criminals and mentally deranged people armed with Rambo-style, semi-automatic assault weapons has been overwhelming and continuing. Police and law enforcement groups all over the nation have joined together to support legislation that would help keep these weapons out of the hands of criminals.⁴

Since then, evidence continues to mount that these semiautomatic assault weapons are the weapons of choice among drug dealers, criminal gangs, hate groups, and mentally deranged persons bent on mass murder.

Use in Crimes. On April 25, 1994, the Director of the Federal Bureau of Alcohol, Tobacco and Firearms testified that the percentage of semiautomatic assault weapons among guns traced because of their use in crime is increasing:

In 1990, 5.9 percent of firearms traced were assault weapons. In 1993, that percentage rose to 8.1 percent. Since Justice Department studies have shown that assault weapons make up only about 1 percent of the firearms in circulation, these percentages strongly suggest that they are proportionately more often used in crimes.⁵

Law enforcement officials confirm this statistical evidence in accounts of the rising level of lethality they face from assault weapons on the street. For example, the representative of a national police officers' organization testified:

In the past, we used to face criminals armed with a cheap Saturday Night Special that could fire off six rounds before loading. Now it is not at all unusual for a cop to look down the barrel of a TEC-9 with a 32 round clip. The ready availability of and easy access to assault weapons by criminals has increased so dramatically that police forces across the country are being required to upgrade their service weapons merely as a matter of self-defense and preservation. The six-shot .38 caliber service revolver, standard law enforcement issue for years, it just no match against a criminal armed with a semi-automatic assault weapon.⁶

A representative of federal law enforcement officers testified that semiautomatic assault weapons “dramatically escalate the firepower of the user” and “have become the weapon of choice for drug runners, hate groups and the mentally unstable.”⁷

The TEC-9 assault pistol is the undisputed favorite of drug traffickers, gang members and violent criminals. Cities across the country confiscate more TEC-9s than any other assault pistol. The prototype for the TEC-9 was originally designed as a submachine gun for the South African government. Now it comes standard with an ammunition magazine holding 36 rounds

of 9 mm cartridges. It also has a threaded barrel to accept a silencer, and a barrel shroud to cool the barrel during rapid fire. To any real sportsman or collector, this firearm is a piece of junk, yet is very popular among criminals.⁸

The Secretary of Housing and Urban Development testified that criminal gangs in Chicago routinely use semiautomatic assault weapons to intimidate not only residents but also security guards, forcing the latter to remove metal detectors installed to detect weapons.⁹

Use in Mass Killings and Killings of Law Enforcement Officers. Public concern about semiautomatic assault weapons has grown because of shootings in which large numbers of innocent people have been killed and wounded, and in which law enforcement officers have been murdered.

On April 25, 1994, the Subcommittee on Crime and Criminal Justice heard testimony about several incidents representative of such killings.

On February 22, 1994, Los Angeles (CA) Police Department rookie officer Christy Lynn Hamilton was ambushed and killed by a drug-abusing teenager using a Colt AR-15. The round that killed Officer Hamilton penetrated a car door, skirted the armhole of her protective vest, and lodged in her chest. The teenager also killed his father, who had given him the gun, and took his own life as well. Officer Hamilton had been voted the most inspirational officer in her graduating class only weeks before her murder. Officer Hamilton's surviving brother testified about the impact of this murder.¹⁰

On December 7, 1993, a deranged gunman walked through a Long Island Railroad commuter train, shooting commuters. Six died and 19 were wounded. The gunman used a Ruger semiautomatic pistol. Although the pistol itself would not be classified as an assault weapon under this bill, its 15 round ammunition magazine ("clip") would be banned. The gunman had several of these high capacity 15 round magazines and reloaded several times, firing between 30 to 50 rounds before he was overpowered while trying to reload yet again. The parents of one of the murdered victims, Amy Locicero Federici, testified about the impact of this murder.¹¹

On February 28, 1993, 4 special agents of the Bureau of Alcohol, Tobacco and Firearms were killed and 15 were wounded while trying to serve federal search and arrest warrants at the Branch Davidian compound in Waco, Texas. The Branch Davidian arsenal included hundreds of assault weapons, including AR-15s, AK-47s, Street Sweepers, MAC10s and MAC-11s, along with extremely high capacity magazines (up to 260 rounds).¹²

Finally, on July 1, 1993, gunman Gian Luigi Ferri Killed 8 people and wounded 6 others in a San Francisco high rise office building. Ferri—who took his own life—used two TEC DC9 assault pistols with 50 round magazines, purchased from a gun dealer in Las Vegas, Nevada. Two witnesses, both of whom lost spouses in the slaughter, and one of whom was herself seriously injured, testified about this incident.¹³

Numerous other notorious incidents involving semiautomatic assault weapons have occurred. They include the January 25, 1993, slaying of 2 CIA employees and wounding of 3 others at McLean, VA, (AK-47), and the January 17, 1989 murder in a Stockton, CA, schoolyard of 5 small children, and wounding of 29 others (AK-47 and 75 round magazine, firing 106 rounds in less than 2 minutes).

Several witnesses who were victims themselves during such incidents testified in opposition to H.R. 4296/H.R. 3527, and in opposition to the banning of any semiautomatic assault weapons or ammunition feeding devices.

Dr. Suzanna Gratia witnessed the brutal murder, in Luby's cafeteria located in Killeen, Texas, of both of her parents who had just celebrated their 47 wedding anniversary. Just a few days before, she had removed her gun from her purse and left it in her car to comply with a Texas law which does not allow concealed carrying of a firearm. Dr. Gratia testified:

I am mad at my legislators for legislating me out of a right to protect myself and my family. I would much rather be sitting in jail with a felony offense on my head and have my parents alive. As far as these so-called assault weapons, you say that they don't have any defense use. You tell that to the guy that I saw on a videotape of the Los Angeles riots standing on his rooftop protecting his property and his life from an entire mob with one of these so-called assault weapons. Tell me that he didn't have a legitimate self-defense use.¹⁴

Ms. Jacquie Miller was shot several times with a semiautomatic assault weapon and left for dead at her place of employment with the Standard Gravure Printing Company in Louisville, Kentucky, when a fellow employee went on a killing spree. Now permanently disabled, Ms. Miller testified:

It completely enrages me that my tragedy is being used against me to deny me and all the law abiding citizens of this country to the right of the firearm of our choosing. I refuse in return to use my tragedy for retribution against innocent people just to make myself feel better for having this misfortune. Enforce the laws against criminals already on the books. After all, there are already over 20,000 of them.¹⁵ More won't do a thing for crime control *** You cannot ban everything in the world that could be used as a weapon because you fear it, don't understand it, or don't agree with it.

This is America, not Lithuania or China. Our most cherished possession is our Constitution and Bill of Rights. Let's not sell those down the river or we could one day find ourselves in a boat without a paddle against the criminals who think we are easy pickings.¹⁶

Mr. Phillip Murphy used his lawfully-possessed Colt AR-15 H-BAR Sporter semiautomatic rifle—a gun which would be specifically banned by H.R. 4296—to capture one of Tucson, Arizona's most wanted criminals who was attempting to burglarize the home of Mr. Murphy's parents. The 19-year old criminal he captured was a three-time loser with 34 prior convictions who was violating his third adult State parole for a knife assault. Mr. Murphy testified:

I respectfully urge this Committee and the Congress of the United States to restrain themselves from forcing tens of millions of law-abiding Americans like me to choose between the law and their lives.¹⁷

The Characteristics of Military-Style Semiautomatic Assault Weapons. The question of what constitutes an assault weapon has been studied by the Congress and the executive branch as the role of these guns in criminal violence has grown.

A Bureau of Alcohol, Tobacco and Firearms working group formed under the Bush administration to consider banning foreign imports of such semiautomatic assault weapons conducted the most recent comprehensive study of military assault weapons and the civilian firearms that are modelled after them.¹⁸ The working group formulated a definition of the civilian version, and a list of the assault weapon characteristics that distinguish them from sporting guns. That technical work has to a large extent been incorporated into H.R. 4296.¹⁹

The working group settled on the term “semiautomatic assault” for the civilian firearms at issue. That term distinguishes the civilian firearms from the fully automatic military weapons (machineguns)²⁰ after which they are modelled and often simply adapted by eliminating the automatic fire feature. The group determined that “semiautomatic assault rifles *** represent a distinctive type of rifle distinguished by certain general characteristics which are common to the modern military assault rifle.”²¹

The group elaborated on the nature of those characteristics as follows:

The modern military assault rifle, such as the U.S. M16, German G3, Belgian FN/FAL, and Soviet AK-47, is a weapon designed for killing or disabling the enemy and *** has characteristics designed to accomplish this purpose.

We found that the modern military assault rifle contains a variety of physical features and characteristics designed for military applications which distinguishes it from traditional sporting rifles. These military features and characteristics (other than selective fire) are carried over to the semiautomatic versions of the original military rifle.²²

The “selective fire” feature to which the working group referred is the ability of the military versions to switch from fully automatic to semiautomatic fire at the option of the user. Since Congress has already banned certain civilian transfer or possession of machineguns,²³ the civilian models of these guns are produced with semiautomatic fire capability only. However, testimony was received by the Subcommittee on Crime and Criminal Justice that it is a relatively simple task to convert²⁴ a semiautomatic weapon to automatic fire²⁵ and that semiautomatic weapons can be fired at rates of 300 to 500 rounds per minute, making them virtually indistinguishable in practical effect from machineguns.²⁶

The 1989 Report's analysis of assault characteristics which distinguish such firearms from sporting guns was further explained by an AFT representative at a 1991 hearing before the Subcommittee on Crime and Criminal Justice:

We found that the banned rifles represented a distinctive type of rifle characterized by certain military features which differentiated them from the traditional sporting rifles. These include the ability to accept large capacity detachable magazines, bayonets, folding or telescoping stocks, pistol grips, flash suppressors, bipods, grenade launchers and night sights, and the fact that they are semiautomatic versions of military machineguns.²⁷

Proponents of these military style semiautomatic assault weapons often dismiss these combat-designed features as merely “cosmetic.” The Subcommittee received testimony that, even if these characteristics were merely “cosmetic” in effect, it is precisely those cosmetics that contribute to their usefulness as tools of intimidation by criminals.²⁸

However, the expert evidence is that the features that characterize a semiautomatic weapon as an assault weapon are not merely cosmetic, but do serve specific, combat-functional ends. By facilitating the deadly “spray fire” of the weapon or enhancing its portability—a useful attribute in combat but one which serves to enhance the ability to conceal the gun in civilian life.²⁹

High-capability magazine, for example, make it possible to fire a large number of rounds without re-loading, then to reload quickly when those rounds are spent.³⁰ Most of the weapons covered by the proposed legislation come equipped with magazines that hold 30 rounds. Even these magazines, however, can be replaced with magazines that hold 50 or even 100 rounds. Furthermore, expended magazines can be quickly replaced, so that a single person with a single assault weapon can easily fire literally hundreds of rounds within minutes. As noted above, tests demonstrate that semiautomatic guns can be fired at very high rates of fire. In contrast, hunting rifles and shotguns typically have much smaller magazine capabilities—from 3 to 5.

Because of the greater enhanced lethality—numbers of rounds that can be fired quickly without reloading—H.R. 4296 also contains a ban on ammunition magazines which hold more than 10 rounds, as well as any combination of parts from which such a magazine can be assembled.

Barrel shrouds also serve a combat-functional purpose.³¹ Gun barrels become very hot when multiple rounds are fired through them quickly. The barrel shroud cools the barrel so that it will not overheat, and provides the shooter with a convenient grip especially suitable for spray-firing.

Similar military combat purposes are served by flash suppressors (designed to help conceal the point of fire in night combat), bayonet mounts, grenade launchers, and pistol grips engrafted on long guns.³²

The net effect of these military combat features is a capability for lethality—more wounds, more serious, in more victims—far beyond that of other firearms in general, including other semiautomatic guns.³³

BRIEF EXPLANATION OF H.R. 4296

H.R. 4296 combines two approaches which have been followed in the past in legislation proposed to control semiautomatic assault weapons—the so-called “list” approach and the “characteristics” approach.

The bill does not ban any semiautomatic assault weapons nor large capacity ammunition feeding device (or component parts) otherwise lawfully possessed on the date of enactment. However, records must be kept by both the transferor and the transferee involved in any transfer of these weapons, but not of the feeding devices (or combination of parts).

The bill explicitly exempts all guns with other than semiautomatic actions—i.e., bolt, slide, pump, and lever actions. In addition, it specifically exempts by make and model 661 long guns most commonly used in hunting and recreational sports,³⁴ making clear that these semiautomatic assault weapons are not and cannot be subject to any ban.

Section 2(z) of the bill lists 19 specific semiautomatic assault weapons—such as the AK-47, M-10, TEC-9, Uzi, etc.—that are banned.³⁵ It also defines other assault weapons by specifically enumerating combat style characteristics and bans those semiautomatic assault weapons that have 2 or more of those characteristics.³⁶

The bill makes clear that the list of exempted guns is not exclusive. The fact that a gun is not on the exempted list may not be construed to mean that it is banned. Thus, a gun that is not on the list of guns specifically banned by name would only be banned if it met the specific characteristics set out in the characteristics test. No gun may be removed from the exempted list.

H.R. 4296 also bans large capacity ammunition feeding devices—clips that accept more than 10 rounds of ammunition—as well as any combination of parts from which such a device can be assembled.

The bill exempts all semiautomatic assault weapons and large capacity ammunition feeding devices (as well as any combination of parts) that are lawfully possessed on date of enactment. Owners of such semiautomatic assault weapons need do nothing under the bill unless they wish to transfer the semiautomatic assault weapon.

H.R. 4296 differs significantly from previously-proposed legislation—it is designed to be more tightly focused and more carefully crafted to clearly exempt legitimate sporting guns. Most significantly, the ban in the 1991 proposed bill gave the Bureau of Alcohol, Tobacco, and Firearms authority to ban any weapon which “embodies the same configuration” as the named list of guns. The current bill, H.R. 4296 does not contain any such general authority. Instead, it contains a set of specific characteristics that must be present in order to ban any additional semiautomatic assault weapons.

102d Congress

The Subcommittee on Crime and Criminal Justice held hearings on semiautomatic assault weapons on June 12 and July 25, 1991. A ban on certain semiautomatic assault weapons was included as Subtitle A of Title XX in H.R. 3371, the Omnibus Crime Control Act of 1991. A ban on large capacity ammunition feeding devices was included in the same bill. The bill was reported out of the Judiciary Committee on October 7, 1991. The provisions dealing with semiautomatic assault weapons and large capacity ammunition feeding devices were struck by the House of Representatives by a vote of 247-177 on October 17, 1991.

103d Congress

The Subcommittee on Crime and Criminal Justice held hearings on H.R. 4296 and its predecessor, H.R. 3527, which ban semiautomatic assault weapons, on April 25, 1994. The Subcommittee reported favorably on an amendment in the nature of a substitute to H.R. 4296 on April 26, 1994, by a recorded vote of 8–5.

COMMITTEE ACTION

The Committee on the Judiciary met on April 28, 1994 to consider H.R. 4296, as amended. Two amendments were adopted during the Committee's consideration.

An amendment was offered to provide that the absence of a firearm from the list of guns specifically exempted from the ban may not be construed as evidence that the semiautomatic assault weapon is banned, and that no gun may be removed from the exempt list so long as the Act is in effect. This amendment was adopted by voice vote.

An amendment was offered to delete a provision that barred from owning any firearms those persons convicted of violating the recordkeeping requirements relating to grandfathered weapons. This amendment was adopted by voice vote.

A reporting quorum being present, the Committee on the Judiciary, by a roll call vote of 20 to 15, ordered H.R. 4296, as amended, favorably reported to the House.

SECTION-BY-SECTION ANALYSIS

SECTION 1–SHORT TITLE

This section provides that the Act may be cited as the “Public Safety and Recreational Firearms Use Protection Act”.

SECTION 2–RESTRICTION ON MANUFACTURE, TRANSFER, AND POSSESSION OF CERTAIN SEMIAUTOMATIC ASSAULT WEAPONS

Subsection 2(a) makes it unlawful for a person to manufacture, transfer, or possess a semiautomatic assault weapon (including any “copies or duplicates.”)

The ban on transfer and possession does not apply to (1) weapons otherwise lawfully possessed on the date of enactment; (2) any of the firearms (or their replicas or duplicates) listed in Appendix A; (3) any manually operated (bolt, pump, slide, lever action), permanently inoperable, or antique firearms; (4) semiautomatic rifles that cannot accept a detachable magazine that holds more than 5 rounds; or, a semiautomatic shotgun that cannot hold more than 5 rounds in a fixed or detachable magazine.

The fact that a gun is not listed in Appendix A may not be construed to mean that it is banned. No gun listed in Appendix A may be removed from that exempted list so long as the Act is in effect.

Federal departments and agencies and those of States and their subdivisions are exempted. Law enforcement officers authorized to purchase firearms for official use are exempted, as are such officers presented with covered weapons upon retirement who are not otherwise prohibited from receiving such a weapon. Finally, weapons made, transferred, possessed, or imported for the purposes of testing or experiments authorized by the Secretary of the Treasury are exempted.

Subsection 2(b) defines semiautomatic assault weapons, both by name and by characteristics. It lists by name specific firearms, including “copies or duplicates” of such firearms.³⁷ Characteristics of covered semiautomatic rifles, pistols, and shotguns are defined by separate subsections applicable to each. In the case of rifles and pistols, in addition to being semiautomatic, a gun must be able to accept a detachable magazine and have at least 2 listed characteristics.

In the case of rifles, those characteristics are: (1) folding or telescoping stock; (2) a pistol grip that protrudes conspicuously beneath the action of the weapon; (3) a bayonet mount; (4) a flash suppressor or threaded barrel designed to accommodate a flash suppressor; and (5) a grenade launcher.

In the case of pistols, the characteristics are: (1) a magazine that attaches to the pistol outside of the pistol grip; (2) a threaded barrel capable of accepting a barrel extender, flash suppressor, forward handgrip, or silencer; (3) a barrel shroud that permits the shooter to hold the firearm without being burned; (4) an unloaded manufactured weight of 50 ounces or more; and (5) a semiautomatic version of an automatic firearm.

In the case of shotguns, covered weapons must have at least 2 of the following four features: (1) a folding or telescoping stock; (2) a pistol grip that protrudes conspicuously beneath the action of the weapon; (3) a fixed magazine capacity in excess of 5 rounds; and (4) an ability to accept a detachable magazine.

The section provides a fine of not more than \$5,000, imprisonment for not more than 5 years, or both, for knowingly violating the ban on manufacture, transfer and possession. It also adds use of a semiautomatic assault weapon to the crimes covered by the mandatory minimum of 5 years under [18 USC Section 924\(c\)\(1\)](#) for use in a federal crime of violence or drug trafficking crime.

Finally, the section requires that semiautomatic assault weapons manufactured after the date of enactment must clearly show the date on which the weapon was manufactured.

SECTION 3—RECORDKEEPING REQUIREMENTS FOR TRANSFERS OF GRANDFATHERED FIREARMS

This section makes it unlawful to transfer a grandfathered semiautomatic assault weapon unless both the transferor and the transferee complete and retain a copy of federal form 4473 (or its successor). Within 90 days of enactment, the Secretary of the Treasury must issue regulations ensuring the availability of the form to owners of semiautomatic assault weapons. The Committee expects the Secretary to make such forms easily and readily available to such gun owners. The Committee further expects the Secretary to maintain the confidentiality of the requester and to ensure the destruction of any and all information pertaining to any request for such forms immediately upon complying with the request. The Committee does not expect the Secretary to release any such information to any other Department of the Federal, State or local Governments or to use the information in any way other than to comply with the requests for the form. The Committee would consider failure to comply with these expectations a very serious breach.

A person who knowingly violates the recordkeeping requirement shall be fined not more than \$1,000, imprisoned for not more than 6 months or both.

SECTION 4—BAN OF LARGE CAPACITY AMMUNITION FEEDING DEVICES

Subsection 4(a) makes it unlawful for a person to transfer or possess a large capacity ammunition feeding device (which is defined to include any combination of parts from which such a device can be assembled.)

The ban on transfer and possession does not apply to (1) devices (or component parts) otherwise lawfully possessed on the date of enactment; (2) Federal departments and agencies and those of States and their subdivisions; (3) law enforcement officers authorized to purchase ammunition feeding devices for official use; devices transferred to such officers upon retirement who

are not otherwise prohibited from receiving them; and (3) devices (or combination of parts) made, transferred, possessed, or imported for the purpose of testing or experiments authorized by the Secretary of the Treasury are exempted.

Subsection 4(b) defines large capacity ammunition feeding device to mean a magazine, belt, drum, feed strip, or similar device that has a capacity of more than 10 rounds, or can be readily restored or converted to accept more than 10 rounds. It includes any combination of parts from which such a device can be assembled. It exempts an attached tubular device designed to accept and capable of operating only with .22 caliber rimfire ammunition.

Subsection 4(c) adds large capacity ammunition feeding devices to the definition of “firearm” under 18 US Code section 921(a)(3).

Subsection 4(d) provides a fine of not more than \$5,000, imprisonment for not more than 5 years, or both, for knowingly violating the ban.

Subsection 4(e) requires that large capacity ammunition feeding devices manufactured after the date of enactment be identified by a serial number that clearly shows the device was manufactured after the date or imported after the date of enactment, and such other identification as the Secretary of the Treasury may by regulation prescribe.

SECTION 5—STUDY BY ATTORNEY GENERAL

This section requires the Attorney General to study and report to the Congress no later than 30 months after its enactment the effects of the Act, particularly with regard to its impact—if any—on violent and drug-trafficking crime.

The study shall be conducted over a period of 18 months, commencing 12 months after the date of enactment.

SECTION 6—EFFECTIVE DATE

The Act and the amendment made by the Act take effect on the date of enactment and are repealed effective as of the date that is 10 years after that date.

SECTION 7—APPENDIX A TO SECTION 922 OF TITLE 18

This section adds, as Appendix A, a list of firearms that are specifically exempted from the ban on semiautomatic assault weapons.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT OPERATIONS OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Operations were received as referred to in clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(l)(3)(B) of House Rule XI is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that H.R. 4296 will have no significant inflationary impact on prices and costs in the national economy.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill H.R. 4296, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. Congress,
Congressional Budget Office.
Washington, DC, May 2, 1994.

Hon. Jack Brooks,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed H.R. 4296, the Public Safety and Recreational Firearms Use Protection Act, as ordered reported by the House Committee on the Judiciary on April 28, 1994. We estimate that enactment of the bill would result in costs to the federal government over the 1995–1999 period of less than \$500,000 from appropriated amounts. In addition, we estimate that enactment of H.R. 4296 would lead to increases in receipts of less than \$10 million a year from new criminal fines. Such receipts would be deposited in the Crime Victims Fund and spent in the following year. Because the bill could affect direct spending and receipts, pay-as-you-go procedures would apply. The bill would not affect the budgets of state or local governments.

H.R. 4296 would ban the manufacture, transfer, and possession of certain semiautomatic assault weapons not lawfully possessed as of the date of the bill's enactment. The bill also would ban the transfer and possession of certain large-capacity ammunition feeding devices not lawfully possessed as of the date of enactment. In addition, H.R. 4296 would establish recordkeeping requirements for transfers of grandfathered weapons and would direct the Attorney General to conduct a study of the bill's impact. Finally, the bill would create new federal crimes and associated penalties—prison sentences and criminal fines—for violation of its provisions.

The new recordkeeping requirements and the impact study would increase costs to the Department of the Treasury and the Department of Justice, respectively, but we estimate that these costs would be less than \$500,000 over the next several years from appropriated amounts. The imposition of new criminal fines in H.R. 4296 could cause governmental receipts to increase through greater penalty collections. We estimate that any such increase would be less than \$10 million annually. Criminal fines would be deposited in the Crime Victims Fund and would be spent in the following year. Thus, direct spending from the fund would match the increase in revenues with a one-year lag.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

Robert D. Reischauer, Director.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

CHAPTER 44 OF TITLE 18, UNITED STATES CODE

* * * * *

CHAPTER 44—FIREARMS

S 921. Definitions

(a) As used in this chapter—

(1)***

* * * * *

(3) The term “firearm” means (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; [or (D) any destructive device.] (D) any destructive device; or (E) any large capacity ammunition feeding device. Such term does not include an antique firearm.

* * * * *

(30) The term “semiautomatic assault weapon” means—

(A) any of the firearms, or copies or duplicates of the firearms, known as—

(i) Norinco, Mitchell, and Poly Technologies Avtomat Kalashnikovs (all models);

(ii) Action Arms Israeli Military Industries UZI and Galil;

(iii) Beretta Ar70 (SC-70);

(iv) Colt AR-15;

(v) Fabrique National FN/FAL, FN/LAR, and FNC;

(vi) SWD M-10, M-11, M-11/9, and M-12;

(vii) Steyr AUG;

(viii) INTRATEC TEC-9, TEC-DC9 and TEC-22; and

(ix) revolving cylinder shotguns, such as (or similar to) the Street Sweeper and Striker 12;

(B) a semiautomatic rifle that has an ability to accept a detachable magazine and has at least 2 of—

(i) a folding or telescoping stock;

(ii) a pistol grip that protrudes conspicuously beneath the action of the weapon;

(iii) a bayonet mount;

(iv) a flash suppressor or threaded barrel designed to accommodate a flash suppressor; and

(v) a grenade launcher;

(C) a semiautomatic pistol that has an ability to accept a detachable magazine and has at least 2 of—

(i) an ammunition magazine that attaches to the pistol outside of the pistol grip;

(ii) a threaded barrel capable of accepting a barrel extender, flash suppressor, forward handgrip, or silencer;

(iii) a shroud that is attached to, or partially or completely encircles, the barrel and that permits the shooter to hold the firearm with the nontrigger hand without being burned;

(iv) a manufactured weight of 50 ounces or more when the pistol is unloaded; and

(v) a semiautomatic version of an automatic firearm; and

(D) a semiautomatic shotgun that has at least 2 of—

(i) a folding or telescoping stock;

(ii) a pistol grip that protrudes conspicuously beneath the action of the weapon;

(iii) a fixed magazine capacity in excess of 5 rounds; and

(iv) an ability to accept a detachable magazine.

(31) The term “large capacity ammunition feeding device”—

(A) means—

(i) a magazine, belt, drum, feed strip, or similar device that has a capacity of, or that can be readily restored or converted to accept, more than 10 rounds of ammunition; and

(ii) any combination of parts from which a device described in clause (i) can be assembled; but

(B) does not include an attached tubular device designed to accept, and capable of operating only with, .22 caliber rimfire ammunition.

S 922. Unlawful acts

(a) It shall be unlawful—

* * * * *

(v)(1) It shall be unlawful for a person to manufacture, transfer, or possess a semiautomatic assault weapon.

(2) Paragraph (1) shall not apply to the possession or transfer of any semiautomatic assault weapon otherwise lawfully possessed on the date of the enactment of this subsection.

(3) Paragraph (1) shall not apply to—

(A) any of the firearms, or replicas or duplicates of the firearms, specified in Appendix A to this section, as such firearms were manufactured on October 1, 1993;

(B) any firearm that—

(i) is manually operated by bolt, pump, lever, or slide action;

(ii) has been rendered permanently inoperable; or

(iii) is an antique firearm;

(C) any semiautomatic rifle that cannot accept a detachable magazine that holds more than 5 rounds of ammunition; or

(D) any semiautomatic shotgun that cannot hold more than 5 rounds of ammunition in a fixed or detachable magazine.

The fact that a firearm is not listed in Appendix A shall not be construed to mean that paragraph (1) applies to such firearm. No firearm exempted by this subsection may be deleted from Appendix A so long as this Act is in effect.

(4) Paragraph (1) shall not apply to—

(A) the United States or a department or agency of the United States or a State or a department, agency, or political subdivision of a State;

(B) the transfer of a semiautomatic assault weapon by a licensed manufacturer, licensed importer, or licensed dealer to an entity referred to in subparagraph (A) or to a law enforcement officer authorized by such an entity to purchase firearms for official use;

(C) the possession, by an individual who is retired from service with a law enforcement agency and is not otherwise prohibited from receiving a firearm, of a semiautomatic assault weapon transferred to the individual by the agency upon such retirement; or

(D) the manufacture, transfer, or possession of a semiautomatic assault weapon by a licensed manufacturer or licensed importer for the purposes of testing or experimentation authorized by the Secretary.

(w)(1) It shall be unlawful for a person to sell, ship, or deliver a semiautomatic assault weapon to a person who has not completed a form 4473 in connection with the transfer of the semiautomatic assault weapon.

(2) It shall be unlawful for a person to receive a semiautomatic assault weapon unless the person has completed a form 4473 in connection with the transfer of the semiautomatic assault weapon.

(3) If a person receives a semiautomatic assault weapon from anyone other than a licensed dealer, both the person and the transferor shall retain a copy of the form 4473 completed in connection with the transfer.

(4) Within 90 days after the date of the enactment of this subsection, the Secretary shall prescribe regulations ensuring the availability of form 4473 to owners of semiautomatic assault weapons.

(5) As used in this subsection, the term “form 4473” means—

(A) the form which, as of the date of the enactment of this subsection, is designated by the Secretary as form 4473; or

(B) any other form which—

(i) is required by the Secretary, in lieu of the form described in subparagraph (A), to be completed in connection with the transfer of a semiautomatic assault weapon; and

(ii) when completed, contains, at a minimum, the information that, as of the date of the enactment of this subsection, is required to be provided on the form described in subparagraph (A).

(x)(1) Except as provided in paragraph (2), it shall be unlawful for a person to transfer or possess a large capacity ammunition feeding device.

(2) Paragraph (1) shall not apply to the possession or transfer of any large capacity ammunition feeding device otherwise lawfully possessed on the date of the enactment of this subsection.

(3) This subsection shall not apply to—

(A) the United States or a department or agency of the United States or a State or a department, agency, or political subdivision of a State;

(B) the transfer of a large capacity ammunition feeding device by a licensed manufacturer, licensed importer, or licensed dealer to an entity referred to in subparagraph (A) or to a law enforcement officer authorized by such an entity to purchase large capacity ammunition feeding devices for official use;

(C) the possession, by an individual who is retired from service with a law enforcement agency and is not otherwise prohibited from receiving ammunition, of a large capacity ammunition feeding device transferred to the individual by the agency upon such retirement; or

(D) the manufacture, transfer, or possession of any large capacity ammunition feeding device by a licensed manufacturer or licensed importer for the purposes of testing or experimentation authorized by the Secretary.

APPENDIX A

.....
Centerfire Rifles—Autoloaders
.....

Browning BAR Mark II Safari Semi-Auto Rifle

Browning BAR Mark II Safari Magnum Rifle
Browning High-Power Rifle
Heckler & Koch Model 300 Rifle
Iver Johnson M-1 Carbine
Iver Johnson 50th Anniversary M-1 Carbine
Marlin Model 9 Camp Carbine
Marlin Model 45 Carbine
Remington Nylon 66 Auto-Loading Rifle
Remington Model 7400 Auto Rifle
Remington Model 7400 Rifle
Remington Model 7400 Special Purpose Auto Rifle
Ruger Mini-14 Autoloading Rifle (w/o folding stock)
Ruger Mini Thirty Rifle

Centerfire Rifles—Lever & Slide

Browning Model 81 BLR Lever-Action Rifle
Browning Model 81 Long Action BLR
Browning Model 1886 Lever-Action Carbine
Browning Model 1886 High Grade Carbine
Cimarron 1860 Henry Replica
Cimarron 1866 Winchester Replicas
Cimarron 1873 Short Rifle
Cimarron 1873 Sporting Rifle
Cimarron 1873 30” Express Rifle
Dixie Engraved 1873 Rifle
E.M.F. 1866 Yellowboy Lever Actions
E.M.F. 1860 Henry Rifle
E.M.F. Model 73 Lever-Actions Rifle

Marlin Model 336CS Lever-Action Carbine
Marlin Model 30AS Lever-Action Carbine
Marlin Model 444SS Lever-Action Sporter
Marlin Model 1894S Lever-Action Carbine
Marlin Model 1894CS Carbine
Marlin Model 1894CL Classic
Marlin Model 1895SS Lever-Action Rifle
Mitchell 1858 Henry Replica
Mitchell 1866 Winchester Replica
Mitchell 1873 Winchester Replica
Navy Arms Military Henry Rifle
Navy Arms Henry Trapper
Navy Arms Iron Frame Henry
Navy Arms Henry Carbine
Navy Arms 1866 Yellowboy Rifle
Navy Arms 1873 Winchester-Style Rifle
Navy Arms 1873 Sporting Rifle
Remington 7600 Slide Action
Remington Model 7600 Special-Purpose Slide Action
Rossi M92 SRC Saddle-Ring Carbine
Rossi M92 SRS Short Carbine
Savage 99C Leber-Action Rifle
Uberti Henry Rifle
Uberti 1866 Sporting Rifle
Uberti 1873 Sporting Rifle
Winchester Model 94 Side Eject Lever-Action Rifle
Winchester Model 94 Trapper Side Eject
Winchester Model 94 Big Bore Side Eject
Winchester Model 94 Ranger Side Eject Lever-Action Rifle

Winchester Model 94 Wrangler Side Eject

Centerfire Rifles—Bolt Action

Alpine Bolt-Action Rifle

A-Square Caesar Bolt-Action Rifle

A-Square Hannibal Bolt-Action Rifle

Anschutz 1700D Classic Rifles

Anschutz 1700D Custom Rifles

Anschutz 1700D Bavarian Bolt-Action Rifle

Anschutz 1733D Mannlicher Rifle

Barret Model 90 Bolt-Action Rifle

Beeman/HW 60J Bolt-Action Rifle

Blaser R84 Bolt-Action Rifle

BRNO 537 Sporter Bolt-Action Rifle

BRNO ZKB 527 Fox Bolt-Action Rifle

BRNO ZKK 600, 601, 602 Bolt-Action Rifles

Browning A-Bolt Rifle

Browning A-Bolt Stainless Stalker

Browning A-Bolt Left Hand

Browning A-Bolt Short Action

Browning Euro-Bolt Rifle

Browning A-Bolt Gold Medallion

Browning A-Bolt Micro Medallion

Century Centurion 14 Sporter

Century Enfield Sporter #4

Century Swedish Sporter #38

Century Mauser 98 Sporter

Cooper Model 38 Centerfire Sporter

Dakota 22 Sporter Bolt-Action Rifle
Dakota 76 Classic Bolt-Action Rifle
Dakota 76 Short Action Rifles
Dakota 76 Safari Bolt-Action Rifle
Dakota 416 Rigby African
E.A.A./Sabatti Rover 870 Bolt-Action Rifle
Auguste Francotte Bolt-Action Rifles
Carl Gustaf 2000 Bolt-Action Rifle
Heym Magnum Express Series Rifle
Howa Lightning Bolt-Action Rifle
Howa Realtree Camo Rifle
Interarms Mark X Viscount Bolt-Action Rifle
Interarms Mini-Mark X Rifle
Interarms Mark X Whitworth Bolt-Action Rifle
Interarms Whitworth Express Rifle
Iver Johnson Model 5100A1 Long-Range Rifle
KDF K15 American Bolt-Action Rifle
Krico Model 600 Bolt-Action Rifle
Krico Model 700 Bolt-Action Rifle
Mauser Model 66 Bolt-Action Rifle
Mauser Model 99 Bolt-Action Rifle
McMillan Signature Classic Sporter
McMillan Signature Super Varminter
McMillan Signature Alaskan
McMillan Signature Titanium Mountain Rifle
McMillan Classic Stainless Sporter
McMillan Talon Safari Rifle
McMillan Talon Sporter Rifle
Midland 1500S Survivor Rifle

Navy Arms TU-33/40 Carbine

Parker-Hale Model 81 Classic Rifle

Parker-Hale Model 81 Classic African Rifle

Parker-Hale Model 1000 Rifle

Parker-Hale Model 1000M African Rifle

Parker-Hale Model 1100 Lightweight Rifle

Parker-Hale Model 1200 Super Rifle

Parker-Hale Model 1200 Super Clip Rifle

Parker-Hale Model 1300C Scout Rifle

Parker-Hale Model 2100 Midland Rifle

Parker-Hale Model 2700 Lightweight Rifle

Parker-Hale Model 2800 Midland Rifle

Remington Model Seven Bolt-Action Rifle

Remington Model Seven Youth Rifle

Remington Model Seven Custom KS

Remington Model Seven Custom MS Rifle

Remington 700 ADL Bolt-Action Rifle

Remington 700 BDL Bolt-Action Rifle

Remington 700 BDL Varmint Special

Remington 700 BDL European Bolt-Action Rifle

Remington 700 Varmint Synthetic Rifle

Remington 700 BDL SS Rifle

Remington 700 Stainless Synthetic Rifle

Remington 700 MTRSS Rifle

Remington 700 BDL Left Hand

Remington 700 Camo Synthetic Rifle

Remington 700 Safari

Remington 700 Mountain Rifle

Remington 700 Custom KS Mountain Rifle

Remington 700 Classic Rifle
Ruger M77 Mark II Rifle
Ruger M77 Mark II Magnum Rifle
Ruger M77RL Ultra Light
Ruger M77 Mark II All-Weather Stainless Rifle
Ruger M77 RSI International Carbine
Ruger M77 Mark II Express Rifle
Ruger M77VT Target Rifle
Sako Hunter Rifle
Sako Fiberclass Sporter
Sako Hunter Left-Hand Rifle
Sako Classic Bolt Action
Sako Hunter LS Rifle
Sako Deluxe Lightweight
Sako Super Deluxe Sporter
Sako Mannlicher-Style Carbine
Sako Varmint Heavy Barrel
Sako TRG-S Bolt-Action Rifle
Sauer 90 Bolt-Action Rifle
Savage 110G Bolt-Action Rifle
Savage 110CY Youth/Ladies Rifle
Savage 110WLE One of One Thousand Limited Edition Rifle
Savage 110GXP3 Bolt-Action Rifle
Savage 110F Bolt-Action Rifle
Savage 110FXP3 Bolt-Action Rifle
Savage 110GV Varmint Rifle
Savage 110FV Varmint Rifle
Savage Model 110FVS Varmint Rifle
Savage Model 112BV Heavy Barrel Varmint Rifle

Savage 116FSS Bolt-Action Rifle
Savage Model 116SK Kodiak Rifle
Savage 110FP Polic Rifle
Steyr-Mannlicher Sporter Models SL, L, M, S, S/T
Steyr-Mannlicher Luxus Model L, M, S
Steyr-Mannlicher Model M Professional Rifle
Tikka Bolt-Action Rifle
Tikka Premium Grade Rifle
Tikka Varmint/Continental Rifle
Tikka Whitetail/Battue Rifle
Ultra Light Arms Model 20 Rifle
Ultra Light Arms Model 28, Model 40 Rifles
Voere VEC 91 Lightning Bolt-Action Rifle
Voere Model 2166 Bolt-Action Rifle
Voere Model 2155, 2150 Bolt-Action Rifles
Weatherby Mark V Deluxe Bolt-Action Rifle
Weatherby Lasermark V Rifle
Weatherby Mark V Crown Custom Rifles
Weatherby Mark V Safari Grade Custom Rifle
Weatherby Mark V Sporter Rifle
Weatherby Mark V Safari Grade Custom Rifles
Weatherby Weathermark Rifle
Weatherby Weathermark Alaskan Rifle
Weatherby Classicmark No. 1 Rifle
Weatherby Weatherguard Alaskan Rifle
Weatherby Vanguard VGX Deluxe Rifle
Weatherby Vanguard Classic Rifle
Weatherby Vanguard Classic No. 1 Rifle
Weatherby Vanguard Weathermark Rifle

Wichita Classis Rifle
Wichita Varmint Rifle
Winchester Model 70 Sporter
Winchester Model 70 Sporter WinTuff
Winchester Model 70 SM Sporter
Winchester Model 70 Stainless Rifle
Winchester Model 70 Varmint
Winchester Model 70 Synthetic Heavy Varmint Rifle
Winchester Model 70 DBM Rifle
Winchester Model 70 DBM-S Rifle
Winchester Model 70 Featherweight
Winchester Model 70 Featherweight WinTuff
Winchester Model 70 Featherweight Classic
Winchester Model 70 Lightweight Rifle
Winchester Ranger Rifle
Winchester Model 70 Super Express Magnum
Winchester Model 70 Super Grade
Winchester Model 70 Custom Sharpshooter
Winchester Model 70 Custom Sporting Sharpshooter Rifle

Centerfire Rifles—Single Shot

Armsport 1866 Sharps Rifle, Carbine
Brown Model One Single Shot Rifle
Browning Model 1885 Single Shot Rifle
Dakota Single Shot Rifle
Desert Industries G-90 Single Shot Rifle
Harrington & Richardson Ultra Varmint Rifle
Model 1885 High Wall Rifle

Navy Arms Rolling Block Buffalo Rifle
Navy Arms #2 Creedmoor Rifle
Navy Arms Sharps Cavalry Carbine
Navy Arms Sharps Plains Rifle
New England Firearms Handi-Rifle
Red Willow Armory Ballard No. 5 Pacific
Red Willow Armory Ballard No. 1.5 Hunting Rifle
Red Willow Armory Ballard No. 8 Union Hill Rifle
Red Willow Armory Ballard No. 4.5 Target Rifle
Remington-Style Rolling Block Carbine
Ruger No. 1B Single Shot
Ruger No. 1A Light Sporter
Ruger No. 1H Tropical Rifle
Ruger No. 1S Medium Sporter
Ruger No. 1 RSI International
Ruger No. 1V Special Varminter
C. Sharps Arms New Model 1874 Old Reliable
C. Sharps Arms New Model 1875 Rifle
C. Sharps Arms 1875 Classic Sharps
C. Sharps Arms New Model 1875 Target & Long Range
Shiloh Sharps 1874 Long Range Express
Shiloh Sharps 1874 Montana Roughrider
Shiloh Sharps 1874 Military Carbine
Shiloh Sharps 1874 Business Rifle
Shiloh Sharps 1874 Military Rifle
Sharps 1874 Old Reliable
Thompson/Center Contender Carbine
Thompson/Center Stainless Contender Carbine
Thompson/Center Contender Carbine Survival System

Thompson/Center Contender Carbine Youth Model

Thompson/Center TCR '87 Single Shot Rifle

Uberti Rolling Block Baby Carbine

Drillings, Combination Guns, Double Rifles

Baretta Express SSO O/U Double Rifles

Baretta 455 SxS Express Rifle

Chapuis RGExpress Double Rifle

Auguste Francotte Sidelock Double Rifles

Auguste Francotte Boxlock Double Rifle

Heym Model 55B O/U Double Rifle

Heym Model 55FW O/U Combo Gun

Heym Model 88b Side-by-Side Double Rifle

Kodiak Mk. IV Double Rifle

Kreighoff Teck O/U Combination Gun

Kreighoff Trumpf Drilling

Merkel Over/Under Combination Guns

Merkel Drillings

Merkel Model 160 Side-by-Side Double Rifles

Merkel Over/Under Double Rifles

Savage 24F O/U Combination Gun

Savage 24F-12T Turkey Gun

Springfield Inc. M6 Scout Rifle/Shotgun

Tikka Model 412s Combination Gun

Tikka Model 412S Double Fire

A. Zoli Rifle-Shotgun O/U Combo

Rimfire Rifles—Autoloaders

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AMT Lightning 25/22 Rifle

AMT Lightning Small-Game Hunting Rifle II

AMT Mannum Hunter Auto Rifle

Anschutz 525 Deluxe Auto

Armscor Model 20P Auto Rifle

Browning Auto-22 Rifle

Browning Auto-22 Grade VI

Krico Model 260 Auto Rifle

Lakefield Arms Model 64B Auto Rifle

Marlin Model 60 Self-Loading Rifle

Marlin Model 60ss Self-Loading Rifle

Marlin Model 70 HC Auto

Marlin Model 990I Self-Loading Rifle

Marlin Model 70P Papoose

Marlin Model 922 Magnum Self-Loading Rifle

Marlin Model 995 Self-Loading Rifle

Norinco Model 22 ATD Rifle

Remington Model 522 Viper Autoloading Rifle

Remington 522BDL Speedmaster Rifle

Ruger 10/22 Autoloading Carbine (w/o folding stock)

Survival Arms AR-7 Explorer Rifle

Texas Remington Revolving Carbine

Voere Model 2115 Auto Rifle

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Rimfire Rifles—Lever & Slide Action

.....

Browning BL-22 Lever-Action Rifle

Marlin 39TDS Carbine

Marlin Model 39AS Golden Lever-Action Rifle

Remington 572BDL Fieldmaster Pump Rifle

Norinco EM-321 Pump Rifle

Rossi Model 62 SA Pump Rifle

Rossi Model 62 SAC Carbine

Winchester Model 9422 Lever-Action Rifle

Winchester Model 9422 Magnum Lever-Action Rifle

Rimfire Rifles—Bolt Actions & Single Shots

Anschutz Achiever Bolt-Action Rifle

Anschutz 1416D/1516D Classic Rifles

Anschutz 1418D/1518D Mannlicher Rifles

Anschutz 1700D Classic Rifles

Anschutz 1700D Custom Rifles

Anschutz 1700 FWT Bolt-Action Rifle

Anschutz 1700D Graphite Custom Rifle

Anschutz 1700D Bavarian Bolt-Action Rifle

Armscor Model 14P Bolt-Action Rifle

Armscor Model 1500 Rifle

BRNO ZKM-452 Deluxe Bolt-Action Rifle

BRNO ZKM 452 Deluxe

Beeman/HW 60-J-ST Bolt-Action Rifle

Browning A-Bolt 22 Bolt-Action Rifle

Browning A-Bolt Gold Medallion

Cabanas Phaser Rifle

Cabanas Master Bolt-Action Rifle

Cabanas Espronceda IV Bolt-Action Rifle

Cabanas Leyre Bolt-Action Rifle

Chipmunk Single Shot Rifle
Cooper Arms Model 36S Sporter Rifle
Dakota 22 Sporter Bolt-Action Rifle
Krico Model 300 Bolt-Action Rifles
Lakefield Arms Mark II Bolt-Action Rifle
Lakefield Arms Mark I Bolt-Action Rifle
Magtech Model MT-22C Bolt-Action Rifle
Marlin Model 880 Bolt-Action Rifle
Marlin Model 881 Bolt-Action Rifle
Marlin Model 882 Bolt-Action Rifle
Marlin Model 883 Bolt-Action Rifle
Marlin Model 883SS Bolt-Action Rifle
Marlin Model 25MN Bolt-Action Rifle
Marlin Model 25N Bolt-Action Repeater
Marlin Model 15YN "Little Buckaroo"
Mauser Model 107 Bolt-Action Rifle
Mauser Model 201 Bolt-Action Rifle
Navy Arms TU-KKW Training Rifle
Navy Arms TU-30/40 Carbine
Navy Arms TU-KKW Sniper Trainer
Norinco JW-27 Bolt-Action Rifle
Norinco JW-15 Bolt-Action Rifle
Remington 541-T
Remington 40-XR Rimfire Custom Sporter
Remington 541-T HB Bolt-Action Rifle
Remington 581-S Sportsman Rifle
Ruger 77/22 Rimfire Bolt-Action Rifle
Ruger K77/22 Varmint Rifle
Ultra Light Arms Model 20 RF Bolt-Action Rifle

Winchester Model 52B Sporting Rifle

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Competition Rifles—Centerfire & Rimfire

.....

Anschutz 64-MS Left Silhouette

Anschutz 1808D RT Super Match 54 Target

Anschutz 1827B Biathlon Rifle

Anschutz 1903D Match Rifle

Anschutz 1803D Intermediate Match

Anschutz 1911 Match Rifle

Anschutz 54.18MS REP Deluxe Silhouette Rifle

Anschutz 1913 Super Match Rifle

Anschutz 1907 Match Rifle

Anschutz 1910 Super Match II

Anschutz 54.18MS Silhouette Rifle

Anschutz Super Match 54 Targe Model 2013

Anschutz Super Match 54 Targe Model 2007

Beeman/Feinwerkbau 2600 Target Rifle

Cooper Arms Model TRP-1 ISU Standard Rifle

E.A.A./Weihrauch HW 60 Target Rifle

E.A.A./HW 60 Match Rifle

Finnish Lion Standard Target Rifle

Krico Model 360 S2 Biathlon Rifle

Krico Model 400 Match Rifle

Krico Model 360S Biathlon Rifle

Krico Model 500 Kricotronic Match Rifle

Krico Model 600 Sniper Rifle

Krico Model 600 Match Rifle

Lakefield Arms Model 90B Target Rifle

Lakefield Arms Model 91T Target Rifle
Lakefield Arms Model 92S Silhouette Rifle
Marlin Model 2000 Target Rifle
Mauser Model 86-SR Specialty Rifle
McMillan M-86 Sniper Rifle
McMillan Combo M-87/M-88 50-Caliber Rifle
McMillan 300 Phoenix Long-Range Rifle
McMillan M-89 Sniper Rifle
McMillan National Match Rifle
McMillan Long-Range Rifle
Parker-Hale M-87 Target Rifle
Parker-Hale M-85 Sniper Rifle
Remington 40-XB Rangemaster Target Centerfire
Remington 40-XR KS Rimfire Position Rifle
Remington 40-XBBR KS
Remington 40-XC KS National Match Course Rifle
Sako TRG-21 Bolt-Action Rifle
Steyr-Mannlicher Match SPG-UIT Rifle
Steyr-Mannlicher SSG P-I Rifle
Steyr-Mannlicher SSG P-III Rifle
Steyr-Mannlicher SSG P-IV Rifle
Tanner Standard UIT Rifle
Tanner 50 Meter Free Rifle
Tanner 300 Meter Free Rifle
Wichita Silhouette Rifle

Shotguns—Autoloaders

American Arms/Franchi Black Magic 48/AL

Benelli Super Black Eagle Shotgun
Benelli Super Black Eagle Slug Gun
Benelli M1 Super 90 Field Auto Shotgun
Benelli Montefeltro Super 90 20-Gauge Shotgun
Benelli Montefeltro Super 90 Shotgun
Benelli M1 Sporting Special Auto Shotgun
Benelli Black Eagle Competition Auto Shotgun
Beretta A-303 Auto Shotgun
Beretta 390 Field Auto Shotgun
Beretta 390 Super Trap, Super Skeet Shotguns
Beretta Vittoria Auto Shotgun
Beretta Model 1201F Auto Shotgun
Browning BSA 10 Auto Shotgun
Browning Bsa 10 Stalker Auto Shotgun
Browning A-500R Auto Shotgun
Browning A-500G Auto Shotgun
Browning A-500G Sporting Clays
Browning Auto-5 Light 12 and 20
Browning Auto-5 Stalker
Browning Auto-5 Magnum 20
Browning Auto-5 Magnum 12
Churchill Turkey Automatic Shotgun
Cosmi Automatic Shotgun
Maverick Model 60 Auto Shotgun
Mossberg Model 5500 Shotgun
Mossberg Model 9200 Regal Semi-Auto Shotgun
Mossberg Model 9200 USST Auto Shotgun
Mossberg Model 9200 Camo Shotgun
Mossberg Model 6000 Auto Shotgun

Remington Model 1100 Shotgun
Remington 11-87 Premier shotgun
Remington 11-87 Sporting Clays
Remington 11-87 Premier Skeet
Remington 11-87 Premier Trap
Remington 11-87 Special Purpose Magnum
Remington 11-87 SPS-T Camo Auto Shotgun
Remington 11-87 Special Purpose Deer Gun
Remington 11-87 SPS-BG-Camo Deer/Turkey Shotgun
Remington 11-87 SPS-Deer Shotgun
Remington 11-87 Special Purpose Synthetic Camo
Remington SP-10 Magnum-Camo Auto Shotgun
Remington SP-10 Magnum Auto Shotgun
Remington SP-10 Magnum Turkey Combo
Remington 1100 LT-20 Auto
Remington 1100 Special Field
Remington 1100 20-Gauge Deer Gun
Remington 1100 LT-20 Tournament Skeet
Winchester Model 1400 Semi-Auto Shotgun

Shotguns—Slide Actions

Browning Model 42 Pump Shotgun
Browning BPS Pump Shotgun
Browning BPS Stalker Pump Shotgun
Browning BPS Pigeon Grade Pump Shotgun
Browning BPS Pump Shotgun (Ladies and Youth Model)
Browning BPS Game Gun Turkey Special
Browning BPS Game Gun Deer Special

Ithaca Model 87 Supreme Pump Shotgun
Ithaca Model 87 Deerslayer Shotgun
Ithaca Deerslayer II Rifled Shotgun
Ithaca Model 87 Turkey Gun
Ithaca Model 87 Deluxe Pump Shotgun
Magtech Model 586-VR Pump Shotgun
Maverick Models 88, 91 Pump Shotguns
Mossberg Model 500 Sporting Pump
Mossberg Model 500 Camo Pump
Mossberg Model 500 Muzzleloader Combo
Mossberg Model 500 Trophy Slugger
Mossberg Turkey Model 500 Pump
Mossberg Model 500 Bantam Pump
Mossberg Field Grade Model 835 Pump Shotgun
Mossberg Model 835 Regal Ulti-Mag Pump
Remington 870 Wingmaster
Remington 870 Special Purpose Deer Gun
Remington 870 SPS-BG-Camo Deer/Turkey Shotgun
Remington 870 SPS-Deer Shotgun
Remington 870 Marine Magnum
Remington 870 TC Trap
Remington 870 Special Purpose Synthetic Camo
Remington 870 Wingmaster Small Gauges
Remington 870 Express Rifle Sighted Deer Gun
Remington 879 SPS Special Purpose Magnum
Remington 870 SPS-T Camo Pump Shotgun
Remington 870 Special Field
Remington 870 Express Turkey
Remington 870 High Grades

Remington 870 Express

Remington Model 870 Express Youth Gun

Winchester Model 12 Pump Shotgun

Winchester Model 42 High Grade Shotgun

Winchester Model 1300 Walnut Pump

Winchester Model 1300 Slug Hunter Deer Gun

Winchester Model 1300 Ranger Pump Gun Combo & Deer Gun

Winchester Model 1300 Turkey Gun

Winchester Model 1300 Ranger Pump Gun

Shotguns—Over/Unders

American Arms/Franchi Falconet 2000 O/U

American Arms Silver I O/U

American Arms Silver II Shotgun

American Arms Silver Skeet O/U

American Arms/Franchi Sporting 2000 O/U

American Arms Silver Sporting O/U

American Arms Silver Trap O/U

American Arms WS/OU 12, TS/OU 12 Shotguns

American Arms WT/OU 10 Shotgun

Armsport 2700 O/U Goose Gun

Armsport 2700 Series O/U

Armsport 2900 Tri-Barrel Shotgun

Baby Bretton Over/Under Shotgun

Beretta Model 686 Ultralight O/U

Beretta ASE 90 Competition O/U Shotgun

Beretta Over/Under Field Shotguns

Beretta Onyx Hunter Sport O/U Shotgun

Beretta Model SO5, SO6, SO9 Shotguns
Beretta Sporting Clay Shotguns
Beretta 687EL Sporting O/U
Beretta 682 Super Sporting O/U
Beretta Series 682 Competition Over/Unders
Browning Citori O/U Shotgun
Browning Superlight Citori Over/Under
Browning Lightning Sporting Clays
Browning Micro Citori Lightning
Browning Citori Plus Trap Combo
Browning Citori Plus Trap Gun
Browning Citori O/U Skeet Models
Browning Citori O/U Trap Models
Browning Special Sporting Clays
Browning Citori GTI Sporting Clays
Browning 325 Sporting Clays
Centurion Over/Under Shotgun
Chapuis Over/Under Shotgun
Connecticut Valley Classics Classic Sporter O/U
Connecticut Valley Classics Classic Field Waterfowler
Charles Daly Field Grade O/U
Charles Daly Lux O/U
E.A.A./Sabatti Sporting Clays Pro-Gold O/U
E.A.A./Sabatti Falcon-Mon Over/Under
Kassnar Grade I O/U Shotgun
Krieghoff K-80 Sporting Clays O/U
Krieghoff K-80 Skeet Shotgun
Krieghoff K-80 International Skeet
Krieghoff K-80 Four-Barrel Skeet Set

Krieghoff K-80/RT Shotguns
Krieghoff K-80 O/U Trap Shotgun
Laurona Silhouette 300 Sporting Clays
Laurona Silhouette 300 Trap
Laurona Super Model Over/Unders
Ljutic LM-6 Deluxe O/U Shotgun
Marocchi Conquista Over/Under Shotgun
Marocchi Avanza O/U Shotgun
Merkel Model 200E O/U Shotgun
Merkel Model 200E Skeet, Trap Over/Unders
Merkel Model 203E, 303E Over/Under Shotguns
Perazzi Mirage Special Sporting O/U
Perazzi Mirage Special Four-Gauge Skeet
Perazzi Sporting Classic O/U
Perazzi MX7 Over/Under Shotguns
Perazzi Mirage Special Skeet Over/Under
Perazzi MX8/MX8 Special Trap, Skeet
Perazzi MX8/20 Over/Under Shotgun
Perazzi MX9 Single Over/Under Shotguns
Perazzi MX12 Hunting Over/Under
Perazzi MX28, MX410 Game O/U Shotguns
Perazzi MX20 Hunting Over/Under
Piotti Boss Over/Under Shotgun
Remington Peerless Over/Under Shotgun
Ruger Red Label O/U Shotgun
Ruger Sporting Clays O/U Shotgun
San Marco 12-Ga. Wildflower Shotgun
San Marco Field Special O/U Shotgun
San Marco 10-Ga. O/U Shotgun

SKB Model 505 Deluxe Over/Under Shotgun
SKB Model 685 Over/Under Shotgun
SKB Model 885 Over/Under Trap, Skeet, Sporting Clays
Stoeger/IGA Condor I O/U Shotgun
Stoeger/IGA ERA 2000 Over/Under Shotgun
Techni-Mec Model 610 Over/Under
Tikka Model 412S Field Grade Over/Under
Weatherby Athena Grade IV O/U Shotguns
Weatherby Athena Grade V Classic Field O/U
Weatherby Orion O/U Shotguns
Weatherby II, III Classic Field O/Us
Weatherby Orion II Classic Sporting Clays O/U
Weatherby Orion II Sporting Clays O/U
Winchester Model 1001 O/U Shotgun
Winchester Model 1001 Sporting Clays O/U
Pietro Zanoletti Model 2000 Field O/U

Shotguns—Side by Sides

American Arms Brittany Shotgun
American Arms Gentry Double Shotgun
American Arms Derby Side-by-Side
American Arms Grulla #2 Double Shotgun
American Arms WS/SS 10
American Arms TS/SS 10 Double Shotgun
American Arms TS/SS 12 Side-by-Side
Arrieta Sidelock Double Shotguns
Armsport 1050 Series Double Shotguns
Arizaga Model 31 Double Shotgun

AYA Boxlock Shotguns

AYA Sidelock Double Shotguns

Beretta Model 452 Sidelock Shotgun

Beretta Side-by-Side Field Shotguns

Crucelegui Hermanos Model 150 Double

Chapuis Side-by-Side Shotgun

E.A.A./Sabatti Sabe-Mon Double Shotgun

Charles Daly Model Dss Double

Ferlib Model F VII Double Shotgun

Auguste Francotte Boxlock Shotgun

Auguste Francotte Sidelock Shotgun

Garbi Model 100 Double

Garbi Model 100 Side-by-Side

Garbi Model 103A, B Side-by-Side

Garbi Model 200 Side-by-Side

Bill Hanus Birdgun Doubles

Hatfield Uplander Shotgun

Merkell Model 8, 47E Side-by-Side Shotguns

Merkel Model 47LSC Sporting Clays Double

Merkel Model 47S, 147S Side-by-Sides

Parker Reproductions Side-by-Side

Piotti King No. 1 Side-by-Side

Piotti Lunik Side-by-Side

Piotti King Extra Side-by-Side

Piotti Piuma Side-by-Side

Precision Sports Model 600 Series Doubles

Rizzini Boxlock Side-by-Side

Rizzini Sidelock Side-by-Side

Stoeger/IGA Side-by-Side Shotgun

Ugartechea 10-Ga. Magnum Shotgun

Shotguns—Bolt Actions & Single Shots

Armsport Single Barrel Shotgun

Browning BT-99 Competition Trap Special

Browning BT-99 Plus Trap Gun

Browning BT-99 Plus Micro

Browning Recoilless Trap Shotgun

Browning Micro Recoilless Trap Shotgun

Desert Industries Big Twenty Shotgun

Harrington & Richardson Topper Model 098

Harrington & Richardson Topper Classic Youth Shotgun

Harrington & Richardson N.W.T.F. Turkey Mag

Harrington & Richardson Topper Deluxe Model 098

Krieghoff KS-5 Trap Gun

Krieghoff KS-5 Special

Krieghoff KS-80 Single Barrel Trap Gun

Ljutic Mono Gun Single Barrel

Ljutic LTX Super Deluxe Mono Gun

Ljutic Recoilless Space Gun Shotgun

Marlin Model 55 Goose Gun Bolt Action

New England Firearms Turkey and Goose Gun

New England Firearms N.W.T.F. Shotgun

New England Firearms Tracker Slug Gun

New England Firearms Standard Pardner

New England Firearms Survival Gun

Perazzi TM1 Special Single Trap

Remington 90-T Super Single Shotgun

Snake Charmer II Shotgun

Stoeger/IGA Reuna Single Barrel Shotgun

Thompson/Center TCR '87 Hunter Shotgun.

S 923. Licensing

(a)***

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(i) Licensed importers and licensed manufacturers shall identify by means of a serial number engraved or cast on the receiver or frame of the weapon, in such manner as the Secretary shall by regulations prescribe, each firearm imported or manufactured by such importer or manufacturer. The serial number of any semiautomatic assault weapon manufactured after the date of the enactment of this sentence shall clearly show the date on which the weapon was manufactured. A large capacity ammunition feeding device manufactured after the date of the enactment of this sentence shall be identified by a serial number that clearly shows that the device was manufactured or imported after the effective date of this subsection, and such other identification as the Secretary may by regulation prescribe.

S 924. Penalties

(a)(1) Except as otherwise provided in this subsection, subsection (b), (c), or (f) of this section, or in section 929, whoever—

(A) knowingly makes any false statement or representation with respect to the information required by this chapter to be kept in the records of a person licensed under this chapter or in applying for any license or exemption or relief from disability under the provisions of this chapter;

(B) knowingly violates subsection (a)(4), (a)(6), (f), (k), [or (q) of section 922] (r), (v), or (x) of section 922;

* * * * *

(6) A person who knowingly violates section 922(w) shall be fined not more than \$1,000, imprisoned not more than 6 months, or both. Section 3571 shall not apply to any offense under this paragraph.

* * * * *

(c)(1) Whoever, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime which provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which he may be prosecuted in a court of the United States, uses or carries a firearm, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime, be sentenced to imprisonment for five years, and if the firearm is a short-barreled rifle, short-barreled shotgun, or semiautomatic assault weapon, to imprisonment for ten years, and if the firearm is a machinegun, or a destructive device, or is equipped with a firearm silencer or firearm muffler, to imprisonment for thirty years. In the case of his second or subsequent conviction under this subsection, such person shall be sentenced to imprisonment for twenty years, and if the firearm is a machinegun, or a destructive device, or is equipped with a firearm silencer or firearm muffler, to life imprisonment without release. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person convicted of a violation of this subsection, nor shall the term of imprisonment imposed under this subsection run concurrently with any other term of imprisonment including that imposed for the crime of violence or drug trafficking crime in which the firearm was used or carried. No person sentenced under this subsection shall be eligible for parole during the term of imprisonment imposed herein.

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SUPPLEMENTAL VIEWS OF HON. DAN GLICKMAN

I supported this bill because it is a narrowly crafted bill focused on specific weapons that have no business being on our streets. It is aimed at rapid fire weapons that have the sole purpose of killing people, and it is aimed at weapons that are more suited for the battlefield than the target range.

I believe that violence in our nation is getting out of hand. It is devastating to read that a student killed a student with a semi-automatic weapon. But it is equally devastating to hear of students killing students with anyone. What we really need to focus on is why students are engaging in violence in the first place. For this reason, I think this legislation must be viewed as part of the effort to reduce crime—in conjunction with the comprehensive crime bill that increases penalties, calls for tougher sentencing, provides for more jails and police officers, and provides for prevention programs.

But we must not abrogate the Second Amendment rights that are provided for in the Constitution. We must be extremely careful that in this legislation and in any legislation in the future, that we are not taking away guns that truly are used for sports, hunting, or self-defense.

I don't believe that this bill is the first step in a long road to banning guns. However, some of my constituents have expressed their fear that the Congress is moving slowly toward banning all guns for all people. We must be absolutely clear that this narrowly crafted legislation is not that first step and is not just a precursor to further, broader federal gun control and federal gun bans. Sport shooters and hunters tell me that they don't want assault weapons on the streets and in the hands of gang members any more than anyone else. But what they don't want is for Congress to take the short step to saying that the hunting rifles are being used on the streets, and should be taken away. And then the handguns are being used on the streets and should be taken away.

I want to make sure that what we are doing has a purpose—that it gets at the weapons that are being used by gang members and others in killing sprees or other random violence. I want to be able to assure the hunters, sport shooters and folks who want to be prepared for self-defense that we're not going to turn around and tell these gun owners that their sporting guns are illegal. This is a good bill, but let's tread very carefully before going any further.

Finally, because I want to make sure that there is no mistake about which guns are banned and which are exempt, especially guns that will be developed in the future, I offered an amendment during Committee markup that was accepted by the Committee. This amendment clarifies that simply because a gun is not on the list of specifically exempted guns, does not mean that that firearm is banned. A firearm must meet the specific criteria set out in the bill, or be specifically named as a banned gun before it can be banned. In other words, the exempted gun list is not exhaustive.

Furthermore, my amendment makes clear that no gun may be taken off the list of specifically exempted guns as long as the act is in effect. In this way, it is absolutely clear that the intent of Congress is that exempted guns remain exempted.

DISSENTING VIEWS OF HON. F. JAMES SENSENBRENNER, JR., HON. GEORGE GEKAS, HON. LAMAR S. SMITH, HON. BILL McCOLLUM, HON. HOWARD COBLE, HON. STEVE SCHIFF, AND HON. BOB GOODLATTE

We strongly oppose H.R. 4296 which would ban a variety of guns. The primary problem with this bill is that it targets law abiding citizens. If this bill passes, simply possessing a shotgun or rifle could land you in jail. You don't have to shoot anybody. You don't have to threaten anyone, just leaving it in the hall closet is enough to land you in jail. Even if you use the gun for self-defense, you can go to jail.

It is already a federal crime for convicted criminals to possess these weapons, or any other gun for that matter. The laws aimed at these criminals should be fully enforced before we start going into the homes of law-abiding citizens and arresting them.

Another problem with this legislation is that simple, cosmetic changes to certain guns would turn those guns from being illegal to, all of a sudden being legal. For example, simply by removing a pistol grip, or a bayonet mount from a rifle saves the owner from going to jail, but leaves the gun's performance unaffected.

Finally, the problem of these guns has been greatly exaggerated. Although semiautomatic weapons are used in the most high profile killings that make it on the nightly news, in fact, more than 99 percent of killers eschew assault rifles and use more prosaic devices. According to statistics from the Justice Department and reports from local law enforcement, five times as many people are kicked or beaten to death than are killed with assault rifles.

Passing this legislation is an excuse to avoid the real issues of violent crime, and threatens the rights of law-abiding citizens. Therefore, we oppose H.R. 4296.

F. James Sensenbrenner, Jr.
George W. Gekas.
Lamar Smith.
Bill McCollum.
Howard Coble.
Steve Schiff.
Bob Goodlatte.

DISSENTING VIEWS OF HON. JACK BROOKS

I am strongly opposed to H.R. 4296, the Public Safety and Recreational Firearms Use Protection Act, because it misidentifies the causes of violent crime in the United States; diverts national priorities away from meaningful solutions to the problem of violent crime; punishes honest American gun owners who buy and use firearms for legitimate, lawful purposes such as, but not necessarily limited to, self-defense, target shooting, hunting, and firearms collection; fails to focus the punitive powers of government upon criminals. Most fundamentally, a prohibition on firearms violates the right of individual Americans to keep and bear arms, protected by the Second Amendment to the Constitution of the United States—a stark fact of constitutional life that the proponents of H.R. 4296 conveniently overlook in their zeal to abridge the rights of law-abiding citizens.

Reasons claimed to justify a prohibition on the firearms that would be affected by H.R. 4296 include the assertion that those particular firearms are used often in the commission of violent crimes. Data on the use of the firearms H.R. 4296 labels as “assault weapons” is not comprehensive, but such data as do exist consistently show that “assault weapons” are involved in a small percentage of violent crimes.

Most of the firearms labelled as “assault weapons” in H.R. 4296 are rifles—yet rifles are the general category of firearms used least often in the commission of violent crimes. The FBI Uniform Crime Reports, 1992, the most recent comprehensive data available, shows that rifles of any description are used in 3.1 percent of homicides, for example, while knives are used in 14.5 percent, fists and feet are used in 5 percent, and blunt objects are used in another 5 percent.

Professor Gary Kleck, of Florida State University, the 1993 recipient of the American Society of Criminology's Hindelang Award, estimates that one-half of 1 percent of violent crimes are committed with “assault weapons.” University of Texas criminologist Sheldon Ekland-Olson estimates that one-quarter of rifle-related homicides may involve rifles chambered for military cartridges, which would include not only so-called “assault” type semi-automatic rifles, but non-semiautomatic rifles as well.

Since 1980, rifle-related homicides have declined by more than a third. According to the Metropolitan Police of Washington, D.C., the city which has the highest per capita rate of homicides of any major city in the United States, between 1980–1993 there occurred only 4 rifle-related homicides out of a total of more than 4,200 homicides in the period. The last rifle homicide

during the period was recorded in 1984. Other data from D.C. police show that rifles are used in about one-tenth of 1 percent of robberies and assaults.

The California Department of Justice surveyed law enforcement agencies in the state in 1990, as the state's legislature addressed "assault weapon" ban legislation there. The California Department of Justice found that only 3.7 percent of the firearms that are used in homicides and assaults were "assault weapons," defined there to include even more firearms than are defined as "assault weapons" in H.R. 4296.

Connecticut State Police report that less than 2 percent of firearms seized by police in the state are "assault weapons"; the Massachusetts State Police report that "assault" type rifles were used in one-half of 1 percent of homicides between 1985-1991.

I believe the proponents of H.R. 4296 are in error in claiming that the Bureau of Alcohol, Tobacco and Firearms (BATF) has traced a large number of "assault weapons" to crime. This claim has been effectively contradicted by both the BATF itself and the Congressional Research Service's (CRS) report on the BATF firearms tracing system. The BATF has stated that it "does not always know if a firearm being traced has been used in a crime." For instance, sometimes a firearm is traced simply to determine the rightful owner after it is found by a law enforcement officer.

Each year, the BATF traces about 50,000 firearms, yet only about 1 percent of these traces relate to "assault weapons" that have been seized by police in the course of investigations of violent crimes. Most "assault weapons" traced relate not to violent crime but to property violations, such as stolen guns being traced so that they may be returned to their lawful owners, violations of the Gun Control Act, and other non-violent circumstances.

As noted by BATF and by CRS in its report to Congress entitled "Assault Weapons: Military-Style Semiautomatic Firearms Facts and Issues" (1992) that firearms traces are not intended to "trace guns to crime," that few "assault weapons" traced relative to violent crime investigations, and that available state and local law enforcement agency data shows relatively little use of "assault weapons" are used frequently in violent crimes.

"Assault weapons" function in the same manner as any other semi-automatic firearm. They fire once with each pull of the trigger, like most firearms. They use the same ammunition as other firearms, both semi-automatic and not. Therefore, "assault weapons" are useful for target shooting, self-defense, hunting, and other legitimate purposes, just as other firearms are.

H.R. 4296 would prohibit rifles that are commonly used for competitive shooting, such as the Springfield A and the Colt "AR-15."

Accessories found on some models of "assault weapons," such as folding stocks, flash suppressors, pistol grips, bayonet lugs, and detachable magazines may look menacing to persons unfamiliar with firearms, but there is absolutely no evidence that any of these accessories provide any advantage to a criminal. As has been demonstrated on many occasions, firearms which H.R. 4296 specifically exempts from its prohibition, firearms not equipped with those accessories, can be fired at the same rate, with the same accuracy, and with the same power as "assault weapons."

Time and again, supporters of H.R. 4296 have claimed that "assault weapons" can be "spray-fired from the hip"; but this is simply not true. The firearms targeted in H.R. 4296 are not machineguns. Machineguns are restricted under the National Firearms Act of 1934. H.R. 4296's guns are semi-automatic, and fire only one shot at a time.

H.R. 4296's limitation on the capacity of ammunition feeding devices would do nothing to reduce the number of rounds available to a criminal. It has been demonstrated frequently that such devices can be switched in less than a second, so a criminal determined to have available a number of rounds greater than H.R. 4296 would permit in a single magazine would need only to possess additional smaller magazines. However, police have reportedly consistently that when criminals fire shots, they rarely discharge more than 2-5 rounds, well below the number of rounds H.R. 4296 would permit in a single magazine.

Most fundamentally, to impinge upon the constitutionally-protected rights of honest, law-abiding Americans on the basis of myth, misinformation, and newspaper headlines is a crime in and of itself. To protect against such a mockery of our Constitution and the infliction of such harm upon our citizens, I intend to oppose H.R. 4296 vigorously on the House floor in the hope that careful reflection will permit cooler heads and the light of reason to prevail.

1 “Omnibus Crime Control Act of 1991,” Report of the Committee on the Judiciary, House of Representatives, on H.R. 3371, 102d Cong, 1st Sess., Rept. 102–242, October 7, 1991, at 202.

2 See, e.g., Hearing on H.R. 4296 and H.R. 3527, Public Safety and Recreational Firearms Use Protection Act, House of Representatives, Committee on the Judiciary, Subcommittee on Crime and Criminal Justice, April 25, 1994 Firearms; Chief Sylvester Daughtry, President, International Association of Chiefs of Police; Mr. John Pitta, National Executive Director, Federal Law Enforcement Officers Association).

3 Hearing on H.R. 4296 and H.R. 3527, Public Safety and Recreational Firearms Use Protection Act, House of Representatives, Committee on the Judiciary, Subcommittee on Crime and Criminal Justice, April 25, 1994; Hearing on Semiautomatic Assault Weapons, House of Representatives, Committee on the Judiciary, Subcommittee on Crime and Criminal Justice, June 12, 1991; Hearing on Semiautomatic Assault Weapons, Part II, House of Representatives, Committee on the Judiciary, Subcommittee on Crime and Criminal Justice, July 25, 1991; Hearing on H.R. 1190, Semiautomatic Assault Weapons Act of 1989, and related bills, House of Representatives, Committee on the Judiciary, Subcommittee on Crime, April 5 and 6, 1989.

4 “Omnibus Crime Control Act of 1991,” Report of the Committee on the Judiciary, House of Representatives, on H.R. 3371, 102d Cong, 1st Sess., Rept. 102–242, October 7, 1991, at 203.

5 Hearing on H.R. 4296 and H.R. 3527, Public Safety and Recreational Firearms Use Protection Act, House of Representatives, Committee on the Judiciary, Subcommittee on Crime and Criminal Justice, April 25, 1994 (Statement of Hon. John Magaw, Director, Bureau of Alcohol, Tobacco and Firearms).

6 Hearing on H.R. 4296 and H.R. 3527, Public Safety and Recreational Firearms Use Protection Act, House of Representatives, Committee on the Judiciary, Subcommittee on Crime and Criminal Justice, April 25, 1994 (Statement of Tony Loizzo, executive vice president, National Association of Police Organizations). See also, Hearing on Semiautomatic Assault Weapons, House of Representatives, Committee on the Judiciary, Subcommittee on Crime and Criminal Justice, June 12, 1991 (Statement of Dewey R. Stokes, National President, Fraternal Order of Police) (assault weapons “pose a grave and immediate threat to the lives of those sworn to uphold our laws”); Hearing on H.R. 1190, Semiautomatic Assault Weapons Act of 1989, and related bills, House of Representatives, Committee on the Judiciary, Subcommittee on Crime, April 5, 1989 (Testimony of Daniel M. Hartnett, associate director, law enforcement, Bureau of Alcohol, Tobacco and Firearms) (“Fifteen years ago, police rarely encountered armed drug dealers. Today, firearms, especially certain types of semiautomatic weapons, are status symbols and tools of the trade for this country’s most vicious criminals.”)

7 Hearing on H.R. 4296 and H.R. 3527, Public Safety and Recreational Firearms Use Protection Act, House of Representatives, Committee on the Judiciary, Subcommittee on Crime and Criminal Justice, April 25, 1994 (Statement of John Pitta, executive vice president, Federal Law Enforcement Officers Association).

8 Hearing on H.R. 4296 and H.R. 3527, Public Safety and recreational Firearms Use Protection Act, House of Representatives, Committee on the Judiciary, Subcommittee on Crime and Criminal Justice, April 25, 1994 (Statement of John Pitta, executive vice president, Federal Law Enforcement Officers Association).

9 Hearing on H.R. 4296 and H.R. 3527, Public Safety and Recreational Firearms Use Protection Act, House of Representatives, Committee on the Judiciary, Subcommittee on Crime and Criminal Justice, April 25, 1994 (Statement of Hon. Henry Cisneros, Secretary, Department of Housing and Urban Development).

10 Hearing on H.R. 4296 and H.R. 3527, Public Safety and Recreational Firearms Use Protection Act, House of Representatives, Committee on the Judiciary, Subcommittee on Crime and Criminal Justice, April 25, 1994 (Statement of Ken Brondell, Jr.).

11 Hearing on H.R. 4296 and H.R. 3527, Public Safety and Recreational Firearms Use Protection Act, House of Representatives, Committee on the Judiciary, Subcommittee on Crime and Criminal Justice, April 25, 1994 (Statements of Jacob Locicero and Arlene Locicero).

12 Hearing on H.R. 4296 and H.R. 3527, Public Safety and Recreational Firearms Use Protection Act, House of Representatives, Committee on the Judiciary, Subcommittee on Crime and Criminal Justice, April 25, 1994 (Statement of John Pitta, executive vice president, Federal Law Enforcement Officers Association).

13 Hearing on H.R. 4296 and H.R. 3527, Public Safety and Recreational firearms Use Protection Act, House of Representatives, Committee on the Judiciary, Subcommittee on Crime and Criminal Justice, April 25, 1994 (Statements of Michelle Scully and Steve Sposato).

14 Hearing on H.R. 4296 and H.R. 3527, Public Safety and Recreational Firearms Use Protection Act, House of Representatives, Committee on the Judiciary, Subcommittee on crime and Criminal Justice, April 25, 1994 (State of Dr. Suzanna Gratia, Copperas Cove, Texas)

15 The Committee notes that, under the Gun Control Act of 1968 as amended in 1986, it is a Federal felony for a convicted felon to be in possession of any firearm, including an assault weapon, under [18 U.S.C. 922\(g\)\(1\)](#). Violations carry up to five years imprisonment and a \$250,000 fine. If a criminal—whether previously convicted or not—is carrying an assault weapon and is involved in a drug trafficking crime, that criminal is subject to a mandatory minimum of 5 years imprisonment and a \$250,000 fine under [18 U.S.C. 924\(c\)\(1\)](#). Any criminal who has three prior violent felony and/or serious drug offenses convictions and is in possession of a firearm is subject to a mandatory minimum of 15 years imprisonment and a \$250,000 fine under [18 U.S.C. 924\(e\)\(1\)](#).

16 Hearing on H.R. 4296 and H.R. 3527, Public Safety and Recreational Firearms Use Protection Act, House of Representatives, Committee on the Judiciary, Subcommittee on Crime and Criminal Justice, April 25, 1994 (Statement of Ms. Jacquie Miller, Louisville, Kentucky).

17 Hearing on H.R. 4296 and H.R. 3527, Public Safety and Recreational Firearms Use Protection Act, House of Representatives, Committee on the Judiciary, Subcommittee on Crime and Criminal Justice, April 25, 1994 (Statement of Mr. Phillip Murphy, Tucson, Arizona).

18 U.S. Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, “Report and Recommendation of the ATF Working Group on the Importability of Certain Semiautomatic Rifles,” July, 1989.

19 The ultimate question of law upon which the working group was advising the Secretary of the Treasury was whether these import firearms met a “sporting purpose” test under 18 U.S.C. Code section 925(d). He held that they did not. Although that legal question is not directly posed by this bill, the working group's research and analysis on assault weapons is relevant on the questions of the purposes underlying the design of assault weapons, the characteristics that distinguish them from sporting guns, and the reasons underlying each of the distinguishing features.

20 An automatic gun fires a continuous stream as long as the trigger is held down, until it has fired all of the cartridges (“rounds” or “bullets”) in its magazine (or “clip”). Automatic firearms are also known as machineguns. A semi-automatic gun fires one round, then loads a new round, each time the trigger is pulled until its magazine is exhausted. Manually operated guns require the shooter to manually operate a bolt, slide, pump, or lever action to extract the fired round and load a new round before pulling the trigger.

21 U.S. Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, "Report and Recommendation of the ATF Working Group on the Importability of Certain Semiautomatic Rifles," July, 1989, p. 6.

22 U.S. Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, "Report and Recommendation of the ATF Working Group on the Importability of Certain Semiautomatic Rifles," July, 1989, p. 6.

23 18 U.S. Code, section 922(o).

24 The Committee notes that such conversion is a Federal felony that carries penalties of up to 10 years imprisonment and a \$250,000 fine under 26 U.S.C. 5861.

25 Hearing on Semiautomatic Assault Weapons, House of Representatives, Committee on the Judiciary, Subcommittee on Crime and Criminal Justice, June 12, 1991 (Statement of Dewey R. Stokes, National President, Fraternal order of Police).

26 Hearing on Semiautomatic Assault Weapons, House of Representatives, Committee on the Judiciary, Subcommittee on Crime and Criminal Justice, June 12, 1991 (Statement of Dewey R. Stokes, National President, Fraternal order of police).

27 Hearing on Semiautomatic Assault Weapons, House of Representatives, Committee on the Judiciary, Subcommittee on Crime and Criminal Justice, June 12, 1991 (Statement of Richard Cook, Chief, Firearms Divisions, Bureau of Alcohol, Tobacco and Firearms) at 268.

28 Hearing on H.R. 4296 and H.R. 3527, Public Safety and Recreational Firearms, Use Protection Act, House of Representatives, Committee on the Judiciary, Subcommittee on Crime and Criminal Justice, April 25, 1994 (Statements of Hon. Henry Cisneros, Secretary, Department of Housing and Urban Development and John Pitta, National Executive Vice President, Federal Law Enforcement Officers Association); Hearing on Semiautomatic Assault Weapons, House of Representatives, Committee on the Judiciary, Subcommittee on Crime and Criminal Justice, June 12, 1991 (Statement of Paul J. McNulty, Principal Deputy Director, Office of Policy development, Department of Justice) at 288.

29 Hearing on H.R. 4296 and H.R. 3527, Public Safety and Recreational Firearms Use Protection Act, House of Representatives, Committee on the Judiciary, Subcommittee on Crime and Criminal Justice, April 25, 1994 (Statements and testimony of John McGaw, Director, Bureau of Alcohol, Tobacco and Firearms, and John Pitta, National Executive Vice President, Federal Law Enforcement Officers Association); Hearing on Semiautomatic Assault Weapons, House of Representatives, Committee on the Judiciary, Subcommittee on Crime and Criminal Justice, June 12, 1991 (Statement of Richard Cook, Chief, Firearms Division, Bureau of Alcohol, Tobacco and Firearms); U.S. Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, "Report and Recommendation of the ATF Working Group on the Importability of Certain Semiautomatic Rifles," July, 1989, p. 6.

30 U.S. Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, "Report and Recommendation of the ATF Working Group on the Importability of Certain Semiautomatic Rifles," July, 1989, p. 6.

31 Hearing on H.R. 4296 and H.R. 3527, Public Safety and Recreational Firearms Use Protection Act, House of Representatives, Committee on the Judiciary, Subcommittee on Crime and Criminal Justice, April 25, 1994 (Statements and testimony of John McGaw, Director, Bureau of Alcohol, Tobacco and Firearms, and John Pitta, National Executive Vice President, Federal Law Enforcement Officers Association); U.S. Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, "Report and Recommendation of the ATF Working Group on the Importability of Certain Semiautomatic Rifles," July, 1989, p. 6.

32 Hearing on H.R. 4296 and H.R. 3527, Public Safety and Recreational Firearms Use Protection Act, House of Representatives, Committee on the Judiciary, Subcommittee on Crime and Criminal Justice, April 25, 1994 (Statements and testimony of John McGaw, Director, Bureau of Alcohol, Tobacco and Firearms, and John Pitta, National Executive Vice President, Federal Law Enforcement Officers Association); U.S. Department of the Treasury, Bureau of Alcohol, Tobacco and

Firearms, "Report and Recommendation of the ATF Working Group on the Importability of Certain Semiautomatic Rifles," July, 1989, p. 6.

33 Hearing on H.R. 4296 and H.R. 3527, Public Safety and Recreational Firearms Use Protection Act, House of Representatives, Committee on the Judiciary, Subcommittee on Crime and Criminal Justice, April 25, 1994 (Statement and testimony of Dr. David Milzman, Associate Director, Trauma Services, Georgetown University Medical Center, Washington, DC); U.S. Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, "Report and Recommendation of the ATF Working Group on the Importability of Certain Semiautomatic Rifles," July, 1989, p. 6.

34 See H.R. 4296, Appendix A, for the list.

35 H.R. 4296 bans the following semiautomatic assault weapons by name (as well as any copies or duplicates, in any caliber): All AK-47 type; Beretta AR-70; Colt AR-15; DC9, 22; FNC; FN-FAL/LAR; Galil; MAC 10, MAC 11-type; Steyr AUG; Street Sweeper; Striker 12; TEC-9; Uzi.

36 While noting that its list is not all-inclusive, the Bureau of Alcohol, Tobacco, and Firearms has listed the following semi-automatic firearms that would be banned based on their general characteristics:

1. Semi-automatic Rifles: AA Arms AR9 semi-automatic rifle; AMT Lightning 25 rifle; Auto Ordnance Thompson Model 1927 carbines (finned barrel versions); Calico M100 carbine; Colt Sporter Rifle (all variations); Federal XC900 carbine; Federal XC450 carbine; Grendel R31 carbine; Iver Johnson M1 carbine (version w/collapsible stock and bayonet mount); Springfield M1A rifle.

2. Pistols: AA Arms AP9 pistol; Australian Automatic Arms pistol; Auto Ordnance Model 1927A5 pistol; American Arms Spectra pistol; Calico Model M950 pistol; Calico Model 110 pistol; All Claridge Hi-Tec pistol; D Max auto pistol; Grendel P-31 pistol; Heckler & Koch SP89 pistol; Wilkinson Linda pistol.

3. Shotguns: Benelli M1 Super 90 Defense shotgun; Benelli M3 Super 90 shotgun; Franchi LAW 12 shotgun; Franchi SPAS 12 shotgun; USAS 12 shotgun.

37 H.R. 4296 bans the following semiautomatic assault weapons by name (as well as any copies or duplicates, in any caliber): All AK-47 type; Beretta AR-70; Colt AR-15; DC9, 22; FNC; FN-FAL/LAR; Galil; MAC 10, MAC 11-type; Steyr AUG; Street Sweeper; Striker 12; TEC-9; Uzi

H.R. REP. 103-489, H.R. Rep. No. 489, 103RD Cong., 2ND Sess. 1994, 1994 WL 168883, 1994 U.S.C.C.A.N. 1820 (Leg.Hist.)

EXHIBIT 9

**Declaration of Roderick M. Thompson in
Support of Sunnyvale's Opposition to
Plaintiffs' Motion for Preliminary
Injunction**

NOVEMBER 5, 2013 CONSOLIDATED ELECTION

Last updated: 11/18/2013 3:30:46 PM PST



Santa Clara County Registrar of Voters



SUMMARY

PRECINCTS REPORTING

VOTER TURNOUT

FILTERS

Reports

Registered Voters: 228,435 Ballots Cast: 63,157 Voter Turnout: 27.65%

OFFICIAL FINAL RESULTS



Customize My Search (13 of 13)

STANISLAUS COUNTY BOARD OF EDUCATION, TA 5 (VOTE FOR 1)

1 of 1 Precincts Reporting

Detail

Map



Choice	Votes	Percent	
ADRIANA GARCIA	2	15.38%	<div style="width: 15.38%;"></div>
BOB VIZZOLINI	11	84.62%	<div style="width: 84.62%;"></div>
Total	13		

ORCHARD SCHOOL DISTRICT (VOTE FOR 3)

7 of 7 Precincts Reporting

Detail

Map



Choice	Votes	Percent	
STEPHANIE HILL	276	21.15%	<div style="width: 21.15%;"></div>
ALAN FONG	307	23.52%	<div style="width: 23.52%;"></div>
BAMBI FLEMING	150	11.49%	<div style="width: 11.49%;"></div>
HELEN LEUNG-YUEN	271	20.77%	<div style="width: 20.77%;"></div>
KARL JACOBSON	301	23.07%	<div style="width: 23.07%;"></div>
Total	1,305		

CITY COUNCIL, CITY OF SUNNYVALE, SEAT 1 (VOTE FOR 1)

54 of 54 Precincts Reporting

Detail

Map



Choice	Votes	Percent	
ANDY FRAZER	8,306	47.43%	<div style="width: 47.43%;"></div>
GUSTAV LARSSON	9,205	52.57%	<div style="width: 52.57%;"></div>
Total	17,511		

CITY COUNCIL, CITY OF SUNNYVALE, SEAT 2 (VOTE FOR 1)

54 of 54 Precincts Reporting

Detail

Map



Choice	Votes	Percent	
STEVE HOFFMAN	6,406	36.34%	<div style="width: 36.34%; background-color: red;"></div>
GLENN HENDRICKS	10,181	57.75%	<div style="width: 57.75%; background-color: red;"></div>
GUSTAVO MAGANA	1,041	5.91%	<div style="width: 5.91%; background-color: red;"></div>
Total	17,628		

CITY COUNCIL, CITY OF SUNNYVALE, SEAT 3 (VOTE FOR 1)

54 of 54 Precincts Reporting

Detail

Map



Choice	Votes	Percent	
JAMES R. "JIM" GRIFFITH	11,410	64.77%	<div style="width: 64.77%; background-color: red;"></div>
TAPPAN (TAP) G. MERRICK	6,207	35.23%	<div style="width: 35.23%; background-color: red;"></div>
Total	17,617		

SOUTH SANTA CLARA VALLEY MEMORIAL DISTRICT (VOTE FOR 2)

34 of 34 Precincts Reporting

Detail

Map



Choice	Votes	Percent	
PHILIP GARCIA	1,205	26.07%	<div style="width: 26.07%; background-color: red;"></div>
ROBERT ARMENDARIZ	1,018	22.03%	<div style="width: 22.03%; background-color: red;"></div>
JESSE SANCHEZ	958	20.73%	<div style="width: 20.73%; background-color: red;"></div>
GABE PEREZ	1,441	31.18%	<div style="width: 31.18%; background-color: red;"></div>
Total	4,622		

MEASURE A - CITY OF SUNNYVALE - ELECTION DATE (VOTE FOR 1)

54 of 54 Precincts Reporting

Detail

Map



Choice	Votes	Percent	
YES	13,259	72.06%	<div style="width: 72.06%; background-color: red;"></div>
NO	5,142	27.94%	<div style="width: 27.94%; background-color: red;"></div>
Total	18,401		

MEASURE B - CITY OF SUNNYVALE - TOT (VOTE FOR 1)

54 of 54 Precincts Reporting

Detail

Map



Choice	Votes	Percent	
YES	12,657	68.58%	<div style="width: 68.58%; height: 15px; background-color: red;"></div>
NO	5,799	31.42%	<div style="width: 31.42%; height: 15px; background-color: red;"></div>
Total	18,456		

MEASURE C - CITY OF SUNNYVALE - GUN SAFETY (VOTE FOR 1)

54 of 54 Precincts Reporting

[Detail](#) [Map](#)



Choice	Votes	Percent	
YES	12,404	66.55%	<div style="width: 66.55%; height: 15px; background-color: red;"></div>
NO	6,235	33.45%	<div style="width: 33.45%; height: 15px; background-color: red;"></div>
Total	18,639		

MEASURE D - CITY OF PALO ALTO - REZONING (VOTE FOR 1)

32 of 32 Precincts Reporting

[Detail](#) [Map](#)



Choice	Votes	Percent	
FOR THE ORDINANCE	6,538	43.55%	<div style="width: 43.55%; height: 15px; background-color: red;"></div>
AGAINST THE ORDINANCE	8,476	56.45%	<div style="width: 56.45%; height: 15px; background-color: red;"></div>
Total	15,014		

MEASURE E - CAMPBELL UNION HIGH SD - PARCEL TAX (VOTE FOR 1)

111 of 111 Precincts Reporting

[Detail](#) [Map](#)



Choice	Votes	Percent	
YES	19,341	76.76%	<div style="width: 76.76%; height: 15px; background-color: red;"></div>
NO	5,857	23.24%	<div style="width: 23.24%; height: 15px; background-color: red;"></div>
Total	25,198		

MEASURE G - SUNNYVALE SD - BONDS (VOTE FOR 1)

30 of 30 Precincts Reporting

[Detail](#) [Map](#)



Choice	Votes	Percent	
BONDS YES	6,995	68.44%	<div style="width: 68.44%; height: 15px; background-color: red;"></div>

BONDS NO	3,225	31.56%	
Total	10,220		

MEASURE H - LOMA PRIETA JT. UNION SD - PARCEL TAX (VOTE FOR 1)

4 of 4 Precincts Reporting

[Detail](#) [Map](#)



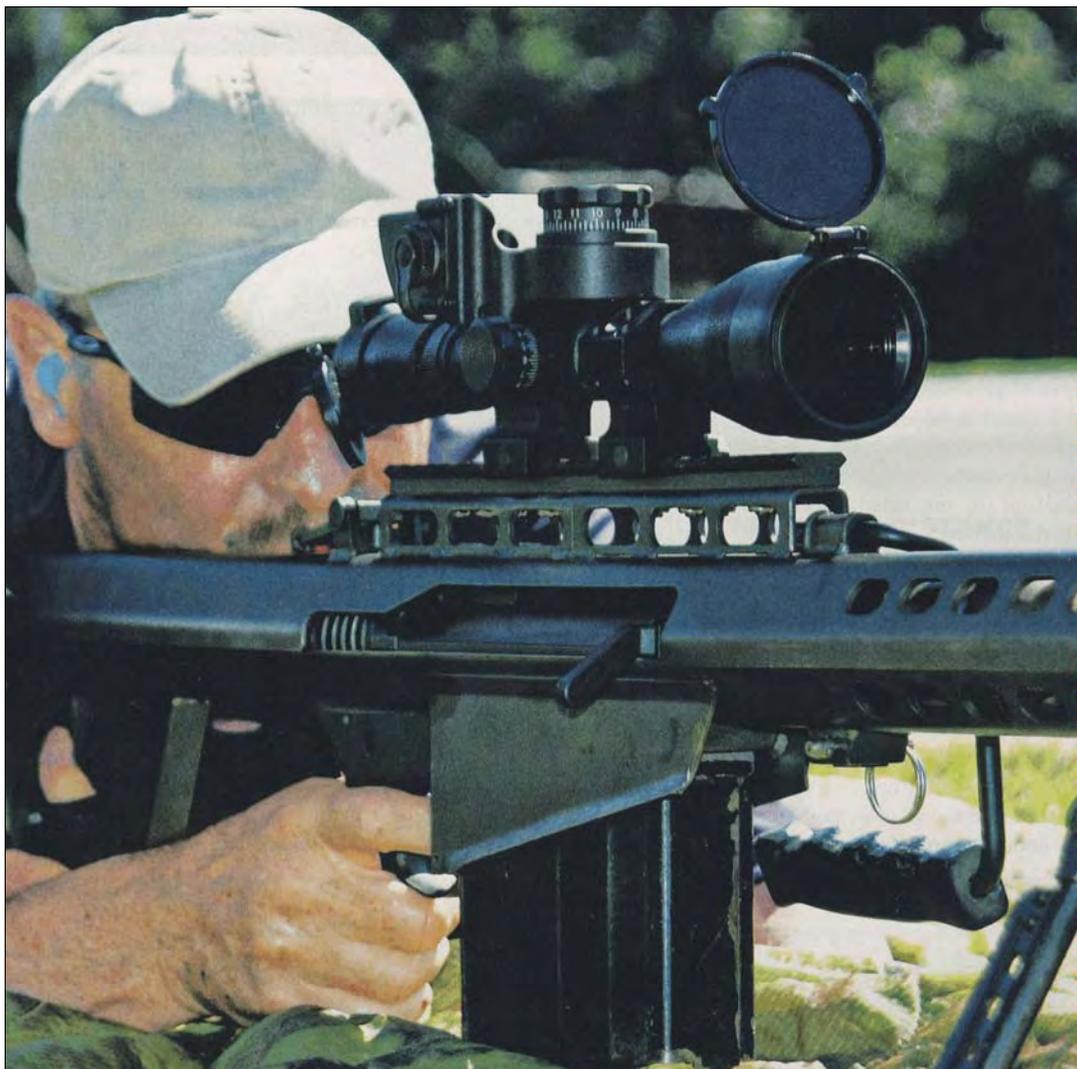
Choice	Votes	Percent	
YES	241	77.49%	
NO	70	22.51%	
Total	311		

[SUMMARY](#) [PRECINCTS REPORTING](#) [VOTER TURNOUT](#) [FILTERS](#)

EXHIBIT 10 (part 1)

Declaration of Roderick M. Thompson in Support of Sunnyvale's Opposition to Plaintiffs' Motion for Preliminary Injunction

The Militarization of the U.S. Civilian Firearms Market



Violence Policy Center
June 2011

The Violence Policy Center (VPC) is a national non-profit educational organization that conducts research and public education on violence in America and provides information and analysis to policymakers, journalists, advocates, and the general public. This report was authored by VPC Senior Policy Analyst Tom Diaz. The study was funded in part with the support of the David Bohnett Foundation and The Joyce Foundation. Past studies released by the VPC include:

- *A Shrinking Minority: The Continuing Decline of Gun Ownership in America* (April 2011)
- *Blood Money: How the Gun Industry Bankrolls the NRA* (April 2011)
- *Lost Youth: A County-by-County Analysis of 2009 California Homicide Victims Ages 10 to 24* (January 2011)
- *Black Homicide Victimization in the United States* (January 2011)
- *When Men Murder Women: An Analysis of 2008 Homicide Data* (September 2010)
- *Drive-by America: Second Edition* (July 2010)
- *Lessons Unlearned—The Gun Lobby and the Siren Song of Anti-Government Rhetoric* (April 2010)
- *Target: Law Enforcement—Assault Weapons in the News* (February 2010)
- *Law Enforcement and Private Citizens Killed by Concealed Handgun Permit Holders—An Analysis of News Reports, May 2007 to April 2009* (July 2009)
- *Indicted: Types of Firearms and Methods of Gun Trafficking from the United States to Mexico as Revealed in U.S. Court Documents* (April 2009)
- *Iron River: Gun Violence and Illegal Firearms Trafficking on the U.S.-Mexico Border* (March 2009)
- *“Big Boomers”—Rifle Power Designed Into Handguns* (December 2008)
- *American Roulette: Murder-Suicide in the United States* (April 2008)
- *An Analysis of the Decline in Gun Dealers: 1994 to 2007* (August 2007)
- *Clear and Present Danger: National Security Experts Warn About the Danger of Unrestricted Sales of 50 Caliber Anti-Armor Sniper Rifles to Civilians* (July 2005)
- *The Threat Posed to Helicopters by 50 Caliber Anti-Armor Sniper Rifles* (August 2004)
- *United States of Assault Weapons: Gunmakers Evading the Federal Assault Weapons Ban* (July 2004)
- *Vest Buster: The .500 Smith & Wesson Magnum—The Gun Industry’s Latest Challenge to Law Enforcement Body Armor* (June 2004)
- *Bullet Hoses—Semiautomatic Assault Weapons: What Are They? What’s So Bad About Them?* (May 2003)
- *“Officer Down”—Assault Weapons and the War on Law Enforcement* (May 2003)
- *“Just Like Bird Hunting”—The Threat to Civil Aviation from 50 Caliber Sniper Rifles* (January 2003)
- *Sitting Ducks—The Threat to the Chemical and Refinery Industry from 50 Caliber Sniper Rifles* (August 2002)
- *License to Kill IV: More Guns, More Crime* (June 2002)
- *“A .22 for Christmas”—How the Gun Industry Designs and Markets Firearms for Children and Youth* (December 2001)
- *Unintended Consequences: Pro-Handgun Experts Prove That Handguns Are a Dangerous Choice For Self-Defense* (November 2001)
- *Voting from the Rooftops: How the Gun Industry Armed Osama bin Laden, Other Foreign and Domestic Terrorists, and Common Criminals with 50 Caliber Sniper Rifles* (October 2001)
- *Hispanics and Firearms Violence* (May 2001)
- *Where’d They Get Their Guns?—An Analysis of the Firearms Used in High-Profile Shootings, 1963 to 2001* (April 2001)
- *A Deadly Myth: Women, Handguns, and Self-Defense* (January 2001)
- *Handgun Licensing and Registration: What it Can and Cannot Do* (September 2000)
- *Pocket Rockets: The Gun Industry’s Sale of Increased Killing Power* (July 2000)
- *Guns For Felons: How the NRA Works to Rearm Criminals* (March 2000)
- *One Shot, One Kill: Civilian Sales of Military Sniper Rifles* (May 1999)
- *Cease Fire: A Comprehensive Strategy to Reduce Firearms Violence* (Revised, October 1997)

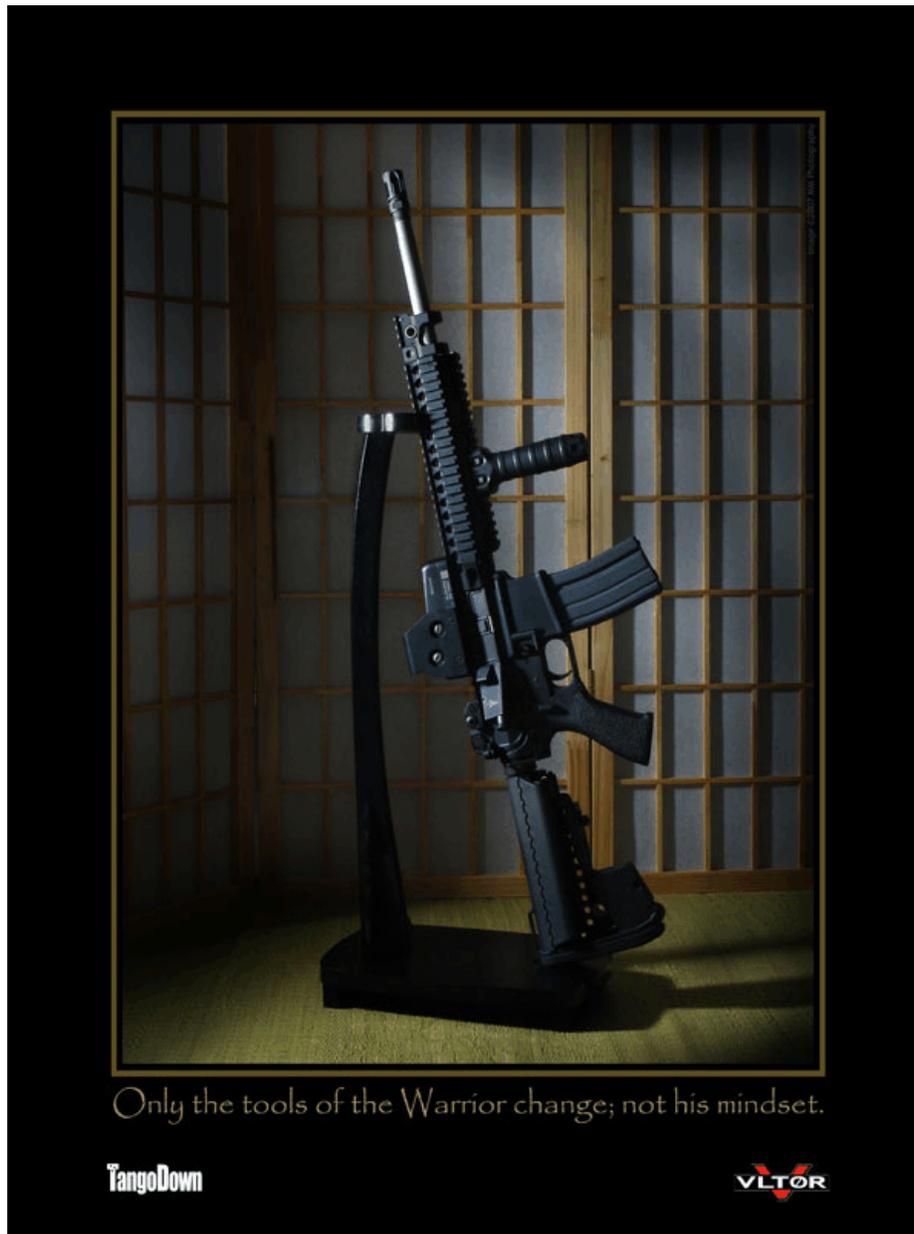
Violence Policy Center, 1730 Rhode Island Avenue, NW, Suite 1014, Washington, DC 20036
202-822-8200 phone, 202-822-8205 fax, www.vpc.org web

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This report is published in PDF format and is designed to be printed out in color as a single-sided document.



Firearms accessories manufacturer TangoDown claims on its website that it "...exists for one reason. To design, develop and manufacture the highest quality products for the warriors of the United States Armed Forces." However, many of its products—like the poster reproduced above—and its advertising are aimed at the militarized civilian market.

www.tangodown.com/td_pages/p_about.html



Sgt. Brandon Paudert (left) and Officer Bill Evans (right) of the West Memphis (Arkansas) Police Department were shot to death May 20, 2010, following a traffic stop. The shooter, 16-year-old Joseph Kane, was armed with an AK-47 semiautomatic assault rifle. Kane and his father, Jerry, were killed in a gunfight with police in a nearby Walmart parking lot. The Kanes were reportedly members of the anti-government Sovereign Citizens Movement.

"Brandon and Bill had no chance against an AK-47," [West Memphis Police Chief Bob] Paudert said. "They were completely outgunned. We are dealing with people who rant and rave about killing. They want government officials dead. We had a 16-year-old better armed than the police."

"West Memphis police chief says officers' pistols were no match for heavily armed teenager," *The Commercial Appeal* (Memphis, TN), May 25, 2010

"Sovereign Citizens Movement members leave two police officers dead in shootout,"
NBC News Transcripts, July 5, 2010

Key Findings

The civilian firearms industry in the United States has been in decline for several decades. Although the industry has enjoyed periods of temporary resurgence, usually primed by “fear marketing”—encouraging people to buy guns by stoking fear of crime, terrorism, violent immigrants, or government control, for example—the long-term trend for the manufacturers of guns for civilians has been one of steady decline.

Selling militarized firearms to civilians—i.e., weapons in the military inventory or weapons based on military designs—has been at the point of the industry’s civilian design and marketing strategy since the 1980s. Today, militarized weapons—semiautomatic assault rifles, 50 caliber anti-armor sniper rifles, and armor-piercing handguns—define the U.S. civilian gun market and are far and away the “weapons of choice” of the traffickers supplying violent drug organizations in Mexico.

The flood of militarized weapons exemplifies the firearms industry’s strategy of marketing enhanced lethality, or killing power, to stimulate sales. The resulting widespread increase in killing power is reflected in the toll of gun death and injury in the United States—a relentless count that every year takes 10 times the number of lives as the terrorist attacks of September 11, 2001.¹

Militarization has baleful consequences beyond the “routine” toll of murders, suicides, and unintentional deaths. Military-style weapons are a favored tool of organized criminals such as gangs and drug traffickers, and violent extremists. Semiautomatic assault weapons—especially inexpensive AK-47 type imports—are increasingly used in attacks against law enforcement officers in the United States.

The pernicious effects of the militarized U.S. civilian gun market extend well beyond the borders of the United States. Lax regulation and easy access to these relatively inexpensive military-style weapons has resulted in their being smuggled on a large scale from the U.S. to criminals throughout the Western Hemisphere—including Mexico, Canada, Central America, the Caribbean, and parts of South America—as well as to points as far away as Afghanistan, the Balkans, and Africa.

This study surveys the rise of the militarized civilian gun market, examines its impact on public health, safety, and crime in the United States and the world, and refutes the gun lobby’s recent attempt to “rebrand” semiautomatic assault weapons as “modern sporting rifles.”

“Militarization” – What is It?

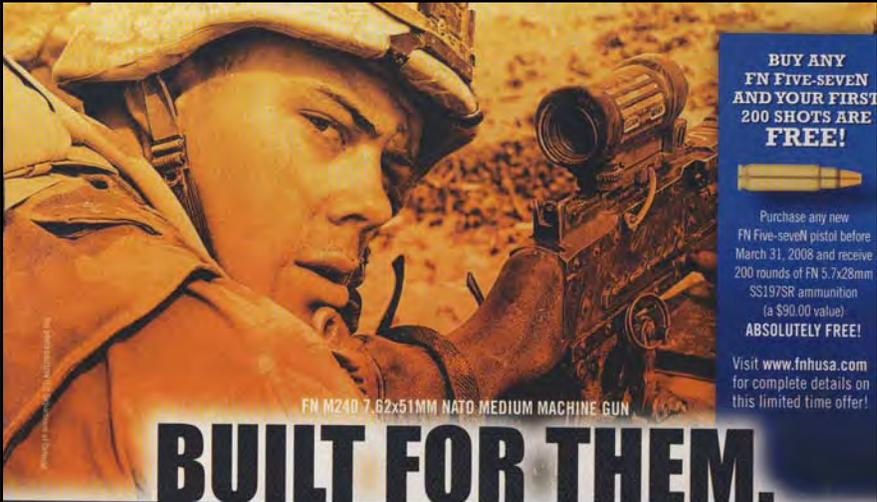
The verb “militarize” means “to give a military character to” something.² The gun industry has given a “military character” to guns in the U.S. civilian market by—

- **Selling on the civilian market guns that are identical to guns used by the armed forces of the United States and other countries.** These firearms include such sophisticated weapons as the Barrett 50 caliber anti-armor sniper rifle and the FN Herstal Five-sevenN 5.7mm pistol.



The Barrett Firearms 50 caliber anti-armor sniper rifle used in combat (above) is sold without meaningful regulation in the U.S. civilian gun market.





**BUY ANY
FN FIVE-SEVEN
AND YOUR FIRST
200 SHOTS ARE
FREE!**



Purchase any new FN Five-seveN pistol before March 31, 2008 and receive 200 rounds of FN 5.7x28mm SS197SR ammunition (a \$90.00 value) **ABSOLUTELY FREE!**

Visit www.fnhusa.com for complete details on this limited time offer!

FN M240 7.62x51MM NATO MEDIUM MACHINE GUN

BUILT FOR THEM.

The FN Five-seveN USG pistol offers carbine ballistic performance in a handgun. Today FN provides 70% of the small arms used by U.S. Military Forces around the globe. FN is the name you can trust. **JUST LIKE THEY DO.**

REAL WORLD PRODUCTS.
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BUILT FOR YOU.

THE FN FIVE-SEVEN USG IS AVAILABLE IN 5.7X28MM
- FN Five-seveN USG AUTOLOADING HANDGUN SHOWN -



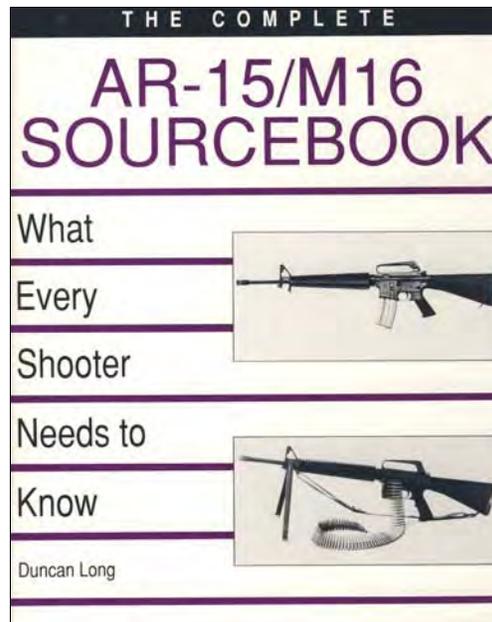
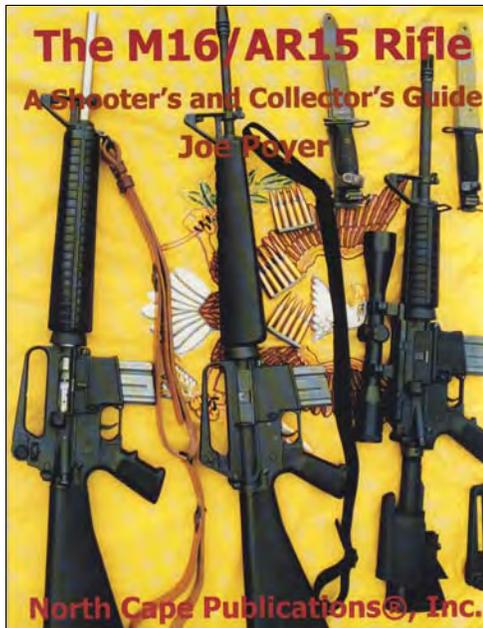
Every FN Five-seveN features:

- Hammer-forged chrome-lined barrel
- Polymer frame and slide cover
- Integrated accessory rail
- Ambidextrous safety levers
- Three 20-round polymer magazines and a hard case
(Limited capacity magazines supplied where required by law.)

FNH USA • P.O. BOX 697 • McLEAN, VA 22101 USA • (703) 288-1292 © FNH USA, LLC., a subsidiary of FN Herstal, S.A. 2007.

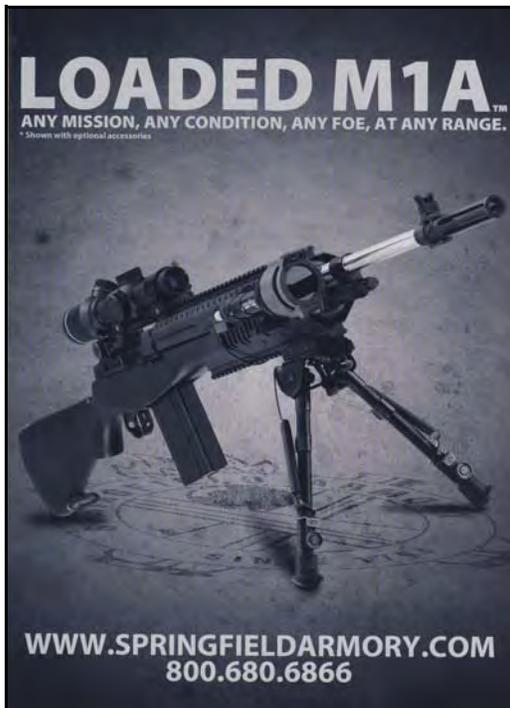
This ad from *Guns & Ammo* (March 2008) explicitly plays on the military's use of FN's Five-seveN 5.7mm armor-piercing handgun.

- **Designing and manufacturing, or importing, civilian variants of military firearms that would otherwise be illegal to sell on the civilian market.** These are principally semiautomatic versions of military assault weapons. (Military assault rifles are capable of fully automatic fire. They are thus barred, as “machine guns,” from sale to civilians in the United States.) They include many variants of the AR-15 (the civilian version of the U.S. military M-16 assault rifle) and numerous semiautomatic versions of the Kalashnikov assault rifle, popularly known as the AK-47.



The covers of these books, the left published in 2000, the right in 1992, graphically illustrate the equivalence gun enthusiasts see between the military M-16 and the civilian AR-15.

- **Heavily promoting military-style products through images, slogans, print, video, and other electronic media that link the features, capabilities, and uses of military weapons with firearms available on the civilian market.** In addition to this direct product promotion, the industry relies heavily on suggestive “patriotic” and “heroic” imagery—both historic and contemporary—to identify ownership of military-style weapons with grand themes of “patriotism” and “homeland defense.”



These ads from the NRA's *American Rifleman* magazine (May 2010) are typical of how the gun industry implicitly evokes militaristic themes in its marketing.

In short, the gun industry designs, manufactures, imports, and sells firearms in the civilian market that are to all intents and purposes the same as military arms. It then bombards its target market with the message that civilian consumers—just like real soldiers—can easily and legally own the firepower of militarized weapons.

Why Has the Gun Industry Militarized Its Market?

In spite of the gauzy imagery of its advertising, the gun industry's militarization is simply a business strategy aimed at survival: boosting sales and improving the bottom line. The hard commercial fact is that military-style weapons sell in an increasingly narrowly focused civilian gun market. True sporting guns do not.

Here, for example, is an informed industry assessment of the importance of assault (often euphemistically called "tactical") weapons to the gun industry from October 2008:

If there is an area of good news, it's still the tactical segment. In the past week, storefront owners and catalog retailers are unequivocally saying that, with the exception of the tactical categories—from AR-style rifles to the polymer pistols increasingly found in the holsters of law enforcement across the country, sales are slow.³

Here is another from an article titled, "Industry Hanging Onto [sic] A Single Category"—

The net of all the numbers is that if you're a company with a strong line of high-capacity pistols and AR-style rifles, you're doing land office business. If you're heavily dependent on hunting, you are hurting.⁴

Gun Industry Problem: Long-Term Decline. The civilian firearms industry in the United States has been in decline for several decades. Although it has from time to time enjoyed brief peaks in sales, it has been essentially stagnant. For example, demand for firearms apparently increased beginning in 2008 because of fears that "high unemployment would lead to an increase in crime" and the Obama administration would "clamp down" on gun ownership by regulating assault weapons. But demand fell back as these fears waned.⁵ A writer for the online industry publication *Shooting Wire* noted in September 2009:

...research tells me what everyone already knows: gun sales are slowing again. It seems the "Barack Boom" has started to go bust. No real reason, other than maybe the fact that everyone already has all the AR-style rifles they can shoot, store or afford, but there is an undeniable slowdown....⁶

In spite of such occasional anomalies, fundamental long-term trends have worked against the gun industry. The nation's largest firearms manufacturer, Freedom Group, Inc., included the following candid disclosure in a document filed recently with the U.S. Securities and Exchange Commission (SEC):

We believe that a number of trends that currently exist may affect the hunting and shooting sports market:

- the development of rural property in many locations has curtailed or eliminated access to private and public lands previously available for hunting;
- environmental issues, such as concern about lead in the environment; and
- decreases in consumer confidence and levels of consumer discretionary spending.

These trends may have a material adverse effect on our business by impairing industry sales of firearms, ammunition and other shooting-related products.⁷

Other trends include aging consumers—the percent of the U.S. population aged 65 and older has grown from 4.1 percent in 1900 to 12.4 percent in 2000.⁸ Gun owners are older and young people are less likely to buy firearms. The *Christian Science Monitor* reported in 2002 that some in the gun industry itself explained that the “fact that the average age of gun owners continues to increase is...more than a statistical quirk tied to aging baby boomers. Rather it’s a sign that younger generations see guns differently.”⁹ The growing proportion of immigrants in U.S. society also has an impact: “America’s increasing immigrant population has less of a tradition with firearms....”¹⁰



Electronic entertainment like Nintendo’s Super Mario series of video games threatens the gun industry’s crucial “youth market.”

Recent studies have shown that alternative recreation has drastically affected so-called “nature recreation”—camping, hunting, fishing, and park visitation—by all Americans. According to these studies, “Most reliable long-term per capita visitation measures of nature recreation peaked between 1981 and 1991. They’ve declined about 1.2 percent per year since then, and have declined a total of between 18 percent and 25 percent.”¹¹ The authors state the cause is “a social change of values characterized by our increasing pursuit of electronic media entertainment.”¹² According to the Entertainment Software Association, U.S. sales of computer and video games grew from \$2.6 billion in 1996 to “well over \$7.0 billion” in 2007.¹³

As a result, the gun industry has failed to keep up with population growth. Between 1980 and 2000 the U.S. population grew from 226,545,805 to 281,421,906—a 24 percent increase.¹⁴ Over the same period, total domestic small arms production fell from 5,645,117 to 3,763,345—a 33 percent decrease.¹⁵ As America has gotten bigger, the gun industry has gotten smaller.

Gun Industry Solution: Generating Demand with New and More Lethal Designs. In order to entice new gun owners into its shrinking pool of customers—and to motivate gun owners already in the pool to buy more guns—the gun industry seeks to create innovative products that offer new features and appeal to consumer trends. The industry *itself* deliberately creates these consumer trends.

An example lies in the phenomena of: (1) the gun lobby’s nationwide campaign, led by the National Rifle Association (NRA), to change state laws to allow the concealed carry of firearms; and, (2) the gun industry’s parallel aggressive marketing of concealable, high-powered handguns. In a 1996 interview with *The Wall Street Journal*, the NRA’s then-chief lobbyist, Tanya Metaksa, claimed credit for generating new gun sales with the concealed carry campaign: “The gun industry should send me a basket of fruit—our efforts have created a new market.”¹⁶

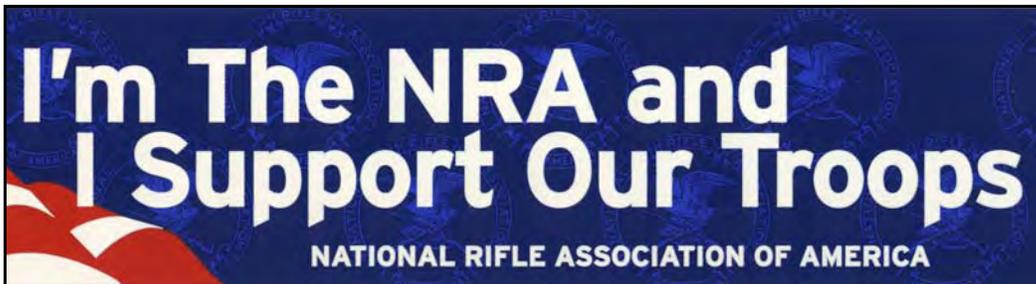


Colt’s Manufacturing evokes the militaristic image of Air Force General Curtis LeMay — “Father of the Strategic Air Command” — to promote its 01970 CY “carry model” semiautomatic pistol.

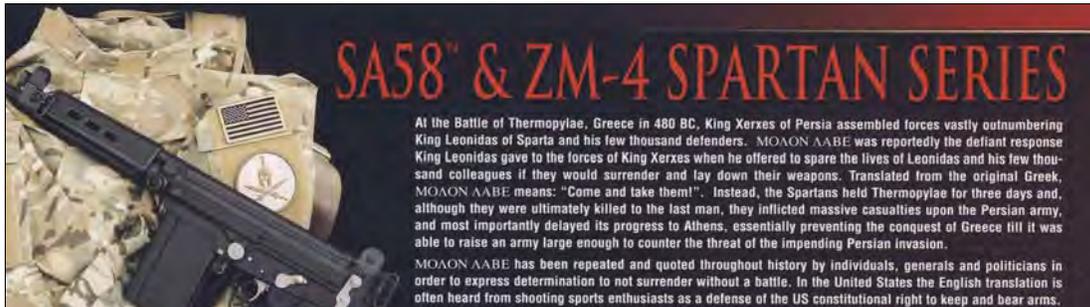
Colt American Legends catalog
(2010)

A Freedom Group filing with the SEC contains a more recent description of the process: “We have also shifted our business from a manufacturing-based ‘push system’ to a customer-focused ‘pull system,’ *driven by our Chief Sales and Marketing Officers.*” [emphasis added]¹⁷ Translated into plain English from the language of financial filings, this admission means that the conglomerate’s marketing technique is to *generate* demand (“pull”).

The constant generation of “pull” in niche markets is vital to the industry’s survival. If a manufacturer’s new product generates sufficient “pull,” or product demand, imitation by other manufacturers and proliferation of the design follows swiftly.



NRA bumper sticker typical of gun lobby’s pseudo-patriotic propaganda.



DSA, Inc. promoted its “Spartan Series” semiautomatic assault rifles with the Greek phrase “*Molon Labe*” (“Come and take them”) supposedly uttered by Spartan warriors in 480 BC at the Battle of Thermopylae. “In the United States the English translation is often heard from shooting sports enthusiasts as a defense of the U.S. constitutional right to keep and bear arms,” the company’s brochure states.

Appealing to the Soldier Within. A marketing technique central to the gun industry’s militarization campaign is appealing to the soldier within potential buyers who are drawn for emotional—or more sinister practical—reasons to military weaponry.



FN Herstal USA’s 2010 catalog touts the SCAR 16S, “the semi-auto only version of the U.S. Special Operations Command’s newest service rifle.”

Here, for example, is an industry newsletter’s description of the appeal of an assault rifle recently introduced by FN Herstal—the FNAR—by reference to a well-known military weapon, the Browning Automatic Rifle (BAR):

Even as many in the firearms business worry about the potential for another assault on assault rifles...there's yet another entry into the black rifle marketplace.

FNH USA has announced the availability of their new FNAR 7.62x51mm semiautomatic rifle. If [sic] looks something like a tuner-version of the venerable BAR, but there's probably some reason for that resemblance. FNH, after all, owns Browning—and the Browning Automatic Rifle carries a lot of mystique with law enforcement and military folks.¹⁸



“Descending from the legendary Browning Automatic Rifle (BAR), the FNAR puts autoloading speed and bolt-action accuracy into one powerful package.”

FNUSA description of its FNAR civilian semiautomatic assault rifle, www.fnhusa.com/le/products/firearms/group.asp?gid=FNG022&cid=FNC01



The BAR was a favorite of U.S. Marines in World War II—and of a notorious 1930s outlaw, serial cop-killer Clyde Barrow.

The gun industry's embrace of militarization can be seen in the chart below. Eleven of the top 15 gunmakers manufacture some type of assault weapon.

Eleven of the Top 15 Gun Manufacturers Market Assault Weapons¹⁹			
Rank	Manufacturer	Assault Weapons?	Make or Type
1	Sturm, Ruger	Yes	Mini-14 and SR-556 assault rifles
2	Smith & Wesson	Yes	M&P 15 assault rifle
3	Remington	Yes	R-15 assault rifle
4	Maverick/Mossberg	Yes	Tactical .22 assault rifle and assorted assault shotguns
5	Marlin	No	
6	Sig Sauer	Yes	Assorted assault rifles
7	Kel-Tec	Yes	Assorted assault rifles
8	Savage	Yes	110 BA assault rifle
9	H&R 1871	No	
10	Beemiller	Yes	Hi-Point Carbine assault rifle
11	Henry Repeating Arms	No	
12	DPMS	Yes	Assorted assault rifles
13	Beretta, USA	Yes	Storm assault rifles
14	Bushmaster	Yes	Assorted assault weapons
15	Glock	No	

How Has the Gun Industry Militarized Its Market?

The gun industry has militarized the civilian market with three major types of firearms: high-capacity handguns, assault rifles and pistols, and sniper rifles.

High-Capacity Handguns

Handguns are a basic weapon of the U.S. military. Until 1911, the U.S. armed forces historically favored revolvers. In that year the U.S. Army adopted a semiautomatic pistol for the first time, the iconic Colt M1911 in .45ACP (designated the M1911A1 after modifications were made in 1926).²⁰



Colt Model 1911A1

The Colt pistol remained the military's standard sidearm until 1989. Although various models of the Colt pistol were offered in the civilian market, American consumers favored revolvers, which continued to dominate the market until 1989.

In that year, Beretta, U.S.A. Corporation—a subsidiary of an Italian gun manufacturer—won final approval of a contract to replace the venerable M1911A1 with its 9mm semiautomatic pistol. In short order, the U.S. civilian handgun market was revolutionized and militarized, in large part because of a deliberate, well-documented marketing strategy by Beretta's management.

Handgun Militarization—High-Capacity Semiautomatic Pistols. Beretta's pistol, designated the M-9, entered service in 1990 as the military's primary sidearm.²¹ But

Beretta's top executive told the *Baltimore Sun* in 1993 that the military contract was simply "part of a carefully planned strategy dating back to 1980" —

The plan was to win the military contract and use it to make Beretta a household name in the United States in hopes of tapping into the larger law-enforcement and commercial markets. That's why, [Robert] Bonaventure [head of Beretta U.S.A. Corp.] said, the company has been selling pistols to the military for about \$225 each—close to production cost....The biggest market—about twice the size of the police and military business combined—is the commercial market....²²



Beretta's top U.S. executive told the *Baltimore Sun* in 1993 that the company's strategy was to use the cachet of military sales to reach the larger civilian handgun market. The Beretta M9 also became a favorite of street gangs and drug dealers.

Beretta advertisement from October 1985 issue of *Guns & Ammo* exemplifies the Italian arms maker's use of military cachet in civilian gun market.

Beretta 92 F. The Ultimate 9mm Sidearm is now the Official Sidearm of the U.S. Military.

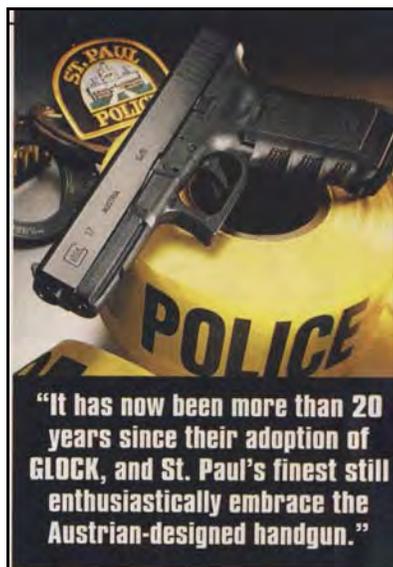
When the U.S. Government went looking for a new standard issue sidearm, it tested the best pistols in the world. But the Beretta 92 F 9mm Parabellum thoroughly out-classed the competition in every government performance trial.

In accuracy, Safety, Reliability, Firepower, In grip, feel, lightness and pointability. The Military was convinced. Now America's fighting men will carry the finest 9mm sidearm in the world. Consistently superior quality and service have also convinced law enforcement agencies like the Connecticut and Wyoming State Police and the Texas Rangers to switch to Beretta. You'll be convinced, too. Look at its outstanding features.

Check out the 92 F and the 92 SB Compact along with the complete line of quality Beretta sporting and competition firearms at your gun dealer's today. Or send \$2.00 to Beretta USA for a copy of our catalog. Beretta U.S.A. Corp., 17601 Indian Head Highway, Accokeek, Md. 20607 (301) 283-2191



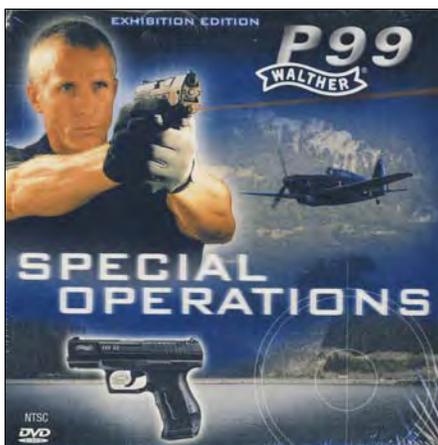
Austrian entrepreneur Gaston Glock had a similar objective when he founded his handgun manufacturing company, won an Austrian army competition in 1982, opened a U.S. subsidiary, and then went after the American law enforcement market. “In marketing terms, we assumed that, by pursuing the law enforcement market, we would then receive the benefits of ‘after sales’ in the commercial market,” Glock told *Advertising Age* in 1995.²³



Austrian gun manufacturer Glock promotes its firearms by constantly linking them to law enforcement use, a form of domestic militarism.

Boosted by these companies’ sophisticated marketing strategies, and an adulatory gun press, high-capacity 9mm semiautomatic pistols reinvigorated the industry in the 1980s. Known as “Wonder Nines,” 9mm semiautomatic pistols drove the formerly dominant revolvers out of the handgun market and created a lucrative boom for the industry. The military-style semiautomatic pistols proliferated.

The switch from revolvers to high-capacity pistols dramatically enhanced handgun lethality. As *Jane’s Infantry Weapons* observed in the early 1980s, revolvers are “bulky,” “generally limited to six rounds,” take a “long time to reload,” and produce low muzzle velocity. Pistols “can be made flat and unobtrusive,” “take up to 13 rounds or more,” feature a “simple to replace magazine,” and high muzzle velocity.²⁴



Gun industry promotional materials, like this DVD distributed at an NRA convention by German gun-maker Carl Walther, frequently emphasize such militaristic terms as “mission,” “special operations,” and “tactical.”

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- Ammunition
- Survival Gear

Your Mission:
Pick your sniper rifle.

Intelligence:
The rifles are listed by manufacturer, select your favorite manufacturer and then pick your tactical rifle.



Sniperworld (above) sells military-style firearms through the Internet. Here it assigns customers the “mission” of picking their sniper rifle. The dealer displays its membership in the NRA Business Alliance: “The Business of Freedom.”

Handgun Militarization—High-Capacity “Anti-Terrorist” Vest-Busting Pistols. In the scramble for market, the gun industry has introduced a plethora of high-capacity, high-caliber semiautomatic pistol designs since the mid-1980s. But no product better captures the gun industry’s relentless militarization than the Belgian company FN Herstal’s introduction into the civilian market of a pistol and cartridge specifically designed to defeat body armor—the FN Model Five-seveN.

FN Herstal originally created the 5.7X28mm cartridge as the ammunition for a new submachine gun, the P90. The gun and round combination was developed in response to NATO’s request for design of a weapon that would be effective against body armor—ubiquitous on the modern battlefield. (The P90 is the prime example of a new generation of “high-tech” assault rifles, and a civilian version, the PS90, has become popular in the United States.) In short order, the company also designed a handgun that would chamber the innovative armor-piercing submachine round.

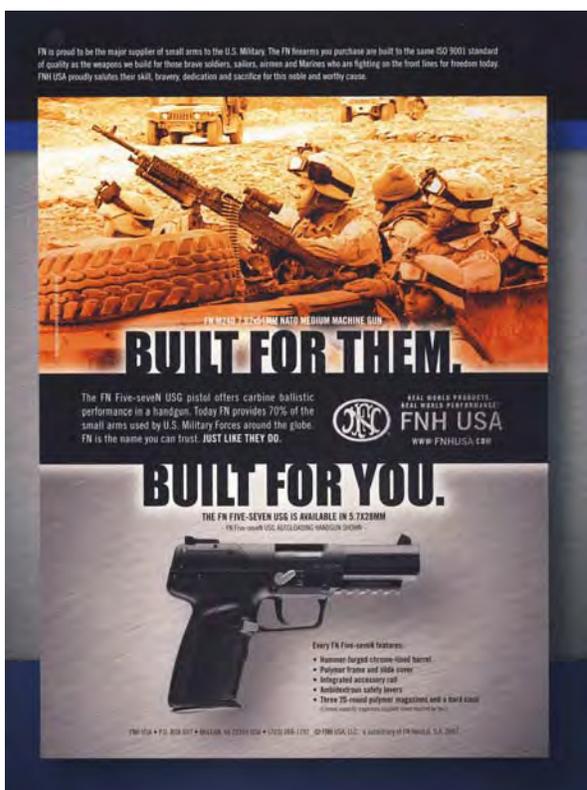


“Just like the Five-seveN handgun, the P90 submachine gun was developed around the 5.7x28mm ammunition to meet the Armies [sic] requirement in terms of efficiency.”

FN Herstal website

FN clearly understood that it was releasing a lethal genie. A spokesman for the company told the *Sunday Times* in 1996 that the pistol was “too potent” for normal police duties and was designed for anti-terrorist and hostage rescue operations.²⁵ The NRA’s *American Rifleman* claimed in 1999 that: “Law enforcement and military markets are the target groups of FN’s new FivesevenN pistol,” and told its readers, “Don’t expect to see this cartridge sold over the counter in the United States. In this incarnation, it is strictly a law enforcement or military round.”²⁶ In 2000, *American Handgunner* magazine assured the public, “For reasons that will become obvious, neither the gun nor the ammunition will ever be sold to civilians or even to individual officers.”²⁷

In fact, this handgun, described as being for anti-terrorist and hostage rescue operations with its law enforcement and military round were, and are, freely sold to civilians. FN was simply hyping its new product with widespread publicity in the gun press about “restricted” sales to military and police, and then—having whetted the gun buying public’s appetite—moved into the much bigger and more profitable civilian market. The Model Five-sevenN is one of the leading firearms smuggled to Mexico from the U.S. civilian gun market.



FN has heavily promoted its armor-piercing handgun in the U.S. civilian market. FN emphasizes its military cachet: “Today FN provides 70% of the small arms used by U.S. Military Forces around the globe. FN is the name you can trust. **JUST LIKE THEY DO.**” [Capitals in original.]

FNH USA 2008 catalog

U.S. Army Major Nidal Malik Hasan, right, used an FN Five-seveN 5.7mm semiautomatic pistol at Ft. Hood, Texas, on November 5, 2009. The major allegedly shot to death 13 people and wounded 32 others. He awaits trial in an Army court martial.



Although aimed at women, this ad's text promotes FN's military connection: "Built for America's Forces. Built for You."

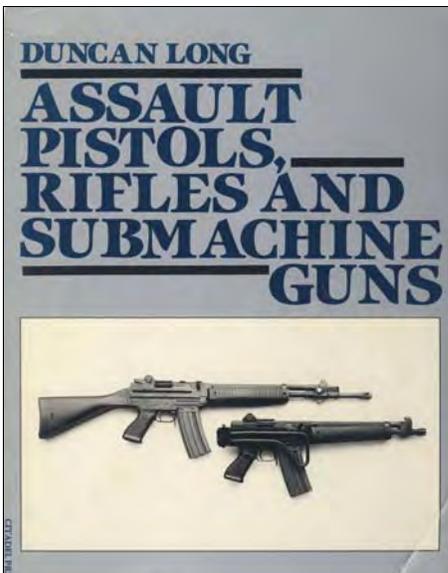
Assault Rifles and Assault Pistols

In the mid-1980s, the industry found another niche market—semiautomatic assault weapons.

Semiautomatic assault weapons are civilian versions of automatic military assault rifles (like the AK-47, the M-16, and FN's high-tech P-90) and automatic military assault pistols (like the UZI).²⁸

The military weapons “look” the same as the civilian weapons because they are functionally virtually identical. They differ only in one feature: military assault rifles are “machine guns.” A machine gun fires continuously as long as its trigger is held back—until it runs out of ammunition. Civilian assault rifles are *semi*-automatic weapons. The trigger of a semiautomatic weapon must be pulled back separately for each round fired.

Because federal law has banned the sale of new machine guns to civilians since 1986,²⁹ and heavily regulates sales to civilians of pre-1986 machine guns, there is virtually no civilian market for military assault weapons. The gun industry introduced semiautomatic versions of these deadly military assault weapons in order to create and exploit civilian markets.



The next problem arises if you make a semiauto-only model of one of these selective-fire rifles. According to the purists, an assault rifle has to be selective fire. Yet, if you think about it, it's a little hard to accept the idea that firearms with extended magazines, pistol grip stock, etc., cease to be assault rifles by changing a bit of metal.

In his 1986 book pro-gun author Duncan Long dismissed in the quote above the suggestion that the semiautomatic civilian assault rifles were different in any substantial way from their military counterparts. The gun lobby has spent three decades trying to “rebrand” civilian assault rifles as mere sporting guns.

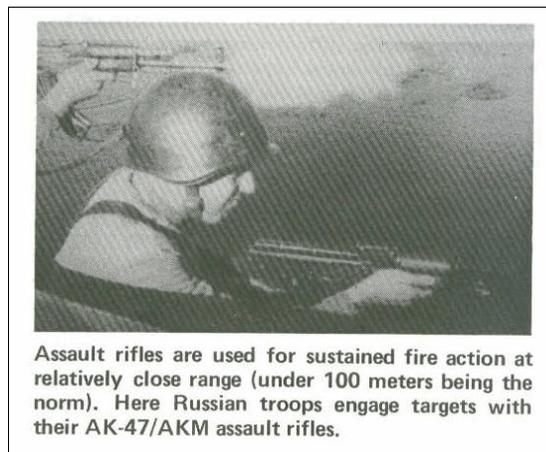
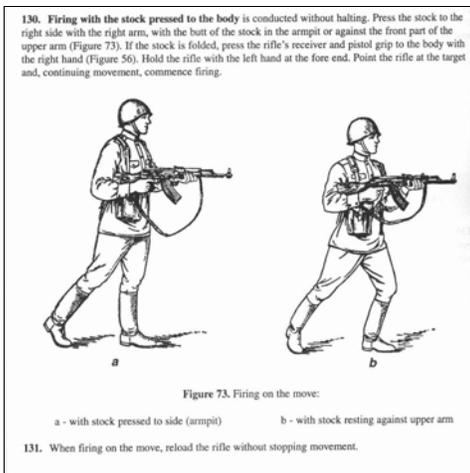
The world's armies developed assault weapons to meet specific combat needs. All assault weapons—military and civilian alike—incorporate specific features that were designed for laying down a high volume of fire over a wide killing zone. This is sometimes known as “hosing down” an area. Civilian assault weapons feature the specific military design features that make spray-firing easy and distinguish assault weapons from traditional sporting firearms.

The most important of these design features are—

- High-capacity detachable ammunition magazines that hold as many as 75 rounds of ammunition.
- A rear pistol grip (handle), including so-called “thumbhole stocks” and magazines that function like pistol grips.
- A forward grip or barrel shroud. Forward grips (located under the barrel or the forward stock) give a shooter greater control over a weapon during firing.

A gun industry observer summed up the design in September 2009:

From the minute you get your first modern, AR-style rifle, the first thing that you notice is the fact that it truly is one of the most ergonomic long guns you'll ever put to your shoulder. Makes sense, it was designed to take young men, many of whom had never fired a gun of any sort before, and quickly make them capable of running the rifle—effectively—in the most extreme duress, armed combat.³⁰



AK manual, gun magazine, and rifle book illustrate assault rifle "hosing down" technique.

Imports—AK-47 Variants. The Soviet Army's premier assault rifle, the AK-47, went into service in 1947. The AK-47 has been made in many variants since then. It is said to be the most widely-distributed rifle in the world.

China was directly responsible for the AK boom in the United States. The country exported few guns to the United States until 1987, when Chinese rifle imports—mostly semiautomatic versions of the AK-47—surged. The flood of Chinese rifles reached 64 percent of all rifles imported into the United States in 1993.³¹

The executive branch has clear, existing authority under the Gun Control Act of 1968 to completely prohibit the import of any "non-sporting" firearm, such as these military-derived weapons.³² In 1989, the George H.W. Bush administration blocked the importation of foreign-made semiautomatic assault rifles such as the AK variants. After the gun industry devised ways to skate around this ban with minor design changes, the Clinton administration acted again to cut off the flood of so-called "rule beaters."

The George W. Bush administration, however, completely and surreptitiously abrogated the first Bush and Clinton import rules. The Obama administration has done nothing to reinstate the earlier tough rules. Accordingly, Eastern European gun manufacturers have taken the place of the Chinese gun makers. They are supplying millions of AK-47-type weapons to the U.S. civilian market through licensed importers.

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AK-47 Model GP75 7.62x39mm 15-1607 **\$429.95**
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7.62x39mm semi-auto with black polymer stock, new US made receiver and high capacity mag... 15-1465 **\$499.95**

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7.62x39mm semi-auto, underfolding stock, parkenzed finish, black polymer forend, slant cut muzzle brake, high capacity mag... 15-1665 **\$489.95**

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With milled receiver, folding synthetic pistol grip and slant cut muzzle brake and VZ2008 30 Round VZ2008 Bayonet With Bakelight handle

AK AC
Romanian AK-47 7.62x39mm steel wind hinged back for easy j... 3 or more each \$
30 Round Excellent to 5 to 9 each
Good to Ve 5 to 9 each
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84 GUNS & AMMO/DECEMBER 1985

Guns & Ammo ad for AK-type rifles from China in December 1985 (lower right). Since George W. Bush's administration opened the assault rifle floodgates again, AK-type rifles have poured in from Eastern Europe, as evidenced by the May 20, 2010, ad for J&G Sales from *Shotgun News*, which is typical of fare in the popular publication.

EXHIBIT 10 (part 2)

Declaration of Roderick M. Thompson in Support of Sunnyvale's Opposition to Plaintiffs' Motion for Preliminary Injunction

Domestic Production—AR-15 Variants of the M-16. After studying over three million casualty reports from World Wars I and II, and data from the Korean War, the U.S. Army concluded, “Marksmanship was not as important as volume.” Accordingly, it decided in the 1960s to replace its M-14 battle rifle with the M-16 assault rifle.³³

The gun industry quickly churned out civilian versions of the M-16, labeling the semiautomatic model the “AR-15” (the same designation as the prototype military assault rifle). “With the number of companies making those particular black rifles today, it's tough to keep up them [sic],” a gun industry insider wrote in 2009.³⁴



The gun industry created a vast market for AR-15 civilian versions of the U.S. military's M-16 assault rifle.

Manufacturers have recently introduced assault rifles in 22 caliber, considerably cheaper than the .223 ammunition of the usual AR-15 semiautomatic assault rifle. The lighter weapons also provide an entry model for later transition to higher-caliber rifles. For example, in August 2009 Smith & Wesson began shipments of its M&P15-22 semiautomatic assault rifle. Here is how one gun writer enthused about the new model:

...the M&P15-22 might be the first .22 LR AR platform that actually is appropriate for consumers, law enforcement and military use that can be used to teach AR operations and basic marksmanship skills and know there will be no modifications necessary to transition to the myriad of other AR calibers available.³⁵

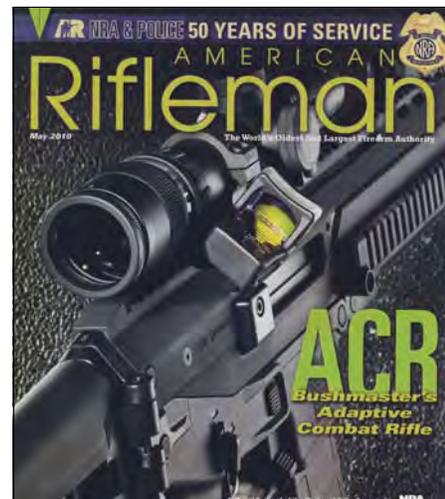


The industry has lately pushed 22 caliber semiautomatic assault rifles.

The 1994 Assault Weapons "Ban" and the Rise of Bushmaster. In 1994, Congress passed a ban on the production of certain semiautomatic assault weapons as well as new high-capacity ammunition magazines that held more than 10 rounds. The law banned specific assault weapons by name and also classified as assault weapons semiautomatic firearms that could accept a detachable ammunition magazine and had two additional assault weapon design characteristics.³⁶

Because the law listed merely cosmetic features (like bayonet mounts) and did not address the fundamental design of assault weapons, it was ineffective. The gun industry quickly made slight design changes in "post-ban" guns to evade the law, a tactic gunmakers dubbed "sporterization." One of the most aggressive of the manufacturers of "post-ban" ARs was Bushmaster Firearms. A Bushmaster XM15 M4 A3 assault rifle was used by the Washington, D.C.-area snipers to kill 10 and injure three in October 2002. A poster child for the industry's success at evading the ban, the snipers' Bushmaster was marketed as a "Post-Ban Carbine."

The 1994 law expired ("sunset") on September 13, 2004.



The Washington, D.C.-area "Beltway Snipers" used the Bushmaster semiautomatic assault rifle being shown at left above. Among Bushmaster's latest AR-type assault rifles is the "Adaptive Combat Rifle" featured on the cover of the NRA's May 2010 *American Rifleman*.

Assault Pistols—UZI, Ingram, Intratec, and More. A particularly deadly variant in the gun industry's marketing program has been the sale of civilian assault pistols, which are for the most part simply semiautomatic versions of submachine guns. Firearms expert Duncan Long explained the marketing basis of this trend in his book *The Terrifying Three: Uzi, Ingram, and Intratec Weapons Families*:

As the militaries of the world increasingly rely on assault rifles to fill the submachine gun role, making money on a new submachine gun design becomes harder and harder....Citizens purchasing firearms for everything from plinking to self-defense have provided a lucrative market, especially in the United States. Those weapons produced for the civilian market are generally semiauto versions of the automatic weapons, often modified slightly to conform to U.S. firearms laws.³⁷

A more recent development has been the introduction of AK-47 type pistols, which combine all the deadly design characteristics of the military-style assault rifle with the greater concealability of the handgun.



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Romanian AK Draco Pistol
7.62x39 caliber handgun.
(Backordered)
[25-1676xq]

Price: \$349.95

quantity	price
2+	\$329.95
5+	\$319.95

Quantity: Add To Cart

These are Romanian AK Draco handguns in 7.62x39 caliber, black finish, new receiver. Barrel has integral front sight & gas tube. Includes muzzle-nut, wood fore stock, plastic pistol grip, and one magazine. Can accept any standard AK double stack mag or drum. This is a hand-picked item. See below for shipping details. This firearm was assembled by J&G Sales International and may contain both new US made parts and used surplus parts. May or may not include cleaning rod.

Gun dealers offer AK-47 type semiautomatic assault pistols, like the Draco above, through the Internet.

The Assault Weapons Hype Market

The 1980s Explosion. Assault weapons quickly became hot items on the civilian market in the 1980s for a variety of reasons. For manufacturers, assault weapons helped counter the mid-1980s decline in handgun sales. Criminals—especially drug traffickers—were drawn to assault weapons’ massive firepower, useful for fighting police and especially competing traffickers. Survivalists—who envisioned themselves fending off a horde of desperate neighbors from within their bomb shelters—loved the combat features of high ammunition capacity and anti-personnel striking power of assault weapons. Right-wing paramilitary extremists, in their ongoing battle against the “Zionist Occupational Government,” made these easily purchased firearms their gun of choice. And for gun enthusiast fans of popular entertainment—*Rambo* and *Miami Vice*—semiautomatic assault weapons offered the look and feel of the “real thing.”

In a survival situation, you want the most uncompromising weapon that money can buy. The HK 91 Semi-Automatic Assault Rifle from Heckler & Koch.

The HK 91 was derived directly from the G3. Its delayed roller-locked bolt system reduces recoil to keep the gun on target. It exceeds the most stringent NATO accuracy requirements—right out of the box. And HK's revolutionary scope mounting system guarantees that you're still zeroed-in every time you mount your scope.

Easy to maintain and take apart, the HK 91 in cal. 5.56 and the HK 93 in cal. 7.62 were both designed as parts of an integrated gun system. The HK system of interchangeable parts and accessories enables these precision firearms to adapt quickly to changing tactical situations.

Leading military operations and law enforcement agencies around the world rely on firearms that bear the HK name. Your choice is equally clear. You can carry an ordinary weapon. Or own the most uncompromising firearm in the world.

For our 24-page color brochure and \$3 to Heckler & Koch, Inc. 1400 Lee Road Chantilly, Virginia 22022 Tel. 703-631-2000

HK

In a world of compromise, some men don't.

In a survival situation, there's no time to worry about how a weapon will perform. That's why Elite American and European special operations favor only on firearms made by Heckler & Koch.

The HK 94 Semi-Automatic Carbine is a direct offspring of Heckler & Koch's renowned family of MP5 Submachine Guns. Designed and built with only one thing in mind, uncompromising performance. Rugged. Reliable. Roll-like accuracy in 100 meters. The delayed roller-locked bolt system reduces recoil to keep the weapon on target. And HK's revolutionary scope mounting system guarantees that you're still zeroed-in every time you mount your scope.

Compare the HK 94 to the UZI or any other semiautomatic carbine on the market. You'll appreciate the difference between carrying an ordinary weapon, and owning the most uncompromising firearm in the world.

For our 24-page color brochure and \$3 to Heckler & Koch, Inc. 1400 Lee Road Chantilly, Virginia 22022 Tel. 703-631-2000

HK

In a world of compromise, some men don't.

German manufacturer Heckler & Koch pushed the civilian version of its military assault rifle in a series of ads—like these from *Guns & Ammo* magazine—in the mid-1980s stressing “survivalist” themes.

The Y2K Exploitation. The gun industry has ever since poured its efforts into new assault weapons designs and into their heavy marketing. One example of the industry's cynicism was its deliberate exploitation of widespread fears of a "breakdown" in public order at the turn of the millennium ("Y2K").³⁸

In the January 1999 issue of *Shooting Sports Retailer*, editor Bob Rogers predicted, "Amidst social turmoil and disintegrating economic underpinnings, you will sell more guns in 1999 than you've ever sold in your life."³⁹ *Shooting Industry's* Russ Thurman asked readers, "Are you cashing in on the new millennium?"⁴⁰

The prime danger, the gun industry luridly suggested, was that of rampaging humans: "... since the Have Nots won't hesitate to break in and take from the Haves, plan on close contact. And plan on being outnumbered. High-capacity rifles, pistols and shotguns are obvious choices."⁴¹ But domestic pets could also become a threat to life in the gun industry's bizarre world: "One might also need to quickly stop a dog or dogs who through starvation revert to wild beasts. Dogs take a lot of killing, so a powerful round and good shot placement will be necessary should this distasteful task arise."⁴²

INDUSTRY watch

IT'S TIME TO SELL THE NEW MILLENNIUM!

BY RUSS THURMAN

Business Soars

Industry-wide, companies are reporting excellent sales, even through the normally slow summer months.

Ellett Brothers Inc. reported its second quarter sales of \$38.3 million were up \$6.4 million compared to the same time last year. For the first six months of '99, Ellett Brothers posted total sales of \$77.3 million, compared to \$65.9 million for the first half of '98.

The Sporting Equipment division of Blount International Inc. continues to be a moneymaker for the industry giant. The

AMMO 2000

REMININGTON-UNION METALLIC CARTRIDGE CO.

HOT SALES ARE EXPECTED TO CONTINUE FOR THE AMMUNITION MARKET

By Roy Huntington

The past year proved to be another banner one for the ammunition industry. While driven partly by on-going fears of pending firearms bans and the related reaction by buyers to "stock-up," the impressive sales were primarily driven by Y2K concerns.

The predictions of massive unrest at the beginning of 2000 prompted gunowners to stock-up on ammunition. Many manufacturers worked around the clock to meet the demand. Virtually all major ammunition makers were back-ordered on .223, .308, 9mm, .45 ACP and .40 "ball" ammunition, especially during the last months of 1999.

Premier gun industry magazine *Shooting Industry* advised dealers in September 1999 (left) that "...taking advantage of the Y2K 'scare' is smart business...." In January 2000 the magazine reported that "...predictions of massive unrest...prompted gunowners to stock-up [sic] on ammunition."

Gun World's Y2K Daisy Chain



Gun World magazine not only published its own article in 1999 about how to “survive Y2K” – it also referred its readers to its sister publication *American Survival Guide*, in which appeared another article of survival advice written by *Gun World* editor Jan Libourel.

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<p>9mm Carbine</p> <p>Polymer Stock 16-1/2" Bbl. 10 Shot Mag</p> <p>Sugg. Retail \$199.00</p>	<p>45 ACP</p> <p>7 Shot 4-1/2" Bbl. 3 Dot Sights</p> <p>Sugg. Retail \$158.95</p>	<p>9mm</p> <p>Polymer Frame 8 Shot 3-1/2" Bbl. 3 Dot Sights</p> <p>Sugg. Retail \$124.95</p>
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SOMETIMES YOU ONLY GET ONE SHOT AT SURVIVAL

When those times come, you want the single shot expertise of New England Firearms on your side. A survival rifle needs to be simple, reliable, light and very accurate. The NEF action, with its patented Transfer Bar System and patented hammer, leaves nothing to chance. The heavy barrel provides the needed accuracy and the compact 223 REM and 308 WIN assures world-wide ammunition availability. A Weaver® Mark scope 100 is standard on mounting a variety of optical devices as the optional hammer extension for easy loading when in scope is mounted.

The lightweight stock and forend are of high-density polymer and accept metal scope mountings, which are adjustable without tools. To store ammunition and other survival items, a standard sling is attached to three points, allowing a wide range of carry options. In every respect it's a solid package. It will cost protection for the roughest times.

See your New England Firearms® dealer or for more information on the New England Survival Rifle, contact us at NEF (877) 1-800-1-NEF, 80 Industrial Road, Danvers, MA 01923.

NEW ENGLAND FIREARMS, 80 INDUSTRIAL ROAD, DANVERS, MA 01923
 JUNE 1999 • GUN WORLD 35

Typical Y2K gun ads from 1999 are shown above.

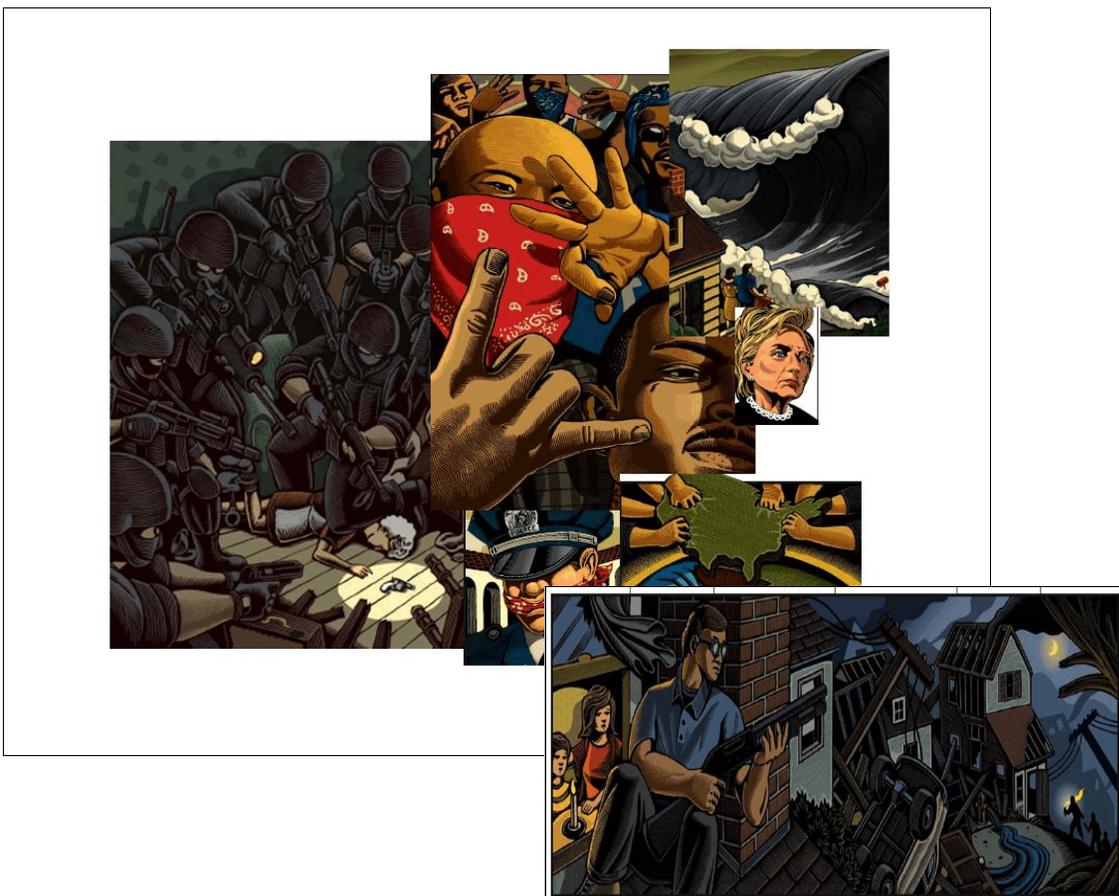
Continuing Incitement. The gun industry, the NRA, and the gun press have exploited every real and imagined public fear since the 1980s—including the terror attacks of September 2001, Hurricane Katrina, “spillover” of border violence, and concerns about violent “illegal” immigrants. The industry’s propaganda added fuel to the militia movement in the 1990s. Lethal confrontations occurred between federal law enforcement and civilians heavily armed with military-style weapons at Waco, Texas, and Ruby Ridge, Idaho. Barack Obama’s election, and fears that he would push an anti-gun agenda, ignited growth in the “militia” movement and a disturbing trend of open display of assault weapons near Presidential speaking engagements.⁴³



The ad for a Benelli shotgun on the left, from the NRA’s 2010 annual meeting brochure, ostensibly speaks to a “revolution” in shotgun design. The ad for the “tactical” shotgun on the right, from the September 2010 *Guns & Ammo* magazine, links “homeland security” to “Iraq, Afghanistan, Your Livingroom.”



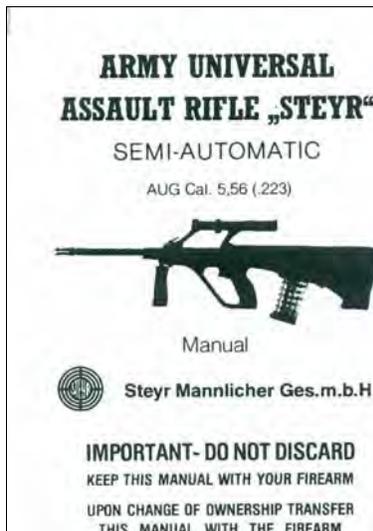
The NRA pamphlet "Freedom in Peril" warns, "Second Amendment freedom today stands naked...." Laced with ugly stereotypes of the gun lobby's political enemies—a classic technique for dehumanizing "the other"—it suggests "towering waves" of danger from ethnic and racial gangs. "Sometimes," the brochure suggestively states, "any hope of prevailing rests in the hearts and hands of a very urgent few...."



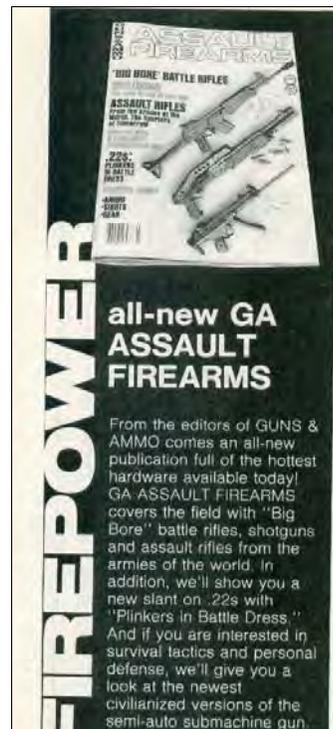
The National Shooting Sports Foundation’s Rebranding Campaign. In November 2009, the National Shooting Sports Foundation (NSSF) announced that—“due to gun owners’ concerns over President-elect Obama and possible legislation regulating the Second Amendment rights of Americans”—it had placed on its website a “media resource...to help clear up much of the confusion and misinformation about so-called ‘assault weapons.’”⁴⁴

This was the opening salvo in the industry’s meretricious campaign to “rebrand” semiautomatic assault weapons as “modern sporting rifles.”⁴⁵ The point of the campaign—inspired by the pummeling the industry gets for selling killing machines—is apparently that semiautomatic assault rifles are really just another sporting gun, no different from an older generation of bolt-action and low-capacity rifles.

Unfortunately for the NSSF and the industry, the widely-reported affection for semiautomatic assault rifles by extremists, drug lords, and common criminals gives the lie to this insidious “rebranding” campaign. Even worse, some within the gun industry’s own ranks apparently never got the NSSF rebranding memo. They continue to call semiautomatic assault rifles what they are—*assault* rifles—and even write lurid prose promoting the worst features of these guns.



Manufacturers and fan magazines alike called semiautomatic assault weapons “assault weapons” before their deadly killing power became a matter of public debate.



For recent example, the August 2010 edition of *Gun World* magazine headlines “Ruger’s Mini-14 Tactical Rifle” as “‘Combat Customized’ From the Factory.”⁴⁶ Among other outbursts of naked candor in the enthusiastic article are the following gems—

- Ruger’s Mini-14 Tactical Rifle is a version of the well-established Mini-14 incorporating many of the assault rifle features that end users have been [sic] applying themselves for decades, this time straight from the factory.
- **Being seen over the years as a sort of “poor man’s assault rifle” the Mini-14 has spawned a huge array of after-market parts that may be applied to make it more “assault rifle-y.”** Recently Sturm, Ruger & Co. finally decided to get into the act themselves by producing their Mini-14 Tactical Rifles. [Bold added]

This spasm of candor is typical of the “wink and nod” game that the gun industry plays when it talks to itself and to its hard-core consumers: call them what you will—“black rifles,” “tactical rifles,” or “modern sporting rifles”—semiautomatic assault weapons are plain and simply military-style assault weapons.

The second model Mini-14 Tactical Rifle is considerably more assault rifle-y in features and appearance –

load), I don’t see why a Ruger Mini-14 Tactical Rifle, equipped with a goodly supply of 20- and/or 30-round magazines, couldn’t fulfill the “semi-auto assault rifle” niche very well for the person wanting such a tool for home or urban self-defense. If current production

introduction in 1974. Being seen over the years as a sort of “poor man’s assault rifle” the Mini-14 has spawned a huge array of after-market parts that may be applied to make it more “assault rifle-y.” Recently Sturm, Ruger & Co. finally decided to get into the act themselves by producing their Mini-14 Tactical Rifles.

50 Caliber Anti-Armor Sniper Rifles

The 50 caliber anti-armor sniper rifle is a case of militarization in which precisely the same weapon is sold on the civilian market as that sold to the world's armed services.

This lucrative weapon was invented in the early 1980s by a Tennessee commercial photographer, Ronnie G. Barrett, who derived the sniper rifle from the Browning 50 caliber machine gun.⁴⁷

Barrett's 1987 patent called his new invention an "anti-armor gun." He described the rifle in his patent claim as a "shoulder-fireable, armor-penetrating gun." Barrett related the novelty of his anti-armor gun as follows:

The recoil and weight of the Browning M-2 heavy-barrel machine gun (50 cal.), belt-fed, make it unsuitable for firing from the shoulder. The bolt-fed sniper rifle of smaller weight and caliber will not penetrate armored targets. The bolts of guns of a caliber that will penetrate armored targets are often broken by recoil because of excessive strain on the lock lugs. Thus, there is a need for a light-weight, shoulder-fireable, armor-penetrating gun that can stand up to heavy duty use. After extended investigation I have come up with just such a gun.

Barrett Firearms Manufacturing, Inc. is today the leading supplier of 50 caliber anti-armor sniper rifles to U.S. military forces and many other armies of the world.

FROM THE DESK OF RONNIE BARRETT



My Fellow Gun Enthusiasts,

Great things are happening now at Barrett! Recent additions to our facility ensure consistent deliveries, and our new R&D shop is world-class. Barrett Optics launched the revolutionary BORS. Our online store is growing every day, and the Barrett internet forum is a hub for exchanging great ideas. Our training department is staffing up with experienced professionals.

I am also pleased to report that each Barrett model of large-caliber rifle is in service with a government somewhere around the globe. This is a great accomplishment for us, but it is equally important to you, the buyer. Adoption by a government indicates a proven design, stable support, and continuous upgrades over many years. Consider this when you are comparing our rifles to any other competitor.

Advertising note "From the Desk of Ronnie Barrett," inventor of the 50 caliber anti-armor sniper rifle, boasts that "...each Barrett model of large-caliber rifle is in service with a government somewhere around the globe." In his pitch to "Fellow Fun Enthusiasts," Barrett urges them to "[c]onsider this when you are comparing our rifles to any other competitor."

Barrett has also aggressively marketed its anti-armor rifles to civilian buyers in the United States. After Barrett effectively created a new civilian market for his anti-armor rifles, lower-priced competition sprang up from dozens of new manufacturers cashing in on the booming niche. These rifles have become one of the hottest items sold in the civilian market.

In spite of their battlefield pedigree, 50 caliber anti-armor rifles are no more regulated under federal law than a 22 caliber target rifle, and are less regulated than handguns. Under federal law, anyone at least 18 years of age who is not in a category as to whom transfers or possession of firearms is prohibited—such as convicted felons—can legally buy any .50BMG anti-armor sniper rifle sold in America. But it is against the law for a federally licensed dealer to sell a handgun to anyone less than 21 years of age. Unlike other weapons of war—such as 50 caliber fully automatic machine guns—50 caliber anti-armor rifles are exempt from the stringent provisions of the federal National Firearms Act, which requires a photo, fingerprints, local law enforcement approval, record of the transfer, and registration of the weapon with a \$200 fee.



The gun industry has saturated the American civilian “gun culture” with 50 caliber anti-armor sniper rifles, like this AR-50.

Taxpayers Subsidize the Gun Industry

In spite of “anti-government” and insurrectionist rhetoric from the National Rifle Association and its ilk, the gun industry and the gun lobby aggressively milk the federal government for taxpayer subsidies. For example, the U.S. Fish & Wildlife Service regularly subsidizes gun industry marketing research in the guise of “conservation” grants, as described in this 2009 industry article:

The Task Force 20/20 group, industry leaders from the hunting and shooting sports, is continuing to work toward its goal of increasing participation in hunting and the shooting sports by 20 percent over the next five years....Task Force 20/20 began in 2008 during the NSSF Summit whose primary focus was discussing research from a three-year study titled *The Future of Hunting and the Shooting Sports—Research-based Recruitment and Retention Strategies*. The report condenses the findings of one of the largest and most comprehensive studies ever conducted on factors related to the hunting and shooting sports industry. Funding for the research came from the U.S. Fish & Wildlife Service in the form of a multi-state conservation grant.⁴⁸

The Future of Hunting and the Shooting Sports
 Research-based Recruitment and Retention Strategies

Background:
 In June the National Shooting Sports Foundation hosted the 2008 Shooting Sports Summit in Colorado Springs. The Summit gathered leaders from throughout the shooting, hunting and outdoor industry as well as key leaders from fish and wildlife agencies and conservation organizations to address key challenges that face the future of the shooting sports.

At the core of the Summit was a three-year research project titled, "The Future of Hunting and the Shooting Sports - Research-based Recruitment and Retention Strategies." **The report condenses the findings of one of the largest and most comprehensive studies ever conducted on the factors related to our industry.** Funding for the research came from the U.S. Fish & Wildlife Service in the form of a multi-state conservation grant. NSSF commissioned the firm of Responsive Management to conduct the research for the report.

The Summit closed out with attendees committed to taking action on key efforts to reach new hunters and shooters to ensure that our shooting traditions will be a lasting heritage passed on to future generations. To guide the successful implementation of this research the NSSF has developed *Task Force 20/20SM*.

TASK FORCE 20/20

Mfr. & Distrib. ... Agencies ... Hunting Groups ... Shooting Groups ... Media ... Retailers

Member Organizations:

Navigation:
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 : 2008 Summit Videos
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 1. Introduction
 2. Participation in Hunting and Shooting Sports
 3. U.S. Demographic Trends and Characteristics
 4. Hunting and Shooting Initiation, recruitment, Retention, and Desertion
 5. Motivations for and Satisfaction with Hunting and the Shooting Sports
 6. Target Markets
 7. Hunting and Shooting

The U.S. armed forces also subsidize industry activity, largely through the ploy of “marksmanship” programs, as this article from an industry newsletter attests:

Every summer, prior to the National Rifle and Pistol Trophy Matches at Camp Perry, Ohio, Soldiers from the U.S. Army Marksmanship Unit take time out of their own training and preparation to pass their knowledge and superb shooting skills on to the next generation of American shooters at the Small Arms Firing School....

“It’s such a great thing,” said Jim Davis, Hamilton, Ind. “This is the best place in the country, maybe the world, to learn about shooting and everything that goes with it.”

Davis took his son and three other children from the Dekalb County 4-H club to the rifle class, stressing to them how valuable the instruction that they are receiving is to them now and down the road.

“I still remember when I came to this school as a teenager,” he said. “I tell my kid that this is something that you’ll always remember.”⁴⁹

The Army Marksmanship Unit also hosts an annual event for “civilians playing army in combat situations.”⁵⁰

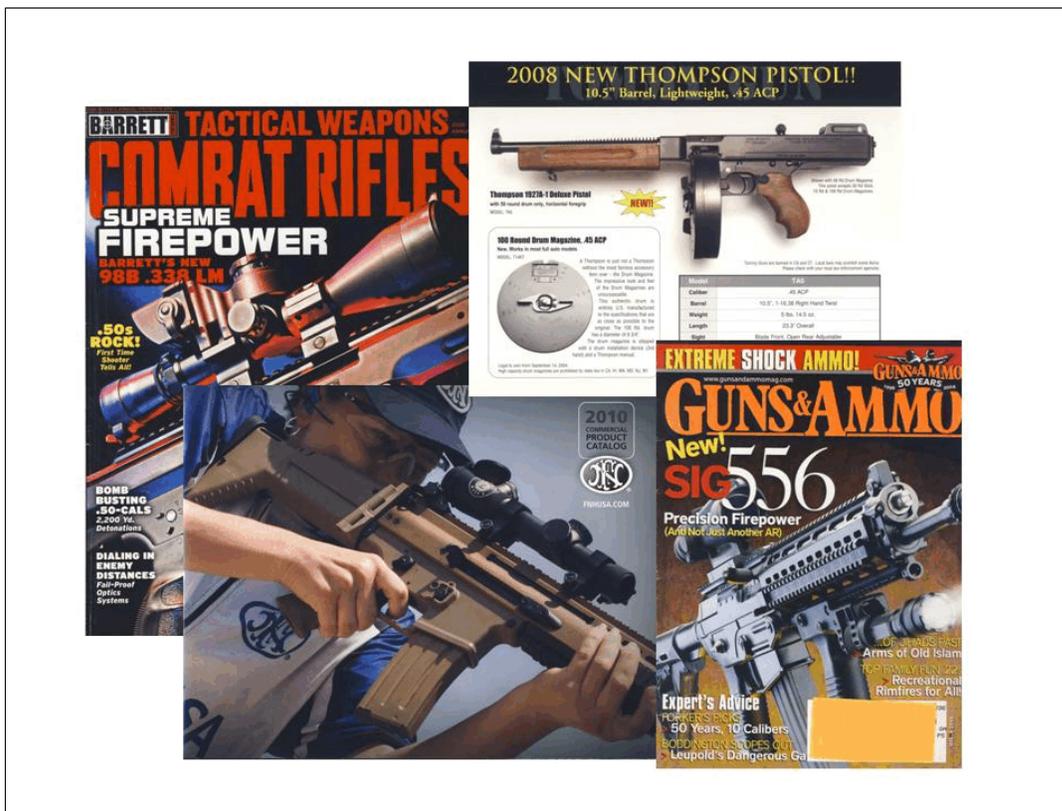
The shooting sport of 3-gun competition, with pistol, rifle, and tactical shotgun is rooted somewhere in the idea of adults playing army. It is simulated combat. And Three Gun can get even more interesting when the Army issues an invitation to bring your guns and join up for three days of competition, with the Army Marksmanship Unit hosting their 3-gun challenge.⁵¹

The bottom line—ultimately the only thing that matters to the gun industry—is that taxpayers are paying for the means by which a dying industry hangs on by funding market research in the guise of “conservation grants” and introducing new generations of children to the “sport” of shooting military-style weapons in the drag of military marksmanship programs.

The Result: Militarized Firearms Define the U.S. Civilian Firearms Market

Military-style weapons today define the U.S. civilian gun market. As *Shooting Wire* summarized the gun industry's situation in December 2008:

The net of all the numbers is that if you're a company with a strong line of high-capacity pistols and AR-style rifles, you're doing land office business. If you're heavily dependent on hunting, you are hurting.⁵²



Military-style "combat rifles" and lethal firepower dominate U.S. civilian firearms market production and marketing.

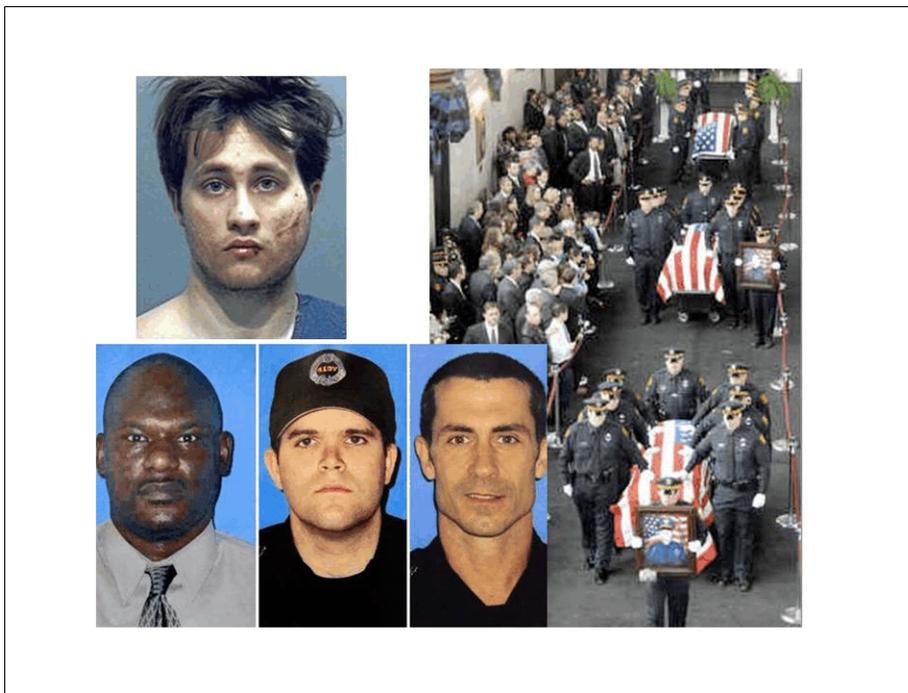
The Consequences of Militarization

The widespread availability of militarized firearms—including especially high-capacity semiautomatic pistols and assault weapons—has substantially raised the level of lethality of armed encounters in the United States. Criminal street gangs, drug traffickers, and militant extremists are all drawn to the military-style firepower of these weapons.

Two trends are remarkable.

Increasing Attacks on Law Enforcement with Assault Weapons. A recent Violence Policy Center study of reported incidents showed that more than one out of four assault weapons incidents involve police. Moreover, the number of assault weapons incidents involving police grew significantly between the two periods studied (March 1, 2005 to February 28, 2006 and March 1, 2006 to February 28, 2007).⁵³

A typical more recent incident is that of Richard Poplawski, who is accused of shooting to death Pittsburgh, Pennsylvania, police officers Paul J. Sciallo II, Stephen J. Mayhle, and Eric G. Kelly on April 4, 2009. Among the guns Poplawski fired at police was an AK-47 semiautomatic assault rifle.⁵⁴



Richard Poplawski and the three police officers who died on April 4, 2009.

Trafficking of Military-Style Weapons from the United States. According to both United States and Mexican officials, large numbers of military-style firearms from the U.S. civilian gun market fuel criminal violence in Mexico. Congressional hearings and public policy reports have made clear that the U.S. gun industry is instrumental in making readily available to illegal gun traffickers the types and numbers of weapons that facilitate drug lords' confrontations with the Mexican government and its people. U.S. and Mexican officials report that, based on firearms tracing data from the federal Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), the cartels obtain up to 90 percent of their firearms from the United States.⁵⁵



Military-style firearms smuggled from the United States fuel violence among Mexican drug cartels and criminal confrontations with the Mexican government. Weapons of choice include 50 caliber anti-armor sniper rifles, assault rifles, and cop-killing FN Five-seveN anti-armor handguns.

What Can Be Done?

More than anything else, the news media, public interest groups, and especially policymakers must come to grips with a deadly reality. That reality is that the gun industry is not today—if it ever was—a “sporting” industry. It is a highly militarized and increasingly cynical industry that has cast all restraint aside to generate profit from military-style firearms.

Like an injured predator, the industry is particularly dangerous as it sinks further into its inevitable decline. The gun industry’s desperate “marketing” campaigns underwrite mass shootings in the United States, increasingly lethal confrontations with law enforcement, and armed violence abroad.

Most insidiously, the gun lobby’s exploitation of fear—racial, ethnic, and political—encourages resort to armed violence among the most impressionable and ill-equipped to function in a complex society.

This is truly an era in which to do nothing is to invite unthinkable violence.

Endnotes

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42. Leroy Thompson, "Facing Y2K With a Colt Python," *Handguns*, September 1999, pp. 51, 53.
43. For a detailed discussion of historical and current trends, see Violence Policy Center, *Lessons Unlearned—The Gun Lobby and the Siren Song of Anti-Government Rhetoric* (April 2010), www.vpc.org/studies/lessonsunlearned.pdf.
44. "NSSF Announces Media Resource on 'Assault Weapons,'" *Shooting Wire*, November 29, 2009, www.shootingwire.com/archived/2008-11-24_sw.html.
45. "Rebranding is the creation of a new name, term, symbol, design or a combination of them for an established brand with the intention of developing a differentiated (new) position in the mind of stakeholders and competitors." "Rebranding," *Wikipedia*, <http://en.wikipedia.org/wiki/Rebranding>.
46. "Ruger's Mini-14 Tactical Rifle," *Gun World*, August 2010, p. 58.
47. For a complete discussion of the history and threat of 50 caliber anti-armor rifles, see, Violence Policy Center, *Clear and Present Danger: National Security Experts Warn About the Danger of Unrestricted Sales of 50 Caliber Anti-Armor Sniper Rifles to Civilians* (July 2005), www.vpc.org/studies/50danger.pdf.
48. "Task Force 20/20 Continues Setting Agenda for Five-year Plan," *Shooting Wire*, September 18, 2009, www.shootingwire.com/archived/2009-09-18_sw.html.
49. "Taking Time To Teach," *Shooting Wire*, August 26, 2009, www.shootingwire.com/archived/2009-08-26_sw.html.

50. "Shooting USA Features The USAMU Three Gun Match," *Shooting Wire*, July 15, 2009, www.shootingwire.com/archived/2009-07-15_sw.html.
51. See www.shootingusa.com/TV_SCHEDULE/SHOW_26-17/show_26-17.html.
52. "Industry Hanging Onto A Single Category," *Shooting Wire*, www.shootingwire.com/archived/2008-12-17_sw.html.
53. For complete details, see Violence Policy Center, *Target: Law Enforcement—Assault Weapons in the News* (February 2010), www.vpc.org/studies/targetle.pdf.
54. "Zappala Will Seek Death Penalty for Poplawski," *Pittsburgh Post-Gazette*, April 21, 2009.
55. For more details, see Violence Policy Center, *Indicted: Types of Firearms and Methods of Gun Trafficking from the United States to Mexico as Revealed in U.S. Court Documents* (April 2009), www.vpc.org/studies/indicted.pdf.

EXHIBIT 11

**Declaration of Roderick M. Thompson in
Support of Sunnyvale's Opposition to
Plaintiffs' Motion for Preliminary
Injunction**

**Proposals to Reduce Gun Violence:
Protecting Our Communities While Respecting the Second Amendment.**

Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights and Human Rights

February 12, 2013

Prepared Testimony by Laurence H. Tribe*

Mr. Chairman and members of the Committee:

I am honored and grateful for the invitation to testify before you today. I know I am not alone in wanting us to do all we can, consistent with the Constitution, to reduce the awful specter of rampant gun violence and the far too frequent massacres of our children, our friends, and our fellow citizens.

Like all decent Americans, I felt a pang of unspeakable horror on December 14, when I learned that twenty first-grade children had been brutally slaughtered in their first-grade classroom in Newtown, Connecticut. Those children, and the brave grown-ups who died at Adam Lanza's hands as they tried to save the young lives entrusted to their care, deserve every effort to translate our shared grief into shared national action. That action must not be deterred by the defeatist argument that, because we will never solve this problem in its entirety, we might as well give up. Nor should it be deterred by distorted interpretations of the United States Constitution. As others have often reminded us about that great and enduring document, it is many things to many people, but one thing it is *not* is a suicide pact.

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While we debate the pending proposals to reduce gun violence through measures focused on gun safety as part of a holistic national response, it's crucial that we not permit any part of our Constitution to become a collateral casualty of our conversation. Proposals to disarm the American people, to leave firearms solely in the hands of the military and the police, have been decisively taken off the table – if they were ever truly *on* the table – by the Supreme Court's Second Amendment decisions in 2008 and 2010. "Slippery slope" arguments predicated on the unsettled state of the law prior to 2008 have been rendered irrelevant. The only proposals under serious consideration in this body are reasonable measures that would fully respect the basic rights of responsible citizens to use ordinary firearms for self-defense and other lawful purposes. They cannot lead to unacceptably extreme measures as long as the Supreme Court sits.

Having examined those proposals, having looked at the steps announced by the President under his power faithfully to execute the laws of the United States, and having studied the decisions of the Supreme Court and lower courts around the country, I am convinced that nothing under discussion in the Senate Judiciary Committee represents a threat to the Constitution or even comes close to violating the Second Amendment or the Constitution's structural limits either on congressional power or on executive authority.

Undoubtedly we should have a national debate about how best to reconcile the Second Amendment rights of every individual with the full range of proposals to reduce gun violence in America. As someone who has studied and taught constitutional law for four decades and argued dozens of cases in the Supreme Court and dozens more in the lower courts, I am obviously interested in engaging those questions. In today's testimony, however, I will focus not on

competing theories of how the Second Amendment ought to have been interpreted but on the law as it stands. I am here not as an academic theorist but as a constitutional lawyer. As a lawyer, I've won some and I've lost some, and I know a losing argument when I see it. And the argument that any of the proposals to reduce gun violence currently being considered here might be struck down as unconstitutional is decidedly a losing argument.

There is plenty of room for policy debate over the best steps to take to reduce gun violence, but we mustn't confuse those policy differences or the ideological and cultural divisions that underlie them with genuine constitutional doubts about whether any of those steps crosses the constitutional line. Everyone in this room knows that anything Congress or the President does in this field will confront opposition. And in a nation as litigious as ours, some of that opposition will no doubt find its way into the courts. But there is no basis to suppose that the courts will or should rebuff any of the steps being debated here today. They should not, and they will not.

What I hope to do this morning, setting all hyperbole aside and approaching the law on the books with a fair-minded eye, is explain why reforms such as those this committee is considering clearly pass constitutional muster.

I. Introduction:

Taking the Second Amendment Seriously, But Applying it Cautiously

I begin by reaffirming my agreement with the Supreme Court that the Second Amendment guarantees Americans the right as individuals to possess guns for reasonable self-defense. Some of my friends and colleagues devoted to the cause of responsible firearms regulation evidently wish to relitigate this point. They continue to insist that the best reading of the Second Amendment would secure gun rights only in connection with service in the state militia and not for individual possession and use. For nearly a decade and a half, I have disagreed with them and have defended the individual rights view ultimately taken by the Supreme Court in 2008. In October of 1999, for example, I joined a fellow constitutional law scholar in publishing an op-ed in *The New York Times* arguing that “bearing arms [is] a ‘privilege’ of each citizen.”¹ I continue to defend this position today.

That matters only insofar as it bears on my credibility as a witness in today’s hearing. If I were among those who had *opposed* the individual rights interpretation adopted by the Supreme Court in *Heller*, some might wonder whether my conclusions about the regulations *Heller* permits Congress to adopt reflect wishful thinking rather than a realistic and sympathetic appraisal of what the Court that decided *Heller* would in fact permit. But there is no wishful thinking here. I am being a hard-headed realist in reading the *Heller* decision and extrapolating conclusions from the majority opinion.

¹ Laurence H. Tribe & Akhil Reed Amar, *Well Regulated Militias and More*, N.Y. TIMES, Oct. 28, 1999, at A25; 1 Laurence H. Tribe, *American Constitutional Law* 900–902 (3d ed. 2000).

Although many in the community advocating gun rights had long assumed that the individual rights interpretation governed the scope of the Second Amendment, it was not until the Supreme Court's 2008 ruling in *District of Columbia v. Heller*² that a majority of the Court's Justices agreed. In so doing, the Court recognized that the core individual liberty protected by the amendment affords Americans the right to purchase and store operable firearms for self-defense in the home. Two years later, in *McDonald v. City of Chicago*,³ the Court extended the *Heller* ruling to cover restrictions imposed by state and local governments, making it unmistakably clear that the right at issue was not and is not simply a right of the state-organized militia against being overrun by federal authority.

Despite this fundamental affirmation, the *Heller* decision is exceedingly narrow in many important respects. As Judge Brett Kavanaugh of the D.C. Circuit Court of Appeals recently put it, "It bears emphasis that *Heller*, while enormously significant jurisprudentially, was not revolutionary in terms of its immediate real-world effects on American gun regulation." "Indeed," he continued, "*Heller* largely preserved the status quo of gun regulation in the United States."⁴ To understand what he meant, it helps to look first to the Washington, DC ordinance implicated in the *Heller* case. The District had in place one of the most restrictive firearms regulations in the nation; it essentially outlawed the possession of handguns in the home, where the need for self-defense is, as Justice Scalia wrote, "most acute."⁵ For the majority on the Court, a policy like the one the District had adopted, a policy on the outer edge of gun control's reach in the United States, was irreconcilable with the Second Amendment.

² 554 U.S. 570 (2008).

³ 130 S.Ct. 3020 (2010).

⁴ *Heller v. Dist. of Columbia*, 670 F.3d 1244, 1270 (D.C. Cir. 2011) (Kavanaugh, J., dissenting).

⁵ *Heller*, 544 U.S. at 628.

The *Heller* decision took great pains to emphasize its relative modesty. It repeated the mantra that the Second Amendment right “is not unlimited”⁶ and devoted an entire section to listing types of regulation – for example, limits on gun ownership “by felons and the mentally ill” and, most relevant to today’s hearing, regulation of “dangerous and unusual weapons” – the constitutionality of which the Court had no intention of casting into doubt.⁷ The decision paused to note that, by specifically giving a constitutional green light to some regulatory efforts, the Court did not mean to signal that others were constitutionally dubious.⁸ Justice Scalia closed his opinion for the Court with an expression of solicitude for the regulatory goals that Washington, DC sought to advance and, more importantly, an invitation to pursue those goals with the “variety of tools” still available to the District and to other states and localities across the country even in *Heller*’s wake.⁹

Since that decision and its extension to state and local laws in 2010, the vast majority of federal and state courts to adjudicate Second Amendment claims have responsibly hewed to the cautious approach espoused by the Supreme Court in *Heller* and *McDonald*. For example, in a ruling highly relevant to the topic of this hearing, the D.C. Circuit recently upheld the constitutionality of Washington D.C.’s assault weapons ban, which included a restriction on

⁶ *Id.* at 595, 626.

⁷ *Id.* at 626 – 28.

⁸ *Id.* at 627 n. 26. There is no doubt, for instance, that regulatory provisions targeting firearms and ammunitions *manufacturers* in addition to those who transfer, possess, carry, or use the resulting weapons are at least as easy to defend from Second Amendment challenge as are measures that do not take effect until the point of sale.

⁹ *Id.* at 636.

high-capacity magazines, as well as gun registration requirements.¹⁰ The majority in the case, following the broad consensus that has emerged among federal and state judges,¹¹ evaluated the regulations against a standard of heightened judicial scrutiny while preserving both the option to adopt a more skeptical mode of review for restrictions on core self-defense firearm possession and the option to exempt other laws from Second Amendment review entirely when they do not enter the amendment's zone of protected conduct.¹² In another notable decision staking out a similar approach, a panel of the Seventh Circuit Court of Appeals struck down Chicago's firing-range ban given the close nexus between regular firing practice and training and safe, responsible self-defense in the home.¹³ And state appellate courts from North Carolina to Wisconsin to California have joined with their federal brethren in upholding state restrictions on firearms ownership under this middle-of-the-road approach that molds the degree of judicial scrutiny to the extent of a law's burden on the core self-defense right secured by the Second Amendment.¹⁴

The central message of *Heller* and its lower-court progeny is thus to take the application of the Second Amendment seriously but also cautiously. When necessary to vindicate the core right to self-defense respected by *Heller*, neither courts nor lawmakers should be shy about invoking the Second Amendment. But because few public responsibilities are as important to

¹⁰ *Heller v. Dist. of Columbia*, 670 F.3d 1244 (D.C. Cir. 2011).

¹¹ *See, e.g.*, *Kachalsky v. County of Westchester*, 701 F.3d 81, 93 – 94 (2d Cir. 2012); *United States v. Booker*, 644 F.3d 12, 25 (1st Cir. 2011) cert. denied, 132 S. Ct. 1538 (U.S. 2012); *United States v. Masciandaro*, 638 F.3d 458, 469-70 (4th Cir. 2011) cert. denied, 132 S. Ct. 756 (U.S. 2011); *United States v. Marzzarella*, 614 F.3d 85, 97 (3d Cir. 2010);

¹² *Heller*, 670 F.3d at 1256 – 58.

¹³ The court applied what it called “not quite strict scrutiny” because the law's burden struck so close to the core Second Amendment right to self-defense in the home. *Ezell v. City of Chicago*, 651 F.3d 684, 708 (7th Cir. 2011).

¹⁴ *See, e.g.*, *Johnston v. State*, 735 S.E.2d 859 (N.C. Ct. App. 2012); *State v. Brown*, 815 N.W.2d 407 (Ct. App. Wisc. 2012); *People v. Ellison*, 196 Cal. App. 4th 1342, 1347 (2011).

good governance as legislating to secure public safety, lawmakers and jurists should not casually give the amendment an expansive scope nor unduly scrutinize reasonable firearm regulations. In the wake of the Newtown massacre and the push to propose sensible new rules about firearms, the Obama administration and many leaders in Congress have conducted themselves precisely along these lines.

II. The Second Amendment Propriety of Recent Policy Proposals

Limits on Large-Capacity Magazines

A core feature of the Assault Weapons Ban of 2013, introduced by Senator Dianne Feinstein, as well as the primary component of a freestanding bill championed by Senator Frank Lautenberg, is a ban on magazines capable of firing more than ten rounds of ammunition without reloading.¹⁵ Before moving into the weeds of the constitutional analysis, it would be useful to contrast such a high-capacity magazine restriction to the law *Heller* struck down. *Heller* axed a local ordinance that adopted about as blunt an approach to restraining gun violence as possible: By its very design, the DC law espoused disagreement with the whole idea of law-abiding gun ownership for self-defense in the home. A limit on large-capacity magazines, by contrast, is a regulation of an entirely different caliber. It does not challenge the fundamental recognition that gun possession for self-defense is a right of every citizen; it merely seeks to reset the parameters of responsible ownership to advance the cause of public safety. It operates with a scalpel rather than an ax. Even Robert Levy, the man who largely funded the challenge to DC's sweeping

¹⁵ The Assault Weapons Ban of 2013 also prohibits firearms with fixed magazines capable of holding more than ten rounds of ammunition.

handgun ban in *Heller* and served as an attorney on the case, concedes that bans on both high-capacity magazines and assault weapons almost certainly do not infringe the Second Amendment rights he successfully fought to vindicate in court.¹⁶

By any reasonable reckoning, this crucial measure might not even trigger heightened Second Amendment review at the threshold stage that the *Heller* ruling requires courts to undertake. But even if the high-capacity magazine prohibition does require further analysis, it safely falls within a zone of regulations that do not unconstitutionally abridge Second Amendment rights.

Most constitutional challenges require lawyers and scholars to carry out two stages of analysis. First, we must assess whether a given government policy even *implicates* a given right in the first place. For example, in 1915, the Supreme Court entertained a First Amendment challenge to a filmmaker's punishment under an Ohio censorship law but, in a clear misjudgment the Court would later correct, decided that movies were not even a form of "speech" entitled to First Amendment protection.¹⁷ More recently, in a ruling that may perhaps give pause to members of this committee (despite the distinct protections of the Constitution's Speech and Debate Clause), the Court concluded that votes by legislators are not a form of "speech" over which any public official can claim a personal First Amendment right.¹⁸ Assuming that a law *does* implicate the right in question, the government must then proceed to justify the challenged

¹⁶ Interview with Robert A. Levy by the Washington Post (Jan. 10, 2013), *transcript available at* http://articles.washingtonpost.com/2013-01-10/lifestyle/36272630_1_assault-weapons-high-capacity-magazines-military-style-guns.

¹⁷ *Mut. Film Corp. v. Indus. Comm'n of Ohio*, 236 U.S. 230, 243 (1915).

¹⁸ *Nevada Comm'n on Ethics v. Carrigan*, 131 S. Ct. 2343, 2350 (2011).

law so that the court hearing the challenge may evaluate, roughly speaking, whether the justification is strong enough to permit the law to stand or, alternatively, whether the measure goes too far and thus violates the Constitution.

I begin with this return to fundamentals because it never ceases to surprise me how often those engaged in legal debate talk past one another by conflating these distinct steps. In the Second Amendment context particularly, there is no excuse for making that mistake. For *Heller* itself makes it absolutely plain that not every gun regulation even triggers Second Amendment review. In other words, sometimes governments may enact regulations addressing the manufacture, transfer, possession or use of firearms that categorically fall outside the Second Amendment's scope, freeing governments of any burden even to make detailed defenses of the provisions in question. For example, the *Heller* opinion specifically named "longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings" as illustrative examples of regulations that should not even receive further constitutional review.¹⁹ The importance of this point should not be underemphasized. If too many entirely reasonable firearm regulations, like assault weapon bans and background checks, or rules about trafficking and straw purchases, are subjected to heightened Second Amendment review, it will become difficult if not impossible to separate those regulations categorically from the restrictions that *Heller* specifically approved without subjecting them to any "scrutiny" at all.

¹⁹ *Dist. of Columbia v. Heller*, 554 U.S. 570, 626 - 27 (2008).

Beyond the examples appearing in the decision, *Heller* also identifies the three primary factors to consider in judging whether other types of regulation trip the Second Amendment's alarm. First, the Court carefully frames the scope of the Second Amendment to cover *only* firearms "in common use at the time."²⁰

Second, *Heller* recognized that "dangerous or unusual" weapons may be and have historically been heavily regulated or banned.²¹ It is not inconceivable – indeed, it seems quite likely – that the Court's pause to distinguish unusually dangerous weapons from widely possessed handguns had precisely the 1994 Assault Weapons Ban, which included a prohibition on high-capacity magazines, in mind. At the very least, the *Heller* majority recognized that the government could keep machine guns —"M-16 rifles and the like"—out of the hands of civilians.²² The Supreme Court thus emphatically rejected the extravagant, or as Justice Scalia characterized it, "startling" notion, still promoted by some, that the Second Amendment could fulfill its original purposes only if citizens were guaranteed a right to arm themselves to the teeth, matching in their private armories essentially the full array of weapons possessed by the United States Military.²³

Third and finally, the Court emphasized the importance of a nexus to core self-defense needs.²⁴ The majority in *Heller* had no trouble recognizing that handguns represented the

²⁰ *Id.* at 627.

²¹ *Id.*

²² *Id.*

²³ *Id.* at 624.

²⁴ *Id.* at 599 ("Justice Breyer's assertion that individual self-defense is merely a 'subsidiary interest' of the right to keep and bear arms . . . is profoundly mistaken. He bases that assertion

“quintessential self-defense weapon,” particularly in the home.²⁵ Moreover, handguns were not categorically more dangerous than other types of firearms. So Washington D.C.’s handgun ban clearly fell within the scope of the Second Amendment.

The clarity of *Heller*’s guidance on how to apply these threshold factors begins to dissipate, however, when they no longer align so strikingly in one direction. To begin with, the Court left “dangerousness” undefined, and what the Court meant by that term is not entirely self-evident. In an obvious sense, *all* firearms are dangerous; that is what makes them effective instruments of self-defense. The *Heller* ruling, therefore, asks us to balance any *exceptional* dangerousness of particular firearm design features against the potential self-defense value of those features. For example, even if home possession of machine guns for self-defense might, on rare occasion, deter criminal trespassers more than home possession of handguns, that benefit is simply not sufficient to overcome the substantial hazards to innocent bystanders and intentional targets, in particular the police. *Heller* obviously does not contemplate asking the government to provide an intricately reasoned justification for banning machine guns; instead, it recognizes – and it surely authorizes Congress, and indeed all of us, to recognize – excessive dangerousness in the inherent design of the weapon²⁶ so as to cut off Second Amendment review at the threshold.

solely upon the prologue—but that can only show that self-defense had little to do with the right’s *codification*; it was the *central component* of the right itself.” (emphasis in original).

²⁵ *Heller*, 544 U.S. at 629.

²⁶ Throughout this debate, opponents of restrictions on large-capacity magazines have repeatedly demanded empirical evidence showing a link between magazine capacity and gun violence. Studies in that mold certainly exist, and I discuss them later. *See, e.g.*, text accompanying notes 48 – 50. But at this threshold stage of the Second Amendment inquiry, the *Heller* decision’s meaning of dangerousness cannot be equivalent to an empirically demonstrated effect on public safety. Rather, the standard is one that asks us to examine design features to assess whether the

All things considered, I conclude that reasonably restricting magazine size and availability does not implicate the core Second Amendment right as *Heller* conceived of it. The reason is not the first factor, that of “common use,” because, of course, large-capacity ammunition magazines and the firearms outfitted for them are, by any reasonable measure, in quite common use in the United States. I note here just a few examples. The standard Glock pistol, the firearm that one reporter called “America’s handgun” in a recent book on the subject, comes equipped with a seventeen-round magazine.²⁷ And America’s most popular rifle, the AR-15 model,²⁸ typically comes with a thirty-round magazine and can accommodate magazines with even larger capacities.²⁹

But to contend that the sizeable market presence of a particular firearm feature is sufficient in itself to trigger full Second Amendment scrutiny is to misrepresent the lesson of *Heller*. The relative dangerousness and self-defense-serving capacity of a firearm or design

weapon poses an aggravated threat to safety as a common-sense matter. First, if the former were the meaning of dangerousness, the threshold inquiry, which may lead courts to conclude that the Second Amendment does not even apply, would become indistinguishable from the more advanced stage of review, in which courts scrutinize a government’s public safety rationale. Second, making empirical evidence of salutary public-safety impacts a prerequisite to gun regulation would defeat efforts to respond to new technologies and lethal features that pose a substantial threat to public safety. The Second Amendment does not require that Americans afford the gun industry a “wait and see” grace period on the (in)famous theory that even a vicious dog deserves one free bite.

²⁷ Erin McCarthy, *Why the Glock Became America’s Handgun*, POPULAR MECHANICS (Jan. 12, 2012, 6:30 AM), <http://www.popularmechanics.com/technology/military/weapons/why-the-glock-became-americas-handgun>

²⁸ Erica Goode, *Rifle Used in Killings, America’s Most Popular, Highlights Regulation Debate*, N.Y. TIMES (Dec. 16, 2012), <http://www.nytimes.com/2012/12/17/us/lanza-used-a-popular-ar-15-style-rifle-in-newtown.html?pagewanted=all>.

²⁹ Steven Almasy, *Newton Shooter’s Guns: What We Know*, CNN (Dec. 19, 2012, 10:11 AM), <http://www.cnn.com/2012/12/18/us/connecticut-lanza-guns/index.html>.

feature are also crucial considerations. This approach makes complete sense. The common use and possession of a given firearm feature is, at best, just one helpful indicator of whether restricting that feature will stymie or frustrate the exercise of the core Second Amendment protection of lawful self-defense to a constitutionally cognizable degree. For instance, in the case of high-capacity magazines, significant market presence does not necessarily translate into heavy reliance by American gun owners on those magazines for self-defense. Analysis of the modern development of the U.S. gun market demonstrates that the firearms industry, driven by an obvious profit motive, ushered in a revolution in the state of the market during the 1980s. Manufacturers began to roll out increasing numbers of pistols with ever-larger-capacity magazines rather than revolvers, which take just six rounds of ammunition and had traditionally been the most popular firearm for personal self-defense.³⁰ The frequent purchase of such large-capacity magazines, then, may not be attributable purely or even primarily to actual gun-owner preferences, much less to gun-owner needs. Rather, guns equipped with or ready for large-capacity magazines may simply be the weapons most readily made available on the market. And even if this market presence begins to influence more Americans to purchase firearms with high-capacity magazines because they fear attacks from criminals possessing guns outfitted with the same high-capacity magazines, nothing in *Heller* suggests that it is improper for the government to halt the escalation of this arms race in its tracks. The one-way ratchet of ever more powerful firearms is not a constitutional inevitability. For unlike the doctrine of mutually assured destruction that some say maintained an uneasy peace during the nuclear arms buildup of the

³⁰ See DC Reedy & CS Koper, *Impact of handgun types on gun assault outcomes: a comparison of gun assaults involving semiautomatic pistols and revolvers*, 9 INJURY PREVENTION 151, 151 (2002), available at <http://injuryprevention.bmj.com/content/9/2/151.full#aff-1>.

VIOLENCE POLICY CENTER, BACKGROUND ON GLOCK 19 PISTOL AND AMMUNITION MAGAZINES USED IN ATTACK ON REPRESENTATIVE GABRIELLE GIFFORDS AND OTHERS 1 (2011), available at www.vpc.org/fact_sht/AZbackgrounder.pdf.

Cold War, the propagation of increasingly dangerous guns on American streets has already taken an all-too-violent toll. In other words, tempering the trend toward more dangerous weapons actually *vindicates* the core Second Amendment right of self-defense and personal safety that *Heller* recognizes. In this context, as in many others, less is more.

But even looking beyond the market saturation of large-capacity magazines, this feature runs headlong into the other threshold obstacles that *Heller* requires Second Amendment claims to clear. As experts in effective firearms regulation have preached for years and particularly fervently in recent weeks, higher-capacity magazines pose greater dangers to public safety. By permitting shooters using semi-automatic weapons to continue firing more bullets without interruption, these magazines increase the potential lethality of armed killers.³¹ Though well-trained gun users can change magazines quickly, this interruption may, as we saw last year in the Arizona shooting of Rep. Gabby Giffords, afford time for heroic men or women to intervene and disarm the shooter.³² Moreover, this interruption gives our police a chance to return fire.³³ And it may even provide time for reflection and rethinking before murder becomes massacre.

³¹ BRADY CAMPAIGN TO PREVENT GUN VIOLENCE, ASSAULT-STYLE WEAPONS: HIGH-CAPACITY MAGAZINES, <http://www.bradycampaign.org/legislation/msassaultweapons/highcapacity> (last visited Feb. 2, 2013).

³² Ken Dolak & Justin Wealer, *Woman Wrestled Fresh Ammo Clip From Tucson Shooter as He Tried to Reload*, ABC NEWS (Jan. 9, 2011), <http://abcnews.go.com/Politics/patricia-maisch-describes-stopping-gunman-reloading/story?id=12577933>.

³³ I believe I can speak for many Americans when I thank Baltimore County Police Chief Jim Johnson for the illuminating insights he has publicly offered on the threats of high-capacity weapons not just to public safety in general but also law enforcement officer safety more specifically. See, e.g., John Quinones, *Baltimore Police Chief Wants to Ban High-Capacity Firepower*, ABC NEWS (Dec. 20, 2012), <http://abcnews.go.com/US/baltimore-police-chief-ban-high-capacity-firepower/story?id=18030163>

Against the evident dangerousness of high-capacity magazines as a design feature, we must evaluate the strength and plausibility of asserted self-defense interests. Critics of recent proposals to reestablish a limit on high-capacity magazines have argued that firing more than ten rounds without changing a magazine is necessary for effective self-defense. While I have no doubt that subscription to this perspective among some law-abiding gun owners is sincere, I doubt that it is well-founded. It's rhetorically effective to ask, "How many bullets do *you* want in your magazine when an intruder breaks into your home?" But the answer tells us little that is of relevance to the Second Amendment as *Heller* conceives that provision. I might want a magazine with twice as many bullets as any possible home intruder; I might want a machine gun too. But in the end that can't be the measure of what the Second Amendment says I have a *right* to own and deploy.

Despite the emotional resonance of this kind of appeal, incidents like burglaries and home invasions – even when they lead to the exchange of fire – are unlikely to *require* firing many shots. The NRA publishes a regular column featuring newspaper clippings of gun owners protecting themselves against intruder attacks, and an analysis of these reports over a five-year period demonstrated that in 50% of all cases, two or fewer shots were fired, and the average number of shots fired across the entire data sample was also about two.³⁴ Of course, this data comes from the episodes the NRA chooses to report, so selection bias is possible, meaning the

³⁴ Claude Verner performed the analysis of reporting over the period 1997 to 2001. The findings further show that when many shots were fired, a (presumably frightened) gun owner finished an entire magazine rather than firing the number of shots that necessarily had to be fired in light of the scenario. The analysis can be found reprinted with the author's permission at *Analysis of Five Years of Armed Encounters (With Data Tables)*, GunsSaveLives.net (March 12, 2012), <http://gunssavelives.net/self-defense/analysis-of-five-years-of-armed-encounters-with-data-tables/>.

average number of shots fired per incident could be even lower.³⁵ Even police officers traditionally found revolvers with six-bullet magazines sufficient for their own safety until more dangerous guns flooded the market.³⁶ And we should not lose track of the bigger picture: studies show that self-defense in the home with firearms is rare.³⁷ Additionally, firearms accidents are all too common: between 1965 and 2000, unintentional shootings accounted for the deaths of over 60,000 Americans.³⁸ Firing more bullets quickly may compound their damage.

Another version of the critics' response is that in scary situations, like home invasions, gun owners may go through bullets too quickly in a fit of nervousness or panic.³⁹ That may be true, but it also aggravates the downside hazard in cases of error,⁴⁰ so it is not at all clear that increased access to large-capacity magazines for shooters subject to fragile nerves represents a

³⁵ It seems likely, for example, that merely brandishing a weapon may often lead intruders to flee. A non-exhaustive review of the NRA column reveals several examples of exactly this scenario, giving me the impression that the NRA's reporting is not demonstrably biased toward extreme scenarios or even those in which some shots are fired. See, e.g., Armed Citizen, NRA (March 2012), <http://www.nrapublications.org/index.php/12492/armed-citizen-23/> (“[The resident] met the intruder at her bedroom door, pointed the gun at him and demanded he leave. The trespasser fled without hesitation.”).

³⁶ See Eugene Volokh, *Implementing the Right to Keep and Bear Arms for Self-Defense: An Analytical Framework and A Research Agenda*, 56 UCLA L. REV. 1443, 1489 (2009).

³⁷ A study of Atlanta police records, for example, found that victims of burglaries used guns in self-defense just 3% of the time. For a description of the study and a rich discussion of self-defense uses for firearms, see DAVID HEMENWAY, PRIVATE GUNS, PUBLIC HEALTH 67 (2004). The study is A.L. Kellermann et al., *Weapon involvement in home invasion crises*, 273 J. OF THE AM. MED. ASSOC. 1759 (1995).

³⁸ HEMENWAY, *supra* note 38, at 27 – 35.

³⁹ See, e.g., *Heller v. Dist. of Columbia*, 670 F.3d 1244, 1261 (D.C. Cir. 2011); Emily Miller, *The High Capacity Magazine Myth*, WASHINGTON TIMES (Jan. 27, 2013), <http://www.washingtontimes.com/news/2013/jan/27/the-high-capacity-magazine-myth/>; Jacob Sullum, *The Threat Posed by Gun Magazine Limits*, REASON (Jan. 16, 2013), <http://reason.com/archives/2013/01/16/the-threat-posed-by-gun-magazine-limits>.

⁴⁰ *Heller*, 670 F.3d at 1263 - 64 (“[T]he tendency is for defenders to keep firing until all bullets have been expended, which poses grave risks to others in the household, passersby, and bystanders.” (internal quotations omitted)).

net gain for home security or public safety. Finally, some critics of magazine-capacity limits have pointed out that, realistically, many gun owners have not received proper training and for that reason, may fire bullets indiscriminately; a larger magazine – so the thinking presumably goes – will increase the chances that at least one of their wayward shots will hit its mark.⁴¹ As the Supreme Court recognized in *Heller*, however, the Second Amendment protects only the right of “*responsible* citizens to use arms in defense of hearth and home.”⁴² In other words, a dangerous firearms feature otherwise outside the Second Amendment’s scope cannot become subject to heightened constitutional scrutiny because of the shortcomings of *irresponsible* gun owners.

To be sure, *some* gun owners may struggle to change magazines quickly not for lack of adequate training but rather by reason of disability or old age.⁴³ Perhaps a ban on high-capacity magazines without any exception for the disabled or elderly might, for this reason, trigger heightened scrutiny of such a ban as applied specifically to those individuals. But the possibility that a prohibition could raise constitutional questions in some subset of its applications does not mean that the prohibition is constitutionally vulnerable on its face.⁴⁴ And it remains the case that

⁴¹ See, e.g., Stephen Hunder, *Why 33 rounds makes sense in a defensive weapon*, WASHINGTON POST (Feb. 6, 2011),

<http://www.washingtonpost.com/wp-dyn/content/article/2011/02/04/AR2011020407083.html>

⁴² *Dist. of Columbia v. Heller*, 554 U.S. 570, 635 (2008) (emphasis added).

⁴³ Yih Chau-Chang, *High-Capacity Magazines And Their Critical Role In Lawful Self-Defense*, THE EXAMINER (March 10, 2011), <http://www.examiner.com/article/high-capacity-magazines-and-their-critical-role-lawful-self-defense>

⁴⁴ The Supreme Court has exhibited an extreme reluctance to strike down laws on their face – meaning in all applications – when only some applications would fall afoul of a constitutional provision (with the exception of the First Amendment, as facially overbroad laws may chill protected free speech). See RICHARD H. FALLON, DANIEL J. MELTZER & DAVID L. SHAPIRO, HART AND WECHSLER’S THE FEDERAL COURTS AND THE FEDERAL SYSTEM 162, 168 (6th ed. 2009).

large-capacity magazines are highly unlikely to be necessary to self-defense in the vast majority of home invasions or burglaries, even those that resort to the exchange of fire. The facial validity of a high-capacity magazine ban is therefore clear.

Despite the considerable market presence of high-capacity magazines, the danger they pose to public safety and the weakness of the self-defense justification for their possession means that two of the three threshold *Heller* factors point strongly against extending Second Amendment protection to high-capacity magazines. The D.C. Circuit Court of Appeals, in a case challenging Washington D.C.'s restriction on magazines with more than ten rounds, recently struggled with this first stage of analysis and determined that the court did not have before it sufficient evidence to decide whether the Second Amendment even *reached* large-capacity magazines.⁴⁵ However, the court went on to conclude that, even if it was proper to extend coverage of the amendment to large-capacity magazines, the government's interest in banning them was strong enough to do so without violating Second Amendment rights.⁴⁶

Having now reviewed the best evidence and argumentation advanced by defenders of high-capacity magazine possession, I doubt that the Supreme Court would find it necessary to reach that second stage of review in dealing with a ban on high-capacity magazines and am quite confident that, in any event, the Court would agree with the ultimate conclusion that, even if the amendment applies, a ban on high-capacity magazines withstands Second Amendment scrutiny.

⁴⁵ *Heller*, 670 F.3d at 1261.

⁴⁶ *Id.* at 1263 – 64.

In explaining that conclusion, I emphasize that commonly advanced rejections of a legitimate government interest in banning high-capacity magazines are deeply misleading. Many opponents of reasonable firearms regulation insist that we tried banning large-capacity magazines in 1994: the results are in, they say, and we failed. One favorite trope is to cite to a 1997 Department of Justice study, which, according to the recent testimony of Wayne LaPierre, “proved that [the] ban had no impact on lowering crime.”⁴⁷ But no one is even *arguing* that a ban on high-capacity magazines (or on assault weapons, for that matter) will necessarily decrease crime rates; highly lethal firearms will still be widely available on the market, and some criminals will use them, just as they do now.

What defenders of a ban on high-capacity magazines *do* argue is that such a ban will help prevent these criminals from killing or maiming as many people when they commit violent crimes. And that argument is solidly grounded. One study, for example, found that between 1984 and 1993, criminals using guns with high-capacity magazines or assault weapons as defined by the 1994 Assault Weapons Ban killed or injured an average of 29 victims, compared to the average 13 victims shot by criminals unequipped with large-capacity magazines.⁴⁸ Another study suggests that, since the lapse of the ban in 2004, high-capacity magazines have once again

⁴⁷ See, e.g., *What Should America Do About Gun Violence?: Hearing Before the S. Judiciary Comm.*, 113th Cong. (2013) (prepared testimony of Wayne LaPierre, Executive Vice President and Chief Executive Officer of the National Rifle Association).

⁴⁸ This study considered all “mass shooting” incidents: those in which six or more were killed or twelve or more were wounded. For an explanation of this study, see Christopher S. Koper, *America’s Experience with the Federal Assault Weapons Ban*, in *REDUCING GUN VIOLENCE IN AMERICA* 167 (Daniel W. Webster & Jon S. Vernick, eds., 2013). The study is Christopher S. Koper & Jeffrey A. Roth, *The Impact of the 1994 Federal Assault Weapon Ban on Gun Violence Outcomes: An Assessment of Multiple Outcome Measures and Some Lessons for Policy Evaluation*, 17 *J. OF QUANTITATIVE CRIMINOLOGY* 33 (2001).

become common in episodes of violent crime after the beginnings of a decline, which probably took place because the black market for these magazines had begun to dry up.⁴⁹

Even more misleading is the suggestion that in 1997 we could (or even today that we can) draw meaningful conclusions from the absence of unmistakable evidence of a decrease in violence following the 1994 ban. That legislation grandfathered or exempted many thousands of weapons already owned, and those could still be sold or transferred.⁵⁰ In other words, the 1994 ban was crafted with long-term effects in mind; to measure its effects notwithstanding its untimely end is to misunderstand fundamentally how the legislation was designed to work. It is therefore all the more telling that supporters of reasonable regulation can cite studies based upon identifiable trends emerging during the latter years of the ban, as well as evidence from both before and after the ban, showing that the legal availability of large-capacity magazines is indeed correlated with increased deaths and injuries caused by gun violence. Considered alongside the dangerousness inherent in a large-capacity magazine as a design feature, this evidence provides the government with a sufficient basis to satisfy the Second Amendment under any plausible understanding of the Supreme Court's jurisprudence surrounding that amendment.

⁴⁹ See David S. Fallis and James V. Grimaldi, *Va. data show drop in criminal firepower during assault gun ban*, WASH. POST (Jan. 23, 2011), <http://www.washingtonpost.com/wp-dyn/content/article/2011/01/22/AR2011012203452.html> (finding that in Richmond, Virginia, the percentage of guns with high-capacity magazines seized from criminals by police fell to a low of 10% by 2004, when the federal assault weapons ban expired, but has since rebounded to 22%).

⁵⁰ Koper, REDUCING GUN VIOLENCE IN AMERICA, *supra* note 49, at 165 – 66.

Assault Weapons Ban

By many accounts, the most important component of the newly proposed assault weapons ban is its prohibition on high-capacity magazines.⁵¹ But that does not mean that the remaining features of the proposal stand on weaker constitutional ground. Far from it. Application of *Heller*'s three threshold factors – dangerousness, commonness of use, and connection to core self-defense interests – demonstrates that the Second Amendment does not provide legal shelter to the features that trigger a firearm's prohibition under the ban.

Opponents of the legislation as well as some proponents of new firearms regulation have observed that some of the “military characteristics” that can lead to prohibition under the legislation⁵² (and, by some accounts, under assault weapons bans in general⁵³) are mostly cosmetic traits designed to make a gun *appear* dangerous and are not, in fact, intrinsically hazardous. But Congress would surely be acting within its constitutional authority if it were to reject this characterization as self-serving or otherwise unreliable. For example, the Brady Campaign to Prevent Gun Violence insists that “[p]istol grips . . . help stabilize the weapon during rapid fire and allow the shooter to spray-fire from the hip position [and that] [b]arrel

⁵¹ Tom Diaz, a researcher for the Violence Policy Center, has repeatedly called on lawmakers to focus their attention on a high-capacity magazine ban. *E.g.*, Tom Diaz, *Ten Ways to Spot a Sell-Out on Gun Control*, FAIRLY CIVIL (Jan. 14, 2013, 2:26 PM), <http://tomdiazgunsandgangs.com/2013/01/14/ten-ways-to-spot-a-sell-out-on-gun-control/> (“An effective law will focus on one prime feature—the ability to accept a high-capacity magazine.”).

⁵² *See, e.g.*, *What Should America Do About Gun Violence?: Hearing Before the S. Judiciary Comm.*, 113th Cong. (2013) (statement by Sen. Ted Cruz) (“Now, what the assault weapons ban instead targets are cosmetic features.”).

⁵³ *See, e.g.*, Nicholas J. Johnson, *Supply Restrictions at the Margins of Heller and the Abortion Analogue: Stenberg Principles, Assault Weapons, and the Attitudinalist Critique*, 60 HASTINGS L.J. 1285, 1295 (2009).

shrouds on assault pistols protect the shooter's hands from the heat generated by firing many rounds in rapid succession.”⁵⁴ Moreover, even if the characterization of these features as cosmetic were accurate, it would make little difference as a constitutional matter. In a recent televised interview, Justice Scalia explained the basis in history for exempting certain types of regulations from Second Amendment review. Certain limitations on gun ownership are constitutionally permissible, he contended, “because there were some [regulations] that were acknowledged at the time [of the Founding]. For example, there was a tort called affrighting . . . if you carried around a really horrible weapon just to scare people, like a head ax or something. . . .”⁵⁵ What the Justice evidently meant was that regulating weapons because they are chosen specifically for their intimidating appearance is constitutionally unproblematic because the very use of intimidation is unnecessarily disruptive to organized society.⁵⁶

Even more important to the constitutionality of the assault weapons ban is the absence of any connection to the core Second Amendment right to defend oneself with a firearm. At this committee’s hearing on January 30, several witnesses criticized the assault weapons ban on policy grounds, but in my role as a constitutional lawyer listening intently for arguments relevant to the proposal’s Second Amendment propriety, I was struck by the failure of anyone’s

⁵⁴ Brady Campaign to Prevent Gun Violence, *The Top 10 NRA Myths About Assault Weapons*, [http:// www.bradycampaign.org/issues/assaultweapons/nramyths/](http://www.bradycampaign.org/issues/assaultweapons/nramyths/).

⁵⁵ Interview with Justice Antonin Scalia by Chris Wallace, FOX NEWS SUNDAY (July 29, 2012), transcript available at <http://www.foxnews.com/on-air/fox-news-sunday/2012/07/29/justice-antonin-scalia-issues-facing-scotus-and-country#p/v/1760654457001>.

⁵⁶ Justice Scalia’s point about the tort of affrighting surfaces in the *Heller* decision itself: the majority opinion cited three illustrative examples of state courts entertaining such actions in the nineteenth century. See *Dist. of Columbia v. Heller*, 554 U.S. 570, 627 (2008) (citing, e.g., *State v. Lanier*, 71 N.C. 288, 289 (1874) (“The elementary writers say that the offence of going armed with dangerous or unusual weapons is a crime against the public peace by terrifying the good people of the land, and this Court has declared the same. . . .”)).

testimony to support these features as essential to self-defense. In fact, I have searched in vain for any reasoned arguments that pistol grips, forward grips, telescoping stocks, grenade or rocket launchers, and barrel shrouds are indispensable or even contribute to self-defense.

Finally, it is relevant to ask how many assault weapons Americans currently own. Data is hard to come by in large part because firearms manufacturers refuse to release data tracking their sales.⁵⁷ What we do know is that the number of weapons that would qualify under either the proposed ban's so-called "characteristics test" or its explicit list of banned models is smaller than the number of guns with standard-issue high-capacity magazines.⁵⁸ One reporter's painstaking analysis estimated that there are 3.75 million AR-15-style rifles owned in the U.S. today, and AR-15s are the most popular although not the exclusive type of qualifying assault weapon.⁵⁹ The NRA's lobbying arm estimates that, depending upon the definition of assault weapon, assault weapons represent 15% of all semi-automatic guns owned in the U.S., which in turn represent about 15% of all firearms owned in the U.S.⁶⁰ Given that the Congressional Research Service recently found that, as of 2009, Americans own about 310 million guns,⁶¹ the NRA's estimate would translate into approximately 7 million assault weapons owned today. Although 7 million is hardly a negligible figure, it still corresponds to quite a small portion of the

⁵⁷ Justin Peters, *How Many Assault Weapons Are There in America? How Much Would It Cost the Government To Buy Them Back?*, SLATE (Dec. 20, 2012), http://www.slate.com/blogs/crime/2012/12/20/assault_rifle_stats_how_many_assault_rifles_are_there_in_america.html.

⁵⁸ See Koper, REDUCING GUN VIOLENCE IN AMERICA, *supra* note 49, at 161 (explaining that the universe of large-capacity magazine equipped firearms is broader than the universe of weapons satisfying the criteria for categorization as an assault weapon).

⁵⁹ Peters, *supra* note 58.

⁶⁰ *Top Ten Frequently Asked Questions*, NRA-ILA, <http://www.gunbanfacts.com/FAQ.aspx> (last visited February 2, 2013).

⁶¹ WILLIAM J. KROUSE, CONG. RES. SERV., RL32842, GUN CONTROL LEGISLATION 8 (2012).

overall gun market – hardly enough to justify calling such weapons “common” within the meaning of *Heller*.

But for the purposes of constitutional analysis, debating how to characterize the significance of assault weapons’ market presence would be a waste of time. To make a difference to *Heller*’s threshold inquiry, which must take notice of the complete lack of any connection of assault-weapon features to self-defense as well as these features’ dangerousness in both fact and appearance, the market presence of assault weapons would have to be overwhelmingly large (and even then, I doubt seriously the bottom line would change as a constitutional matter). And overwhelmingly large it assuredly is not.

Universal Registration and Background Checks

All responsible participants in the gun safety debate agree that some groups of people simply should not be allowed to own, keep, or carry guns. Those groups include children, dangerous felons, and those with serious mental illnesses that preclude safe gun ownership. When some observers casually compare the Second Amendment to the First, they forget this essential difference: Although freedom of speech sometimes comes at a price, and although speech can at times pose dangers, our constitutional system addresses those dangers by permitting government to impose carefully crafted limits on speech, not by limiting or licensing eligible speakers. The Constitution’s strategy with respect to guns is entirely different. It addresses the dangers of guns in the wrong hands by permitting government to keep them out of

those hands in the first place, and, of course, by permitting government to regulate where and under what conditions people can bear those weapons in possible confrontation with others.

Accordingly, this Congress might be called upon to consider measures designed to minimize the risk that guns fall into the hands of such prohibited purchasers and owners. Measures dealing with straw purchases and trafficking are obviously important in that effort and are clearly constitutional. Rather than spending the committee's time on those measures, I will focus here on provisions that mandate universal registration requirements or a universal background check, closing the many notorious loopholes that characterize current laws on the subject. There is no serious doubt that requiring universal registration or a universal background check would comply with the Second Amendment.

It is important to recognize, at the outset, that prohibiting particular groups of people from owning or possessing guns is fully compatible with the Second Amendment. In the first place, such prohibitions are consistent with the original and traditional understanding of the Second Amendment. It was widely accepted at the time of the framing that not every person had a right to keep and bear arms; instead, the right was closely tied to the notion of responsible citizenship, and it has long been denied to criminals and others whose possession of guns would pose a severe danger to the public.⁶² On this point, precedent aligns closely with history. The Supreme Court said in *District of Columbia v. Heller*: “[N]othing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the

⁶² See *United States v. Rene E.*, 583 F.3d 8, 15–16 (1st Cir. 2009).

mentally ill ...”⁶³ The Court fortified this conclusion in *McDonald v. City of Chicago*, when it added: “We made it clear in *Heller* that our holding did not cast doubt on such longstanding regulatory measures as ‘prohibitions on the possession of firearms by felons and the mentally ill’ ... We repeat those assurances here.”⁶⁴

Once the constitutionality of prohibiting gun possession by some people is accepted, the constitutionality of a reasonable system of registration or background checks follows automatically. The most powerful argument for this inference is not a technical legal point; it is, instead, common sense. And, although it shouldn’t be necessary to cite authority for the point, it’s worth noting that as eminent an authority as Alexander Hamilton wrote in *The Federalist* that “[t]he rules of legal interpretation are rules of *common sense*,” and that the “true test” of a “just application” of these rules is whether the resulting interpretation is “consistent with reason and common sense.”⁶⁵

Consider, then, whether the Constitution would be “consistent with reason and common sense” if it allowed prohibitions on firearms purchases by felons but disallowed background checks to determine whether a felon was the would-be purchaser of a firearm. As a matter of common sense, we all know that guns do not of their own accord stay out of the hands of prohibited purchasers. Nor are prohibited purchasers likely to confess their legal inability to buy guns when talking to gun dealers. The prohibitions, in short, do not enforce themselves. In order to be effective, in order to be meaningful, in order to be anything more than rules on paper, they

⁶³ 554 U.S. 570, 626 (2008).

⁶⁴ 130 S. Ct. 3020, 3047 (2010) (plurality opinion).

⁶⁵ *The Federalist* No. 83, at 495 (Alexander Hamilton) (Clinton Rossiter ed., 1961).

must be comprehensive and must be carried into operation by the government. It contradicts common sense—it ignores the fact that “the framers of the Constitution were not mere visionaries, toying with speculations or theories, but practical men”⁶⁶—to say on the one hand that prohibiting felons from owning guns is constitutional, but to insist on the other hand that the background checks that seek to make those prohibitions effective are unconstitutional.

The Supreme Court’s decisions in *District of Columbia v. Heller* and *McDonald v. City of Chicago* confirm the constitutionality of reasonable background check requirements. *Heller* expressly affirms that the Court was not calling into doubt “laws imposing conditions and qualifications on the commercial sale of arms.”⁶⁷ The *McDonald* Court “repeat[ed] those assurances,” observing that its holding “does not imperil every law regulating firearms.”⁶⁸ The universal registration requirement or background check is simply a “condition[.]” on the transfer of arms; it is therefore expressly within the zone of permissible regulation identified by *Heller* and *McDonald*.

Analogous Supreme Court doctrine points in the same direction. The right to vote, like the right to keep and bear arms, is a fundamental right of Americans.⁶⁹ But no serious legal scholar doubts that before letting a citizen cast his ballot, the government may require the citizen to register and may take steps to check whether he or she really is an eligible voter. And the

⁶⁶ *NFIB v. Sebelius*, 132 S. Ct. 2566, 2589 (2012) (opinion of Roberts, C.J.) (quoting *South Carolina v. United States*, 199 U.S. 437, 449 (1905)).

⁶⁷ 554 U.S. at 626–27.

⁶⁸ 130 S. Ct. at 3047 (plurality opinion).

⁶⁹ Compare *Harper v. Virginia State Board of Elections*, 383 U.S. 663 (1966) (holding that the right to vote is fundamental), with *McDonald v. City of Chicago*, 130 S. Ct. 2020 (2010) (holding that the right to keep and bear arms is fundamental).

Supreme Court agrees; in *Crawford v. Marion County Election Board*, for example, it concluded that Indiana’s voter ID law was a permissible means of ensuring that only eligible voters participate in an election.⁷⁰ Checking whether a voter is eligible before giving that voter a ballot is comparable to checking whether a purchaser is eligible before letting her acquire a gun. Just as the former is constitutional, so is the latter. And the argument is of course even stronger in the instance of firearms. For, unlike a ballot in the hands of an ineligible voter, which might in the end prove to make no difference to who wins or loses the election at issue, a gun in the hands of even one ineligible owner poses a deadly danger all by itself.

History reinforces common sense and case law in this regard. The Supreme Court in *Heller* and *McDonald* stressed the role of history in interpreting the scope of the Second Amendment; “longstanding” prohibitions upon gun ownership, the Court indicated, are presumptively exempt from Second Amendment scrutiny.⁷¹ Lower courts have likewise noted that history plays an important, though not exclusive, role in determining the scope of permissible regulation under the Second Amendment.⁷² Measures to keep guns out of the hands of prohibited owners – owners who could not safely be entrusted with control of a lethal weapon – have a strong historical pedigree. For example, many states have longstanding laws—sometimes, laws dating back a century or more—requiring sellers to keep registers of all firearm purchasers; the registers had to be open to peace officers.⁷³ The government could use thus use

⁷⁰ 553 U.S. 181 (2008) (plurality opinion).

⁷¹ See 554 U.S. at 626–27; 130 S. Ct. at 3047 (plurality opinion).

⁷² See, e.g., *Heller v. District of Columbia*, 670 F.3d 1244, 1253 (D.C. Cir. 2011); *Ezell v. City of Chicago*, 651 F.3d 684, 701–04 (7th Cir. 2011); *United States v. Marzarella*, 614 F.3d 85, 89 (3d Cir. 2010); *United States v. Chester*, 628 F.3d 673, 680 (4th Cir. 2010); *United States v. Reese*, 627 F.3d 792, 800–01 (10th Cir. 2010).

⁷³ See *Heller*, 670 F.3d at 1253–54.

these registers to determine whether any of the purchasers had obtained weapons in violation of the law.

To be sure, modern computerized background checks differ from the more cumbersome historical enforcement measures known to history. But “a constitution [is] intended to endure for ages to come.”⁷⁴ Just as the Second Amendment covers modern weapons, like handguns, that did not exist when the Bill of Rights was ratified in 1791, so too does it cover modern enforcement measures, like mandatory computerized background checks, that could not have been anticipated in 1791. Reasonable background checks fit into the long historical tradition to which registration requirements belong, and that is enough to sustain them without further ado under the tests established by the Supreme Court in *Heller* and *McDonald*.

In short, all relevant legal considerations—logic and common sense, directly applicable precedent, analogies to surrounding legal doctrines, and history and tradition—point to the same conclusion. The Second Amendment does not prohibit Congress from passing laws to carry into effect concededly constitutional prohibitions on firearm purchases. The universal background check, in particular, easily passes constitutional muster as a permissible regulation of the transfer of firearms.

This is not to say that all conceivable background check systems would comport with the Constitution. Suppose, for example, that Congress were to pass a law requiring handgun purchasers to undergo an extensive check on the purchasers themselves and all their family

⁷⁴ *McCulloch v. Maryland*, 17 U.S. 316, 415 (1819).

members and housemates, a check that took years to complete. Such a scheme would plainly impose a very severe burden on the right to keep and bear arms for self-defense. The burden would be entirely disproportionate to the objective the government is seeking to pursue. Where a background check is taken to such lengths that it effectively destroys the right to keep and bear arms, rather than ensuring that the right is enjoyed only by those constitutionally entitled to it, the government has overstepped the lawful boundaries of its power.

Such concerns are entirely out of place here, however. Whether a particular background check scheme that Congress adopts would go too far obviously depends on the specific details of that scheme. But none of the proposals seriously under consideration at the present come remotely close to overstepping constitutional boundaries. The proposed background check frameworks, especially those that rely on checks conducted instantaneously through the National Instant Background Check System, impose a constitutionally insignificant burden upon law-abiding citizens. Indeed, an instant background check is much *less* onerous than the Voter ID law that the Supreme Court upheld in *Crawford v. Marion County Election Board*; it is also much less cumbersome than longstanding registration requirements and other conditions on sale⁷⁵ that are concededly constitutional. Ultimately, therefore, I see no merit to the constitutional objections to the background check proposals presently being seriously considered by Congress.

III. The Consistency of the President's Measures with the Separation of Powers

⁷⁵ See *Heller*, 670 F.3d at 1253.

This January, President Obama announced twenty-three steps that his Administration would take to prevent gun violence.⁷⁶ The President has begun to implement these steps by using the executive powers vested in him by the Constitution and laws of the United States. Because the President adopted these measures by executive action, without specific congressional involvement, some have concluded that the President violated the separation of powers established by the Constitution. This claim is legally untenable; the President is acting well within his powers as head of the executive branch.

Some of the President's measures involve nothing beyond communicating with members of the public. Measure 23, for example, is to "[l]aunch a national dialogue ... on mental health." There is plainly no constitutional problem with executive steps of this sort. The President obviously does not need congressional permission every time he decides to give a speech or publish a press release.

Another category of measures—and this covers the great majority of the actions that the President has committed to take—includes steps that will improve the enforcement of federal laws already on the books. Thus, the President has agreed to "[m]aximize enforcement efforts to prevent gun violence and prosecute gun crime."⁷⁷ He has likewise decided "to require federal law enforcement to trace guns recovered in criminal investigations."⁷⁸ These improvements to

⁷⁶ See, e.g., Colleen Curtis, *President Obama Announces New Measures to Prevent Gun Violence*, Jan. 16, 2013, available at <http://www.whitehouse.gov/blog/2013/01/16/president-obama-announces-new-measures-prevent-gun-violence>.

⁷⁷ Measure 13.

⁷⁸ Measure 9.

federal law enforcement efforts plainly fall within the President’s constitutional power—and constitutional responsibility—to “take Care that the Laws be faithfully executed.”⁷⁹

A third group of measures involves the making of rules and regulations under preexisting congressionally granted authority. For instance, step 21—“[f]inalize regulations clarifying essential health benefits and parity requirements within ACA exchanges”—simply carries into effect authority granted by the Patient Protection and Affordable Care Act.⁸⁰

Step 11, “[n]ominate an ATF director,” is equally clearly within the President’s constitutional powers; the Constitution expressly states that the President “shall nominate, and by and with the Advice and Consent of the Senate, shall appoint ... Officers of the United States.”⁸¹ Likewise, the Constitution plainly authorizes the President’s requests for information from executive branch officials, such as step 15, “direct[ing] the Attorney General to issue a report on the availability and most effective use of new gun safety technologies and challenge the private sector to develop innovative technologies”; Article II provides that the President “may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices.”⁸²

Finally, and perhaps most controversially, some of the President’s measures entail the issuance of interpretations of existing laws. To this class belongs, for instance, step 16, “[c]larify[ing] that the Affordable Care Act does not prohibit doctors asking their patients about

⁷⁹ U.S. Const. art. II, § 3.

⁸⁰ Patient Protection and Affordable Care Act of 2010, Pub. L. 111-148, § 1321(a).

⁸¹ U.S. Const. art. II, § 2, cl. 2.

⁸² U.S. Const. art. II, § 2, cl. 1.

guns in their homes.” To be sure, the Article III judiciary must ultimately interpret laws when applying those laws in the context of concrete cases or controversies. But it is well established that the President also has the authority to interpret the law—and especially the power to announce legal interpretations concerning issues that have not yet been settled by the courts. In fact, the tradition of presidential clarifications of the law goes back to President George Washington’s Neutrality Proclamation. The tradition also has a solid grounding in the text of the Constitution; it is based on the Constitution’s vesting in the President of “the executive Power,” and in its imposition on the President of the power and duty to “take Care that the Laws be faithfully executed.”⁸³

In sum, although some opponents of gun regulation might disagree with some of the President’s executive actions as a matter of policy, those disagreements cannot plausibly be translated into constitutional objections. From a separation-of-powers perspective, the President has acted well within the bounds of his constitutionally assigned authority.

In closing, I note that I share the beliefs of many that the prevalence of guns in our country is by no means the only significant contributor to the tragedy at Newtown and to the many other gun-related massacres we have seen in recent months and recent years, or to the deaths of an average of over 30 Americans, nearly 5 of them children, *each and every day* as a result of gunfire homicides in less visible, and often virtually unnoticed, tragic incidents.⁸⁴

⁸³ U.S. Const. art. II, §§ 1, 3.

⁸⁴ The Center for Disease Control reports that in 2010, 11,078 individuals in the U.S. died from firearm-related homicides. 1,773 of them were between the ages of 0 and 19. *See* CENTER FOR DISEASE CONTROL, NATIONAL CENTER FOR INJURY PREVENTION & CONTROL, *WISQARS*

Violence has many causes. Violent video games, for example, some of them simulating mass shootings, may well play a significant role in the inculcation of violent attitudes among children.⁸⁵ And mental illness plainly played a significant part in bringing about the massacre at Newtown. If our country is to reduce the incidence of similar unspeakable violence in the future, the widespread availability of high-powered guns to people who should not possess them and who have no constitutional right to do so is by no means the only phenomenon that our government, our society, and our families need to address.

But it is simply not true that the presence of other causes of gun violence means that we neither can nor should do anything significant about the prevalence, too often in the wrong hands, of high-powered guns and high-capacity magazines that turn those guns from means of self-defense into weapons of mass destruction. It is not true constitutionally, it is not true politically, and it is not true morally. We must do our best to address in a serious way *every* source of avoidable death by firearms that we can, and if we always point to other problems still waiting to be solved we will never get started.

The time to get started on sensible gun regulation is not now—it was weeks, months, years, even decades ago. The Second Amendment is not a barrier. We have already delayed too long, and our society has paid a terrible price. We should delay no longer.

Fatal Injury Reports, National and Regional, 1999 – 2010,
http://webappa.cdc.gov/sasweb/ncipc/mortrate10_us.html (last visited Feb. 4, 2013).

⁸⁵ See *Brown v. Entertainment Merchants Ass'n*, 131 S. Ct. 2729, 2767–71 (2011) (Breyer, J., dissenting).

EXHIBIT 12

**Declaration of Roderick M. Thompson in
Support of Sunnyvale's Opposition to
Plaintiffs' Motion for Preliminary
Injunction**

Gary Kleck

**POINT
BLANK**

**Guns and Violence
in America**



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Anything Short of Total Success is Utter Failure

Opponents of gun laws, like opponents of any law, like to point to the failures of the laws—how many crimes are committed even in places with strict gun laws, how many criminals have guns despite the laws, and so on. This argument, however, is a non sequitur; it does not follow that gun laws are ineffective. All laws are violated and thus less than completely effective, and most important criminal laws are violated frequently, as a glance at criminal statistics indicates. Even some laws widely supported by the population have been violated by a majority of the population, as self-report surveys of the population have long shown (e.g., Wallerstein and Wyle 1947). Yet no one concludes that the thousands of homicides committed each year mean that laws prohibiting murder are ineffective and should be repealed. It is unreasonable to oppose a law merely because some people will violate it.

A more sensible standard to apply is to ask whether the benefits of the law exceed its costs, i.e., whether the world will, on balance, be a better place after the law is in effect. It is impossible to directly count the number of successes, i.e., the number of crimes deterred or otherwise prevented by the existence of laws prohibiting the acts, since one can never count the number of events that do not occur. And no matter how many failures there are, it is always possible that there are still more successes. The only way one can assess the relative balance of successes and failures is to compare jurisdictions having a law with those lacking the law, or to compare jurisdictions before and after they adopt a law, to see if there is, on balance, less crime with the law than without it. Just counting failures settles nothing.

Criminals Will Ignore the Law

A corollary to the previous fallacy is the assertion that many criminals will ignore gun laws and get guns anyway. This is indisputably true, but not especially decisive regarding the desirability of gun control, since it does not address the number of successes of gun control. There is no clearly established minimum level of compliance that must be achieved before a law is to be judged a success. And if there were such a standard, it certainly could not reasonably be 100%, and would not necessarily be even 50% or any other similarly high level. It is even conceivable that if just 1 or 2% of potentially violent persons could be denied a gun, the resulting benefits might exceed the costs of whatever measure produced this modest level of compliance.

As it happens, there appears to be some compliance with gun laws

even among the "hard-core" felons incarcerated in the nation's prisons. A survey of over 1800 felons in 11 state prisons found that 25% of felon gun owners reported having registered a firearm and 15% reported having applied for a permit to purchase or carry a gun, percentages that would have been higher had felons in states without such legal requirements been excluded from the computations (Wright and Rossi 1986, p. 84). Although the self-reported compliance levels were low, as one would expect in a sample of felons, they were also not zero. Among potentially violent persons not in prison, who are probably less persistently and seriously involved in law-breaking, compliance levels would presumably be even higher.

One Thing Leads to Another

Gun control supporters often wonder how the National Rifle Association (NRA) and other gun owner organizations can possibly oppose some of the more modest and apparently inoffensive regulations. Opponents reply that today's controls, no matter how limited and sensible, will just make it that much easier to take the next, more drastic step tomorrow, and then the next step, and the next, until finally total prohibition of private possession of firearms is achieved. They argue that gun control is a "slippery slope" on which it is hard to stop halfway, and that many proponents do not want to stop with just the more limited restrictions.

This fear is not completely unreasonable, as bills calling for a national ban on private possession of handguns have been introduced in Congress (Alviani and Drake 1975, pp. 55, 57) and much of the general public does favor prohibitions. In national opinion polls, about 40% of Americans say they support bans on the private possession of handguns, and one in six even support a ban on possession of *any* guns. Since about 75% of all Americans favor registering gun purchases and about 70% favor requiring police permits to buy a gun (Chapter 9), this means that *most* supporters of these moderate controls also favor a total ban on private handgun possession. If this is so among ordinary nonactivist supporters of gun control, it almost certainly is true of activists and leaders of gun control advocacy groups.

There have always been enough prominent prohibitionists willing to air their views in a highly visible way to lend credence to fears about a movement toward total prohibition. For example, criminologist Marvin Wolfgang, in a letter to the editor of *Time* magazine, advocated a total national ban on possession of all firearms (July 5, 1968, p. 6), a sentiment echoed by noted sociologist Morris Janowitz (*Time*, 6-21-68).

cators are necessarily “noisy,” reflecting both gun availability and inclinations of violent people to choose guns for their aggressive or suicidal purposes. Although the two measures often show similar trends, they also moved in opposite directions during 1945–1951, 1976–1983, and, to a lesser degree, 1958–1963. If the gun share of homicides were used as an indicator of long-term trends in a general gun ownership, it would indicate that gun ownership had declined since the 1920s. In 1920–1926, 71% of U.S. homicides were committed with guns (Brearley 1932, p. 68). Since at that time six states in the South and West, where a high share of homicides were committed with guns, were not yet a part of the national vital statistics system, the figure almost certainly would have been higher had those states been included. By 1989, the national figure was down to 62% (U.S. FBI 1990).

Table 2.3 provides estimates of the size of the U.S. gun stock, based on national surveys that asked Rs how many guns they owned. They all support the view that there was a huge number of guns in private hands. All but one of the estimates, however, are substantially lower than production-based estimates for the same years (Table 2.1). Flaws in these estimates and reasons for the discrepancy are discussed in Appendix 2.

Table 2.4 displays information on the combinations and numbers of guns owned by gun-owning households and individuals. Part A shows that most households with guns have long guns (85%), and that most (56%) own *only* longguns, whereas only one-seventh of owning households have only handguns. However, it will be this handgun-only type of household that will be of special interest later because it may be the type most likely to have guns for crime-related reasons (Bordua et al. 1979). Conversely, two-thirds of households with handguns also have long guns. This fact is significant because it suggests that when handguns are used in crimes or for defense (at least when in the home), the use was often the result of a choice between different types of guns, rather than the fact that only handguns were available. This would support the view that there is something about handguns that gun users regard as especially suitable for defensive and criminal purposes. An even more important implication is that if handguns were restricted, most current handgun owners would not even have to acquire new guns in order to have substitute firearms to use. The implications of this substitution possibility will be discussed in detail in Chapter 3.

Part B of Table 2.4 attempts to provide more realistic estimates of the number of guns owned per owner than were reported in Table 2.3. It has been assumed that the true fraction of households and individuals own-

ing guns is 10% higher than survey figures indicate, to adjust for the underreporting previously discussed (see Appendix 2 for a justification). These survey figures were combined with the production cumulation figures in Table 2.1 to roughly estimate the numbers of guns owned per owner. Based on this procedure, among households owning guns, an average of over four guns are owned, considerably higher than most survey data suggest. The distribution, however, is undoubtedly skewed to the right, with a few households owning very large numbers of guns, and most households owning a few, based on the Table 2.3 survey results. Among households with a handgun, the average number of handguns owned is about 2.8. Among individuals age 18 or over who own guns, the average number owned is about 3.4, and among individuals with handguns, the average is about 2.0. Both these data and survey data support the conclusion that although gun ownership is widespread in the United States, a large share of the guns may also be in relatively few hands (see also Cook 1983, pp. 78–9).

Regardless of the major source on which one relies, it is clear that the number of guns currently in private hands in the United States is very large, whether the number is 100 or 200 million. One straightforward policy implication is that policies that seek to reduce gun violence by reducing the overall supply of guns, as distinct from reducing the number possessed by high-risk subsets of the population, face an enormous obstacle in this huge existing stock. Even if further additions to the stock could somehow be totally and immediately stopped, the size of the stock and durability of guns imply that, in the absence of mass confiscations or unlikely voluntary surrenders of guns, it might be decades before any perceptible impact became apparent.

Who Owns Guns?

In a nation where at least half of the households have a gun, it would be difficult to regard gun ownership as an unusual or deviant status. Nevertheless, gun owners do differ from nonowners in some respects, as the figures in Table 2.5 demonstrate. These figures were computed from the combined 1980, 1982, and 1984 General Social Surveys conducted by the National Opinion Research Center (for details of the surveys, see Davis 1984). These surveys were superior to previous national surveys in that they asked whether each *respondent* (R) owned a gun, rather than asking only whether someone in the household did. This made it possible to relate attributes of the R to whether the R owned

of "ARs," it is unlikely that criminals would adopt them. But even if at least some types of criminals did seek out rifles as an alternative to handguns, they would have an ample supply of more lethal substitute rifles available to them even in the absence of "ARs."

While "ARs" are not unusually lethal relative to other rifles, they do have other technical attributes potentially relevant to criminal violence: (1) they are capable of firing single shots as fast as the shooter can pull the trigger, and (2) they can accept magazines that hold a large number of cartridges. It is unclear whether either of these attributes is of substantial criminological significance. "ARs" are capable of firing at a rate somewhat faster than other gun types, but it is unknown how often violent incidents occur in which this higher rate of fire would have any impact on the outcome of the incident. For example, even in a rare mass shooting such as the 1989 Stockton schoolyard killing of five children, the killer fired 110 rounds in 3 to 4 (or more) minutes, or about 28–37 rounds per minute (*Los Angeles Times* 1-18-89, p. 3; 1-19-89, p. 9). The same rate of fire can be achieved with an ordinary double-action revolver using speed-loaders to reload. Further, there was nothing to stop Purdy from continuing his attack for another 3 or 4 minutes. The higher rate of fire was unnecessary for Purdy to carry out his murderous intentions—he did all the shooting he wanted to do in 4 minutes and then killed himself.

The effective rate of fire of any gun is limited by its recoil. When a shot is fired, the force of the bullet leaving the barrel causes the gun to move back toward the shooter and off of its original aiming alignment. It cannot be fired at the same target again until the shooter puts it back in line with the target. Thus the somewhat higher rate of fire of semiautomatic weapons cannot be fully exploited, reducing the effective difference between these weapons and revolvers.

Ordinary revolvers can easily fire six rounds in 3 seconds without any special skill on the part of the shooter or modification to the weapon. Even assuming a semiautomatic gun could fire at twice this rate, it would only mean that a shooter could fire six rounds in 1.5 instead of 3 seconds. The issue comes down to this: How many violent incidents occur each year in which a shooter has 1.5 seconds to shoot the victim(s), but not 3 seconds? Such incidents are probably fairly rare, although there are no hard data on the matter.

Critics of "ARs" have also pointed to the high total *volume* of fire of which the weapons are capable, due to their large magazines. It should be noted that magazines for these weapons are almost always detachable, and the weapons are usually capable of accepting many different

common magazine sizes, whether one containing only 3 rounds, or one containing 30 or more (Warner 1989). Thus, the high volume of rounds is not, strictly speaking, an attribute of the gun itself, but rather of the magazine. Likewise, most of the millions of ordinary semiautomatic pistols sold in the United States for decades are also capable of accepting box-type magazines that can have very large capacities. Consequently, one legal difficulty in distinguishing "ARs" from other semiautomatic rifles, or AWs from other semiautomatic handguns, is that most varieties of all of these weapon categories accept box-type magazines. Since such magazines can be either big or small, it means that the unrestricted civilian-style guns are just as capable of using a large-capacity magazine as are the restricted modern military-style AWs. Consequently, rational controls based on concern over large ammunition capacity would have to either ban large magazines or ban all guns capable of receiving types of magazines that sometimes have large capacities. The former alternative would be very difficult to enforce, whereas the latter alternative would mean banning large numbers of hunting rifles and most semiautomatic pistols, and thus would negate the chief political benefit of restricting only rare weapons.

It is doubtful whether a high volume magazine is currently relevant to the outcome of a large number of violent incidents. The rare mass killing notwithstanding, gun assaults usually involve only a few shots being fired. Even in a sample of gun attacks on armed police officers, where the incidents are more likely to be mutual combat gunfights with many shots fired, the suspects fired an average of only 2.55 times (New York City Police Department 1989, p. 6). On the other hand, if high-volume guns did become popular among criminals in the future, this could change for the worse. Further, although "ARs" are not unique in any one of their attributes, they are unusual, although not unique, in combining the lethality of rifles, a potentially large ammunition capacity, and a high rate of fire. It is possible that the combination of all three attributes could have a crime-enhancing effect greater than that generated by any one of the attributes.

Whereas semiautomatic firearms offer a rate of fire only somewhat higher than other common gun types, fully automatic weapons have much higher rates of fire. "ARs" sold on the civilian market are not capable of fully automatic fire, but it has been argued that this distinction is a minor one because "ARs" are so easily converted to fully automatic fire (*Newsweek* 10-14-85, pp. 48-9). The *New York Times*, in an editorial, even told its readers that "many semiautomatics can be made fully automatic with a screwdriver, even a paperclip" (8-2-88). Eight

share of defensive uses attributable to these sorts of users is relevant to assessing NCS information used later to evaluate the effectiveness of defensive gun uses, since that information is derived from questions that did not exclude any uses by persons with these violence-related occupations. Although the gun use surveys did not obtain sufficiently detailed occupational detail to assess this, the NCS did. In the 1979–1985 sample, members of these occupations accounted for 15.4% of self-protection gun uses. They do therefore account for a disproportionate share of the NCS-counted gun uses, but still a relatively small fraction. And again it should be stressed that on-duty uses by such persons were explicitly excluded from the surveys used to estimate the number of defensive gun uses.

Shooting in Self-Defense

Most uses of guns for either criminal or defensive purposes are probably much less dramatic or consequential than one might think. Only a tiny fraction of criminal gun assaults involves anyone actually being wounded, even nonfatally, and one would expect the same to be true of defensive gun uses. More commonly, guns are merely pointed at another person, or perhaps only referred to (“I’ve got a gun”) or displayed, and this is sufficient to accomplish the ends of the user, whether criminal or noncriminal. Nevertheless, most gun owners questioned in surveys assert that they would be willing to shoot criminals under the right circumstances. The 1989 Time/CNN survey found that 80% of gun owners thought they would get their guns if they thought someone was breaking into their home, and 78% said they would shoot a burglar if they felt threatened by that person (Quinley 1990, p. 9).

Despite this stated willingness of gun owners to shoot under certain circumstances, most defensive uses of guns do not in fact involve shooting anyone. Although the surveys listed in Table 4.1 did not delve into much detail about the circumstances in which guns were used defensively, or the manner in which they were used, most did ask whether the gun was fired. Results generally indicate the gun was fired in less than half of the defensive uses; the rest of the times the gun was merely displayed or referred to, in order to threaten or frighten away a criminal.

Self-Defense Killings

The rarest, but most serious form of self-defense with a gun is a defensive killing. Although shootings of criminals represent a small frac-

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Analysis of Five Years of Armed Encounters (With Data Tables)

March 12 2012

by Dan Cannon

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Incident at a Glance (Click Links For Similar Stories)

Gun(s) Used:	Unknown	Location:	Unknown
# of Suspects:	Unknown	Shots Fired:	Unknown
Suspect Killed:	Unknown	State:	
Source:		Archived Source:	None



Foreword by GunsSaveLives.net

This article was originally written several years ago by Claude Werner. It is republished here, in its entirety (including data tables) with permission.

While the source material is somewhat dated there is still a lot of information we can learn from this. One thing to also note is that the stories used for this study were all situations in which a citizen *successfully* defended themselves. This means that the study focuses on and shows what works, not what doesn't work.

Author

Claude Werner

[Firearms Safety Training LLC](#)

The Armed Citizen – A Five Year Analysis

altschool.com/Private_Elementary

AltSchool K-8



New San Francisco Private School. Now
Enrolling & Accepting Transfers

AdChoices 

Overview

For the period 1997 – 2001, reports from “The Armed Citizen” column of the NRA Journals were collected. There were 482 incidents available for inclusion in the analysis. All involved the use of firearms by private citizens in self defense or defense of others. No law enforcement related incidents were included. The database is self-selecting in that no non-positive outcomes were reported in the column.

Analysis

As might be expected, the majority of incidents (52%) took place in the home. Next most common locale (32%) was in a business. Incidents took place in public places in 9% of reports and 7% occurred in or around vehicles.

The most common initial crimes were armed robbery (32%), home invasion (30%), and burglary (18%).

Overall, shots were fired by the defender in 72% of incidents. The average and median number of shots fired was 2. When more than 2 shots were fired, it generally appeared that the defender's initial response was to fire until empty. It appears that revolver shooters are more likely to empty their guns than autoloader shooters. At least one assailant was killed in 34% of all incidents. At least one assailant was wounded in an additional 29% of all incidents. Of the incidents where shots are fired by a defender, at least one assailant is killed in 53% of those incidents.

Handguns were used in 78% of incidents while long guns were used in 13%; in the balance the type of firearm was not reported. The most common size of handgun was the .35 caliber family (.38, .357, 9mm) at 61%, with most .38s apparently being of the 5 shot variety. Mouseguns (.380s and below) were at 23%, and .40 caliber and up at 15%.

The range of most incidents appears to be short but in excess of touching distance. It appears that most defenders will make the shoot decision shortly before the criminal comes within arm's length. Defenders frequently communicate with their

attackers before shooting.

The firearm was carried on the body of the defender in only 20% of incidents. In 80% of cases, the firearm was obtained from a place of storage, frequently in another room.

Reloading was required in only 3 incidents. One of those involved killing an escaped lion with a .32 caliber revolver, which was eventually successful after 13 shots.

Multiple conspirators were involved in 36% of the incidents. However, there were no apparent cases of getaway drivers or lookouts acting as reinforcements for the criminal actor(s) once shooting starts. At the sound of gunfire, immediate flight was the most common response for drivers and lookouts.

When multiple conspirators were involved, the first tier was a two man action team. If another member was available, he was usually the driver of the getaway car and remained in the car. If a fourth conspirator was involved, he was stationed immediately outside the target location as a lookout for the police or other possible intervening parties. The outside conspirators do not generally appear to be armed. It does appear that the trend over the period has increased from one weapon in the action team to two weapons.

The largest group of violent criminal actors was 7, a group that committed serial home invasions in Rochester NY. An alert and prepared homeowner, who saw them invade an adjacent home, accessed his shotgun, and dispatched them (2 killed and 1 seriously wounded) when they broke in his door.

Incidents rarely occurred in reaction time (i.e., ¼ second increments). Most commonly, criminals acted in a shark-like fashion, slowly circling and alerting their intended victims. The defender(s) then had time to access even weapons that were stored in other rooms and bring them to bear.

The most common responses of criminals upon being shot were to flee immediately or expire. With few exceptions, criminals ceased their advances immediately upon being shot. Even small caliber handguns displayed a significant degree of instant lethality (30 per cent immediate one shot kills) when employed at close range. Many criminal actors vocally expressed their fear of being shot when the defender displayed a weapon. Upon the criminals' flight, the "victims" frequently chased and captured or shot the criminals and held them for the authorities.

Conclusions

- 1) Even small caliber weapons are adequate to solve the vast majority of incidents requiring armed self-defense.
- 2) Mindset of the potential victim was far more important than the type of weapon used. All the victims were willing to fight their opponents in order to survive. Although not common, in some cases bridge weapons, such as pens, were used to gain time to access the firearm.
- 3) Frequently, the defenders were aware that something was amiss before the action started and then placed themselves in position to access their weapons. Awareness of the surroundings appears to be a key element of successful defense.
- 4) The defenders had some measure of familiarity with their firearms. Although perhaps not trained in the formal sense, they appear to be able to access a firearm and immediately put it into action. At least one defender learned from a previous experience and made the firearm more accessible for subsequent use.
- 5) Training or practice with a firearm should include a substantial amount of accessing the firearm from off body locations, such as drawers, underneath counters, etc.
- 6) This analysis does not present a view of the totality of armed self-defense in that non-positive outcomes were not available for inclusion in the database. The analysis may, however, be useful in helping to describe a methodology for successful armed self-defense. This methodology might be described as:
 1. be aware,
 2. be willing to fight,
 3. have a weapon accessible,
 4. be familiar enough with the weapon to employ it without fumbling,
 5. when ready, communicate, both verbally and non-verbally, to the attacker that resistance will be given, and
 6. if the attacker does not withdraw, counterattack without hesitation.

Location of Incident

Location	%
Home	52%
Business	32%
Public	9%
In/around Vehicle	7%

Shots Fired

Type of Location No Yes

Business	33%	72%
Home	25%	75%
Public	29%	71%
In/around Vehicle	35%	65%
Total	28%	72%

Number of Shots Fired

Average	2.2
Median	2
Mode	1
Max	20

Gun Type

Handgun	78%
Long Gun	13%
Unknown	8%

Body Carry

Type of Location No Yes

Business	69%	31%
Home	94%	6%
Public	49%	51%
In/around Vehicle	65%	35%
Total	80%	20%

Multiple Assailants

Type of Location No Yes

Business	76%	24%
Home	72%	28%
Public	62%	38%
Retail Business	52%	48%

In/around Vehicle 49% 51%
Total 80% 20%

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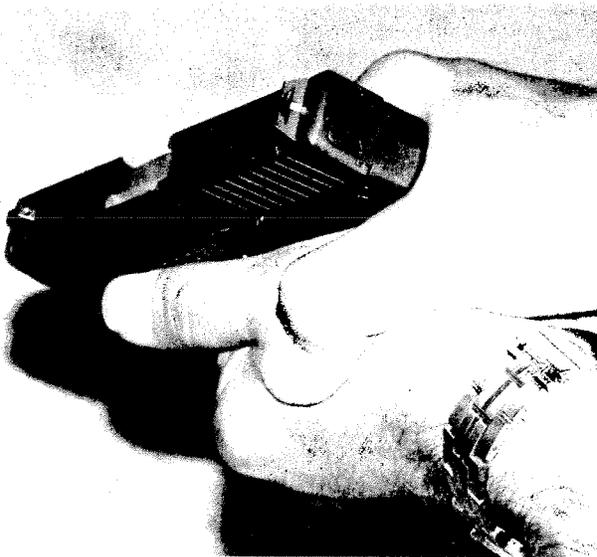
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G32 .357 SIG, G30 .45 ACP, and G38 .45 GAP) are all good choices. So are the many other compact (i.e., medium size) modern autos you'll find in the *Gun Digest*, where there's more space to pore over the various models and size/weight specifications than here. In the 1911, Commander and Officers size work well. For many, something more *subcompact* fits the body better. These would include the "baby Glocks" in the same calibers, the Micro-series Kahrs, and the smallest of the 1911s by their many makers.

Finally, a full-size gun makes particular sense under cold-weather wardrobes, which can amply conceal them. In cold weather, with gloved or cold-numbed hands, a pistol with a longer grip-frame may be easier to handle. I like something with a large trigger guard, and whose trigger won't rebound



Subcompact carry guns can be "too small for your hand," necessitating technique changes. Trigger reach is so short on this Kahr that author's trigger finger is blocked by thumb in traditional grasp; thumb will need to come up. Little finger is tucked under short butt since there's no room for it on the frame...



...author's two-hand grasp on the Kahr puts firing thumb on support hand out of the way of trigger finger, and support hand thumb well forward to avoid the sharp edge on the Kahr's slide release lever.

so far forward that it can snag on or be blocked by thick glove material, which could make it fail to re-set. ATDA auto pistol will generally fill that bill, as will the Glock or XD. I get leery of single-action pistols when cold or gloves have further reduced a vasoconstricted hand's ability to feel the trigger, and the glove-blocking factor leaves most revolvers out entirely.

The bottom line of "concealed handgun wardrobe selection" is this: the gun's size and shape must fit hand, body, and clothing selection alike. You probably don't dress the same every day. When you "dress to kill" (forgive me, I couldn't resist) you also need to vary that particular "wardrobe" to better suit your daily needs.

Final advice: In the immortal words of author and big game hunter Robert Ruark, "Use Enough Gun." Small-caliber weapons simply don't have the "oomph" to stop a violent human being. I coined the phrase "Friends don't let friends carry mouse-guns," and I'll stick by that. The cessation of homicidal human threat is the *raison d'être* of CCW. If the Weapon you're Carrying Concealed isn't powerful enough to do that job, you've undercut the whole purpose of the mission. I personally draw the line above the marginal 380 ACP and consider the minimums to be 38 Special +P in a revolver and 9mm Luger in a semiautomatic pistol. On the top end, only master shooters can handle the violent recoil of 41 and 44 Magnums. For most people, the best bet is in a caliber range that encompasses 38 Special, 357 Magnum, 9mm Luger, 40 Smith & Wesson, 10mm Auto, 45 ACP, and 45 GAP. There are other rarely-carried rounds within that range, but any of those - with proper high-tech hollow-point defensive ammunition - can be reasonably counted on to get you through the night.

For more on gun and ammo selection, I'd refer you to my *Gun Digest Book of Combat Handgunnery, Sixth Edition*, available from Krause. The bottom line is, it's not about "what gun did you have" so much as it's about "did you have a gun?" Modern ultra-compact, ultra-light 38 Special and 9mm Luger handguns give you adequate power in extremely small and light packages. You just don't have to settle for anything less, when innocent lives - including your life and the lives of those you most love - will likely be at stake if and when the shooting starts.



EXHIBIT 15

**Declaration of Roderick M. Thompson in
Support of Sunnyvale's Opposition to
Plaintiffs' Motion for Preliminary
Injunction**

U.S. Department of Justice

Bureau of Alcohol, Tobacco, Firearms and Explosives

ATF

Study on the Importability of Certain Shotguns



Firearms and Explosives Industry Division

January 2011

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Study on the Importability of Certain Shotguns

Executive Summary

The purpose of this study is to establish criteria that the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) will use to determine the importability of certain shotguns under the provisions of the Gun Control Act of 1968 (GCA).

The Gun Control Act of 1968 (GCA) generally prohibits the importation of firearms into the United States.¹ However, pursuant to 18 U.S.C. § 925(d), the GCA creates four narrow categories of firearms that the Attorney General must authorize for importation. Under one such category, subsection 925(d)(3), the Attorney General shall approve applications for importation when the firearms are generally recognized as particularly suitable for or readily adaptable to sporting purposes (the “sporting purposes test”).

After passage of the GCA in 1968, a panel was convened to provide input on the sporting suitability standards which resulted in factoring criteria for handgun importations. Then in 1989, and again in 1998, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) conducted studies to determine the sporting suitability and importability of certain firearms under section 925(d)(3). However, these studies focused mainly on a type of firearm described as “semiautomatic assault weapons.” The 1989 study determined that assault rifles contained a variety of physical features that distinguished them from traditional sporting rifles. The study concluded that there were three characteristics that defined semiautomatic assault rifles.²

The 1998 study concurred with the conclusions of the 1989 study, but included a finding that “the ability to accept a detachable large capacity magazine originally designed and produced for a military assault weapon should be added to the list of disqualifying military configuration features identified in 1989.”³ Further, both studies concluded that the scope of “sporting purposes” did not include all lawful activity, but was limited to traditional sports such as hunting, skeet shooting, and trap shooting. This effectively narrowed the universe of firearms considered by each study because a larger number of firearms are “particularly suitable for or readily adaptable to a sporting purpose” if plinking⁴ and police or military-style practical shooting competitions are also included as a “sporting purpose.”⁵

Although these studies provided effective guidelines for determining the sporting purposes of rifles, ATF recognized that no similar studies had been completed to determine the sporting

¹ Chapter 44, Title 18, United States Code (U.S.C.), at 18 U.S.C. § 922(l).

² These characteristics were: (a) a military configuration (ability to accept a detachable magazine, folding/telescoping stocks, pistol grips, ability to accept a bayonet, flash suppressors, bipods, grenade launchers, and night sights); (b) a semiautomatic version of a machinegun; and (c) chambered to accept a centerfire cartridge case having a length of 2.25 inches or less. *1989 Report and Recommendation on the Importability of Certain Semiautomatic Rifles (1989 Study)* at 6-9.

³ *1998 Department of the Treasury Study on the Sporting Suitability of Modified Semiautomatic Rifles (1998 Study)* at 2.

⁴ “Plinking” is shooting at random targets such as bottles and cans. 1989 Report at 10.

⁵ *1989 Report* at 8-9; *1998 Study* at 18-19.

suitability of shotguns. A shotgun study working group (working group) was assigned to perform a shotgun study under the § 925(d)(3) sporting purposes test. The working group considered the 1989 and 1998 studies, but neither adopted nor entirely accepted findings from those studies as conclusive as to shotguns.

Sporting Purpose

Determination of whether a firearm is generally accepted for use in sporting purposes is the responsibility of the Attorney General (formerly the Secretary of the Treasury). As in the previous studies, the working group considered the historical context of “sporting purpose” and that Congress originally intended a narrow interpretation of sporting purpose under § 925(d)(3).

While the 1989 and 1998 studies considered all rifles in making their recommendations, these studies first identified firearm features and subsequently identified those activities believed to constitute a legitimate “sporting purpose.” However, in reviewing the previous studies, the working group believes that it is appropriate to first consider the current meaning of “sporting purpose” as this may impact the “sporting” classification of any shotgun or shotgun features. For example, military shotguns, or shotguns with common military features that are unsuitable for traditional shooting sports, may be considered “particularly suitable for or readily adaptable to sporting purposes” if military shooting competitions are considered a generally recognized sporting purpose. Therefore, in determining the contemporary meaning of sporting purposes, the working group examined not only the traditional sports of hunting and organized competitive target shooting, but also made an effort to consider other shooting activities.

In particular, the working group examined participation in and popularity of practical shooting events as governed by formal rules, such as those of the United States Practical Shooting Association (USPSA) and International Practical Shooting Confederation (IPSC), to determine whether it was appropriate to consider these events a “sporting purpose” under § 925(d)(3). While the number of members reported for USPSA is similar to the membership for other shotgun shooting organizations,⁶ the working group ultimately determined that it was not appropriate to use this shotgun study to determine whether practical shooting is “sporting” under § 925(d)(3). A change in ATF’s position on practical shooting has potential implications for rifle and handgun classifications as well. Therefore, the working group believes that a more thorough and complete assessment is necessary before ATF can consider practical shooting as a generally recognized sporting purpose.

The working group agreed with the previous studies in that the activity known as “plinking” is “primarily a pastime” and could not be considered a recognized sport for the purposes of

⁶ Organization websites report these membership numbers: for the United States Practical Shooting Association, approx. 19,000; Amateur Trapshooting Association, over 35,000 active members; National Skeet Shooting Association, nearly 20,000 members; National Sporting Clays Association, over 22,000 members; Single Action Shooting Society, over 75,000 members.

importation.⁷ Because almost any firearm can be used in that activity, such a broad reading of “sporting purpose” would be contrary to the congressional intent in enacting section 925(d)(3). For these reasons, the working group recommends that plinking not be considered a sporting purpose. However, consistent with past court decisions and Congressional intent, the working group recognized hunting and other more generally recognized or formalized competitive events similar to the traditional shooting sports of trap, skeet, and clays.

Firearm Features

In reviewing the shotguns used for those activities classified as sporting purposes, the working group examined State hunting laws, rules, and guidelines for shooting competitions and shooting organizations; industry advertisements and literature; scholarly and historical publications; and statistics on participation in the respective shooting sports. Following this review, the working group determined that certain shotgun features are not particularly suitable or readily adaptable for sporting purposes. These features include:

- (1) Folding, telescoping, or collapsible stocks;
- (2) bayonet lugs;
- (3) flash suppressors;
- (4) magazines over 5 rounds, or a drum magazine;
- (5) grenade-launcher mounts;
- (6) integrated rail systems (other than on top of the receiver or barrel);
- (7) light enhancing devices;
- (8) excessive weight (greater than 10 pounds for 12 gauge or smaller);
- (9) excessive bulk (greater than 3 inches in width and/or greater than 4 inches in depth);
- (10) forward pistol grips or other protruding parts designed or used for gripping the shotgun with the shooter’s extended hand.

Although the features listed above do not represent an exhaustive list of possible shotgun features, designs or characteristics, the working group determined that shotguns with any one of these features are most appropriate for military or law enforcement use. Therefore, shotguns containing any of these features are not particularly suitable for nor readily adaptable to generally recognized sporting purposes such as hunting, trap, sporting clay, and skeet shooting. Each of these features and an analysis of each of the determinations are included within the main body of the report.

⁷ 1989 Study at 10; 1998 Study at 17.

Study on the Importability of Certain Shotguns

The purpose of this study is to establish criteria that the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) will use to determine the importability of certain shotguns under the provisions of the Gun Control Act of 1968 (GCA).

Background on Shotguns

A shotgun is defined by the GCA as “a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of an explosive to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.”⁸

Shotguns are traditional hunting firearms and, in the past, have been referred to as bird guns or “fowling” pieces. They were designed to propel multiple pellets of shot in a particular pattern that is capable of killing the game that is being hunted. This design and type of ammunition limits the maximum effective long distance range of shotguns, but increases their effectiveness for small moving targets such as birds in flight at a close range. Additionally, shotguns have been used to fire slugs. A shotgun slug is a single metal projectile that is fired from the barrel. Slugs have been utilized extensively in areas where State laws have restricted the use of rifles for hunting. Additionally, many States have specific shotgun seasons for deer hunting and, with the reintroduction of wild turkey in many States, shotguns and slugs have found additional sporting application.

Shotguns are measured by *gauge* in the United States. The gauge number refers to the “number of equal-size balls cast from one pound of lead that would pass through the bore of a specific diameter.”⁹ The largest commonly available gauge is 10 gauge (.0775 in. bore diameter). Therefore, a 10 gauge shotgun will have an inside diameter equal to that of a sphere made from one-tenth of a pound of lead. By far, the most common gauges are 12 (0.729 in. diameter) and 20 (0.614 in. diameter). The smallest shotgun that is readily available is known as a “.410,” which is the diameter of its bore measured in inches. Technically, a .410 is a 67 gauge shotgun.

Background on Sporting Suitability

The GCA generally prohibits the importation of firearms into the United States.¹⁰ However, the statute exempts four narrow categories of firearms that the Attorney General shall authorize for importation. Originally enacted by Title IV of the Omnibus Crime Control and Safe Streets Act of 1968,¹¹ and amended by Title I of the GCA¹² enacted that same year, this section provides, in pertinent part:

⁸ 18 U.S.C. § 921(a)(5).

⁹ The Shotgun Encyclopedia at 106.

¹⁰ 18 U.S.C. § 922(l).

¹¹ Pub. Law 90-351 (June 19, 1968).

¹² Pub. Law 90-618 (October 22, 1968).

the Attorney General shall authorize a firearm . . . to be imported or brought into the United States . . . if the firearm . . . (3) is of a **type** that does not fall within the definition of a firearm as defined in section 5845(a) of the Internal Revenue Code of 1954 and **is generally recognized as particularly suitable for or readily adaptable to sporting purposes**, excluding surplus military firearms, except in any case where the Secretary has not authorized the importation of the firearm pursuant to this paragraph, it shall be unlawful to import any frame, receiver, or barrel of such firearm which would be prohibited if assembled.¹³ (Emphasis added)

This section addresses Congress' concern that the United States had become a "dumping ground of the castoff surplus military weapons of other nations,"¹⁴ in that it exempted only firearms with a generally recognized sporting purpose. In recognizing the difficulty in implementing this section, Congress gave the Secretary of the Treasury (now the Attorney General) the discretion to determine a weapon's suitability for sporting purposes. This authority was ultimately delegated to what is now ATF. Immediately after discussing the large role cheap imported .22 caliber revolvers were playing in crime, the Senate Report stated:

[t]he difficulty of defining weapons characteristics to meet this target without discriminating against sporting quality firearms, was a major reason why the Secretary of the Treasury has been given fairly broad discretion in defining and administering the import prohibition.¹⁵

Indeed, Congress granted this discretion to the Secretary even though some expressed concern with its breadth:

[t]he proposed import restrictions of Title IV would give the Secretary of the Treasury unusually broad discretion to decide whether a particular type of firearm is generally recognized as particularly suitable for, or readily adaptable to, sporting purposes. If this authority means anything, it permits Federal officials to differ with the judgment of sportsmen expressed through consumer preference in the marketplace. . . .¹⁶

Since that time, ATF has been responsible for determining whether firearms are generally recognized as particularly suitable for or readily adaptable to sporting purposes under the statute.

¹³ 18 U.S.C. § 925(d)(3). In pertinent part, 26 U.S.C. § 5845(a) includes "a shotgun having a barrel or barrels of less than 18 inches in length."

¹⁴ 90 P.L. 351 (1968).

¹⁵ S. Rep. No. 1501, 90th Cong. 2d Sess. 38 (1968).

¹⁶ S. Rep. No. 1097, 90th Cong. 2d. Sess. 2155 (1968) (views of Senators Dirksen, Hruska, Thurmond, and Burdick). In Gun South, Inc. v. Brady, 877 F.2d 858, 863 (11th Cir. 1989), the court, based on legislative history, found that the GCA gives the Secretary "unusually broad discretion in applying section 925(d)(3)."

On December 10, 1968, the Alcohol and Tobacco Tax Division of the Internal Revenue Service (predecessor to ATF) convened a “Firearm Advisory Panel” to assist with defining “sporting purposes” as utilized in the GCA. This panel was composed of representatives from the military, law enforcement, and the firearms industry. The panel generally agreed that firearms designed and intended for hunting and organized competitive target shooting would fall into the sporting purpose criteria. It was also the consensus that the activity of “plinking” was primarily a pastime and therefore would not qualify. Additionally, the panel looked at criteria for handguns and briefly discussed rifles. However, no discussion took place on shotguns given that, at the time, all shotguns were considered inherently sporting because they were utilized for hunting or organized competitive target competitions.

Then, in 1984, ATF organized the first large scale study aimed at analyzing the sporting suitability of certain firearms. Specifically, ATF addressed the sporting purposes of the Striker-12 and Streetsweeper shotguns. These particular shotguns were developed in South Africa as law enforcement, security and anti-terrorist weapons. These firearms are nearly identical 12-gauge shotguns, each with 12-round capacity and spring-driven revolving magazines. All 12 rounds can be fired from the shotguns within 3 seconds.

In the 1984 study, ATF ruled that the Striker-12 and the Streetsweeper were not eligible for importation under 925(d)(3) because they were not “particularly suitable for sporting purposes.” In doing this, ATF reversed an earlier opinion and specifically rejected the proposition that police or combat competitive shooting events were a generally accepted “sporting purpose.” This 1984 study adopted a narrow interpretation of organized competitive target shooting competitions to include the traditional target events such as trap and skeet. ATF ultimately concluded that the size, weight and bulk of the shotguns made them difficult to maneuver in traditional shooting sports and, therefore, these shotguns were not particularly suitable for or readily adaptable to these sporting purposes. At the same time, however, ATF allowed importation of a SPAS-12 variant shotgun because its size, weight, bulk and *modified* configuration were such that it was particularly suitable for traditional shooting sports.¹⁷ The Striker-12 and Streetsweeper were later classified as “destructive devices” pursuant to the National Firearms Act.¹⁸

In 1989, and again in 1998, ATF conducted studies to determine whether certain rifles could be imported under section 925(d)(3). The respective studies focused primarily on the application of the sporting purposes test to a type of firearm described as a “semiautomatic assault weapon.” In both 1989 and 1998, ATF was concerned that certain semiautomatic assault weapons had been approved for importation even though they did not satisfy the sporting purposes test.

¹⁷ Private letter Ruling of August 9, 1989 from Bruce L. Weininger, Chief, Firearms and Explosives Division.

¹⁸ See ATF Rulings 94-1 and 94-2.

1989 Study

In 1989, ATF announced that it was suspending the importation of several semiautomatic assault rifles pending a decision on whether they satisfied the sporting criteria under section 925(d)(3). The 1989 study determined that assault rifles were a “type” of rifle that contained a variety of physical features that distinguished them from traditional sporting rifles. The study concluded that there were three characteristics that defined semiautomatic assault rifles:

- (1) a military configuration (ability to accept a detachable magazine, folding/telescoping stocks, pistol grips, ability to accept a bayonet, flash suppressors, bipods, grenade launchers, and night sights);
- (2) semiautomatic version of a machinegun;
- (3) chambered to accept a centerfire cartridge case having a length of 2.25 inches or less.¹⁹

The 1989 study then examined the scope of “sporting purposes” as used in the statute.²⁰ The study noted that “[t]he broadest interpretation could take in virtually any lawful activity or competition which any person or groups of persons might undertake. Under this interpretation, any rifle could meet the “sporting purposes” test.²¹ The 1989 study concluded that a broad interpretation would render the statute useless. The study therefore concluded that neither plinking nor “police/combat-type” competitions would be considered sporting activities under the statute.²²

The 1989 study concluded that semiautomatic assault rifles were “designed and intended to be particularly suitable for combat rather than sporting applications.”²³ With this, the study determined that they were not suitable for sporting purposes and should not be authorized for importation under section 925(d)(3).

1998 Study

The 1998 study was conducted after “members of Congress and others expressed concern that rifles being imported were essentially the same as semiautomatic assault rifles previously determined to be nonimportable” under the 1989 study.²⁴ Specifically, many firearms found to be nonimportable under the 1989 study were later modified to meet the standards outlined in the study. These firearms were then legally imported into the country under section 925(d)(3). ATF commissioned the 1998 study on the sporting suitability of semiautomatic rifles to address concerns regarding these modified firearms.

¹⁹ 1989 Report and Recommendation on the ATF Working Group on the Importability of Certain Semiautomatic Rifles (1989 Study).

²⁰ *Id.* at 8.

²¹ *Id.*

²² *Id.* At 9.

²³ *Id.* At 12.

²⁴ 1998 Study at 1.

The 1998 study identified the firearms in question and determined that the rifles shared an important feature—the ability to accept a large capacity magazine that was originally designed for military firearms. The report then referred to such rifles as Large Capacity Military Magazine rifles or “LCMM rifles.”²⁵

The study noted that after 1989, ATF refused to allow importation of firearms that had any of the identified non-sporting features, but made an exception for firearms that possessed only a detachable magazine. Relying on the 1994 Assault Weapons Ban, the 1998 study noted that Congress “sent a strong signal that firearms with the ability to expel large amounts of ammunition quickly are not sporting.”²⁶ The study concluded by adopting the standards set forth in the 1989 study and by reiterating the previous determination that large capacity magazines are a military feature that bar firearms from importation under section 925(d)(3).²⁷

Present Study

While ATF conducted the above mentioned studies on the sporting suitability of rifles, to date, no study has been conducted to address the sporting purposes and importability of shotguns. This study was commissioned for that purpose and to ensure that ATF complies with its statutory mandate under section 925(d)(3).

Methodology

To conduct this study, the working group reviewed current shooting sports and the sporting suitability of common shotguns and shotgun features. At the outset, the working group recognized the importance of acknowledging the inherent differences between rifles, handguns and shotguns. These firearms have distinct characteristics that result in specific applications of each weapon. Therefore, in conducting the study, the working group generally considered shotguns without regard to technical similarities or differences that exist in rifles or handguns.

The 1989 and 1998 studies examined particular features and made sporting suitability determinations based on the generally accepted sporting purposes of *rifles*. These studies served as useful references because, in recent years, manufacturers have produced shotguns with features traditionally found only on rifles. These features are typically used by military or law enforcement personnel and provide little or no advantage to sportsmen.

Following a review of the 1989 and 1998 studies, the working group believed that it was necessary to first identify those activities that are considered legitimate “sporting purposes” in the modern era. While the previous studies determined that only “the traditional sports of hunting and organized competitive target shooting” would be considered “sporting,”²⁸ the working group recognized that sporting purposes may evolve over time. The working group felt

²⁵ 1998 Study at 16.

²⁶ 1998 Study at 3.

²⁷ The 1994 Assault Weapons Ban expired Sept. 13, 2004, as part of the law's sunset provision.

²⁸ 1998 Study at 16

that the statutory language supported this because the term “generally recognized” modifies, not only firearms used for shooting activities, but also the shooting activities themselves. This is to say that an activity is considered “sporting” under section 925(d)(3) if it is generally recognized as such.²⁹ Therefore, activities that were “generally recognized” as legitimate “sporting purposes” in previous studies are not necessarily the same as those activities that are “generally recognized” as sporting purposes in the modern era. As stated above, Congress recognized the difficulty in legislating a fixed meaning and therefore gave the Attorney General the responsibility to make such determinations. As a result, the working group did not simply accept the proposition that sporting events were limited to hunting and traditional trap and skeet target shooting. In determining whether an activity is now generally accepted as a sporting purpose, the working group considered a broad range of shooting activities.

Once the working group determined those activities that are generally recognized as a “sporting purpose” under section 925(d)(3), it examined numerous shotguns with diverse features in an effort to determine whether any particular firearm was particularly suitable for or readily adaptable to those sports. In coming to a determination, the working group recognized that a shotgun cannot be classified as sporting merely because it may be used for a sporting purpose. During debate on the original bill, there was discussion about the meaning of the term “sporting purposes.” Senator Dodd stated:

Here again I would have to say that if a military weapon is used in a special sporting event, it does not become a sporting weapon. It is a military weapon used in a special sporting event As I said previously the language says no firearms will be admitted into this country unless they are genuine sporting weapons.³⁰

In making a determination on any particular feature, the working group considered State hunting laws, currently available products, scholarly and historical publications, industry marketing, and rules and regulations of organization such as the National Skeet Shooting Association, Amateur Trapshooting Association, National Sporting Clays Association, Single Action Shooting Society, International Practical Shooting Confederation (IPSC), and the United States Practical Shooting Association (USPSA). Analysis of these sources as well as a variety of shotguns led the working group to conclude that certain shotguns were of a type that did not meet the requirements of section 925(d)(3), and therefore, could not lawfully be imported.

²⁹ ATF previously argued this very point in *Gilbert Equipment Company, Inc. v. Higgins*, 709 F.Supp. 1071, 1075 (S.D. Ala. 1989). The court agreed, noting, “according to Mr. Drake, the bureau takes the position . . . that an event has attained general recognition as being a sport before those uses and/or events can be ‘sporting purposes’ or ‘sports’ under section 925(d)(3). *See also* Declaration of William T. Drake, Deputy Director, Bureau of Alcohol, Tobacco and Firearms.

³⁰ 114 Cong. Rec. 27461-462 (1968).

Analysis

A. Scope of Sporting Purposes

In conducting the sporting purposes test on behalf of the Attorney General, ATF examines the physical and technical characteristics of a shotgun and determines whether those characteristics meet this statutory requirement. A shotgun's suitability for a particular sport depends upon the nature and requirements inherent to that sport. Therefore, determining a "sporting purpose" was the first step in this analysis under section 925(d)(3) and is a critical step of the process.

A broad interpretation of "sporting purposes" may include any lawful activity in which a shooter might participate and could include any organized or individual shooting event or pastime. A narrow interpretation of "sporting purposes" would clearly result in a more selective standard governing the importation of shotguns.

Consistent with previous ATF decisions and case law, the working group recognized that a sport or event must "have attained general recognition as being a 'sport,' before those uses and/or events can be 'sporting purposes' or 'sports' under Section 925(d)(3)."³¹ The statutory language limits ATF's authority to recognize a particular shooting activity as a "sporting purpose," and therefore requires a narrow interpretation of this term. As stated however, the working group recognized that sporting purposes may change over time, and that certain shooting activities may become "generally recognized" as such.

At the present time, the working group continues to believe that the activity known as "plinking" is not a generally recognized sporting purpose. There is nothing in the legislative history of the GCA to indicate that section 925(d)(3) was meant to recognize every conceivable type of activity or competition that might employ a firearm. Recognition of plinking as a sporting purpose would effectively nullify section 925(d)(3) because it may be argued that *any* shotgun is particularly suitable for or readily adaptable to this activity.

The working group also considered "practical shooting" competitions. Practical shooting events generally measure a shooter's accuracy and speed in identifying and hitting targets while negotiating obstacle-laden shooting courses. In these competitions, the targets are generally stationary and the shooter is mobile, as opposed to clay target shooting where the targets are moving at high speeds mimicking birds in flight. Practical shooting consist of rifle, shotgun and handgun competitions, as well as "3-Gun" competitions utilizing all three types of firearm on one course. The events are often organized by local or national shooting organizations and attempt to categorize shooters by skill level in order to ensure competitiveness within the respective divisions. The working group examined participation in and popularity of practical shooting events as governed under formal rules such as those of the United States Practical Shooting Association (USPSA) and International Practical Shooting Confederation (IPSC) to see

³¹ Gilbert at 1085.

if it is appropriate to consider these events a legitimate “sporting purpose” under section 925(d)(3).

The USPSA currently reports approximately 19,000 members that participate in shooting events throughout the United States.³² While USPSA’s reported membership is within the range of members for some other shotgun shooting organizations,³³ organizations involved in shotgun hunting of particular game such as ducks, pheasants and quail indicate significantly more members than any of the target shooting organizations.³⁴ Because a determination on the sporting purpose of practical shooting events should be made only after an in-depth study of those events, the working group determined that it was not appropriate to use this shotgun study to make a definitive conclusion as to whether practical shooting events are “sporting” for purposes of section 925(d)(3). Any such study must include rifles, shotguns and handguns because practical shooting events use all of these firearms, and a change in position by ATF on practical shooting or “police/combat-type” competitions may have an impact on the sporting suitability of rifles and handguns. Further, while it is clear that shotguns are used at certain practical shooting events, it is unclear whether shotgun use is so prevalent that it is “generally recognized” as a sporting purpose. If shotgun use is not sufficiently popular at such events, practical shooting would have no effect on any sporting suitability determination of shotguns. Therefore, it would be impractical to make a determination based upon one component or aspect of the practical shooting competitions.

As a result, the working group based the following sporting suitability criteria on the traditional sports of hunting, trap and skeet target shooting.

B. Suitability for Sporting Purposes

The final step in our review involved an evaluation of shotguns to determine a “type” of firearm that is “generally recognized as particularly suitable or readily adaptable to sporting purposes.” Whereas the 1989 and 1998 studies were conducted in response to Congressional interest pertaining to a certain “type” of firearm, the current study did not benefit from a mandate to focus upon and review a particular type of firearm. Therefore, the current working group determined that it was necessary to consider a broad sampling of shotguns and shotgun features that may constitute a “type.”

Whereas rifles vary greatly in size, function, caliber and design, historically, there is less variation in shotgun design. However, in the past several years, ATF has witnessed increasingly diverse shotgun design. Much of this is due to the fact that some manufacturers are now applying rifle designs and features to shotguns. This has resulted in a type of shotgun that has

³² See www.uspsa.org.

³³ Organization websites report these membership numbers: for the United States Practical Shooting Association, approx. 19,000; Amateur Trapshooting Association, over 35,000 active members; National Skeet Shooting Association, nearly 20,000 members; National Sporting Clays Association, over 22,000 members; Single Action Shooting Society, over 75,000 members.

³⁴ Organization websites report these membership numbers: Ducks Unlimited, U.S adult 604,902 (Jan. 1, 2010); Pheasants/Quail Forever, over 130,000 North American members (2010) <http://www.pheasantfest.org/page/1/PressReleaseViewer.jsp?pressReleaseId=12406>.

features or characteristics that are based on tactical and military firearms. Following a review of numerous shotguns, literature, and industry advertisements, the working group determined that the following shotgun features and design characteristics are particularly suitable for the military or law enforcement, and therefore, offer little or no advantage to the sportsman. Therefore, we recognized that any shotgun with one or more of these features represent a “type” of firearm that is not “generally recognized as particularly suitable or readily adaptable to sporting purposes” and may not be imported under section 925(d)(3).

(1) Folding, telescoping or collapsible stock.

Shotgun stocks vary in style, but sporting stocks have largely resembled the traditional design.³⁵ Many military firearms incorporate folding or telescoping stocks. The main advantage of this feature is portability, especially for airborne troops. These stocks allow the firearm to be fired from the folded or retracted position, yet it is difficult to fire as accurately as can be done with an open or fully extended stock. While a folding stock or telescoping stock makes it easier to carry the firearm, its predominant advantage is for military and tactical purposes. A folding or telescoping stock is therefore not found on the traditional sporting shotgun. Note that certain shotguns may utilize adjustable butt plates, adjustable combs, or other designs intended only to allow a shooter to make small custom modifications to a shotgun. These are not intended to make a shotgun more portable, but are instead meant to improve the overall “fit” of the shotgun to a particular shooter. These types of adjustable stocks are sporting and are, therefore, acceptable for importation.

(2) Bayonet Lug.

A bayonet lug is generally a metal mount that allows the installation of a bayonet onto the end of a firearm. While commonly found on rifles, bayonets have a distinct military purpose. Publications have indicated that this may be a feature on military shotguns as well.³⁶ It enables soldiers to fight in close quarters with a knife attached to their firearm. The working group discovered no generally recognized sporting application for a bayonet on a shotgun.

(3) Flash Suppressor.

Flash suppressors are generally used on military firearms to disperse the muzzle flash in order to help conceal the shooter’s position, especially at night. Compensators are used on military and commercial firearms to assist in controlling recoil and the “muzzle climb” of the shotgun. Traditional sporting shotguns do not have flash suppressors or compensators. However, while compensators have a limited benefit for shooting sports because they allow the shooter to quickly reacquire the target for a second shot, there is no particular benefit in suppressing muzzle flash in

³⁵ Exhibit 1.

³⁶ *A Collector’s Guide to United States Combat Shotguns* at 156.

sporting shotguns. Therefore, the working group finds that flash suppressors are not a sporting characteristic, while compensators are a sporting feature. However, compensators that, in the opinion of ATF, actually function as flash suppressors are neither particularly suitable nor readily adaptable to sporting purposes.

(4) Magazine over 5 rounds, or a Drum Magazine.

A magazine is an ammunition storage and feeding device that delivers a round into the chamber of the firearm during automatic or semiautomatic firing.³⁷ A magazine is either integral (tube magazine) to the firearm or is removable (box magazine). A drum magazine is a large circular magazine that is generally detachable and is designed to hold a large amount of ammunition.

The 1989 Study recognized that virtually all modern military firearms are designed to accept large, detachable magazines. The 1989 Study noted that this feature provides soldiers with a large ammunition supply and the ability to reload rapidly. The 1998 Study concurred with this and found that, for rifles, the ability to accept a detachable large capacity magazine was not a sporting feature. The majority of shotguns on the market today contain an integral “tube” magazine. However, certain shotguns utilize removable box magazine like those commonly used for rifles.³⁸

In regard to sporting purposes, the working group found no appreciable difference between integral tube magazines and removable box magazines. Each type allowed for rapid loading, reloading, and firing of ammunition. For example, “speed loaders” are available for shotguns with tube-type magazines. These speed loaders are designed to be preloaded with shotgun shells and can reload a shotgun with a tube-type magazine in less time than it takes to change a detachable magazine.

However, the working group determined that magazines capable of holding large amounts of ammunition, regardless of type, are particularly designed and most suitable for military and law enforcement applications. The majority of state hunting laws restrict shotguns to no more than 5 rounds.³⁹ This is justifiable because those engaged in sports shooting events are not engaging in potentially hostile or confrontational situations, and therefore do not require the large amount of immediately available ammunition, as do military service members and police officers.

Finally, drum magazines are substantially wider and have considerably more bulk than standard clip-type magazines. They are cumbersome and, when attached to the shotgun, make it more difficult for a hunter to engage multiple small moving targets. Further, drum magazines are generally designed to contain more than 5 rounds. Some contain as many as 20 or more

³⁷ Steindler's New Firearms Dictionary at 164.

³⁸ See Collector's Guide to United States Combat Shotguns at 156-7, noting that early combat shotguns were criticized because of their limited magazine capacity and time consuming loading methods.

³⁹ Exhibit 2.

rounds.⁴⁰ While such magazines may have a military or law enforcement application, the working group determined that they are not useful for any generally recognized sporting purpose. These types of magazines are unlawful to use for hunting in most states, and their possession and manufacture are even prohibited or restricted in some states.⁴¹

(5) Grenade Launcher Mount.

Grenade launchers are incorporated into military firearms to facilitate the launching of explosive grenades. Such launchers are generally of two types. The first type is a flash suppressor designed to function as a grenade launcher. The second type attaches to the barrel of the firearm either by screws or clamps. Grenade launchers have a particular military application and are not currently used for sporting purposes.

(6) Integrated Rail Systems.⁴²

This refers to a mounting rail system for small arms upon which firearm accessories and features may be attached. This includes scopes, sights, and other features, but may also include accessories or features with no sporting purpose, including flashlights, foregrips, and bipods. Rails on the sides and underside of shotguns—including any accessory mount—facilitate installation of certain features lacking any sporting purpose. However, receiver rails that are installed on the top of the receiver and barrel are readily adaptable to sporting purposes because this facilitates installation of optical or other sights.

(7) Light Enhancing Devices.

Shotguns are generally configured with either bead sights, iron sights or optical sights, depending on whether a particular sporting purpose requires the shotgun to be pointed or aimed.⁴³ Bead sights allow a shooter to “point” at and engage moving targets at a short distance with numerous small projectiles, including birds, trap, skeet and sporting clays. Iron and optical sights are used when a shooter, firing a slug, must “aim” a shotgun at a target, including deer, bear and turkeys.⁴⁴ Conversely, many military firearms are equipped with sighting devices that utilize available light to facilitate night vision capabilities. Devices or optics that allow illumination of a target in low-light conditions are generally for military and law enforcement purposes and are not typically found on sporting shotguns because it is generally illegal to hunt at night.

⁴⁰ Exhibit 3.

⁴¹ See, e.g., Cal Pen Code § 12020; N.J. Stat. § 2C:39-9.

⁴² Exhibit 4.

⁴³ NRA Firearms Sourcebook at 178.

⁴⁴ Id.

(8) Excessive Weight.⁴⁵

Sporting shotguns, 12 gauge and smaller, are lightweight (generally less than 10 pounds fully assembled),⁴⁶ and are balanced and maneuverable. This aids sportsmen by allowing them to carry the firearm over long distances and rapidly engage a target. Unlike sporting shotguns, military firearms are larger, heavier, and generally more rugged. This design allows the shotguns to withstand more abuse in combat situations.

(9) Excessive Bulk.⁴⁷

Sporting shotguns are generally no more than 3 inches in width or more than 4 inches in depth. This size allows sporting shotguns to be sufficiently maneuverable in allowing hunters to rapidly engage targets. Certain combat shotguns may be larger for increased durability or to withstand the stress of automatic fire. The bulk refers to the fully assembled shotgun, but does not include magazines or accessories such as scopes or sights that are used on the shotgun. For both width and depth, shotguns are measured at the widest points of the action or housing on a line that is perpendicular to the center line of the bore. Depth refers to the distance from the top plane of the shotgun to the bottom plane of the shotgun. Width refers to the length of the top or bottom plane of the firearm and measures the distance between the sides of the shotgun. Neither measurement includes the shoulder stock on traditional sporting shotgun designs.

(10) Forward Pistol Grip or Other Protruding Part Designed or Used for Gripping the Shotgun with the Shooter's Extended Hand.⁴⁸

While sporting shotguns differ in the style of shoulder stock, they are remarkably similar in fore-end design.⁴⁹ Generally, sporting shotguns have a foregrip with which the shooter's forward hand steadies and aims the shotgun. Recently, however, some shooters have started attaching forward pistol grips to shotguns. These forward pistol grips are often used on tactical firearms and are attached to those firearms using the integrated rail system. The ergonomic design allows for continued accuracy during sustained shooting over long periods of time. This feature offers little advantage to the sportsman. Note, however, that the working group believes that pistol grips for the trigger hand are prevalent on shotguns and are therefore generally recognized as particularly suitable for sporting purposes.⁵⁰

While the features listed above are the most common non-sporting shotgun features, the working group recognizes that other features, designs, or characteristics may exist. Prior to importation, ATF will classify these shotguns based upon the requirements of section 925(d)(3). The working

⁴⁵ See generally Gilbert.

⁴⁶ Shotgun Encyclopedia 2001 at 264.

⁴⁷ Exhibit 5.

⁴⁸ Exhibit 6.

⁴⁹ See Exhibit 1. See generally NRA Firearms Sourcebook at 121-2.

⁵⁰ See Exhibit 1.

group expects the continued application of unique features and designs to shotguns that may include features or designs based upon traditional police or military tactical rifles. However, even if a shotgun does not have one of the features listed above, it may be considered “sporting” only if it meets the statutory requirements under section 925(d)(3). Further, the simple fact that a military firearm or feature *may* be used for a generally recognized sporting purposes is not sufficient to support a determination that it is sporting under 925(d)(3). Therefore, as required by section 925(d)(3), in future sporting classifications for shotguns, ATF will classify the shotgun as sporting only if there is evidence that its features or design characteristics are generally recognized as particularly suitable for or readily adaptable to generally recognized sporting purposes.

The fact that a firearm or feature was initially designed for military or tactical applications, including offensive or defensive combat, may indicate that it is not a sporting firearm. This may be overcome by evidence that the particular shotgun or feature has been so regularly used by sportsmen that it is generally recognized as particularly suitable for or readily adaptable to sporting purposes. Such evidence may include marketing, industry literature and consumer articles, scholarly and historical publications, military publications, the existence of State and local statutes and regulations limiting use of the shotgun or features for sporting purposes, and the overall use and the popularity of such features or designs for sporting purposes according to hunting guides, shooting magazines, State game commissioners, organized competitive hunting and shooting groups, law enforcement agencies or organizations, industry members and trade associations, and interest and information groups. Conversely, a determination that the shotgun or feature was originally designed as an improvement or innovation to an existing sporting shotgun design or feature will serve as evidence that the shotgun is sporting under section 925(d)(3). However, any new design or feature must still satisfy the sporting suitability test under section 925(d)(3) as outlined above.

The Attorney General and ATF are not limited to these factors and therefore may consider any other factor determined to be relevant in making this determination. The working group recognizes the difficulty in applying this standard but acknowledges that Congress specifically intended that the Attorney General perform this function. Therefore, the working group recommends that sporting determinations for shotguns not specifically addressed by this study be reviewed by a panel pursuant to ATF orders, policies and procedures, as appropriate.

Conclusion

The purpose of section 925(d)(3) is to provide a limited exception to the general prohibition on the importation of firearms without placing “any undue or unnecessary Federal restrictions or burdens on law-abiding citizens with respect to the acquisition, possession, or use of firearms....”⁵¹ Our determinations will in no way preclude the importation of true sporting shotguns. While it will certainly prevent the importation of certain shotguns, we believe that

⁵¹ 90 P.L. 351 (1968).

those shotguns containing the enumerated features cannot be fairly characterized as “sporting” shotguns under the statute. Therefore, it is the recommendation of the working group that shotguns with any of the characteristics or features listed above not be authorized for importation.

Shotgun Stock Style Comparison

Exhibit 1

“Straight” or “English” style stock (Ruger Red Label):



“Pistol grip” style stock (Browning Citori):



“Pistol grip” style stock (Mossberg 935 Magnum Turkey):



“Thumbhole” style stock (Remington SP-10):



Stock with Separate Pistol Grip



Hunting Statutes by State

Exhibit 2

State	Gauge	Mag Restriction / plugged with one piece filler requiring disassembly of gun for removal	Attachments	Semi-Auto	Other
Alabama	10 gauge or smaller;	(Species specific) 3 shells			1
Alaska	10 gauge or smaller				
Arizona	10 gauge or smaller	5 shells			
Arkansas	≤ 10 gauge; some zones ≥ .410; ≥ 20 gauge for bear	(Species specific) 3 shells			
California	≤ 10 gauge; Up to 12 gauge in some areas	(Species specific) 3 shells			
Colorado	≥ 20 gauge; Game Mammals ≤ 10 gauge	3 shells			
Connecticut	≤ 10-gauge	(Species specific) 3 shells	telescopic sights		
Delaware	20, 16, 12, 10 gauge	3 shells	Muzzleloaders may be equipped with scopes		2
Florida	Muzzleloading firing ≥ 2 balls ≥ 20-gauge; Migratory birds ≤ 10-gauge; opossums - single-shot .41 -gauge shotguns	(Species specific) 3 shells			
Georgia	≥ 20-gauge; Waterfowl ≤ 10-gauge	5 shells	Scopes are legal		
Hawaii	≤ 10 gauge	(Species specific) 3 shells			
Idaho			some scopes allowed		3
Illinois	20 - 10 gauge; no .410 or 28 gauge allowed	3 shells			
Indiana		(Species specific) 3 shells	Laser sights are legal		

Hunting Statutes by State

Exhibit 2

Iowa	10-, 12-, 16-, and 20-gauge			
Kansas	≥ 20 gauge; ≤ 10 gauge,	(Species specific) 3 shells		
Kentucky	up to and including 10-gauge, includes .410-	(Species specific) 3 shells	Telescopic sights (scopes)	
Louisiana	≤ 10 gauge	3 shells	Nuisance Animals; infrared, laser sighting devices, or night vision devices	
Maine	10 - 20 gauge	(Species specific) 3 shells	may have any type of sights, including scopes	Auto-loading illegal if hold more than 6 cartridges
Maryland	Muzzle loading ≥ 10 gauge ; Shotgun ≤ 10-gauge	(Species specific) 3 shells	may use a telescopic sight on muzzle loading firearm	
Massachusetts	≤ 10 gauge	(Species specific) 3 shells		
Michigan	any gauge	(Species specific) 3 shells		Illegal: semi-automatic holding > 6 shells in barrel and magazine combined
Minnesota	≤ 10 gauge	(Species specific) 3 shells		
Mississippi	any gauge	(Species specific) 3 shells	Scopes allowed on primitive weapons	
Missouri	≤ 10 gauge	(Species specific) 3 shells		
Montana	≤ 10 gauge	(Species specific) 3 shells		
Nebraska	≥ 20 gauge	(Species specific) 3 shells		Illegal: semi-automatic holding > 6 shells in barrel and magazine combined
Nevada	≤ 10 gauge; ≥ 20 gauge	(Species specific) 3 shells		
New Hampshire	10 - 20 gauge	(Species specific) 3 shells		
New Jersey	≤ 10 gauge; ≥ 20 gauge; or .410 caliber	(Species specific) 3 shells	Require adjustable open iron, peep sight or scope affixed if hunting with slugs. Telescopic sights Permitted	
New Mexico	≥ 28 gauge, ≤ 10 gauge	(Species specific) 3 shells		
New York	Big game ≥ 20 gauge		scopes allowed	No semi-automatic firearm with a capacity to hold more than 6 rounds

Hunting Statutes by State

Exhibit 2

North Carolina	≤ 10 gauge	(Species specific) 3 shells	
North Dakota	≥ 410 gauge; no ≤ 10 gauge	3 shells (repealed for migratory birds)	
Ohio	≤ 10 gauge	(Species specific) 3 shells	
Oklahoma	≤ 10 gauge	(Species specific) 3 shells	
Oregon	≤ 10 gauge; ≥ 20 gauge	(Species specific) 3 shells	Scopes (permanent and detachable), and sights allowed for visually impaired
Pennsylvania	≤ 10 gauge; ≥ 12 gauge	(Species specific) 3 shells	
Rhode Island	10, 12, 16, or 20-gauge	5 shells	
South Carolina		(Species specific) 3 shells	
South Dakota	(Species specific) ≤ 10 gauge	5 shells	No auto-loading firearm holding > 6 cartridges
Tennessee	Turkey: ≥ 28 gauge	(Species specific) 3 shells	May be equipped with sighting devices
Texas	≤ 10 gauge	(Species specific) 3 shells	scoping or laser sighting devices used by disabled hunters
Utah	≤ 10 gauge; ≥ 20 gauge	(Species specific) 3 shells	
Vermont	≥ 12 gauge	(Species specific) 3 shells	
Virginia	≤ 10 gauge	(Species specific) 3 shells	
Washington	≤ 10 gauge	(Species specific) 3 shells	
West Virginia			
Wisconsin	10, 12, 16, 20 and 28 gauge; no .410 shotgun for deer/bear	(Species specific) 3 shells	
Wyoming			

- 1 Shotgun/rifle combinations (drilling) permitted
- 2 large game training course - Students in optional proficiency qualification bring their own pre-zeroed, ≥ .243 , scoped shotgun
- 3 no firearm that, in combination with a scope, sling and/or any attachments, weighs more than 16 pounds
- 4 no relevant restrictive laws concerning shotguns

General Firearm Statutes by State

Exhibit 2

State	Source	Semi-Auto Restrictions	Attachments	Prohibited* (in addition to possession of short-barrel or sawed-off shotguns by non-authorized persons, e.g., law enforcement officers for official duty purposes)
Alabama	Alabama Code, title 13:			
Alaska	Alaska Statutes 11.61.200.(h)			
Arizona	Arizona Rev. Statutes 13-3101.8.	single shot	silencer prohibited	
Arkansas	Arkansas Code Title 5, Chapter 73.			
California	California Penal Code, Part 4.12276. and San Diego Municipal Code 53.31.	San Diego includes under "assault weapon," any shotgun with a magazine capacity of more than 6 rounds		"Assault weapons": Franchi SPAS 12 and LAW 12; Striker 12; Streetsweeper type S/S Inc. ; semiautomatic shotguns having both a folding or telescoping stock and a pistol grip protruding conspicuously beneath the action of the weapon, thumbhole stock, or vertical handgrip; semiautomatic shotguns capable of accepting a detachable magazine; or shotguns with a revolving cylinder.
Colorado	2 CCR 406-203			
Connecticut	Connecticut Gen. Statutes 53-202a.			"Assault weapons": Steyr AUG; Street Sweeper and Striker 12 revolving cylinder shotguns
D.C	7-2501.01.			

General Firearm Statutes by State

Exhibit 2

Delaware	7.I.§ 711.		7.I.§ 711. Hunting with automatic-loading gun prohibited; penalty (a) No person shall hunt for game birds or game animals in this State, except as authorized by state-sanctioned federal depredation/conservation orders for selected waterfowl species, with or by means of any automatic-loading or hand-operated repeating shotgun capable of holding more than 3 shells, the magazine of which has not been cut off or plugged with a filler incapable of removal through the loading end thereof, so as to reduce the capacity of said gun to not more than 3 shells at 1 time, in the magazine and chamber combined. (b) Whoever violates this section shall be guilty of a class C environmental misdemeanor. (c) Having in one's possession, while in the act of hunting game birds or game animals, a gun that will hold more than 3 shells at one time in the magazine and chamber combined, except as authorized in subsection (a) of this section, shall be prima facie evidence of violation of this section.
Florida	Florida statutes, Title XLVI.790.001.		
Georgia			
Hawaii	Hawaii Rev. Statutes, Title 10., 134-8.	silencer prohibited	
Idaho	Idaho Code, 18-3318.		
Illinois	Code of Ordinances, City of Aurora 29-43.	Aurora includes under "assault weapon," any shotgun with a magazine capacity of more than 5 rounds	"Assault weapons": Street Sweeper and Striker 12 revolving cylinder shotguns or semiautomatic shotguns with either a fixed magazine with a capacity over 5 rounds or an ability to accept a detachable magazine and has at least a folding / telescoping stock or a pistol grip that protrudes beneath the action of firearm and which is separate and apart from stock

General Firearm Statutes by State

Exhibit 2

Indiana	Indiana Code 35-47-1-10. and Municipal Code of the City of South Bend 13-95.	South Bend under "assault weapon" firearms which have threads, lugs, or other characteristics designed for direct attachment of a silencer, bayonet, flash suppressor, or folding stock; as well as any detachable magazine, drum, belt, feed strip, or similar device which can be readily made to accept more than 15. rounds	South Bend includes under "assault weapon," any shotgun with a magazine capacity of more than 9 rounds
Iowa	Iowa Code, Title XVI. 724.1.		Includes as an offensive weapon, "a firearm which shoots or is designed to shoot more than one shot, without manual reloading, by a single function of the trigger"
Kansas			
Kentucky	Kentucky Revised Statutes- 150.360		
Louisiana	Louisiana RS 56:116.1		
Maine	Maine Revised Statutes 12.13.4.915.4.§11214. F.		
Maryland	Maryland Code 5-101.		"Assault weapons": F.I.E./Franchi LAW 12 and SPAS 12 assault shotgun; Steyr-AUG-SA semi-auto; Holmes model 88 shotgun; Mossberg model 500 Bullpup assault shotgun; Street sweeper assault type shotgun; Striker 12 assault shotgun in all formats; Daewoo USAS 12 semi-auto shotgun

General Firearm Statutes by State

Exhibit 2

Massachusetts	Massachusetts Gen L. 140.121.	under "assault weapon": any shotgun with (fixed or detachable) magazine capacity of more than 5 rounds	"Assault weapons": revolving cylinder shotguns, e.g., Street Sweeper and Striker 12; also "Large capacity weapon" includes any semiautomatic shotgun fixed with large capacity feeding device (or capable of accepting such), that uses a rotating cylinder capable of accepting more than 5 shells
Michigan	Il.2.1. (2)		
Minnesota	Minnesota Statutes 624.711		"Assault weapons": Street Sweeper and Striker-12 revolving cylinder shotgun types as well as USAS-12 semiautomatic shotgun type
Mississippi	Mississippi Code 97-37-1.	silencer prohibited	
Missouri	Code of State Regulations 10-7.410(1)(G)		
Montana			
Nebraska	Nebraska Administrative Code Title 163 Chapter 4 001.		
Nevada	Nevada Revised Statutes 503.150 1.		
New Hampshire			
New Jersey	New Jersey Statutes 23:4-13. and 23:4-44. and New Jersey Rev. Statutes 2C39-1.w.	magazine capacity of no more than 5 rounds	"Assault weapons": any shotgun with a revolving cylinder, e.g. "Street Sweeper" or "Striker 12" Franchi SPAS 12 and LAW 12 shotguns or USAS 12 semi-automatic type shotgun; also any semi-automatic shotgun with either a magazine capacity exceeding 6 rounds, a pistol grip, or a folding stock
New Mexico	New Mexico Administrative Code 19.31.6.7H., 19.31.11.10N. , 19.31.13.10M. and 19.31.17.10N.		

General Firearm Statutes by State

Exhibit 2

New York	New York Consolidated Laws 265.00. 22. and Code of the City of Buffalo 1801B.	magazine capacity of no more than 5 rounds	sighting device making a target visible at night may classify a shotgun as an assault weapon	"Assault weapons": Any semiautomatic shotgun with at least two of the following: folding or telescoping stock; pistol grip that protrudes conspicuously beneath the action of the weapon; fixed magazine capacity in excess of five rounds; an ability to accept a detachable magazine; or any revolving cylinder shotguns, e.g., Street Sweeper and Striker 12; Buffalo 1801B. Assault Weapon: (2) A center-fire rifle or shotgun which employs the force of expanding gases from a discharging cartridge to chamber a fresh round after each single pull of the trigger, and which has: (a) A flash suppressor attached to the weapon reducing muzzle flash; (c) A sighting device making a target visible at night; (d) A barrel jacket surrounding all or a portion of the barrel, to dissipate heat therefrom; or (e) A multi-burst trigger activator. (3) Any stockless pistol grip shotgun.
North Carolina	North Carolina Gen. Statutes 14-288.8		silencer prohibited	
North Dakota	North Dakota Century Code 20.1-01-09. Section 20.1-04-10, SHOTGUN SHELL-HOLDING CAPACITY RESTRICTION, repealed/eliminated			
Ohio	Ohio Rev. Code 2923.11. and Columbus City Codes 2323.11.	magazine capacity of no more than 5 rounds		semiautomatic shotgun that was originally designed with or has a fixed magazine or detachable magazine with a capacity of more than five rounds. Columbus includes under "Assault weapon" any semi-automatic shotgun with two or more of the following: pistol grip that protrudes conspicuously beneath the receiver of the weapon; folding, telescoping or thumbhole stock; fixed magazine capacity in excess of 5 standard 2-3/4, or longer, rounds; or ability to accept a detachable magazine; also any shotgun with revolving cylinder
Oklahoma				
Oregon	Oregon Rev. Statutes 166.272.		silencer prohibited	
Pennsylvania	Title 34 Sec. 2308. (a)(4) and (b)(1)			
Rhode Island	Rule 7, Part III, 3.3 and 3.4			
South Carolina	SECTION 50-11-310. (E) and ARTICLE 3. SUBARTICLE 1. 123 40			

General Firearm Statutes by State

Exhibit 2

South Dakota	South Dakota Codified Laws 22,1,2, (8)		silencer prohibited
Tennessee			
Texas			
Utah	Utah Administrative Code R657-5-9. (1), R657-6-6. (1) and R657-9-7.		
Vermont			
Virginia	Virginia Code 18.2-308.	magazine capacity no more than 7 rounds (not applicable for hunting or sport shooting)	"Assault weapons": Striker 12's commonly called a "streetsweeper," or any semi-automatic folding stock shotgun of like kind with a spring tension drum magazine capable of holding twelve shotgun shells prohibited
Washington	Washington Administrative Code 232-12-047		
West Virginia	West Virginia statute 8-12-5a.		
Wisconsin	Wisconsin Administrative Code – NR 10.11 and NR 10.12		
Wyoming	Wyoming Statutes, Article 3. Rifles and Shotguns [Repealed] and 23-3-112.		silencer prohibited

Drum Magazine

Exhibit 3



Integrated Rail System

Exhibit 4

Sporting



Sporting



Non-Sporting



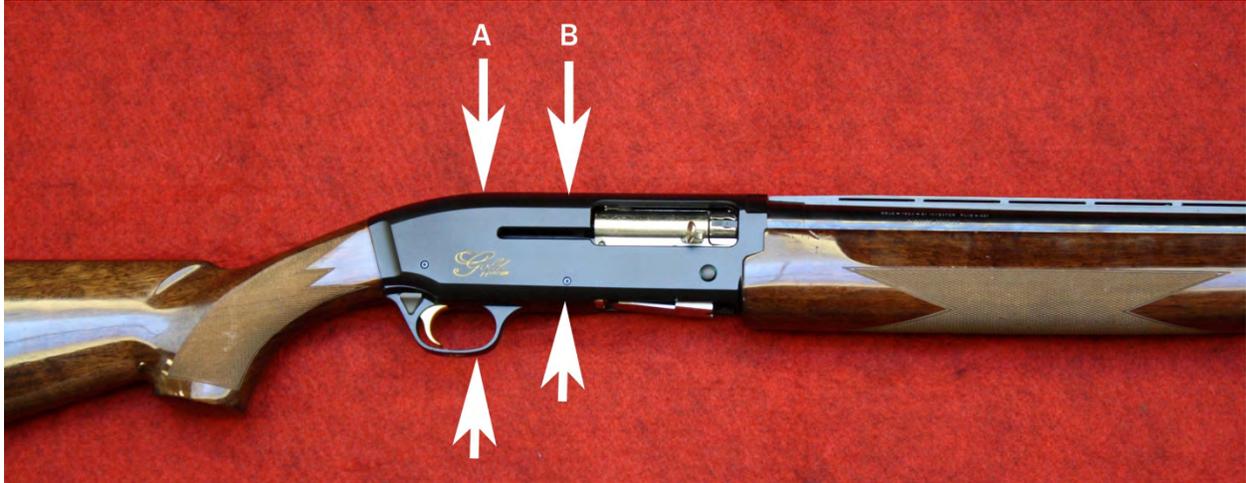
Non-Sporting



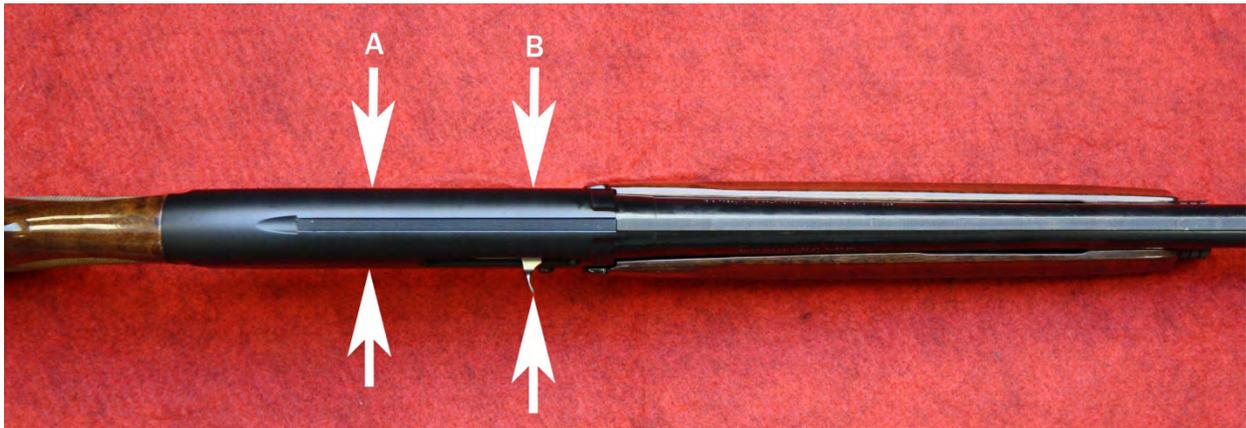
Bulk Measurements

Exhibit 5

Depth refers to the distance from the top plane of the shotgun to the bottom plane of the shotgun. Depth measurement "A" below is INCORRECT; it includes the trigger guard which is not part of the frame or receiver. Depth measurement "B" below is CORRECT; it measures only the depth of the frame or receiver:



Width refers to the length of the top or bottom pane of the firearm and measures the distance between the sides of the shotgun. Width measurement "A" below is CORRECT; it measures only the width of the frame or receiver. Width measurement "B" below is INCORRECT; it includes the charging handle which is not part of the frame or receiver:



Forward Pistol Grip

Exhibit 6



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EXHIBIT 16

**Declaration of Roderick M. Thompson in
Support of Sunnyvale's Opposition to
Plaintiffs' Motion for Preliminary
Injunction**



DEPARTMENT OF
THE TREASURY
STUDY ON
THE SPORTING
SUITABILITY
OF MODIFIED
SEMI-AUTOMATIC
ASSAULT RIFLES

APRIL 1998

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EXECUTIVE SUMMARY

On November 14, 1997, the President and the Secretary of the Treasury ordered a review of the importation of certain modified versions of semiautomatic assault rifles into the United States.¹ The decision to conduct this review stemmed in part from concerns expressed by members of Congress and others that the rifles being imported were essentially the same as semiautomatic assault rifles previously determined to be nonimportable in a 1989 decision by the Bureau of Alcohol, Tobacco and Firearms (ATF). The decision also stemmed from the fact that nearly 10 years had passed since the last comprehensive review of the importation of rifles, and many new rifles had been developed during this time.

Under 18 U.S.C. section 925(d)(3), the Secretary shall approve applications for importation only when the firearms are generally recognized as particularly suitable for or readily adaptable to sporting purposes (the “sporting purposes test”). In 1989, ATF denied applications to import a series of semiautomatic versions of automatic-fire military assault rifles. When ATF examined these semiautomatic assault rifles, it found that the rifles, while no longer machineguns, still had a military configuration that was designed for killing and disabling the enemy and that distinguished the rifles from traditional sporting rifles. This distinctively military configuration served as the basis for ATF’s finding that the rifles were not considered sporting rifles under the statute.

The military configuration identified by ATF incorporated eight physical features: ability to accept a detachable magazine, folding/telescoping stocks, separate pistol grips, ability to accept a bayonet, flash suppressors, bipods, grenade launchers, and night sights. In 1989, ATF took the position that any of these military configuration features, other than the ability to accept a detachable magazine, would make a semiautomatic rifle not importable.

Subsequent to the 1989 decision, certain semiautomatic assault rifles that failed the 1989 sporting purposes test were modified to remove all of the military configuration features other than the ability to accept a detachable magazine. Significantly, most of these modified rifles not only still had the ability to accept a detachable magazine but, more specifically, still had the ability to accept a detachable large capacity magazine that

¹ The President and the Secretary directed that all pending and future applications for importation of these rifles not be acted upon until completion of the review. They also ordered that outstanding permits for importation of the rifles be suspended for the duration of the review period. The existence of applications to import 1 million new rifles and outstanding permits for nearly 600,000 other rifles threatened to defeat the purpose of the expedited review unless the Department of the Treasury deferred action on additional applications and temporarily suspended the outstanding permits. (See exhibit 1 for a copy of the November 14, 1997, memorandum directing this review.)

The rifles that are the subject of this review are referred to in this report as “study rifles.”

was originally designed and produced for the military assault rifles from which they were derived. These magazines are referred to in this report as “large capacity military magazines.” Study rifles with the ability to accept such magazines are referred to in this report as “large capacity military magazine rifles,” or “LCMM rifles.” It appears that only one study rifle, the VEPR caliber .308 (an AK47 variant), is not an LCMM rifle. Based on the standard developed in 1989, these modified rifles were found to meet the sporting purposes test. Accordingly, the study rifles were approved for import into the United States.

These modified rifles are the subject of the present review. Like the rifles banned in 1989, the study rifles are semiautomatic rifles based on AK47, FN-FAL, HK91 and 93, Uzi, and SIG SG550 military assault rifles. While there are at least 59 specific model designations of the study rifles, they all fall within the basic designs listed above. There are at least 39 models based on the AK47 design, 8 on the FN-FAL design, 7 on the HK91 and 93 designs, 3 on the Uzi design, and 2 on the SIG SG550 design (see exhibit 2 for a list of the models). Illustrations of some of the study rifles are included in exhibit 3 of this report.

This review takes another look at the entire matter to determine whether the modified rifles approved for importation since 1989 are generally recognized as particularly suitable for or readily adaptable to sporting purposes.² We have explored the statutory history of the sporting purposes test and prior administrative and judicial interpretations; reexamined the basic tenets of the 1989 decision; analyzed the physical features of the study rifles, as well as information from a wide variety of sources relating to the rifles’ use and suitability for sporting purposes; and assessed changes in law that might have bearing on the treatment of the rifles.

This review has led us to conclude that the basic finding of the 1989 decision remains valid and that military-style semiautomatic rifles are not importable under the sporting purposes standard. Accordingly, we believe that the Department of the Treasury correctly has been denying the importation of rifles that had any of the distinctly military configuration features identified in 1989, other than the ability to accept a detachable magazine. Our review, however, did result in a finding that the ability to accept a detachable large capacity magazine originally designed and produced for a military assault weapon should be added to the list of disqualifying military configuration features identified in 1989.

Several important changes have occurred since 1989 that have led us to reevaluate the importance of this feature in the sporting purposes test. Most significantly, by passing the 1994 bans on semiautomatic assault weapons and large capacity ammunition feeding

² The study was carried out by a working group composed of ATF and Treasury representatives. The working group’s activities and findings were overseen by a steering committee composed of ATF and Treasury officials.

devices, Congress sent a strong signal that firearms with the ability to expel large amounts of ammunition quickly are not sporting; rather, firearms with this ability have military purposes and are a crime problem. Specifically, Congress found that these magazines served “combat-functional ends” and were attractive to criminals because they “make it possible to fire a large number of rounds without reloading, then to reload quickly when those rounds are spent.”³ Moreover, we did not find any evidence that the ability to accept a detachable large capacity military magazine serves any sporting purpose. Accordingly, we found that the ability to accept such a magazine is a critical factor in the sporting purposes test, which must be given the same weight as the other military configuration features identified in 1989.

In addition, the information we collected on the use and suitability of LCMM rifles for hunting and organized competitive target shooting demonstrated that the rifles are not especially suitable for sporting purposes. Although our review of this information indicated that, with certain exceptions, the LCMM rifles sometimes are used for hunting, their actual use in hunting is limited. There are even some general restrictions and prohibitions on the use of semiautomatic rifles for hunting game. Similarly, although the LCMM rifles usually may be used, with certain exceptions, and sometimes are used for organized competitive target shooting, their suitability for this activity is limited. In fact, there are some restrictions and prohibitions on their use.

Furthermore, the information we gathered demonstrated that the LCMM rifles are attractive to certain criminals. We identified specific examples of the LCMM rifles’ being used in violent crime and gun trafficking. In addition, we found some disturbing trends involving the LCMM rifles, including a rapid and continuing increase in crime gun trace requests after 1991 and a rapid “time to crime.” Their ability to accept large capacity military magazines likely plays a role in their appeal to these criminals.

After weighing all the information collected, we found that the LCMM rifles are not generally recognized as particularly suitable for or readily adaptable to sporting purposes and are therefore not importable. However, this decision will in no way preclude the importation of true sporting firearms.

³ H. Rep. No. 103-489, at 18-19.

BACKGROUND

Importation of Firearms Under the Gun Control Act

The Gun Control Act of 1968 (GCA)⁴ generally prohibits the importation of firearms into the United States.⁵ However, the GCA creates four narrow categories of firearms that the Secretary of the Treasury shall authorize for importation. The category that is relevant to this study is found at 18 U.S.C. section 925(d)(3).

The Secretary shall authorize a firearm . . . to be imported or brought into the United States . . . if the firearm . . .

(3) is of a type that does not fall within the definition of a firearm as defined in section 5845(a) of the Internal Revenue Code of 1954 and **is generally recognized as particularly suitable for or readily adaptable to sporting purposes**, excluding surplus military firearms, except in any case where the Secretary has not authorized the importation of the firearm pursuant to this paragraph, it shall be unlawful to import any frame, receiver, or barrel of such firearm which would be prohibited if assembled. (Emphasis added)

This provision originally was enacted, in a slightly different form, by Title IV of the Omnibus Crime Control and Safe Streets Act of 1968⁶ and also was contained in Title I of the GCA, which amended Title IV later that year.

The GCA was enacted in large part "to assist law enforcement authorities in the States and their subdivisions in combating the increasing prevalence of crime in the United States." However, the Senate Report to the act also made clear that Congress did not intend the GCA to place any undue or unnecessary restrictions or burdens on responsible, law-abiding citizens with respect to acquiring, possessing, transporting, or using firearms for lawful activities.⁷

⁴ Pub. L. No. 90-618.

⁵ 18 U.S.C. section 922(l).

⁶ Pub. L. No. 90-351.

⁷ S. Rep. No. 1501, 90th Cong. 2d Sess. 22 (1968).

Consistent with this general approach, legislative history indicates that Congress intended the importation standard provided in section 925(d)(3) to exclude military-type weapons from importation to prevent such weapons from being used in crime, while allowing the importation of high-quality sporting rifles. According to the Senate Report, section 925(d)(3) was intended to "curb the flow of surplus military weapons and other firearms being brought into the United States which are not particularly suitable for target shooting or hunting."⁸ The report goes on to explain that "[t]he importation of certain foreign-made and military surplus nonsporting firearms has an important bearing on the problem which this title is designed to alleviate [crime]. Thus, the import provisions of this title seem entirely justified."⁹ Indeed, during debate on the bill, Senator Dodd, the sponsor of the legislation, stated that "Title IV prohibits importation of arms which the Secretary determines are not suitable for . . . sport The entire intent of the importation section is to get those kinds of weapons that are used by criminals and have no sporting purpose."¹⁰

The Senate Report, however, also makes it clear that the importation standards "are designed and intended to provide for the importation of quality made, sporting firearms, including . . . rifles such as those manufactured and imported by Browning and other such manufacturers and importers of firearms."¹¹ (The rifles being imported by Browning at that time were semiautomatic and manually operated traditional sporting rifles of high quality.) Similarly, the report states that the importation prohibition "would not interfere with the bringing in of currently produced firearms, such as rifles . . . of recognized quality which are used for hunting and for recreational purposes."¹² The reference to recreational purposes is not inconsistent with the expressed purpose of restricting importation to firearms particularly suitable for target shooting or hunting, because firearms particularly suitable for these purposes also can be used for other purposes such as recreational shooting.

During debate on the bill, there was discussion about the meaning of the term "sporting purposes." Senator Dodd stated:

[h]ere again I would have to say that if a military weapon is used in a

⁸ S. Rep. No. 1501, 90th Cong. 2d Sess. 22 (1968).

⁹ S. Rep. No. 1501, 90th Cong. 2d Sess. 24 (1968).

¹⁰ 114 Cong. Rec. S 5556, 5582, 5585 (1968).

¹¹ S. Rep. No. 1501, 90th Cong. 2d. Sess. 38 (1968).

¹² S. Rep. No. 1501, 90th Cong. 2d. Sess. 22 (1968).

special sporting event, it does not become a sporting weapon. It is a military weapon used in a special sporting event As I said previously the language says no firearms will be admitted into this country unless they are genuine sporting weapons.¹³

Legislative history also shows that the determination of a weapon's suitability for sporting purposes is the direct responsibility of the Secretary of the Treasury. The Secretary was given this discretion largely because Congress recognized that section 925(d)(3) was a difficult provision to implement. Immediately after discussing the large role cheap imported .22 caliber revolvers were playing in crime, the Senate Report stated:

[t]he difficulty of defining weapons characteristics to meet this target without discriminating against sporting quality firearms, was a major reason why the Secretary of the Treasury has been given fairly broad discretion in defining and administering the import prohibition.¹⁴

Indeed, Congress granted this discretion to the Secretary even though some expressed concern with its breadth:

[t]he proposed import restrictions of Title IV would give the Secretary of the Treasury unusually broad discretion to decide whether a particular type of firearm is generally recognized as particularly suitable for, or readily adaptable to, sporting purposes. If this authority means anything, it permits Federal officials to differ with the judgment of sportsmen expressed through consumer preference in the marketplace¹⁵

Section 925(d)(3) provides that the Secretary shall authorize the importation of a firearm if it is of a "type" that is generally recognized as particularly suitable for or readily adaptable to sporting purposes. The legislative history also makes it clear that the Secretary shall scrutinize types of firearms in exercising his authority under section 925(d). Specifically, the Senate Report to the GCA states that section 925(d) "gives the

Secretary authority to permit the importation of ammunition and certain types of firearms."¹⁶

¹³ 114 Cong. Rec. 27461-462 (1968).

¹⁴ S. Rep. No. 1501, 90th Cong. 2d Sess. 38 (1968).

¹⁵ S. Rep. No. 1097, 90th Cong. 2d. Sess. 2155 (1968) (views of Senators Dirksen, Hruska, Thurmond, and Burdick). In *Gun South, Inc. v. Brady*, F.2d 858, 863 (11th Cir. 1989), the court, based on legislative history, found that the GCA gives the Secretary "unusually broad discretion in applying section 925(d)(3)."

¹⁶ S. Rep. No. 1501, 90th Cong. 2d. Sess. 38 (1968).

The Senate Report to the GCA also recommended that the Secretary establish a council that would provide him with guidance and assistance in determining which firearms meet the criteria for importation into the United States.¹⁷ Accordingly, following the enactment of the GCA, the Secretary established the Firearms Evaluation Panel (FEP) (also known as the Firearms Advisory Panel) to provide guidelines for implementation of the "sporting purposes" test. This panel was composed of representatives from the military, the law enforcement community, and the firearms industry. At the initial meeting of the FEP, it was understood that the panel's role would be advisory only.¹⁸ The panel focused its attention on handguns and recommended the adoption of factoring criteria to evaluate the various types of handguns. These factoring criteria are based upon such considerations as overall length of the firearm, caliber, safety features, and frame construction. ATF thereafter developed an evaluation sheet (ATF Form 4590) that was put into use for evaluating handguns pursuant to section 925(d)(3). (See exhibit 4.)

The FEP did not propose criteria for evaluating rifles and shotguns under section 925(d)(3). Other than surplus military firearms, which Congress addressed separately, the rifles and shotguns being imported prior to 1968 were generally conventional rifles and shotguns specifically intended for sporting purposes. Therefore, in 1968, there was no cause to develop criteria for evaluating the sporting purposes of rifles and shotguns.

1984 Application of the Sporting Purposes Test

The first time that ATF undertook a meaningful analysis of rifles or shotguns under the sporting purposes test was in 1984. At that time, ATF was faced with a new breed of imported shotgun, and it became clear that the historical assumption that all shotguns were sporting was no longer viable. Specifically, ATF was asked to determine whether the Striker-12 shotgun was suitable for sporting purposes. This shotgun is a military/law enforcement weapon initially designed and manufactured in South Africa for riot control. When the importer was asked to submit evidence of the weapon's sporting purposes, it provided information that the weapon was suitable for police/combat-style competitions. ATF determined that this type of competition did not constitute a sporting purpose

under the statute, and that the shotgun was not suitable for the traditional shotgun sports of hunting, and trap and skeet shooting.

¹⁷ S. Rep. No. 1501, 90th Cong. 2d Sess. 38 (1968).

¹⁸ Gilbert Equipment Co. v. Higgins, 709 F. Supp. 1071, 1083, n. 7 (S.D. Ala. 1989), aff'd without op., 894 F.2d 412 (11th Cir. 1990).

1986 Firearms Owners Protection Act

On May 19, 1986, Congress passed the Firearms Owners Protection Act,¹⁹ which amended section 925(d)(3) to provide that the Secretary "shall" (instead of "may") authorize the importation of a firearm that is of a type that is generally recognized as particularly suitable for or readily adaptable to sporting purposes. The Senate Report to the law stated "it is anticipated that in the vast majority of cases, [the substitution of 'shall' for 'may' in the authorization section] will not result in any change in current practices."²⁰ As the courts have found, "[r]egardless of the changes made [by the 1986 law], the firearm must meet the sporting purposes test and it remains the Secretary's obligation to determine whether specific firearms satisfy this test."²¹

1986 Application of the Sporting Purposes Test

In 1986, ATF again had to determine whether a shotgun met the sporting purposes test, when the Gilbert Equipment Company requested that the USAS-12 shotgun be classified as a sporting firearm under section 925(d)(3). Again, ATF refused to recognize police/combat-style competitions as a sporting purpose. After examining and testing the weapon, ATF determined its weight, size, bulk, designed magazine capacity, configuration, and other factors prevented it from being classified as particularly suitable for or readily adaptable to the traditional shotgun sports of hunting, and trap and skeet shooting. Accordingly, its importation was denied.

When this decision was challenged in Federal court, ATF argued, in part, that large magazine capacity and rapid reloading ability are military features. The court accepted this argument, finding "the overall appearance and design of the weapon (especially the detachable box magazine . . .) is that of a combat weapon and not a sporting weapon."²² In reaching this decision, the court was not persuaded by the importer's argument that box magazines can be lengthened or shortened depending on desired shell capacity.²³ The court also agreed with ATF's conclusion that police/combat-style competitions were not considered sporting purposes.

¹⁹ Pub. L. No. 99-308.

²⁰ S. Rep. No. 98-583, 98th Cong. 1st Sess. 27 (1984).

²¹ Gilbert Equipment Co., 709 F. Supp. at 1083.

²² Id. at 1089.

²³ Id. at 1087, n. 20 and 1089.

1989 Report on the Importability of Semiautomatic Assault Rifles

In 1989, after five children were killed in a California schoolyard by a gunman with a semiautomatic copy of an AK47, ATF decided to reexamine whether certain semiautomatic assault-type rifles met the sporting purposes test. This decision was reached after consultation with the Director of the Office of National Drug Control Policy.

In March and April 1989, ATF announced that it was suspending the importation of certain "assault-type rifles." For the purposes of this suspension, assault-type rifles were those rifles that generally met the following criteria: (1) military appearance; (2) large magazine capacity; and (3) semiautomatic version of a machinegun. An ATF working group was established to reevaluate the importability of these assault-type rifles. On July 6, 1989, the group issued its Report and Recommendation of the ATF Working Group on the Importability of Certain Semiautomatic Rifles (hereinafter 1989 report).

In the 1989 report, the working group first discussed whether the assault-type rifles under review fell within a "type" of firearm for the purposes of section 925(d)(3). The working group concluded that most of the assault-type rifles under review represented "a distinctive type of rifle [which it called the "semiautomatic assault rifle"] distinguished by certain general characteristics which are common to the modern military assault rifle."²⁴ The working group explained that the modern military assault rifle is a weapon designed for killing or disabling the enemy and has characteristics designed to accomplish this purpose. Moreover, it found that these characteristics distinguish modern military assault rifles from traditional sporting rifles.

The characteristics of the modern military assault rifle that the working group identified were as follows: (1) military configuration (which included: ability to accept a detachable magazine, folding/telescoping stocks, separate pistol grips, ability to accept a bayonet, flash suppressors, bipods, grenade launchers, and night sights) (see exhibit 5 for a thorough discussion of each of these features); (2) ability to fire automatically (i.e., as a machinegun); and (3) chambered to accept a centerfire cartridge case having a length of 2.25 inches or less.²⁵ In regards to the ability to accept a detachable magazine, the working group explained that:

[v]irtually all modern military firearms are designed to accept large, detachable magazines. This provides the soldier with a fairly large ammunition supply and the ability to rapidly reload. Thus, large capacity magazines are indicative of military firearms. While detachable

²⁴ 1989 report at 6.

²⁵ 1989 report at 6.

magazines are not limited to military firearms, most traditional semiautomatic sporting firearms, designed to accommodate a detachable magazine, have a relatively small magazine capacity.²⁶

The working group emphasized that these characteristics had to be looked at as a whole to determine whether the overall configuration of each of the assault-type rifles under review placed the rifle fairly within the semiautomatic assault rifle type. The semiautomatic assault rifles shared all the above military assault rifle characteristics other than being machineguns.²⁷

The working group also addressed the scope of the term "sporting purposes." It concluded that the term should be given a narrow interpretation that focuses on the traditional sports of hunting and organized competitive target shooting. The working group made this determination by looking to the statute, its legislative history, applicable case law, the work of the FEP, and prior interpretations by ATF. In addition, the working group found that the reference to sporting purposes was intended to stand in contrast to military and law enforcement applications. Consequently, it determined that police/combat-type competitions should not be treated as sporting activities.²⁸

The working group then evaluated whether the semiautomatic assault rifle type of firearm is generally recognized as particularly suitable for or readily adaptable to traditional sporting applications. This examination took into account technical and marketing data, expert opinions, the recommended uses of the firearms, and information on the actual uses for which the weapons are employed in this country. The working group, however, did not consider criminal use as a factor in its analysis of the importability of this type of firearm.

After analyzing this information, the working group concluded that semiautomatic assault rifles are not a type of firearm generally recognized as particularly suitable for or readily adaptable to sporting purposes. Accordingly, the working group concluded that semiautomatic assault rifles should not be authorized for importation under section 925(d)(3). However, the working group found that some of the assault-type rifles under review (the Valmet Hunter and .22 rimfire caliber rifles), did not fall within the semiautomatic assault rifle type. In the case of the Valmet Hunter, the working group found that although it was based on the operating mechanism of the AK47 assault rifle, it had been substantially

²⁶ 1989 report at 6 (footnote omitted).

²⁷ The semiautomatic assault rifles were semiautomatic versions of machineguns.

²⁸ 1989 report at 9-11.

changed so that it was similar to a traditional sporting rifle.²⁹ Specifically, it did not have any of the military configuration features identified by the working group, except for the ability to accept a detachable magazine.

Following the 1989 study, ATF took the position that a semiautomatic rifle with any of the eight military configuration features identified in the 1989 report, other than the ability to accept a detachable magazine, failed the sporting purposes test and, therefore, was not importable.

Gun South, Inc. v. Brady

Concurrent with its work on the 1989 report, ATF was involved in litigation with Gun South, Inc. (GSI). In October 1988 and February 1989, ATF had granted GSI permits to import AUG-SA rifles. As mentioned previously, in March and April of 1989, ATF imposed a temporary suspension on the importation of rifles being reviewed in the 1989 study, which included the AUG-SA rifle. GSI filed suit in Federal court, seeking to prohibit the Government from interfering with the delivery of firearms imported under permits issued prior to the temporary suspension.

The court of appeals found that the Government had the authority to suspend temporarily the importation of GSI's AUG-SA rifles because the GCA "impliedly authorizes" such action.³⁰ In addition, the court rejected GSI's contention that the suspension was arbitrary and capricious because the AUG-SA rifle had not physically changed, explaining the argument "places too much emphasis on the rifle's structure for determining whether a firearm falls within the sporting purpose exception. While the Bureau must consider the rifle's physical structure, the [GCA] requires the Bureau to equally consider the rifle's use."³¹ In addition, the court found that ATF adequately had considered sufficient evidence before imposing the temporary suspension, citing evidence ATF had considered

demonstrating that semiautomatic assault-type rifles were being used with increasing frequency in crime.³²

²⁹ This finding reflects the fact that the operating mechanism of the AK47 assault rifle is similar to the operating mechanism used in many traditional sporting rifles.

³⁰ Gun South, Inc. v. Brady, 877 F.2d 858 (11th Cir. 1989). The court of appeals issued its ruling just days before the 1989 report was issued. However, the report was complete before the ruling was issued.

³¹ Id.

³² Id.

Although GSI sued ATF on the temporary suspension of its import permits, once the 1989 report was issued, no one pursued a lawsuit challenging ATF's determination that the semiautomatic assault rifles banned from importation did not meet the sporting purposes test.³³

Violent Crime Control and Law Enforcement Act of 1994

On September 13, 1994, Congress passed the Violent Crime Control and Law Enforcement Act of 1994,³⁴ which made it unlawful, with certain exceptions, to manufacture, transfer, or possess semiautomatic assault weapons as defined by the statute.³⁵ The statute defined semiautomatic assault weapons to include 19 named models of firearms (or copies or duplicates of the firearms in any caliber);³⁶ semiauto-matic rifles that have the ability to accept detachable magazines and have at least two of five features specified in the law; semiautomatic pistols that have the ability to accept detachable magazines and have at least two of five features specified in the law; and semiautomatic shotguns that have at least two of four features specified in the law.³⁷ However, Congress

³³ After the 1989 report was issued, Mitchell Arms, Inc. asserted takings claims against the Government based upon the suspension and revocation of four permits allowing for the importation of semiautomatic assault rifles and ATF's temporary moratorium on import permits for other rifles. The court found for the Government, holding the injury complained of was not redressable as a taking because Mitchell Arms did not hold a property interest within the meaning of the Just Compensation Clause of the Fifth Amendment. Mitchell Arms v. United States, 26 Cl. Ct. 1 (1992), aff'd, 7 F.3d 212 (Fed. Cir. 1993), cert. denied, 511 U.S. 1106 (1994).

³⁴ Pub. L. No. 103-22. Title XI, Subtitle A of this act may be cited as the "Public Safety and Recreational Firearms Use Protection Act."

³⁵ 18 U.S.C. section 922(v).

³⁶ Chapter 18 U.S.C. section 921(a)(30)(A) states that the term "semiautomatic assault weapon" means "any of the firearms, or copies or duplicates of the firearms in any caliber, known as -, " followed by a list of named firearms. Even though section 921(a)(3) defines "firearm" as used in chapter 18 to mean, in part, "the frame or receiver of any such weapon," the use of "firearm" in section 921(a)(30)(A) has not been interpreted to mean a frame or receiver of any of the named weapons, except when the frame or receiver actually is incorporated in one of the named weapons.

Any other interpretation would be contrary to Congress' intent in enacting the assault weapon ban. In the House Report to the assault weapon ban, Congress emphasized that the ban was to be interpreted narrowly. For example, the report explained that the present bill was more tightly focused than earlier drafts which gave ATF authority to ban any weapon which "embodies the same configuration" as the named list of guns in section 921(a)(30)(A); instead, the present bill "contains a set of specific characteristics that must be present in order to ban any additional semiautomatic assault weapons [beyond the listed weapons]." H. Rep. 103-489 at 21.

³⁷ 18 U.S.C. section 921(a)(30).

exempted from the assault weapon ban any semiautomatic rifle that cannot accept a detachable magazine that holds more than five rounds of ammunition and any semiautomatic shotgun that cannot hold more than five rounds of ammunition in a fixed or detachable magazine.³⁸

Although the 1994 law was not directly addressing the sporting purposes test in section 925(d)(3), section 925(d)(3) had a strong influence on the law's content. The technical work of ATF's 1989 report was, to a large extent, incorporated into the 1994 law. The House Report to the 1994 law explained that although the legal question of whether semiautomatic assault weapons met section 925(d)(3)'s sporting purposes test "is not directly posed by [the 1994 law], the working group's research and analysis on assault weapons is relevant on the questions of the purposes underlying the design of assault weapons, the characteristics that distinguish them from sporting guns, and the reasons underlying each of the distinguishing features."³⁹ As in the 1989 study, Congress focused on the external features of firearms, rather than on their semiautomatic operating mechanism.

The 1994 law also made it unlawful to possess and transfer large capacity ammunition feeding devices manufactured after September 13, 1994.⁴⁰ A large capacity ammunition feeding device was generally defined as a magazine, belt, drum, feed strip, or similar device that has the capacity of, or that can be readily restored or converted to accept, more than 10 rounds of ammunition.⁴¹

Congress passed these provisions of the 1994 law in response to the use of semiautomatic assault weapons and large capacity ammunition feeding devices in crime. Congress had been presented with much evidence demonstrating that these weapons were "the weapons of choice among drug dealers, criminal gangs, hate groups, and mentally deranged persons bent on mass murder."⁴² The House Report to the 1994 law recounts numerous crimes that had occurred involving semiautomatic assault weapons and large capacity magazines that were originally designed and produced for military assault rifles.⁴³

³⁸ 18 U.S.C. sections 922(v)(3)(C)&(D).

³⁹ H. Rep. No. 103-489, at 17, n. 19.

⁴⁰ 18 U.S.C. section 922(w).

⁴¹ 18 U.S.C. section 921(a)(31).

⁴² H. Rep. No. 103-489, at 13.

⁴³ H. Rep. No. 103-489, at 14-15.

In enacting the semiautomatic assault weapon and large capacity ammunition feeding device bans, Congress emphasized that it was not preventing the possession of sporting firearms. The House Report, for example, stated that the bill differed from earlier bills in that "it is designed to be more tightly focused and more carefully crafted to clearly exempt legitimate sporting guns."⁴⁴ In addition, Congress specifically exempted 661 long guns from the assault weapon ban which are "most commonly used in hunting and recreational sports."⁴⁵

Both the 1994 law and its legislative history demonstrate that Congress recognized that ammunition capacity is a factor in determining whether a firearm is a sporting firearm. For example, large capacity ammunition feeding devices were banned, while rifles and shotguns with small ammunition capacities were exempted from the assault weapon ban. Moreover, the House Report specifically states that the ability to accept a large capacity magazine was a military configuration feature which was not "merely cosmetic," but "serve[d] specific, combat-functional ends."⁴⁶ The House Report also explains that, while "[m]ost of the weapons covered by the [ban] come equipped with magazines that hold 30 rounds [and can be replaced with magazines that hold 50 or even 100 rounds], . . . [i]n contrast, hunting rifles and shotguns typically have much smaller magazine capabilities--from 3-5."⁴⁷

Finally, it must be emphasized that the semiautomatic assault weapon ban of section 922(v) is distinct from the sporting purposes test governing imports of section 925(d)(3). Clearly, any weapon banned under section 922(v) cannot be imported into the United States because its possession in the United States would be illegal. However, it is possible that a weapon not defined as a semiautomatic assault weapon under section 922(v) still would not be importable under section 925(d)(3). In order to be importable, the firearm must be of a type generally recognized as particularly suitable for or readily adaptable to sporting purposes regardless of its categorization under section 922(v). The

Secretary's discretion under section 925(d)(3) remains intact for all weapons not banned by the 1994 statute.

The Present Review

Prior to the November 14, 1997, decision to conduct this review, certain members of

⁴⁴ H. Rep. No. 103-489, at 21.

⁴⁵ H. Rep. No. 103-489, at 20. None of these 661 guns are study rifles.

⁴⁶ H. Rep. No. 103-489, at 18.

⁴⁷ H. Rep. No. 103-489, at 19 (footnote omitted).

Congress strongly urged that it was necessary to review the manner in which the Treasury Department is applying the sporting purposes test to the study rifles, in order to ensure that the present practice is consistent with section 925(d)(3) and current patterns of gun use. The fact that it had been nearly 10 years since the last comprehensive review of the importation of rifles (with many new rifles being developed during this time) also contributed to the decision to conduct this review.

DEFINING THE TYPE OF WEAPON UNDER REVIEW

Section 925 (d) (3) provides that the Secretary shall authorize the importation of a firearm if it is of a "type" that meets the sporting purposes test. Given this statutory mandate, we had to determine whether the study rifles suspended from importation fell within one type of firearm. Our review of the study rifles demonstrated that all were derived from semiautomatic assault rifles that failed to meet the sporting purposes test in 1989 but were later found to be importable when certain military features were removed.

Within this group, we determined that virtually all of the study rifles shared another important feature: The ability to accept a detachable large capacity magazine (e.g., more than 10 rounds) that was originally designed and produced for one of the following military assault rifles: AK47, FN-FAL, HK91 or 93, SIG SG550, or Uzi. (This is the only military configuration feature cited in the 1989 study that remains with any of the study rifles).

We determined that all of the study rifles that shared both of these characteristics fell within a type of firearm which, for the purposes of this report, we call "large capacity military magazine rifles" or "LCMM rifles." It appears that only one study rifle, the VEPR caliber .308--which is based on the AK47 design--does not fall within this type because it does not have the ability to accept a large capacity military magazine.

SCOPE OF "SPORTING PURPOSES"

As in the 1989 study, we had to determine the scope of "sporting purposes" as used in section 925(d)(3). Looking to the statute, its legislative history, the work of the Firearms Evaluation Panel (see exhibit 6), and prior ATF interpretations, we determined sporting purposes should be given a narrow reading, incorporating only the traditional sports of hunting and organized competitive target shooting (rather than a broader interpretation that could include virtually any lawful activity or competition.)

In terms of the statute itself, the structure of the importation provisions suggests a somewhat narrow interpretation. Firearms are prohibited from importation (section 922(l)), with four specific exceptions (section 925(d)). A broad interpretation permitting a firearm to be imported because someone may wish to use it in some lawful shooting activity would render the general prohibition of section 922(l) meaningless.

Similarly, as discussed in the "Background" section, the legislative history of the GCA indicates that the term sporting purposes narrowly refers to the traditional sports of hunting and organized competitive target shooting. There is nothing in the history to indicate that it was intended to recognize every conceivable type of activity or competition that might employ a firearm.

In addition, the FEP specifically addressed the informal shooting activity of "plinking" (shooting at randomly selected targets such as bottles and cans) and determined that it was not a legitimate sporting purpose under the statute. The panel found that, "while many persons participate in this type of activity and much ammunition was expended in such endeavors, it was primarily a pastime and could not be considered a sport for the purposes of importation. . . ." (See exhibit 6.)

Finally, the 1989 report determined that the term sporting purposes should be given a narrow reading incorporating the traditional rifle sports of hunting and organized competitive target shooting. In addition, the report determined that the statute's reference to sporting purposes was intended to stand in contrast with military and law enforcement applications. This is consistent with ATF's interpretation in the context of the Striker-12 shotgun and the USAS-12 shotgun. It is also supported by the court's decision in Gilbert Equipment Co. v. Higgins.

We received some comments urging us to find "practical shooting" is a sport for the purposes of section 925(d)(3).⁴⁸ Further, we received information showing that practical shooting is gaining in popularity in the United States and is governed by an organization that has sponsored national events since 1989. It also has an international organization.

While some may consider practical shooting a sport, by its very nature it is closer to police/combat-style competition and is not comparable to the more traditional types of sports, such as hunting and organized competitive target shooting. Therefore, we are not convinced that practical shooting does, in fact, constitute a sporting purpose under section 925(d)(3).⁴⁹ However, even if we were to assume for the sake of argument that practical shooting is a sport for the purposes of the statute, we still would have to decide whether a firearm that could be used in practical shooting meets the sporting purposes test. In other words, it still would need to be determined whether the firearm is of a type that is generally recognized as particularly suitable for or readily adaptable to practical shooting and other sporting purposes.⁵⁰ Moreover, the legislative history makes clear that the use of a military weapon in a practical shooting competition would not make that weapon

⁴⁸ Practical shooting involves moving, identifying, and engaging multiple targets and delivering a number of shots rapidly. In doing this, practical shooting participants test their defensive skills as they encounter props, including walls and barricades, with full or partial targets, "no-shoots," steel reaction targets, movers, and others to challenge them.

⁴⁹ As noted earlier, ATF has taken the position that police/combat-style competitions do not constitute a "sporting purpose." This position was upheld in Gilbert Equipment Co., 709 F. Supp. at 1077.

⁵⁰ Our findings on the use and suitability of the LCMM rifles in practical shooting competitions are contained in the "Suitability for Sporting Purposes" section of this report.

sporting: “if a military weapon is used in a special sporting event, it does not become a sporting weapon. It is a military weapon used in a special sporting event.”⁵¹ While none of the LCMM rifles are military weapons, they still retain the military feature of the ability to accept a large capacity military magazine.

⁵¹ 114 Cong. Rec. 27461-462 (1968) (Sen. Dodd).

METHOD OF STUDY

As explained in the “Executive Summary” section of this report, the purpose of this study is to review whether modified semiautomatic assault rifles are properly importable under 18 U.S.C. section 925(d)(3). More specifically, we reexamined the conclusions of the 1989 report as applied today to determine whether we are correct to allow importation of the study rifles that have been modified by having certain military features removed. To determine whether such rifles are generally recognized as particularly suitable for or readily adaptable to sporting purposes, the Secretary must consider both the physical features of the rifles and the actual uses of the rifles.⁵² Because it appears that all of the study rifles that have been imported to date have the ability to accept a large capacity military magazine,⁵³ all of the information collected on the study rifles’ physical features and actual uses applies only to the LCMM rifles.

Physical features:

The discussion of the LCMM rifles’ physical features are contained in the “Suitability for Sporting Purposes” section of this report.

Use:

We collected relevant information on the use of the LCMM rifles. Although the 1989 study did not consider the criminal use of firearms in its importability analysis, legislative history demonstrates and the courts have found that criminal use is a factor that can be considered in determining whether a firearm meets the requirements of section 925(d)(3).⁵⁴ Accordingly, we decided to consider the criminal use of the LCMM rifles in the present analysis.

The term “generally recognized” in section 925(d)(3) indicates that the Secretary should base his evaluation of whether a firearm is of a type that is particularly suitable for or readily adaptable to sporting purposes, in part, on a “community standard” of the firearm’s use.⁵⁵ The community standard “may change over time even though the firearm remains the same. Thus, a changing pattern of use may significantly affect whether a firearm is generally recognized as particularly suitable for or readily adaptable to a sporting purpose.”⁵⁶ Therefore, to assist the Secretary in determining whether the LCMM rifles presently are of a type generally recognized as particularly suitable for or readily adaptable to sporting purposes, we gathered information from the relevant “community.” The relevant community was defined as persons and groups who are

⁵² Gun South, Inc., 877 F.2d at 866.

⁵³ The VEPR caliber .308 discussed on page 16 has not yet been imported.

⁵⁴ 114 Cong. Rec. S 5556, 5582, 5585 (1968)(“[t]he entire intent of the importation section [of the sporting purposes test] is to get those kinds of weapons that are used by criminals and have no sporting purposes”) (Sen. Dodd); Gun South, Inc., 877 F.2d at 866.

⁵⁵ Gun South, Inc., 877 F.2d at 866.

⁵⁶ Id.

knowledgeable about the uses of these firearms or have relevant information about whether these firearms are particularly suitable for sporting purposes. We identified more than 2,000 persons or groups we believed would be able to provide relevant, factual information on these issues. The individuals and groups were selected to obtain a broad range of perspectives on the issues. We conducted surveys to obtain specific information from hunting guides, editors of hunting and shooting magazines, organized competitive shooting groups, State game commissions, and law enforcement agencies and organizations. Additionally, we asked industry members, trade associations, and various interest and information groups to provide relevant information.⁵⁷ A detailed presentation of the surveys and responses is included as an appendix to this report.

We also reviewed numerous advertisements and publications, both those submitted by the editors of hunting and shooting magazines and those collected internally, in our search for material discussing the uses of the LCMM rifles. Further, we collected importation data, tracing data, and case studies.⁵⁸

Our findings on use are contained in the “Suitability for Sporting Purposes” section of this report.

⁵⁷ **Hunting guides:** Guides were asked about specific types of firearms used by their clients. The guides were an easily definable group, versus the entire universe of hunters. We obtained the names of the hunting guides surveyed from the States.

Editors of hunting and shooting magazines: Editors were surveyed to determine whether they recommended the LCMM rifles for hunting or organized competitive target shooting and whether they had written any articles on the subject. The list of editors we surveyed was obtained from a directory of firearms-related organizations.

Organized competitive shooting groups: Organized groups were asked whether they sponsored competitive events with high-power semiautomatic rifles and whether the LCMM rifles were allowed in those competitions. We felt it was significant to query those who are involved with organized events rather than unofficial activities with no specific rules or guidelines. As with the editors above, the list of groups was obtained from a directory of firearms-related organizations.

State game commissions: State officials were surveyed to determine whether the use of the LCMM rifles was prohibited or restricted for hunting in each State.

Law enforcement agencies and organizations: Specific national organizations and a sampling of 26 police departments across the country were contacted about their knowledge of the LCMM rifles’ use in crime. The national organizations were surveyed with the intent that they would gather input from the wide range of law enforcement agencies that they represent or that they would have access to national studies on the subject.

Industry members and trade associations: These groups were included because of their knowledge on the issue.

Interest and information groups: These organizations were included because of their wide range of perspectives on the issue.

⁵⁸ To assist us with our review of the crime-related information we collected, we obtained the services of Garen J. Wintemute, MD, M.P.H. Director of the Violence Prevention Research Program, University of California, Davis, and Anthony A. Braga, Ph.D., J.F.K. School of Government, Harvard University.

SUITABILITY FOR SPORTING PURPOSES

The next step in our review was to evaluate whether the LCMM rifles, as a type, are generally recognized as particularly suitable for or readily adaptable to hunting and organized competitive target shooting.⁵⁹ The standard applied in making this determination is high. It requires more than a showing that the LCMM rifles may be used or even are sometimes used for hunting and organized competitive target shooting; if this were the standard, the statute would be meaningless. Rather, the standard requires a showing that the LCMM rifles are especially suitable for use in hunting and organized competitive target shooting.

As discussed in the “Method of Study” section, we considered both the physical features of the LCMM rifles and the actual uses of the LCMM rifles in making this determination.

Physical Features

The ability to accept a detachable large capacity magazine that was originally designed and produced for one of the following military assault rifles: AK47, FN-FAL, HK91 or 93, SIG SG550, or Uzi.

Although the LCMM rifles have been stripped of many of their military features, they all still have the ability to accept a detachable large capacity magazine that was originally designed and produced for one of the following military assault rifles: AK47, FN-FAL, HK91 and 93, SIG SG550, or Uzi; in other words, they still have a feature that was designed for killing or disabling an enemy. As the 1989 report explains:

Virtually all modern military firearms are designed to accept large, detachable magazines. This provides the soldier with a fairly large ammunition supply and the ability to rapidly reload. Thus, large capacity magazines are indicative of military firearms. While detachable magazines are not limited to military firearms, most traditional

⁵⁹ One commenter suggests that the Secretary has been improperly applying the “readily adaptable to sporting purposes” provision of the statute. Historically, the Secretary has considered the “particularly suitable for or readily adaptable to” provisions as one standard. The broader interpretation urged by the commenter would make the standard virtually unenforceable. If the Secretary allowed the importation of a firearm which is readily adaptable to sporting purposes, without requiring it actually to be adapted prior to importation, the Secretary would have no control over whether the adaptation actually would occur following the importation.

semiautomatic sporting firearms, designed to accommodate a detachable magazine, have a relatively small magazine capacity.⁶⁰

Thus, the 1989 report found the ability to accept a detachable large capacity magazine originally designed and produced for a military assault rifle was a military, not a sporting, feature. Nevertheless, in 1989 it was decided that the ability to accept such a large capacity magazine, in the absence of other military configuration features, would not be viewed as disqualifying for the purposes of the sporting purposes test. However, several important developments, which are discussed below, have led us to reevaluate the weight that should be given to the ability to accept a detachable large capacity military magazine in the sporting purposes test.

Most significantly, we must reevaluate the significance of this military feature because of a major amendment that was made to the GCA since the 1989 report was issued. In 1994, as discussed in the “Background” section of this report, Congress passed a ban on large capacity ammunition feeding devices and semiautomatic assault weapons.⁶¹ In enacting these bans, Congress made it clear that it was not preventing the possession of sporting firearms.⁶² Although the 1994 law was not directly addressing the sporting purposes test, section 925(d)(3) had a strong influence on the law's content. As discussed previously, the technical work of ATF's 1989 report was, to a large extent, incorporated into the 1994 law.

Both the 1994 law and its legislative history demonstrate that Congress found that ammunition capacity is a factor in whether a firearm is a sporting firearm. For example, large capacity ammunition feeding devices were banned, while rifles and shotguns with small ammunition capacities were exempted from the assault weapon ban. In other words, Congress found magazine capacity to be such an important factor that a semiautomatic rifle that cannot accept a detachable magazine that holds more than five rounds of ammunition will not be banned, even if it contains all five of the assault

⁶⁰ 1989 report at 6 (footnote omitted). This was not the first time that ATF considered magazine capacity to be a relevant factor in deciding whether a firearm met the sporting purposes test. See Gilbert Equipment Co., 709 F. Supp. at 1089 (“the overall appearance and design of the weapon (especially the detachable box magazine . . .) is that of a combat weapon and not a sporting weapon.”)

⁶¹ The ban on large capacity ammunition feeding devices does not include any such device manufactured on or before September 13, 1994. Accordingly, there are vast numbers of large capacity magazines originally designed and produced for military assault weapons that are legal to transfer and possess (“grandfathered” large capacity military magazines). Presently these grandfathered large capacity military magazines fit the LCMM rifles.

⁶² See, for example, H. Rep. No. 103-489, at 21.

weapon features listed in the law. Moreover, unlike the assault weapon ban in which a detachable magazine and at least two physical features are required to ban a rifle, a large capacity magazine in and of itself is banned.

In addition, the House Report specifically states that the ability to accept a large capacity magazine is a military configuration characteristic that is not "merely cosmetic," but "serve[s] specific, combat-functional ends."⁶³ The House Report also explains that large capacity magazines

make it possible to fire a large number of rounds without re-loading, then to reload quickly when those rounds are spent. Most of the weapons covered by the proposed legislation come equipped with magazines that hold 30 rounds. Even these magazines, however, can be replaced with magazines that hold 50 or even 100 rounds. Furthermore, expended magazines can be quickly replaced, so that a single person with a single assault weapon can easily fire literally hundreds of rounds within minutes. . . . In contrast, hunting rifles and shotguns typically have much smaller magazine capabilities--from 3-5.⁶⁴

Congress specifically exempted 661 long guns from the assault weapon ban that are "most commonly used in hunting and recreational sports."⁶⁵ The vast majority of these long guns do not use large capacity magazines. Although a small number of the exempted long guns have the ability to accept large capacity magazines, only four of these exempted long guns were designed to accept large capacity military magazines.⁶⁶

The 1994 law also demonstrates Congress' concern about the role large capacity magazines and firearms with the ability to accept these large capacity magazines play in

⁶³ H. Rep. No. 103-489, at 18.

⁶⁴ H. Rep. No. 103-489, at 19 (footnote omitted). The fact that 12 States place a limit on the magazine capacity allowed for hunting, usually 5 or 6 rounds, is consistent with this analysis. (See exhibit 7).

⁶⁵ H. Rep. 103-489, at 20.

⁶⁶ These four firearms are the Iver Johnson M-1 carbine, the Iver Johnson 50th Anniversary M-1 carbine, the Ruger Mini-14 autoloading rifle (without folding stock), and the Ruger Mini Thirty rifle. All of these weapons are manufactured in the United States and are not the subject of this study. In this regard, it should also be noted that Congress can distinguish between domestic firearms and foreign firearms and impose different requirements on the importation of firearms. For example, Congress may ban the importation of certain firearms although similar firearms may be produced domestically. See, for example, B-West Imports v. United States, 75 F.3d 633 (Fed. Cir. 1996).

crime. The House Report for the bill makes reference to numerous crimes involving these magazines and weapons, including the following:⁶⁷

The 1989 Stockton, California, schoolyard shooting in which a gunman with a semiautomatic copy of an AK47 and 75-round magazines fired 106 rounds in less than 2 minutes. Five children were killed and twenty-nine adults and children were injured.

The 1993 shooting in a San Francisco, California, office building in which a gunman using 2 TEC DC9 assault pistols with 50-round magazines killed 8 people and wounded 6 others.

A 1993 shooting on the Long Island Railroad that killed 6 people and wounded 19 others. The gunman had a Ruger semiautomatic pistol, which he reloaded several times with 15-round magazines, firing between 30 to 50 rounds before he was overpowered.

The House Report also includes testimony from a representative of a national police officers' organization, which reflects the congressional concern with criminals' access to firearms that can quickly expel large amounts of ammunition:

In the past, we used to face criminals armed with a cheap Saturday Night Special that could fire off six rounds before [re]loading. Now it is not at all unusual for a cop to look down the barrel of a TEC-9 with a 32 round clip. The ready availability of and easy access to assault weapons by criminals has increased so dramatically that police forces across the country are being required to upgrade their service weapons merely as a matter of self-defense and preservation. The six-shot .38 caliber service revolver, standard law enforcement issue for years, is just no match against a criminal armed with a semiautomatic assault weapon.⁶⁸

Accordingly, by passing the 1994 law, Congress signaled that firearms with the ability to accept detachable large capacity magazines are not particularly suitable for sporting purposes. Although in 1989 we found the ability to accept a detachable large capacity military magazine was a military configuration feature, we must give it more weight, given this clear signal from Congress.

The passage of the 1994 ban on large capacity magazines has had another effect. Under the 1994 ban, it generally is unlawful to transfer or possess a large capacity magazine

⁶⁷ H. Rep. No. 103-489, at 15 (two of these examples involve handguns).

⁶⁸ H. Rep. 103-489, at 13-14 (footnote omitted).

manufactured after September 13, 1994. Therefore, if we require the LCMM rifles to be modified so that they do not accept a large capacity military magazine in order to be importable, a person will not be able to acquire a newly manufactured large capacity magazine to fit the modified rifle. Thus, the modified rifle neither will be able to accept a grandfathered large capacity military magazine, nor can a new large capacity magazine be manufactured to fit it. Accordingly, today, making the ability to accept a large capacity military magazine disqualifying for importation will prevent the importation of firearms which have the ability to expel large amounts of ammunition quickly without reloading.

This was not the case in 1989 or prior to the 1994 ban.

It is important to note that even though Congress reduced the supply of large capacity military magazines by passing the 1994 ban, there are still vast numbers of grandfathered large capacity military magazines available that can be legally possessed and transferred. These magazines currently fit in the LCMM rifles. Therefore, the 1994 law did not eliminate the need to take further measures to prevent firearms imported into the United States from having the ability to accept large capacity military magazines, a nonsporting factor.

Another impetus for reevaluating the existing standard is the development of modified weapons. The 1989 report caused 43 different models of semiautomatic assault rifles to be banned from being imported into the United States. The effect of that determination was that nearly all semiautomatic rifles with the ability to accept detachable large capacity military magazines were denied importation. Accordingly, at the time, there was no need for the ability to accept such a magazine to be a determining factor in the sporting purposes test. This is no longer the case. As discussed earlier, manufacturers have modified the semiautomatic assault rifles disallowed from importation in 1989 by removing all of their military configuration features, except for the ability to accept a detachable magazine. As a result, semiautomatic rifles with the ability to accept detachable large capacity military magazines (and therefore quickly expel large amounts of ammunition) legally have been entering the United States in significant numbers. Accordingly, the development of these modified weapons necessitates reevaluating our existing standards.

Thus, in order to address Congress' concern with firearms that have the ability to expel large amounts of ammunition quickly, particularly in light of the resumption of these weapons coming into the United States, the ability to accept a detachable large capacity military magazine must be given greater weight in the sporting purposes analysis of the LCMM rifles than it presently receives.⁶⁹

⁶⁹ A firearm that can be easily modified to accept a detachable large capacity military magazine with only minor adjustments to the firearm or the magazine is considered to be a firearm with the ability to accept these magazines. The ROMAK4 is an example of such a firearm: With minor modifications to either the

Derived from semiautomatic assault rifles that failed to meet the sporting purposes test in 1989 but were later found importable when certain military features were removed.

All rifles that failed to meet the sporting purposes test in 1989 were found to represent a distinctive type of rifle distinguished by certain general characteristics that are common to the modern military assault rifle. Although the LCMM rifles are based on rifle designs excluded from importation under the 1989 standard, they all were approved for import when certain military features were removed. However, the LCMM rifles all still maintain some characteristics common to the modern military assault rifle. Because the outward appearance of most of the LCMM rifles continues to resemble the military assault rifles from which they are derived, we have examined the issue of outward appearance carefully. Some might prefer the rugged, utilitarian look of these rifles to more traditional sporting guns. Others might recoil from using these rifles for sport because of their nontraditional appearance. In the end, we concluded that appearance alone does not affect the LCMM rifles' suitability for sporting purposes. Available information leads us to believe that the determining factor for their use in crime is the ability to accept a detachable large capacity military magazine.

Use

In the 1989 study, ATF found that all rifles fairly typed as semiautomatic assault rifles should be treated the same. Accordingly, the report stated "[t]he fact that there may be some evidence that a particular rifle of this type is used or recommended for sporting purposes should not control its importability. Rather, all findings as to suitability of these rifles as a whole should govern each rifle within this type."⁷⁰ We adopt the same approach for the present study.

Use for hunting:

The information we collected on the actual use of the LCMM rifles for hunting medium or larger game suggests that, with certain exceptions, the LCMM rifles sometimes are used for hunting; however, their actual use in hunting is limited.⁷¹ In fact, there are some

firearm or a large capacity magazine that was originally designed and produced for a semiautomatic assault rifle based on the AK47 design, the ROMAK4 has the ability to accept the magazine.

⁷⁰ 1989 report at 11.

⁷¹ We targeted the surveys toward the hunting of medium and larger game (e.g., turkey and deer) because the LCMM rifles chamber centerfire cartridges and therefore likely would be most suitable for hunting this type of game. We also learned that the LCMM rifles were used to shoot certain varmints (e.g., coyotes and groundhogs), which are generally considered to be pests, not game. Many commented that the LCMM

general restrictions and prohibitions on the use of any semiautomatic rifle for hunting game. Almost half of the States place restrictions on the use of semiautomatic rifles in hunting, mostly involving magazine capacity (5-6 rounds) and what can be hunted with the rifles (see exhibit 7).

Of the 198 hunting guides who responded to our survey, only 26 stated that they had clients who used the LCMM rifles on hunting trips during the past 2 hunting seasons and only 10 indicated that they recommend the LCMM rifles for hunting. In contrast, the vast majority of the guides (152) indicated that none of their clients used the LCMM rifles on hunting trips during the past 2 hunting seasons. In addition, the hunting guides indicated that the most common semiautomatic rifles used by their clients were those made by Browning and Remington.⁷² We found significant the comments of the hunting guides indicating that the LCMM rifles were not widely used for hunting.

Of the 13 editors of hunting and shooting magazines who responded to our survey, only 2 stated that their publications recommend specific types of centerfire semiautomatic rifles for use in hunting medium or larger game. These two respondents stated that they recommend all rifles that are safe and of appropriate caliber for hunting, including the LCMM rifles. However, they did not recommend the LCMM rifles based on the Uzi design for hunting big game; these rifles use a 9mm cartridge, which is not an appropriate caliber for this type of game, according to the editors. It is important to note that the LCMM rifles use different cartridges. The LCMM rifles based on the FN-FAL, SIG SG550, and HK91 and 93 designs are chambered for either the .308 Winchester cartridge or the .223 Remington cartridge, depending on the specific model; the LCMM rifles based on the Uzi design are chambered for the 9mm Parabellum cartridge; and the majority of the LCMM rifles based on the AK47 design are chambered for the 7.62 x 39mm cartridge (some are chambered for the .223 Remington cartridge).

Of the five interest and information groups that responded to our survey, three supported the use of the LCMM rifles for hunting. However, one of these groups stated that the

rifles were particularly useful on farms and ranches because of their ruggedness, utilitarian design, and reliability.

⁷² According to a 1996 study conducted for the Fish and Wildlife Service, only 2 percent of big game hunters surveyed used licensed hunting guides. Therefore, it should be noted that the information provided by the guides we surveyed may not be representative of all hunters. However, we believe that the hunting guides' information is reliable and instructive because of their high degree of experience with and knowledge of hunting.

ammunition used by the LCMM rifle models based on the Uzi design were inadequate for shooting at long distances (i.e., more than 100 yards).

Out of the 70 published articles reviewed from various shooting magazines, only 5 contained relevant information. One of these five articles stated that, in the appropriate calibers, the LCMM rifles could make “excellent” hunting rifles. Two of the articles stated that the 7.62 x 39mm cartridge (used in LCMM rifles based on the AK47 design) could be an effective hunting cartridge. One of the articles that recommended the rifles also recommended modifications needed to improve their performance in hunting. None of the articles suggested that LCMM rifles based on the Uzi design were good hunting rifles. Thus, although the LCMM rifles could be used in hunting, the articles provided limited recommendations for their use as hunting weapons.

In their usage guides, ammunition manufacturers recommend the .308 and the 7.62 x 39mm cartridges (used in LCMM rifles based on the FN-FAL and HK 91 designs, and the AK47 design respectively) for medium game hunting. However, the usage guides do not identify the 9mm cartridge (used in the Uzi design rifles) as being suitable for hunting.

A majority of the importers who provided information said that the LCMM rifles they import are used for hunting deer and similar animals. However, they provided little evidence that the rifles were especially suitable for hunting these animals. Two of the importers who responded also provided input from citizens in the form of letters supporting this position. The letters show a wide variety of uses for the LCMM rifles, including deer hunting, plinking, target shooting, home defense, and competitive shooting.

Our review of all of this information indicates that while these rifles are used for hunting medium and larger game, as well as for shooting varmints, the evidence was not persuasive that there was widespread use for hunting. We did not find any evidence that the ability to accept a large capacity military magazine serves any hunting purpose. Traditional hunting rifles have much smaller magazine capabilities. Furthermore, the mere fact that the LCMM rifles are used for hunting does not mean that they are particularly suitable for hunting or meet the test for importation.

Use for organized competitive target shooting:

Of the 31 competitive shooting groups we surveyed that stated they have events using high-power semiautomatic rifles, 18 groups stated that they permit the use of the LCMM rifles for all competitions. However, 13 respondents stated that they restrict or prohibit the LCMM rifles for some competitions, and one group stated that it prohibits the LCMM

rifles for all competitions. These restrictions and prohibitions generally were enacted for the following reasons:

1. High-power rifle competitions generally require accuracy at ranges beyond the capabilities of the 9mm cartridge, which is used by the LCMM rifles based on the Uzi design.
2. The models based on the AK47 design are limited to competitions of 200 yards or less because the 7.62 x 39mm cartridge, which is used by these models, generally has an effective range only between 300 and 500 yards.
3. Certain matches require U.S. military service rifles, and none of the LCMM rifles fall into this category.

The LCMM rifles are permitted in all United States Practical Shooting Association (USPSA) rifle competitions. The USPSA Practical Shooting Handbook, Glossary of Terms, states that “[y]ou can use any safe firearm meeting the minimum caliber (9mm/.38) and power factor (125PF) requirements.” The USPSA has stated that “rifles with designs based on the AR15, AK47, FN-FAL, HK91, HK93, and others are allowed and must be used to be competitive.” Moreover, we received some information indicating that the LCMM rifles actually are used in practical shooting competitions.⁷³ However, we did not receive any information demonstrating that an LCMM rifle’s ability to accept large capacity military magazines was necessary for its use in practical shooting competitions.

A couple of the interest groups recommended the LCMM rifles for organized competitive target shooting.

None of the 70 published articles read mentioned the use of the LCMM rifles in organized competitive target shooting.

All of the major ammunition manufacturers produce .308 Winchester ammunition (which is used in the LCMM rifle models based on the HK 91 and FN-FAL designs) and .223 Remington ammunition (which is used in the HK 93, the SIG SG550, and some of the study rifle models based on the AK47 design) specifically for competitive shooting for rifles. The major manufacturers and advertisers of 9mm ammunition (which is used in the LCMM rifles based on the Uzi design) identify it as being suitable for pistol target shooting and self-defense.

⁷³ Merely because a rifle is used in a sporting competition, the rifle does not become a sporting rifle. 114 Cong. Rec. 27461-462 (1968).

A majority of the importers who provided information stated that the LCMM rifles they import are permitted in and suitable for organized competitive target shooting. Two of the importers who responded also provided input from citizens in the form of letters and petitions supporting this position. However, the importers provided little evidence that the rifles were especially suitable for organized competitive target shooting.

The information collected on the actual use of the LCMM rifles for organized competitive target shooting suggests that, with certain exceptions, the LCMM rifles usually may be used and sometimes are used for organized competitive target shooting; however, their suitability for this activity is limited. In fact, there are some restrictions and prohibitions on their use. The use of the rifles in competitive target shooting appears more widespread than for hunting and their use for practical shooting was the most significant. Although we are not convinced that practical shooting does in fact constitute a sporting purpose under section 925(d), we note that there was no information demonstrating that rifles with the ability to accept detachable large capacity military magazines were necessary for use in practical shooting. Once again, the presence of this military feature on LCMM rifles suggests that they are not generally recognized as particularly suitable for or readily adaptable to sporting purposes.

Use in crime:

To fully understand how the LCMM rifles are used, we also examined information available to us on their use in crime. Some disturbing trends can be identified, and it is clear the LCMM rifles are attractive to criminals.

The use of LCMM rifles in violent crime and firearms trafficking is reflected in the cases cited below. It should be noted that the vast majority of LCMM rifles imported during the period 1991-1997 were AK47 variants, which explains their prevalence in the cited cases.

North Philadelphia, Pennsylvania

From April 1995 to November 1996, a convicted felon used a straw purchaser to acquire at least 55 rifles, including a number of MAK90s. The rifles were then trafficked by the prohibited subject to individuals in areas known for their high crime rates. In one case, the rifles were sold from the parking lot of a local elementary school.

Oakland, California

On July 8, 1995, a 32-year-old Oakland police officer assisted a fellow officer with a vehicle stop in a residential area. As the first officer searched the rear compartment of the stopped vehicle, a subject from a nearby residence used a Norinco model NMH 90 to shoot the 32-year old officer in the back. The officer later died from the wound.

El Paso, Texas

On April 15, 1996, after receiving information from the National Tracing Center, ATF initiated an undercover investigation of a suspected firearms trafficker who had purchased 326 MAK90 semiautomatic rifles during a 6-month period. The individual was found to be responsible for illegally diverting more than 1,000 firearms over the past several years. One of the MAK90 rifles that the subject had purchased was recovered from the scene of a 1996 shootout in Guadalajara, Mexico, between suspected drug traffickers and Mexican authorities. Another MAK90 was recovered in 1997 from the residence of a former Mexican drug kingpin following his arrest for drug-related activities.

Charlotte, North Carolina

On May 24, 1996, four armed subjects—one with a MAK90 rifle—carried out a home invasion robbery during which they killed the resident with a 9mm pistol. All four suspects were arrested.

Dallas, Texas

In September 1997, an investigation was initiated on individuals distributing crack cocaine from a federally subsidized housing community. During repeated undercover purchases of the narcotics, law enforcement officials noticed that the suspects had firearms in their possession. A search warrant resulted in the seizure of crack cocaine, a shotgun, and a North China Industries model 320 rifle.

Chesterfield, Virginia

In November 1997, a MAK90 rifle was used to kill two individuals and wound three others at a party in Chesterfield, Virginia.

Orange, California

In December 1997, a man armed with an AKS 762 rifle and two other guns drove to where he was previously employed and opened fire on former coworkers, killing four and injuring three, including a police officer.

Baltimore, Maryland

In December 1997, a search warrant was served on a homicide suspect who was armed at the time with three pistols and a MAK90 rifle.

We also studied import and trace information to learn whether the LCMM rifles are used in crime.

Between 1991 and 1997, there were 425,114 LCMM rifles imported into the United States. This represents 7.6 percent of the approximately 5 million rifles imported during this period. The breakdown of the specific variants of LCMM rifles imported follows:

AK-47 variants:	377,934
FN-FAL variants:	37,534
HK variants:	6,495
Uzi variants:	3,141
SIG SG550 variants:	10

During this same time period, ATF traced 632,802 firearms.⁷⁴ This included 81,842 rifles of which approximately 3,176 were LCMM rifles.⁷⁵ While this number is relatively low compared to the number of total traces, it must be viewed in light of the small number of LCMM rifles imported during this time period and the total number of rifles, both imported domestic, that were available in the United States. A more significant trend is reflected in figure 1.

⁷⁴ ATF traces crime guns recovered and submitted by law enforcement officials. A crime gun is defined, for purposes of firearms tracing, as any firearm that is illegally possessed, used in a crime, or suspected by law enforcement of being used in a crime. Trace information is used to establish links between criminals and firearms, to investigate illegal firearm trafficking, and to identify patterns of crime gun traces by jurisdiction. A substantial number of firearms used in crime are not recovered by law enforcement agencies and therefore not traced. In addition, not all recovered crime guns are traced. Therefore, trace requests substantially underestimate the number of firearms involved in crimes, and trace numbers contain unknown statistical biases. These problems are being reduced as more law enforcement agencies institute policies of comprehensive crime gun tracing.

⁷⁵ The vast majority of LCMM rifles traced during this time period were AK47 variants. Specifically, AK47 variants comprised 95.6 percent of the LCMM rifles traced. This must be viewed within the context that 88 percent of the LCMM rifles imported during this period were AK47 variants.

Firearms Traces 1991-1997

Year	Total Firearms Traced	Total Rifles Traced	Total Assault ⁷⁶ Rifles Traced	Total LCMM Rifles Traced
1991	42,442	6,196	656	7
1992	45,134	6,659	663	39
1993	54,945	7,690	852	182
1994	83,137	9,201	735	596
1995	76,847	9,988	717	528
1996	136,062	17,475	1,075	800
1997	194,235	24,633	1,518	1,024
Cumulative Total	632,802	81,842	6,216	3,176

Figure 1

The figures in this table show that between 1991 and 1994, trace requests involving LCMM rifles increased rapidly, from 7 to 596. During the same period, trace requests for assault rifles increased at a slower rate, from 656 to 735. The years 1991 to 1994 are significant because they cover a period between when the ban on the importation of semiautomatic assault rifles was imposed and before the September 13, 1994, ban on semiautomatic assault weapons was enacted. Thus, during the years leading up to the 1994 ban, traces of LCMM rifles were increasing much more rapidly than the traces of the rifles that had been the focus of the 1989 ban, as well as the rifles that were the focus of the 1994 congressional action.

We also compared patterns of importation with trace requests to assess the association of LCMM rifles with criminal involvement. The comparison shows that importation of LCMM rifles in the early 1990s was followed immediately by a rapid rise in the number of trace requests involving LCMM rifles. This is shown in figures 2 and 3.

⁷⁶ For purposes of this table, assault rifles include (1) semiautomatic assault rifles banned from importation in 1989 but still available domestically because they had been imported into the United States prior to the ban, (2) domestically produced rifles that would not have qualified for importation after 1989, and (3) semiautomatic assault rifles that were banned in 1994.

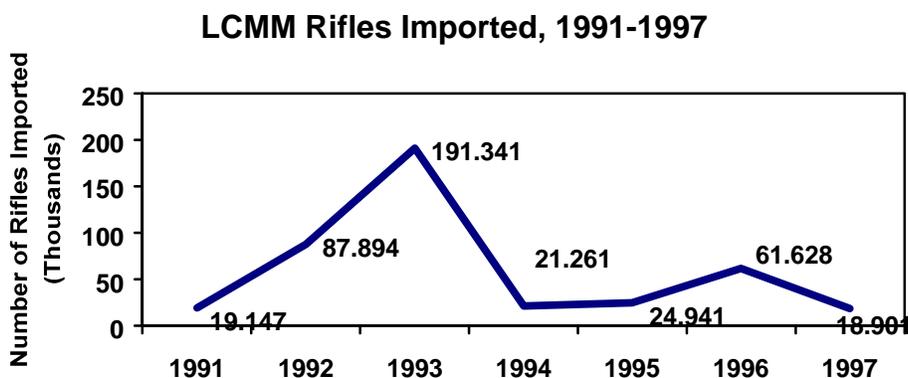


Figure 2

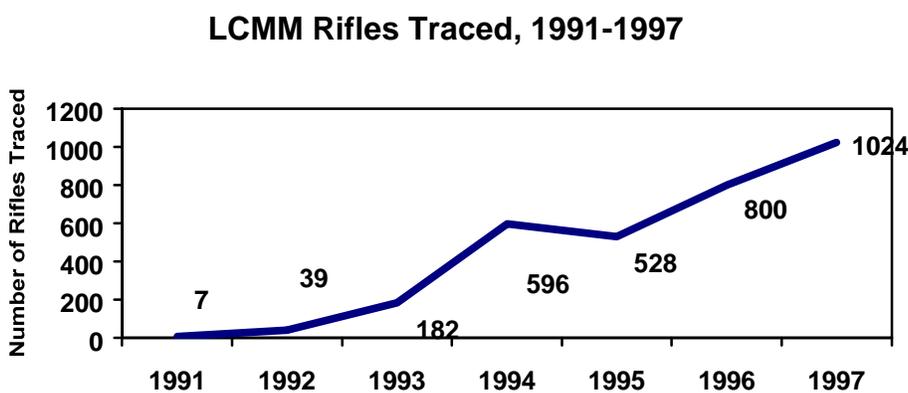


Figure 3

Two aspects of the relationship between importation and trace request patterns are significant. First, the rapid rise in traces following importation indicates that, at least in some cases, very little time elapsed between a particular LCMM rifle’s importation and its recovery by law enforcement. This time lapse is known as “time to crime.” A short time to crime can be an indicator of illegal trafficking. Therefore, trace patterns suggest what the case examples show: LCMM rifles have been associated with illegal trafficking. Second, while LCMM rifles have not been imported in large numbers since 1994,⁷⁷ the number of trace requests for LCMM rifles continues to rise. This reflects a sustained and

⁷⁷ One reason is that there has been an embargo on the importation of firearms from China since May 1994.

continuing pattern of criminal association for LCMM rifles despite the fact that there were fewer new LCMM rifles available.⁷⁸ Moreover, it is reasonable to conclude that if the importation of LCMM rifles resumes, the new rifles would contribute to the continuing rise in trace requests for them.⁷⁹

All of the LCMM rifles have the ability to accept a detachable large capacity military magazine. Thus, they all have the ability to expend large amounts of ammunition quickly. In passing the 1994 ban on semiautomatic assault rifles and large capacity ammunition feeding devices, Congress found that weapons with this ability are attractive to criminals.⁸⁰ Thus, we can infer that the LCMM rifles may be attractive to criminals because in some ways they remain akin to military assault rifles, particularly in their ability to accept a detachable large capacity military magazine.

⁷⁸ The increase in trace requests also reflects the fact that law enforcement officials were making trace requests for all types of firearms much more frequently beginning in 1996. There were 76,847 trace requests in 1995, 136,062 trace requests in 1996, and 194,235 trace requests in 1997. Traces for assault rifles were increasing by approximately the same percentage as traces for LCMM rifles during these years.

⁷⁹ In addition to looking at case studies and tracing and import information, we attempted to get information on the use of the LCMM rifles in crime by surveying national law enforcement agencies and organizations, as well as metropolitan police departments. Twenty-three national law enforcement agencies and organizations were surveyed and five responded. Three of the respondents stated they had no information. The other two provided information that was either outdated or not specific enough to identify the LCMM rifles.

The 26 metropolitan police departments surveyed provided the following information:

17 departments had no information to provide.

5 departments stated that the LCMM rifles were viewed as crime guns.

1 department stated that the LCMM rifles were non sporting.

2 departments stated that the LCMM rifles were used to hunt coyotes in their areas.

1 department stated that the LCMM rifles were used for silhouette target shooting.

⁸⁰ H. Rep. No. 103-489, at 13, 18, 19.

DETERMINATION

In 1989, ATF determined that the type of rifle defined as a semiautomatic assault rifle was not generally recognized as particularly suitable for or readily adaptable to sporting purposes. Accordingly, ATF found that semiautomatic assault rifles were not importable into the United States. This finding was based, in large part, on ATF's determination that semiautomatic assault rifles contain certain general characteristics that are common to the modern military assault rifle. These characteristics were designed for killing and disabling the enemy and distinguish the rifles from traditional sporting rifles. One of these characteristics is a military configuration, which incorporates eight physical features: Ability to accept a detachable magazine, folding/telescoping stocks, separate pistol grips, ability to accept a bayonet, flash suppressors, bipods, grenade launchers, and night sights. In 1989, ATF decided that any of these military configuration features, other than the ability to accept a detachable magazine, would make a semiautomatic assault rifle not importable.

Certain semiautomatic assault rifles that failed the 1989 sporting purposes test were modified to remove all of the military configuration features, except for the ability to accept a detachable magazine. Significantly, most of these modified rifles not only still have the ability to accept a detachable magazine but, more specifically, still have the ability to accept a large capacity military magazine. It appears that only one of the current study rifles, the VEPR caliber .308 (an AK47 variant), does not have the ability to accept a large capacity military magazine and, therefore, is not an LCMM rifle. Based on the standard developed in 1989, these modified rifles were found not to fall within the semiautomatic assault rifle type and were found to meet the sporting purposes test. Accordingly, these rifles were approved for import into the United States.

Members of Congress and others have expressed concerns that these modified semiautomatic assault rifles are essentially the same as the semiautomatic assault rifles determined to be not importable in 1989. In response to such concerns, the present study reviewed the current application of the sporting purposes test to the study rifles to determine whether the statute is being applied correctly and to ensure that the current use of the study rifles is consistent with the statute's criteria for importability.

Our review took another look at the entire matter. We reexamined the basic tenets of the 1989 study, conducted a new analysis of the physical features of the rifles, surveyed a wide variety of sources to acquire updated information relating to use and suitability, and assessed changes in law that might have bearing on the treatment of the study rifles.

This review has led us to conclude that the basic finding of the 1989 decision remains valid and that military-style semiautomatic rifles are not importable under the sporting purposes standard. Accordingly, we believe that the Department of the Treasury correctly has been denying the importation of rifles that had any of the distinctly military

configuration features identified in 1989, other than the ability to accept a detachable magazine. Our review, however, did result in a finding that the ability to accept a detachable large capacity magazine originally designed and produced for a military assault weapon should be added to the list of disqualifying military configuration features identified in 1989.

Several important changes have occurred since 1989 that have led us to reevaluate the importance of this feature in the sporting purposes test. Most significantly, by passing the 1994 bans on semiautomatic assault weapons and large capacity ammunition feeding devices, Congress sent a strong signal that firearms with the ability to expel large amounts of ammunition quickly are not sporting; rather, firearms with this ability have military purposes and are a crime problem. The House Report to the 1994 law emphasizes that the ability to accept a large capacity magazine “serve[s] specific, combat-functional ends.”⁸¹ Moreover, this ability plays a role in increasing a firearm’s “capability for lethality,” creating “more wounds, more serious, in more victims.”⁸² Furthermore, the House Report noted semiautomatic assault weapons with this ability are the “weapons of choice among drug dealers, criminal gangs, hate groups, and mentally deranged persons bent on mass murder.”⁸³

Moreover, we did not find any evidence that the ability to accept a detachable large capacity military magazine serves any sporting purpose. The House Report to the 1994 law notes that, while most of the weapons covered by the assault weapon ban come equipped with detachable large capacity magazines, hunting rifles and shotguns typically have much smaller magazine capabilities, from 3 to 5 rounds.⁸⁴ Similarly, we found that a number of States limit magazine capacity for hunting to 5 to 6 rounds. We simply found no information showing that the ability to accept a detachable large capacity military magazine has any purpose in hunting or organized competitive target shooting.

Accordingly, we find that the ability to accept a detachable large capacity military magazine is a critical factor in the sporting purposes test that must be given the same weight as the other military configuration features identified in 1989.

The information we collected on the use and suitability of the LCMM rifles for hunting and organized competitive target shooting demonstrated that the rifles are not especially suitable for sporting purposes. Although our study found that the LCMM rifles, as a type, may sometimes be used for hunting, we found no evidence that they are commonly used for hunting. In fact, some of the rifles are unsuitable for certain types of hunting.

⁸¹ H. Rep. No. 103-489, at 18.

⁸² H. Rep. No. 103-489, at 19.

⁸³ H. Rep. No. 103-489, at 13.

⁸⁴ H. Rep. No. 103-489, at 19 (footnote omitted).

The information we collected also demonstrated that although the LCMM rifles, as a type, may be used for organized competitive target shooting, their suitability for these competitions is limited. There are even some restrictions or prohibitions on their use for certain types of competitions. In addition, we believe that all rifles which are fairly typed as LCMM rifles should be treated the same. Therefore, the fact that there may be some evidence that a particular rifle of this type is used or recommended for sporting purposes should not control its importability. Rather, all findings as to suitability of LCMM rifles as a whole should govern each rifle within this type. The findings as a whole simply did not satisfy the standard set forth in section 925(d)(3).

Finally, the information we gathered demonstrates that the LCMM rifles are attractive to certain criminals. We find that the LCMM rifles' ability to accept a detachable large capacity military magazine likely plays a role in their appeal to these criminals. In enacting the 1994 bans on semiautomatic assault weapons and large capacity ammunition feeding devices, Congress recognized the appeal large magazine capacity has to the criminal element.

Weighing all this information, the LCMM rifles, as a type, are not generally recognized as particularly suitable for or readily adaptable to sporting purposes. As ATF found in conducting its 1989 study, although some of the issues we confronted were difficult to resolve, in the end we believe the ultimate conclusion is clear and compelling. The ability of all of the LCMM rifles to accept a detachable large capacity military magazine gives them the capability to expel large amounts of ammunition quickly; this serves a function in combat and crime, but serves no sporting purpose. Given the high standard set forth in section 925(d)(3) and the Secretary's discretion in applying the sporting purposes test, this conclusion was clear.

This decision will in no way preclude the importation of true sporting firearms. It will prevent only the importation of firearms that cannot fairly be characterized as sporting rifles.

Individual importers with existing permits for, and applications to import involving, the LCMM rifles will be notified of this determination in writing. Each of these importers will be given an opportunity to respond and present additional information and arguments. Final action will be taken on permits and applications only after an affected importer has an opportunity to make its case.

THE WHITE HOUSE
WASHINGTON

November 14, 1997

MEMORANDUM FOR THE SECRETARY OF THE TREASURY

SUBJECT: Importation of Modified Semiautomatic
Assault-Type Rifles

The Gun Control Act of 1968 restricts the importation of firearms unless they are determined to be particularly suitable for or readily adaptable to sporting purposes. In 1989, the Department of the Treasury (the Department) conducted a review of existing criteria for applying the statutory test based on changing patterns of gun use. As a result of that review, 43 assault-type rifles were specifically banned from importation. However, manufacturers have modified many of those weapons banned in 1989 to remove certain military features without changing their essential operational mechanism. Examples of such weapons are the Galil and the Uzi.

In recent weeks, Members of Congress have strongly urged that it is again necessary to review the manner in which the Department is applying the sporting purposes test, in order to ensure that the agency's practice is consistent with the statute and current patterns of gun use. A letter signed by 30 Senators strongly urged that modified assault-type weapons are not properly importable under the statute and that I should use my authority to suspend temporarily their importation while the Department conducts an intensive, expedited review. A recent letter from Senator Dianne Feinstein emphasized again that weapons of this type are designed not for sporting purposes but for the commission of crime. In addition, 34 Members of the House of Representatives signed a letter to Israeli Prime Minister Binyamin Netanyahu requesting that he intervene to stop all sales of Galils and Uzis into the United States. These concerns have caused the Government of Israel to announce a temporary moratorium on the exportation of Galils and Uzis so that the United States can review the importability of these weapons under the Gun Control Act.

The number of weapons at issue underscores the potential threat to the public health and safety that necessitates immediate action. Firearms importers have obtained permits to import nearly 600,000 modified assault-type rifles. In addition, there are pending before the Department applications to import more than 1 million additional such weapons. The number of rifles covered by outstanding permits is comparable to that which existed in 1989 when the Bush Administration temporarily suspended import permits for assault-type rifles. The number of weapons for which permits for importation are being sought through pending applications is approximately 10 times greater than in 1989. The number of such firearms for which import applications have been filed has skyrocketed from 10,000 on October 9, 1997, to more than 1 million today.

My Administration is committed to enforcing the statutory restrictions on importation of firearms that do not meet the sporting purposes test. It is necessary that we ensure that the statute is being correctly applied and that the current use of these modified weapons is consistent with the statute's criteria for importability. This review should be conducted at once on an expedited basis. The review is directed to weapons such as the Uzi and Galil that failed to meet the sporting purposes test in 1989, but were later found importable when certain military features were removed. The results of this review should be applied to all pending and future applications.

The existence of outstanding permits for nearly 600,000 modified assault-type rifles threatens to defeat the purpose of the expedited review unless, as in 1989, the Department temporarily suspends such permits. Importers typically obtain authorization to import firearms in far greater numbers than are actually imported into the United States. However, gun importers could effectively negate the impact of any Department determination by simply importing weapons to the maximum amount allowed by their permits. The public health and safety require that the only firearms allowed into the United States are those that meet the criteria of the statute.

Accordingly, as we discussed, you will:

- 1) Conduct an immediate expedited review not to exceed 120 days in length to determine whether modified semiautomatic assault-type rifles are properly importable under the statutory sporting purposes test. The results of this review will govern action on pending and future applications for import permits, which shall not be acted upon until the completion of this review.

Exhibit 1

3

2) Suspend outstanding permits for importation of modified semiautomatic assault-type rifles for the duration of the 120-day review period. The temporary suspension does not constitute a permanent revocation of any license. Permits will be revoked only if and to the extent that you determine that a particular weapon does not satisfy the statutory test for importation, and only after an affected importer has an opportunity to make its case to the Department.

William J. Curran

Exhibit 2

STUDY RIFLE MODELS

AK47 Variants:

MAK90*	SA2000
314*	ARM
56V*	MISR
89*	MISTR
EXP56A*	SA85M
SLG74	Mini PSL
NHM90*	ROMAK 1
NHM90-2*	ROMAK 2
NHM91*	ROMAK 4
SA85M	Hunter rifle
SA93	386S
A93	PS/K
AKS 762	VEPR caliber
VEPR	7.62 x 39mm
caliber .308	

FN-FAL Variants:

Saiga rifle	L1A1 Sporter
Galil Sporter	FAL Sporter
Haddar	FZSA
Haddar II	SAR4800
WUM 1	X FAL
WUM 2	C3
SLR95	C3A
SLR96	LAR Sporter
SLR97	
SLG94	
SLG95	
SLG96	

HK Variants:

BT96
Centurian 2000
SR9
PSG1
MSG90
G3SA
SAR8

Uzi Variants:

Officers 9*
320 carbine*
Uzi Sporter

SIG SG550 Variants:

SG550-1
SG550-2

- These models were manufactured in China and have not been imported since the 1994 embargo on the importation of firearms from China.

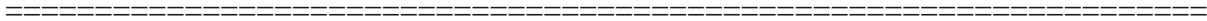
STUDY RIFLES

The study rifles are semiautomatic firearms based on the AK47, FN-FAL, HK 91 and 93, Uzi, and SIG SG550 designs. Each of the study rifles is derived from a semiautomatic assault rifle. The following are some examples of specific study rifle models grouped by design type. In each instance, a semiautomatic assault rifle is shown above the study rifles for comparison.

AK47 Variants



AK47 semiautomatic assault rifle



MISR



ARM



MAK90



WUM 1

Exhibit 3

FN-FAL Variants



FN-FAL semiautomatic assault rifle



L1A1 Sporter



SAR 4800

HK 91 and 93 Variants



HK91 semiautomatic assault rifle



SR9



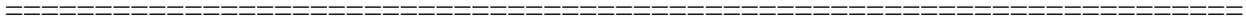
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Exhibit 3

Uzi Variants



Uzi semiautomatic assault rifle



320 carbine

SIG SG550 Variants

The following illustration depicts the configuration of a semiautomatic assault rifle based on the SIG SG550 design. No illustrations of modified semiautomatic versions are available.



SIG SG550 semiautomatic assault rifle

DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

FACTORING CRITERIA FOR WEAPONS

NOTE: The Bureau of Alcohol, Tobacco and Firearms reserves the right to preclude importation of any revolver or pistol which achieves an apparent qualifying score but does not adhere to the provisions of section 925(d)(3) of Amended Chapter 44, Title 18, U.S.C.

PISTOL			REVOLVER		
MODEL:			MODEL:		
PREREQUISITES			PREREQUISITES		
1. The pistol must have a positive manually operated safety device. 2. The combined length and height must not be less than 10" with the height (right angle measurement to barrel without magazine or extension) being at least 4" and the length being at least 6"			1. Must pass safety test. 2. Must have overall frame (with conventional grips) length (not diagonal) of 4 1/2" minimum. 3. Must have a barrel length of at least 3".		
INDIVIDUAL CHARACTERISTICS	POINT VALUE	POINT SUB-TOTAL	INDIVIDUAL CHARACTERISTICS	POINT VALUE	POINT SUB-TOTAL
OVERALL LENGTH			BARREL LENGTH (<i>Muzzle to Cylinder Face</i>)		
FOR EACH 1/4" OVER 6"	1		LESS THAN 4"	0	
FRAME CONSTRUCTION			FOR EACH 1/4" OVER 4"	1/2	
INVESTMENT CAST OR FORGED STEEL	15		FRAME CONSTRUCTION		
INVESTMENT CAST OR FORGED HTS ALLOY	20		INVESTMENT CAST OR FORGED STEEL	15	
WEAPON WEIGHT W/MAGAZINE (<i>Unloaded</i>)			INVESTMENT CAST OR FORGED HTS ALLOY	20	
PER OUNCE	1		WEAPON WEIGHT (<i>Unloaded</i>)		
CALIBER			PER OUNCE	1	
.22 SHORT AND .25 AUTO	0		CALIBER		
.22 LR AND 7.65mm TO .380 AUTO	3		.22 SHORT TO .25 ACP	0	
9mm PARABELLUM AND OVER	10		.22 LR AND .30 TO .38 S&W	3	
SAFETY FEATURES			.38 SPECIAL	4	
LOCKED BREECH MECHANISM	5		.357 MAG AND OVER	5	
LOADED CHAMBER INDICATOR	5		MISCELLANEOUS EQUIPMENT		
GRIP SAFETY	3		ADJUSTABLE TARGET SIGHTS (<i>Drift or Click</i>)	5	
MAGAZINE SAFETY	5		TARGET GRIPS	5	
FIRING PIN BLOCK OR LOCK	10		TARGET HAMMER AND TARGET TRIGGER	5	
MISCELLANEOUS EQUIPMENT			SAFETY TEST		
EXTERNAL HAMMER	2		A Double Action Revolver must have a safety feature which automatically (or in a Single Action Revolver by manual operation) causes the hammer to retract to a point where the firing pin does not rest upon the primer of the cartridge. The safety device must withstand the impact of a weight equal to the weight of the revolver dropping from a distance of 36" in a line parallel to the barrel upon the rear of the hammer spur, a total of 5 times.		
DOUBLE ACTION	10				
DRIFT ADJUSTABLE TARGET SIGHT	5				
CLICK ADJUSTABLE TARGET SIGHT	10				
TARGET GRIPS	5				
TARGET TRIGGER	2				
SCORE ACHIEVED (<i>Qualifying score is 75 points</i>)			SCORE ACHIEVED (<i>Qualifying score is 45 points</i>)		

Exhibit 5

MILITARY CONFIGURATION

1. Ability to accept a detachable magazine. Virtually all modern military firearms are designed to accept large, detachable magazines. This provides the soldier with a fairly large ammunition supply and the ability to rapidly reload. Thus, large capacity magazines are indicative of military firearms. While detachable magazines are not limited to military firearms, most traditional semiautomatic sporting firearms, designed to accommodate a detachable magazine, have a relatively small magazine capacity. Additionally, some States have a limit on the magazine capacity allowed for hunting, usually five or six rounds.
2. Folding/telescoping stock. Many military firearms incorporate folding or telescoping stocks. The main advantage of this item is portability, especially for airborne troops. These stocks allow the firearm to be fired from the folded position, yet it cannot be fired nearly as accurately as with an open stock. With respect to possible sporting uses of this feature, the folding stock makes it easier to carry the firearm when hiking or backpacking. However, its predominant advantage is for military purposes, and it is normally not found on the traditional sporting rifle.
3. Pistol grips. The vast majority of military firearms employ a well-defined separate pistol grip that protrudes conspicuously beneath the action of the weapon. In most cases, the "straight line design" of the military weapon dictates a grip of this type so that the shooter can hold and fire the weapon. Further, a pistol grip can be an aid in one-handed firing of the weapon in a combat situation. Further, such grips were designed to assist in controlling machineguns during automatic fire. On the other hand, the vast majority of sporting firearms employ a more traditional pistol grip built into the wrist of the stock of the firearm since one-handed shooting is not usually employed in hunting or organized competitive target competitions.
4. Ability to accept a bayonet. A bayonet has distinct military purposes. First, it has a psychological effect on the enemy. Second, it enables soldiers to fight in close quarters with a knife attached to their rifles. No traditional sporting use could be identified for a bayonet.
5. Flash suppressor. A flash suppressor generally serves one or two functions. First, in military firearms it disperses the muzzle flash when the firearm is fired to help conceal the shooter's position, especially at night. A second purpose of some flash suppressors is to assist in controlling the "muzzle climb" of the rifle, particularly when fired as a fully automatic weapon. From the standpoint of a traditional sporting firearm, there is no particular benefit in suppressing muzzle flash. Flash suppressors that also serve to dampen muzzle climb have a limited benefit in sporting uses by allowing the shooter to reacquire

Exhibit 5

the target for a second shot. However, the barrel of a sporting rifle can be modified by "magna-porting" to achieve the same result. There are also muzzle attachments for sporting firearms to assist in the reduction of muzzle climb. In the case of military-style weapons that have flash suppressors incorporated in their design, the mere removal of the flash suppressor may have an adverse impact on the accuracy of the firearm.

6. Bipods. The majority of military firearms have bipods as an integral part of the firearm or contain specific mounting points to which bipods may be attached. The military utility of the bipod is primarily to provide stability and support for the weapon when fired from the prone position, especially when fired as a fully automatic weapon. Bipods are available accessory items for sporting rifles and are used primarily in long-range shooting to enhance stability. However, traditional sporting rifles generally do not come equipped with bipods, nor are they specifically designed to accommodate them. Instead, bipods for sporting firearms are generally designed to attach to a detachable "slingswivel mount" or simply clamp onto the firearm.
7. Grenade launcher. Grenade launchers are incorporated in the majority of military firearms as a device to facilitate the launching of explosive grenades. Such launchers are generally of two types. The first type is a flash suppressor designed to function as a grenade launcher. The second type attaches to the barrel of the rifle by either screws or clamps. No traditional sporting application could be identified for a grenade launcher.
8. Night sights. Many military firearms are equipped with luminous sights to facilitate sight alignment and target acquisition in poor light or darkness. Their uses are generally for military and law enforcement purposes and are not usually found on sporting firearms since it is generally not legal to hunt at night.

[This document has been retyped for clarity.]

MEMORANDUM TO FILE

FIREARMS ADVISORY PANEL

The initial meeting of the Firearms Advisory Panel was held in Room 3313, Internal Revenue Building, on December 10, 1968, with all panel members present. Internal Revenue Service personnel in attendance at the meeting were the Director, Alcohol and Tobacco Tax Division, Harold Serr; Chief, Enforcement Branch, Thomas Casey; Chief, Operations Coordination Section, Cecil M. Wolfe, and Firearms Enforcement Officer, Paul Westenberger. Deputy Assistant Commissioner Compliance, Leon Green, visited the meeting several times during the day.

The Director convened the meeting at 10:00 a.m. by welcoming the members and outlining the need for such an advisory body. He then introduced the Commissioner of Internal Revenue, Mr. Sheldon Cohen, to each panel member.

Mr. Cohen spoke to the panel for approximately fifteen minutes. He thanked the members for their willingness to serve on the panel, explained the role of the panel and some of the background which led to the enactment of the Gun Control Act of 1968. Commissioner Cohen explained to the panel members the conflict of interest provisions of regulations pertaining to persons employed by the Federal Government and requested that if any member had any personal interest in any matter that came under discussion or consideration, he should make such interest known and request to be excused during consideration of the matter.

Mr. Seer then explained to the panel the areas in which the Division would seek the advice of the panel and emphasized that the role of the panel would be advisory only, and that it was the responsibility of the Service to make final decisions. He then turned the meeting over to the moderator, Mr. Wolfe.

Mr. Wolfe explained the responsibility of the Service under the import provisions of the Gun Control Act and under the Mutual Security Act. The import provisions were read and discussed.

The panel was asked to assist in defining Sporting purposes as used in the Act. It was generally agreed that firearms designed and intended for hunting and all types of organized competitive target shooting would fall within the sporting purpose category. A discussion was held on the so-called sport of Apling. It was the consensus that, while many persons

Exhibit 6

participated in the type of activity and much ammunition was expended in such endeavors, it was primarily a pastime and could not be considered a sport for the purposes of importation since any firearm that could expel a projectile could be used for this purpose without having any characteristics generally associated with target guns.

The point system that had been developed by the Division and another point system formula suggested and furnished by the Southern Gun Distributors through Attorney Michael Desalle, was explained and demonstrated to the panel by Paul Westenberger. Each panel member was given copies of the formulas and requested to study them and endeavor to develop a formula he believed would be equitable and could be applied to all firearms sought to be imported.

A model BM59 Beretta, 7.62 mm, NATO Caliber Sporter Version Rifle was presented to the panel and their advice sought as to their suitability for sporting purposes. It was the consensus that these rifles do have a particular use in target shooting and hunting. Accordingly, it was recommended that importation of this rifle together with the SIG-AMT 7.62mm NATO Caliber Sporting Rifle and the Cetme 7.62mm NATO Caliber Sporting Rifle be authorized for importation. Importation, however, should include the restriction that these weapons must not possess combination flash suppressors/grenade adaptors with outside diameters greater than 20mm (.22 mm is the universal grade adaptor size).

The subject of ammunition was next discussed. Panel members agreed that incendiary and tracer small arms ammunition have no use for sporting purposes. Accordingly, the Internal Revenue Service will not authorize these types of small arms ammunition importation. All other conventional small arms ammunition for pistols, revolvers, rifles and shotguns will be authorized.

The meeting was adjourned at 4:00 p.m.

C.M. Wolfe

Exhibit 7

STATE FISH AND GAME COMMISSION REVIEW

STATE RESTRICTION	RIFLE RESTRICTION	MAGAZINE RESTRICTION
Alabama	Not for turkey	
Alaska		
Arizona		Not more than five rounds
Arkansas	Not for turkey	
California		
Colorado		Not more than six rounds
Connecticut*	No rifles on public land	
Delaware	No rifles	
Florida		Not more than five rounds
Georgia	Not for turkey	
Hawaii		
Idaho	Not for turkey	
Illinois	Not for deer or turkey	
Indiana*	Not for deer or turkey	
Iowa	Not for deer or turkey No restrictions on coyote or fox	
Kansas		
Kentucky		
Louisiana	Not for turkey	
Maine*	Not for turkey	
Maryland*		

Exhibit 7

STATE RESTRICTION	RIFLE RESTRICTION	MAGAZINE RESTRICTION
Massachusetts	Not for deer or turkey	
Michigan	Not for turkey	Not more than six rounds
Minnesota		
Mississippi	Not for turkey	
Missouri	Not for turkey	Chamber and magazine not more than 11 rounds
Montana		
Nebraska		Not more than six rounds
Nevada	Not for turkey	
New Hampshire*	Not for turkey	Not more than five rounds
New Jersey	No rifles	
New Mexico	Not for turkey	
New York*		Not more than six rounds
North Carolina	Not for turkey	
North Dakota	Not for turkey	
Ohio	Not for deer or turkey	
Oklahoma		Not more than seven rounds for .22 caliber
Oregon*		Not more than five rounds
Pennsylvania*	No semiautomatics	

Exhibit 7

STATE RESTRICTION	RIFLE RESTRICTION	MAGAZINE RESTRICTION
Rhode Island	Prohibited except for woodchuck in summer	
South Carolina	Not for turkey	
South Dakota		Not more than five rounds
Tennessee	Not for turkey	
Texas		
Utah	Not for turkey	
Vermont		Not more than six rounds
Virginia*		
Washington	Not for turkey	
West Virginia		
Wisconsin		
Wyoming		

* Limited restrictions (e.g., specified areas, county restrictions, populated areas, time of day).



DIRECTOR

DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
WASHINGTON, D.C. 20226

O:F:S:DMS
3310

Dear Sir or Madam:

On November 14, 1997, the President and the Secretary of the Treasury decided to conduct a review to determine whether modified semiautomatic assault rifles are properly importable under Federal law. Under 18 U.S.C. section 925(d)(3), firearms may be imported into the United States only if they are determined to be of a type generally recognized as particularly suitable for or readily adaptable to sporting purposes. The firearms in question are semiautomatic rifles based on the AK47, FN-FAL, HK91, HK93, SIG SG550-1, and Uzi designs.

As part of the review, the Bureau of Alcohol, Tobacco and Firearms (ATF) is interested in receiving information that shows whether any or all of the above types of semiautomatic rifles are particularly suitable for or readily adaptable to hunting or organized competitive target shooting. We are asking that you voluntarily complete the enclosed survey to assist us in gathering this information. We anticipate that the survey will take approximately 15 minutes to complete.

Responses must be received no later than January 9, 1998; those received after that date cannot be included in the review. Responses should be forwarded to the Bureau of Alcohol, Tobacco and Firearms, Department HG, P.O. Box 50860, Washington, DC 20091. We appreciate any information you care to provide.

Sincerely yours,


John W. Magaw
Director

Enclosure

ATF SURVEY OF HUNTING GUIDES FOR RIFLE USAGE

Page 1 of 2

Please report only on those clients who hunted medium game (for example, turkey) or larger game (for example, deer) with a rifle.

For the purposes of this survey, please count only individual clients and NOT the number of trips taken by a client. For example, if you took the same client on more than one trip, count the client only once.

1. What is the approximate number of your clients who have ever used **manually operated rifles** during the past two hunting seasons of 1995 and 1996?

_____ number of clients.

2. What is the approximate number of your clients who have ever used **semiautomatic rifles** during the past two hunting seasons of 1995 and 1996?

_____ number of clients.

3. What is the approximate number of your clients who have ever used semiautomatic rifles whose design is based on the **AK 47, FN-FAL, HK91, HK93, SIG 550-1, or Uzi** during the past two hunting seasons of 1995 and 1996?

_____ number of clients.

4. From your knowledge, for your clients who use **semiautomatic rifles**, please list the three most commonly used rifles.

Make

Model

Caliber

5. Do you **recommend** the use of any specific rifles by your clients?

_____ Yes (*Continue to #6*)

_____ No (*You are finished with the survey. Thank you.*)

An agency may not conduct or sponsor, and a person is not required to respond to, the collection of information unless it displays a currently valid OMB control number.

ATF SURVEY OF HUNTING GUIDES
FOR RIFLE USAGE

Page 2 of 2

6. If your answer to item 5 is "Yes", please identify the specific rifles you **recommend**.

Make

Model

Caliber

7. Do you **recommend** the use of any semiautomatic rifles whose design is based on the **AK 47, FN-FAL, HK91, HK93, SIG 550-1, or Uzi**?

Yes (Continue to #8)

No (You are finished with the survey. Thank you.)

8. If your answer to item 7 is "Yes", please identify the specific rifles whose design is based on the **AK 47, FN-FAL, HK91, HK93, SIG 550-1, or Uzi** that you recommend.

Make

Model

Caliber

Hunting Guides

case	Number of clients Using			Recommend	
	Manual	Semiauto	AK47 et.al.	Any	AK47 et.al.
A 1	28	0	0	No	
A 2	100	10	0	Yes	No
A 3	18	0	0	No	
A 4	120	40	0	Yes	No
A 5	12	0	0	Yes	No
A 6	80	40	0	No	
A 7	275	25	0	No	
A 8					
A 9	0	0	0		
A 10	0				
A 11	2	5	0	Yes	Yes
A 12	12	0	0	Yes	No
A 13	10	6	0	No	No
A 14	5	7	0	No	
A 15	0	0	0		
A 16	20	0	0	No	No
A 17					
A 18	0	0	0	No	
A 19	17	6	0	No	
A 20	30	8	0	No	
A 21	117	7	0	Yes	No
A 22	160	0	0	Yes	No
A 23	23	1	0	Yes	No
A 24	100	5	0	Yes	No
A 25	210	10	0	Yes	No
A 26	12	4	1	Yes	Yes
A 27	24	3	0	Yes	No
A 28	20	15	0	Yes	No
A 29	4	0	0	No	No
A 30	4	0	0	Yes	No
A 31	100	5	0	No	No
A 32	1	0	0	No	No
A 33			0	No	No
A 34	142	1	0	No	
A 35	78	2	0	Yes	No
A 36	600	200		No	
A 37	20	13	1	No	
A 38	45	15	0	No	
A 39	100	10	0	No	
A 40	80	6	2	Yes	No
A 41	250	25	0	Yes	No
A 42	4	0	0	No	
A 43	14	2	0	No	No
A 44	171	15	0	Yes	No
A 45	54	6	0	Yes	No
A 46	10	6	0	No	
A 47	0	0	0	No	No
A 48	24	0	0	No	
A 49	180	2	0	Yes	No
A 50					
A 51					

Hunting Guides

case	Number of clients Using			Recommend	
	Manual	Semiauto	AK47 et.al.	Any	AK47 et.al.
A 52	24	16	0	No	
A 53	600	100	12	No	
A 54	18	6	0	No	
A 55	0	0	0	No	
A 56	0	0	0	No	
A 57	40	4	0	No	
A 58					
A 59	40	10	0	No	No
A 60	60	2	0	No	No
A 61	63	4	0	Yes	No
A 62	40	4	0	No	
A 63	8	0	0	Yes	No
A 64	27	1	0	Yes	No
A 65	50	9	0	Yes	No
A 66	35	2	0	No	
A 67	6	0	0	Yes	No
A 68	6	3		No	
A 69	50	20	0	No	
A 70		0	0	Yes	No
A 71	27	1	0	Yes	
A 72	85	0	0	Yes	No
A 73	56	24	0	Yes	No
A 74	25	25	0	Yes	No
A 75	100	20	0	No	
A 76	50	15	3	No	
A 77	15	4	0	No	
A 78	12	0	0	Yes	No
A 79	75	0	0	No	
A 80					
A 81	0	0	0	No	
A 82	0	0	0	No	
A 83	12	4	0	No	No
A 84	40	0	0	Yes	No
A 85	24	0	0	No	
A 86	17	0	0	No	No
A 87	16	3	0	Yes	No
A 88	45	10	0	No	
A 89	11	7	7	Yes	Yes
A 90	35	1	0	Yes	No
A 91	25	2	0	Yes	No
A 92	0	0	0		
A 93	75	40	0	Yes	No
A 94	60	2	0	Yes	No
A 95	26	0	0	No	
A 96	20	0		No	No
A 97	65	11	0	Yes	No
A 98	40	5	0	Yes	No
A 99	26	5	0	No	
A 100	13	2	0	No	
A 101					
A 102	45	6	0	No	No

Hunting Guides

case	Number of clients Using			Recommend	
	Manual	Semiauto	AK47 et.al.	Any	AK47 et.al.
A 103	120	4	0	No	
A 104				Yes	
A 105	150	50	0	No	No
A 106	80	20	0	Yes	No
A 107	40	0	0	No	No
A 108	10	0	0	No	
A 109	160	40	0	Yes	No
A 110	10	10	0	No	No
A 111	6	0	0	No	
A 112					
A 113	150	150	100	Yes	Yes
A 114	50	25	0	No	No
A 115	19	0	0	Yes	No
A 116	80	3	0	No	
A 117	40	10	0	Yes	No
A 118					
A 119	50	0	0	Yes	No
A 120	0	0	0	No	
A 121	0	0	0		
A 122	120	15	0	Yes	No
A 123	10	0	0	Yes	No
A 124	22	0	0	Yes	No
A 125	40	40	20	No	
A 126	50	10	0	Yes	No
A 127	60	20	0	Yes	No
A 128	14	0	0	No	No
A 129	13	16	4	No	
A 130	80	4	0	Yes	No
A 131	12	2	0	Yes	No
A 132		4	0	Yes	No
A 133	50	26	7	No	No
A 134	12	0	0	No	
A 135	2	10	3	No	
A 136	2	1	1	Yes	No
A 137	28	0	0	Yes	No
A 138	45	10		No	
A 139	46	59	0	Yes	No
A 140			0	Yes	No
A 141	40	10	0	No	No
A 142	70	20	0	Yes	No
A 143	50	3	0	No	No
A 144	60	6	0	Yes	No
A 145	140	0	0	Yes	No
A 146	20	4	1	Yes	No
A 147	10	1	0	Yes	No
A 148	0	0	0	No	No
A 149	37	0	0	Yes	No
A 150			0	Yes	No
A 151	6	10	0	No	No
A 152	110	5	0	No	
A 153	15	17		Yes	No

Hunting Guides

case	Number of clients Using			Recommend	
	Manual	Semiauto	AK47 et.al.	Any	AK47 et.al.
A 154	18	4	0	No	
A 155	25	3	0	Yes	No
A 156	60	6	3	No	
A 157	20	0	0	No	
A 158	88	46	0	No	No
A 159	68	19	3	Yes	Yes
A 160	25	5	0	No	
A 161	15	0	0	No	
A 162	75	10	0	No	
B 1				No	
C 1	25	0	0	Yes	No
C 2	55	10	6	Yes	Yes
C 3	60	30	0	No	
C 4	80	20	0	No	
C 5	10	0	0	No	No
C 6	25	6	0	No	
C 7	66	10	1	No	
C 8	24	0	0	Yes	No
C 9	10	15	15	No	
C 10	35	15	9	Yes	Yes
C 11			0	No	
C 12					No
C 13	25	10	0	No	
C 14	60	20	0	Yes	No
C 15	20	0	0	Yes	No
C 16	14	0	0	No	
C 17		0	0	Yes	No
C 18	18	25	5	Yes	Yes
C 19	125	50	5	Yes	No
C 20	20	5	2	No	
C 21		0	0	Yes	No
C 22	30	0	0	No	No
C 23	150	20	0	Yes	No
C 24	60	0	0	No	
C 25	16	7	6	Yes	Yes
C 26	300	650	400	No	
C 27	20	15	8	Yes	Yes
C 28	3	5	2	No	
C 29	45	6	0	Yes	No
C 30				No	
C 31	30	0	0	Yes	No
C 32			0	Yes	No
C 33	35	4	0	Yes	No
C 34	25	5	0	Yes	No
C 35				Yes	No

Hunting Guides

Q4. Three most commonly used rifles				
case	Make	Other Make	Model	Caliber
A 1				
A 2				
A 3				
A 4	Browning		BAR	300
A 5				
A 6	Remington		742	30.06
A 7	Browning		BAR	30.06, .270, 7MM, 300 Mag
A 8				
A 9				
A 10				
A 11	Remington		740-7400	20, 30
A 12				
A 13	Remington		700	7 mm mag
A 14	Remington		7400	270
A 15				
A 16				
A 17				
A 18				
A 19	Browning			30.06
A 20	Remington		742	30.06
A 21				
A 22				
A 23	Browning		?	300 mag
A 24	Remington			30.06
A 25	Remington			30.06
A 26	Browning		BAR	30.06
A 27	Remington			30.06
A 28		?	?	06
A 29				
A 30				
A 31	Browning		automatics	
A 32				
A 33				
A 34	Remington			.3006
A 35	Browning			7 mm
A 36	Browning			30.06
A 37	Browning		BAR	30.06
A 38	Browning		br	7 mm, 300win, 30.06
A 39	Remington		7600	.270 win, .30-06, .280 rem
A 40	Browning		Bar mark II	300 win mag
A 41	Remington			
A 42				
A 43	Remington		7600	243 - 7 mm mag
A 44				30.06, 300 winmag, .338, 270
A 45	Browning		BAR Automatic	30.06

Hunting Guides

Q4. Three most commonly used rifles				
A 46	Browning		BAR	7 mm, 30.06
A 47				
A 48				
A 49				
A 50				
A 51				
A 52	Browning		BAR	7 mm mag/30.06
A 53	Browning		BAR	30.06, 300 wm
A 54	Browning		BAR	30.06
A 55				
A 56				
A 57	Browning		semi-auto	300 mag
A 58				
A 59				
A 60				
A 61	Browning			30.06
A 62	Browning			7 mm
A 63	Browning		BAR	.270 - 300 win mag
A 64	Browning		BAR	30.06
A 65	Browning		semi-auto	.308
A 66	Browning			
A 67				
A 68	Remington		7400	30.06
A 69	Browning			
A 70				
A 71	Browning		Not sure	
A 72				
A 73	Browning		BARR	30.06
A 74	Browning		BAR	300
A 75	Remington		7400 old 752	270 and 30.06
A 76	Browning		BAR	308, 30.06, 300win, 338 win
A 77	Remington			308
A 78	Browning			300, 270, 30.06
A 79				
A 80				
A 81				
A 82				
A 83				30 caliber or bigger for elk
A 84				
A 85				
A 86				
A 87	Browning			30.06 and 7 mm
A 88	Browning		BAR	7 mm, .300, .270
A 89	Other	Russian	SKS	7.62
A 90	Browning			1 or 2 in over 50 years
A 91	Browning			300 win mag

Hunting Guides

Q4. Three most commonly used rifles				
A 92				
A 93				
A 94	Browning		BAR	
A 95				
A 96				
A 97	Browning		BAR	300-06-270
A 98	Browning			300, 30.06
A 99	Other	Savage		7 mm
A 100	Browning		?	7 mm mag
A 101				
A 102	Browning	Only 1 I recall	BAR	30.06
A 103				
A 104				
A 105				
A 106	Browning		BAR	300 win mag
A 107				
A 108				
A 109	Browning			30.06
A 110	Remington		700	30.06, 270, 7 mm
A 111				
A 112				
A 113	Other	Weatherby		300 mag
A 114	Browning			7 m mag
A 115				
A 116				
A 117	Browning			
A 118				
A 119				
A 120				
A 121				
A 122	Browning		U/K	.338 mag
A 123				
A 124				
A 125				
A 126	Remington		742	243, 30.06
A 127	Winchester		?	30.06
A 128	Winchester			270, 306
A 129	Browning		BAR	7 mm and 243
A 130	Browning			30.06
A 131	Browning		BAR	.7 mm mag
A 132	Remington			30.06
A 133			AK 47	223
A 134				
A 135	Remington			270
A 136	Browning		BAR	
A 137				

Hunting Guides

Q4. Three most commonly used rifles				
A	138	Winchester		30.06
A	139	Browning	BAR	270, 7 mm
A	140	Browning		7 mm
A	141			
A	142	Browning		7 mm mag
A	143			
A	144	Browning		30.06
A	145			
A	146	Browning	BDL	7mg
A	147	Browning	BAR	308
A	148			
A	149			
A	150	Remington		
A	151	Browning	BAR	308
A	152	Remington		various 270 - 338
A	153	Browning		30
A	154	Browning	BAR	7 mm mag
A	155			30.06
A	156	Other	BAR	
A	157			
A	158	Remington	280	280
A	159	Browning		7 mm mag
A	160	Remington	Semiauto	30.06
A	161			
A	162	Browning		30.06
B	1			.308, 30-06, .270
C	1			
C	2	Other	AK-47	Antelope Hunter 30
C	3	Browning	Auto	30.06
C	4	Browning	Bar	7mm
C	5			
C	6			
C	7	Browning		30.06
C	8			
C	9	Other	FN-FAL	308
C	10	Remington	742	30.06
C	11	Browning		306
C	12			
C	13	Remington		.06 - 7mm
C	14	Browning	BAR	7mm
C	15			
C	16			
C	17			
C	18	Ruger	Ranch Rifle	223
C	19	Other	AK47	
C	20	Browning	BAR	300 win mag

Hunting Guides

Q4. Three most commonly used rifles				
C 21	Other	Bolt-action or pump		
C 22				
C 23	Browning			30.06
C 24				
C 25	Other	AK47		7.62-39
C 26	Other	HK	93	.308
C 27	Browning		BAR	7mm
C 28	Other	Norinco	SKS Type 56	7.62X39
C 29	Browning		BAR	30.06 -.300
C 30				
C 31				
C 32	Browning			3.06 - 7mm
C 33	Remington			30.06
C 34	Remington		741	.270 - 30.06
C 35	Remington			.270
A 1				
A 2				
A 3				
A 4	Remington		7400	30.06
A 5				
A 6	Browning			30.06
A 7	Remington		700	30.03, 270, 7 mm
A 8				
A 9				
A 10				
A 11	Winchester		100	30
A 12				
A 13	Winchester		70	300 mag
A 14	Remington		7400	30.06
A 15				
A 16				
A 17				
A 18				
A 19	Remington		7400	30.06
A 20	Browning			7 mm mag
A 21				
A 22				
A 23				
A 24	Browning			30.06
A 25	Browning			30.03 to 300 mag
A 26	Remington		Fieldmaster	30.06
A 27				
A 28				
A 29				
A 30				
A 31	Remington		automatics	

Hunting Guides

Q4. Three most commonly used rifles				
A 32				
A 33				
A 34				
A 35				
A 36	Remington			270 - 30.06
A 37	Remington		7400	30.06
A 38				
A 39	Browning		BAR	.270 win, 7 mm mag
A 40	Remington		7400	30.06
A 41	Browning			
A 42				
A 43	Browning		BAR	243 - 7 mm mag
A 44				
A 45				
A 46	Remington		1100	12 gauge
A 47				
A 48				
A 49				
A 50				
A 51				
A 52	Remington		7400	30.06
A 53	Remington		7400/742	30.06
A 54				
A 55				
A 56				
A 57	Remington		semi-auto	30.06
A 58				
A 59				
A 60				
A 61	Other	Savage		7 mm mag
A 62	Remington			30.06
A 63	Remington		742	.270 - 30.06
A 64				
A 65	Winchester		semi-auto	.308
A 66	Remington			
A 67				
A 68	Remington		7400	.308
A 69	Remington			
A 70				
A 71	Remington		742	30.06
A 72				
A 73	Remington			30.06
A 74	Remington		7600	30.06
A 75	Browning		BAR	270/338 and 30.06
A 76	Other	AK-47		30
A 77	Remington			30.06

Hunting Guides

Q4. Three most commonly used rifles				
A 78	Remington		?	300, 270, 30.06
A 79				
A 80				
A 81				
A 82				
A 83				
A 84				
A 85				
A 86				
A 87	Remington			30.06
A 88	Remington		742, 7400	30.06, .270
A 89	Other	Heckler-Koch	HK91	308
A 90	Remington			
A 91	Remington			30.06
A 92				
A 93				
A 94				
A 95				
A 96				
A 97				
A 98	Remington		760	.300, 30.06, 270
A 99	Browning			7 mm
A 100	Remington		742	30.06
A 101				
A 102				
A 103				
A 104				
A 105				
A 106				
A 107				
A 108				
A 109	Winchester			308
A 110				
A 111				
A 112				
A 113	Remington		700	7 mm mag
A 114	Remington		742 Wingmaster	30.06
A 115				
A 116				
A 117	Remington			
A 118				
A 119				
A 120				
A 121				
A 122				
A 123				

Hunting Guides

Q4. Three most commonly used rifles				
A 124				
A 125				
A 126	Ruger		22	
A 127	Marlin		?	.308
A 128	Remington			7 m
A 129				
A 130				
A 131	Browning		BAR	30.06
A 132				
A 133	Ruger		Mini 14	223
A 134				
A 135	Remington			243
A 136	Other	HK 91		
A 137				
A 138	Browning			308
A 139	Remington		742	30.06 - 6 mm
A 140	Remington			30.06
A 141				
A 142	Browning			300 win mag
A 143				
A 144	Browning			7 mm mag
A 145				
A 146	Browning		BDL	300
A 147				
A 148				
A 149				
A 150	Winchester			
A 151	Remington		742	30.06
A 152	Ruger			various 270 - 338
A 153	Winchester			30
A 154	Browning		BAR	30.06
A 155				
A 156	Other	AK-47		
A 157				
A 158	Winchester			338
A 159	Remington			30.06
A 160				
A 161				
A 162	Remington		742	30.06, 270
B 1				
C 1				
C 2				
C 3	Winchester		Auto	30.06
C 4	Browning		Bar	338
C 5				
C 6				

Hunting Guides

Q4. Three most commonly used rifles				
C 7	Remington			30.06
C 8				
C 9	Other	Uzi		9mm
C 10	Other	AK-47	Hunter	7.62x39
C 11	Other	Weatherby		300
C 12				
C 13	Winchester			.06 - 7mm
C 14	Browning			300
C 15				
C 16				
C 17				
C 18	Other	AK-47		
C 19	SigArms		550-1	
C 20	Ruger		Mini 14	.223
C 21				
C 22				
C 23	Remington		742	30.06
C 24				
C 25	Other	MAK-90		7.62-39
C 26	Other	HK	91	0.223
C 27	Remington		7400 Series	30.06
C 28	Remington		7600	30.06
C 29	Remington		742	.308 - 3.06
C 30				
C 31				
C 32	Remington			30.06 - 7mm
C 33	Browning			300 win
C 34	Browning			.270 - 30.06
C 35	Browning			300
A 1				
A 2				
A 3				
A 4	Ruger		Mini 14	223
A 5				
A 6	Other	Savage		270
A 7				
A 8				
A 9				
A 10				
A 11				
A 12				
A 13	Browning		A-bolt	270
A 14				
A 15				
A 16				
A 17				

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Q4. Three most commonly used rifles				
A 18				
A 19				
A 20				
A 21				
A 22				
A 23				
A 24				
A 25				
A 26	Other	China	SKS	7.62x37
A 27				
A 28				
A 29				
A 30				
A 31				
A 32				
A 33				
A 34				
A 35				
A 36	Winchester			270 - 30.06
A 37				
A 38				
A 39				
A 40	Ruger			44 mag
A 41				
A 42				
A 43	Ruger			223 - 30.06
A 44				
A 45				
A 46				
A 47				
A 48				
A 49				
A 50				
A 51				
A 52				
A 53	Ruger		Mini-14	.223
A 54				
A 55				
A 56				
A 57	Ruger		semi-auto	35 cal
A 58				
A 59				
A 60				
A 61				
A 62	Ruger		Mini 14	223
A 63				

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Q4. Three most commonly used rifles				
A 64				
A 65				
A 66				
A 67				
A 68				
A 69				
A 70				
A 71				
A 72				
A 73				
A 74	Browning		BAR	30.06
A 75				
A 76	Remington			30.06, 270
A 77	Browning			300
A 78				
A 79				
A 80				
A 81				
A 82				
A 83				
A 84				
A 85				
A 86				
A 87				
A 88				
A 89	Other	Springfield Armory	FNG	308
A 90				
A 91				
A 92				
A 93				
A 94				
A 95				
A 96				
A 97				
A 98				
A 99				
A 100				
A 101				
A 102				
A 103				
A 104				
A 105				
A 106				
A 107				
A 108				
A 109				

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Q4. Three most commonly used rifles				
A 110				
A 111				
A 112				
A 113	Other	All		30.06
A 114	Remington		721	270
A 115				
A 116				
A 117				
A 118				
A 119				
A 120				
A 121				
A 122				
A 123				
A 124				
A 125				
A 126	Browning	Remington	Shotguns	12 gauge
A 127	Remington			.308 or 30.06
A 128	Other	Savage		308
A 129				
A 130				
A 131				
A 132				
A 133	Browning		BAR	7 mm
A 134				
A 135	Browning		742	30.06
A 136	Other	AK 47		
A 137				
A 138				
A 139	Other	Weatherby		300 m
A 140				
A 141				
A 142				
A 143				
A 144				
A 145				
A 146	Ruger		#1	7 mag
A 147				
A 148				
A 149				
A 150	Browning			
A 151				
A 152	Browning			various 270 - 338
A 153				
A 154	Browning		BAR	8 mm mag
A 155				

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Q4. Three most commonly used rifles				
A 156	Other	Uzi		
A 157				
A 158	Browning			300
A 159				
A 160				
A 161				
A 162				
B 1				
C 1				
C 2				
C 3	Browning		Auto	270
C 4	Browning		Bar	300
C 5				
C 6				
C 7				
C 8				
C 9	Other	HK91		
C 10	Browning		BAR	30.06
C 11				
C 12				
C 13	Browning			300
C 14				
C 15				
C 16				
C 17				
C 18				
C 19				
C 20	Other	AK47		7.62 x 39
C 21				
C 22				
C 23	Remington		742	308, 270
C 24				
C 25		M1-A1		.223
C 26				
C 27	Winchester	Various	M1 Garand	30.06
C 28				
C 29			M1A1	30.06
C 30				
C 31				
C 32				
C 33				
C 34				
C 35				

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Q 6. Rifles recommended for clients				
case	Make	Other Make	Model	Caliber
A 1				
A 2	Ruger			30.06
A 3				
A 4	Other	Weatherby	Mark V	300
A 5				30.06
A 6				
A 7				
A 8				
A 9				
A 10				
A 11				
A 12				
A 13				
A 14				
A 15				
A 16				
A 17				
A 18				
A 19				
A 20				
A 21	Winchester			30.06, .270
A 22	Remington		700	7 mm or larger
A 23	Winchester		70	25 to 30
A 24	Remington		710	30.06
A 25		Any make	Bolt action	Does not recommend
A 26	Winchester		70	30.06 or larger
A 27	Other	Weatherby		300
A 28	Other	bolt action		270 and up
A 29				
A 30		hunter's choice		.270
A 31				
A 32				
A 33				
A 34				
A 35	Winchester		70	300 win mag
A 36				
A 37				
A 38				
A 39				
A 40	Remington			30.06 - 300 win mag
A 41				
A 42				
A 43				
A 44				30.06, 300winmag, 338, 270
A 45	Browning		Bolt Action	25.06 - 328

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Q 6. Rifles recommended for clients				
case	Make	Other Make	Model	Caliber
A 46				
A 47				
A 48				
A 49	Other	Weatherby		300 mag
A 50				
A 51				
A 52				
A 53				
A 54				
A 55				
A 56				
A 57				
A 58				
A 59				
A 60				
A 61	Remington		Bolt Action	300 mag
A 62				
A 63	Other	bolt action repeating rifles		30.06 to .338 winmag
A 64	Winchester		70	338
A 65	Remington		bolt action	308,25-06,243,7 mm mag,30.06,22-250,300 mag all
A 66				
A 67	Ruger		#1	7 mm, 30.06, 7 mm mag
A 68				
A 69				
A 70	Other		Bolt Action	30.06
A 71				300 mag
A 72	Other	Any make	Any model	7 mm, 270, 30.06, 25.06
A 73				
A 74	Browning		BAR	300 win mag
A 75				
A 76				
A 77				
A 78	Browning		Bolt action	
A 79				
A 80				
A 81				
A 82				
A 83				
A 84				
A 85				
A 86				
A 87	Remington		700	30.06, 7 mm, 270
A 88				
A 89	Other	Russian	SKS	7.62
A 90	Other	Weatherby		7 mm mag

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Q 6. Rifles recommended for clients				
case	Make	Other Make	Model	Caliber
A 91	Remington		700	7 mag
A 92				
A 93	Winchester		70	300 mag
A 94	Other	Any bolt action		270 or larger
A 95				
A 96				
A 97	Other	Any bolt action		30 or larger, on semiauto same
A 98				
A 99				
A 100				
A 101				
A 102				
A 103				
A 104				
A 105				
A 106	Other	Weatherby		300 magnum
A 107				
A 108				
A 109	Remington		70	7 mm
A 110				
A 111				
A 112				
A 113				
A 114				
A 115				
A 116				
A 117				magnum
A 118				
A 119	Remington		700	7 mm
A 120				
A 121				
A 122				
A 123				
A 124				
A 125				
A 126				300 mag, 338 mag, 30.06
A 127				
A 128				
A 129				
A 130	Remington		700	7 mm magnum
A 131				
A 132	Other	Weatherby		300 mag
A 133				
A 134				
A 135				

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Q 6. Rifles recommended for clients				
case	Make	Other Make	Model	Caliber
A 136				
A 137	Remington		700	7 mm
A 138				
A 139	Browning		BAR	7 m or 270
A 140				
A 141				
A 142				30.06
A 143				
A 144	Browning			from 7 mm mag to 338 mag for deer and elk
A 145	Winchester			30.06
A 146	Browning		BDL	7 mag
A 147	Remington		700 BDL	7 mm
A 148				
A 149				
A 150	Browning		Bolt action	
A 151				
A 152				
A 153	Remington		700	30
A 154				
A 155	Other	Weatherby		300
A 156				
A 157				
A 158				
A 159	Browning	Ruger		243, 30.06, 7 mm mag, 340 weather, .338
A 160				
A 161				
A 162				
B 1				7.62 x 39
C 1	Other	Manually operated		
C 2	Ruger		77	300
C 3				
C 4				
C 5				
C 6				
C 7				
C 8	Remington		700	270
C 9				
C 10	Other	HK	91	.308
C 11				
C 12				
C 13				
C 14	Other	Bolt-action w/ belted mag		Calibers, make and model mean nothing
C 15	Other	Bolt-action		30.06-7mm
C 16				
C 17	Other	Bolt-action		

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Q 6. Rifles recommended for clients				
case	Make	Other Make	Model	Caliber
C 18	Ruger		Ranch Rifle	223
C 19				.243 and larger
C 20				
C 21				
C 22				
C 23	Other	Bolt-action		7mm mag
C 24				
C 25	Other	Savage		7mm mag
C 26				
C 27	Winchester		70	30.06
C 28				
C 29	Winchester		70	30.06 - .338
C 30				
C 31	Winchester		Manual, bolt	300
C 32	Remington		All	270 - 7mm
C 33	Winchester		70	30.06 - .300 win
C 34	Other	Bolt-action		270 or larger for elk and deer
C 35	Other	Bolt-action or semiautos		.270 or larger
A 1				
A 2	Remington			7 mm
A 3				
A 4	Winchester		70	300
A 5				
A 6				
A 7				
A 8				
A 9				
A 10				
A 11				
A 12				
A 13				
A 14				
A 15				
A 16				
A 17				
A 18				
A 19				
A 20				
A 21	Remington		70	30.06
A 22	Winchester		70	7 mm or larger
A 23	Remington		700	25 to 30
A 24	Remington			300 Mag
A 25				
A 26	Browning		A bolt	30.06 or larger
A 27				300 win mag, 30.06 or 270

Hunting Guides

Q 6. Rifles recommended for clients				
case	Make	Other Make	Model	Caliber
A 28				
A 29				
A 30		hunter's choice		.308
A 31				
A 32				
A 33				
A 34				
A 35	Remington		700 BDL	7 mm
A 36				
A 37				
A 38				
A 39				
A 40	Winchester			30.06 - 300 win mag
A 41				
A 42				
A 43				
A 44				
A 45	Remington		Bolt Action	25.06 - 328
A 46				
A 47				
A 48				
A 49				
A 50				
A 51				
A 52				
A 53				
A 54				
A 55				
A 56				
A 57				
A 58				
A 59				
A 60				
A 61	Other	Savage	Bolt Action	7 mm mag
A 62				
A 63				
A 64	Remington		700	300 win mag
A 65	Other	Weatherby		
A 66				
A 67	Remington		Bolt Action	7 mm, 30.06, 7 mm mag
A 68				
A 69				
A 70			Pump	30.06
A 71				7 mm mag
A 72				

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Q 6. Rifles recommended for clients				
case	Make	Other Make	Model	Caliber
A 73				
A 74	Winchester		7C	300 win mag
A 75				
A 76				
A 77				
A 78	Remington		Bolt Action	
A 79				
A 80				
A 81				
A 82				
A 83				
A 84				
A 85				
A 86				
A 87	Browning			308, 7 mm, 30.06
A 88				
A 89	Other	Heckler-Koch	HK-91	308
A 90				
A 91	Winchester		70	300 mag
A 92				
A 93	Browning		Mark II	300 mag, 280-270-25.06
A 94				
A 95				
A 96				
A 97	Other	Semi-auto		30 cal or larger
A 98				
A 99				
A 100				
A 101				
A 102				
A 103				
A 104				
A 105				
A 106	Remington		700	300 win mag
A 107				
A 108				
A 109	Winchester			300 mag, 30.06
A 110				
A 111				
A 112				
A 113				
A 114				
A 115				
A 116				
A 117				

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Q 6. Rifles recommended for clients				
case	Make	Other Make	Model	Caliber
A 118				
A 119	Other	Weatherby		300
A 120				
A 121				
A 122				
A 123				
A 124				
A 125				
A 126				
A 127				
A 128				
A 129				
A 130				
A 131				
A 132	Other	Weatherby		700 mag
A 133				
A 134				
A 135				
A 136				
A 137	Other	Weatherby		300
A 138				
A 139	Remington		742	30.06 or 6 mm
A 140				
A 141				
A 142				7 mm recommended for deer and elk
A 143				
A 144	Other	Weatherby		from 7 mm mag to 338 for deer
A 145	Other	Weatherby		300
A 146	Browning		BDC	300
A 147				
A 148				
A 149				
A 150	Winchester		Bolt Action	
A 151				
A 152				
A 153	Remington		700	7 mm
A 154				
A 155	Other	Weatherby		7 mm
A 156				
A 157				
A 158				
A 159	Winchester	Remington		340 Weather - .338 mag
A 160				
A 161				
A 162				

Hunting Guides

Q 6. Rifles recommended for clients				
case	Make	Other Make	Model	Caliber
B 1				
C 1				
C 2	Browning			300
C 3				
C 4				
C 5				
C 6				
C 7				
C 8	Remington		700	280
C 9				
C 10	Winchester		70	.270
C 11				
C 12				
C 13				
C 14				
C 15				
C 16				
C 17	Other	Pump		
C 18	Other	AK-47		
C 19				6mm
C 20				
C 21				
C 22				
C 23	Other	Bolt-action		.30
C 24				
C 25	Other	Bolt-action		30.06
C 26				
C 27	Ruger		77	.300 win mag
C 28				
C 29	Remington		700	30.06-.338
C 30				
C 31	Remington		Manual bolt	300
C 32	Browning		All	.270 - 7mm
C 33	Ruger		77	30.06 - .300 win
C 34				
C 35				
A 1				
A 2	Winchester			375
A 3				
A 4	Winchester		70	270
A 5				
A 6				
A 7				
A 8				
A 9				

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Q 6. Rifles recommended for clients				
case	Make	Other Make	Model	Caliber
A 10				
A 11				
A 12				
A 13				
A 14				
A 15				
A 16				
A 17				
A 18				
A 19				
A 20				
A 21	Remington		70	.270
A 22				
A 23	Other	Any bolt action	1-5 shotmag	25 to 30
A 24	Other	Weatherby		300 mag
A 25				
A 26				
A 27				
A 28				
A 29				
A 30				
A 31				
A 32				
A 33				
A 34				
A 35				
A 36				
A 37				
A 38				
A 39				
A 40	Ruger			30.06 - 300 win mag
A 41				
A 42				
A 43				
A 44				
A 45	Winchester		Bolt Action	25.06 - 328
A 46				
A 47				
A 48				
A 49				
A 50				
A 51				
A 52				
A 53				
A 54				

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Q 6. Rifles recommended for clients				
case	Make	Other Make	Model	Caliber
A 55				
A 56				
A 57				
A 58				
A 59				
A 60				
A 61	Other	Weatherby	Bolt Action	338 mag
A 62				
A 63				
A 64	Other	Weatherby Mark V		300 Wea Mag
A 65	Winchester	Browning		
A 66				
A 67	Winchester	Bolt Action		
A 68				
A 69				
A 70			Bolt Action	7 mm
A 71				
A 72				
A 73				
A 74	Browning		A Bolt	300 win mag
A 75				
A 76				
A 77				
A 78				
A 79				
A 80				
A 81				
A 82				
A 83				
A 84				
A 85				
A 86				
A 87	Other	Weatherby		300, 7 mm, 338
A 88				
A 89	Other	Springfield Armory	FNG	308
A 90				
A 91	Ruger		77	300 mag
A 92				
A 93	Ruger		M77	270, 26-06, 300 mag
A 94				
A 95				
A 96				
A 97				
A 98				
A 99				

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Q 6. Rifles recommended for clients				
case	Make	Other Make	Model	Caliber
A 100				
A 101				
A 102				
A 103				
A 104				
A 105				
A 106	Browning		1895	45-70 govt
A 107				
A 108				
A 109				
A 110				
A 111				
A 112				
A 113				
A 114				
A 115				
A 116				
A 117				
A 118				
A 119	Other	Savage		270 or 30.06
A 120				
A 121				
A 122				
A 123				
A 124				
A 125				
A 126				
A 127				
A 128				
A 129				
A 130				
A 131				
A 132				
A 133				
A 134				
A 135				
A 136				
A 137				
A 138				
A 139				
A 140				
A 141				
A 142				300 winmag recommended
A 143				
A 144	Remington	Weatherby		from 270 to 338 for deer and elk

Hunting Guides

Q 6. Rifles recommended for clients				
case	Make	Other Make	Model	Caliber
A 145	Remington			270
A 146	Ruger		#1	7 mag
A 147				
A 148				
A 149				
A 150				All bolt action with a round nose point
A 151				
A 152				
A 153				
A 154				
A 155				
A 156				
A 157				
A 158				
A 159				300mag,416Rigby,375mag,270 mag,500 nitroexpress
A 160				
A 161				
A 162				
B 1				
C 1				
C 2	Other	Sako		300
C 3				
C 4				
C 5				
C 6				
C 7				
C 8				
C 9				
C 10	Winchester		100	.308
C 11				
C 12				
C 13				
C 14				
C 15				
C 16				
C 17	Other	Weatherby		243 to 300
C 18				
C 19				
C 20				
C 21				
C 22				
C 23				
C 24				
C 25				
C 26				

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Q 6. Rifles recommended for clients				
case	Make	Other Make	Model	Caliber
C 27	Springfield		M Garard	30.06 - 308
C 28				
C 29	Browning		A bolt	30.06 - .338
C 30				
C 31				
C 32	Ruger		All	.270 - 7 mm
C 33	Browning		A bolt	30.06 - 300 win
C 34				
C 35				

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Q 8. Recommended rifles based on AK47 et.al.					
case	Make	Other Make	Model	Caliber	
A	26	AK47		7.62x37	
A	89	Other	Russian	SKS	7.62
A	113	FN-FAL			
A	159	AK47			
C	2	AK47		Antelope and Varmints and Target Shooters	30
C	10	AK47			7.62x39
C	18	AK47			
C	25	AK47			7.62
C	27	FN-FAL			308
A	26		SKS		7.62x37
A	89	HK91			308
A	113		HK 99		
C	2	AK47		Antelope and Varmints and Target Shooters	243
C	10	HK91			308
C	25		MAK 90		7.62
C	27		Century	L1A1	308
A	89	Other	Springfield Armory	FNG	308
A	113	HK93			
C	10	HK93			223
C	25		M-15		223
C	27	HK91	And clones		308

Additional Comments by Hunting Guides

Additional comments:

- (8) The respondent answered questions 1, 2, 3, and 5 with "None of your business." He then stated in question 4: "It's none of your business what kind, make, model or how many guns law abiding citizens of the U.S. own, prefer to shoot."
- (9) The respondent wrote that he was no longer in business but that he had owned a waterfowl operation and upland bird operation (shotguns only). He added that assault rifles were not true sporting rifles and that they should be limited to use by the military and law enforcement agencies. However, he felt that true sporting weapons that can be modified into some "quasi-assault weapons" should not be restricted. He stated that he supported the effort to get military weapons off the streets but did not want the rights of true sportsmen to be affected.
- (10) Although licensed, the respondent did not guide anyone during the past year.
- (11) The respondent stated in question 6 that he recommends any legal caliber rifle that client is comfortable with and that is capable of killing the desired game.
- (12) For question 6, the respondent replied that he didn't recommend any specific make or model, other than whatever his clients are most comfortable using so long as the weapons are legal for the particular game.
- (15) The respondent stated that his organization was solely recreational wildlife watching and photography.
- (17) The respondent did not answer the questions but informed us that it is illegal in Hawaii to hunt turkey with a rifle.
- (23) The respondent stated that the study rifles were more suitable for militants than sportsmen. He added, "If they want to use these weapons let them go back to the service and use them to defend our country, not against it."
- (25) The respondent stated that, in his 35 years of conducting big game hunts, he had never seen any of the study rifles used for hunting. He suggested that the rifles are made to kill people, not big game.
- (26) The respondent recommended bolt-action rifles for his clients but stated that he doesn't demand that they use such rifles. The respondent recommended the study rifles in close-range situations in which there are multiple targets that may pose a danger to the hunter (e.g., coyotes, foxes, mountain lions, and bears).
- (27) The respondent stated that he recommended the study rifles for hunting but not any specific make.

- (32) The respondent said that most of his clients are bow or pistol hunters. He said that there is little if any use for the study rifles in his outfitting service because it focuses on hunts of mountain lions and bighorn sheep. However, he did recommend the study rifles on target ranges and in competitive shooting situations and cited his right to bear arms.
- (35) The respondent recommended bolt-action rifles for his clients.
- (40) The respondent stated that semiautomatic rifles (such as the AK47) and others are useful for predator hunting.
- (41) The respondent said that he recommended only ranges of calibers deemed suitable but not makes and models of specific rifles.
- (44) The respondent recommended the following calibers for hunting without any specific makes or models: 30.06, 300 Win mag, 338, and 270.
- (47) The respondent stated: "You are asking questions about certain makes of assault rifles, but you are going to end up going after ALL semiautomatic guns. I've spent about 21 years HUNTING with shotguns and I've used semiautomatic models. If you go down the list of times that one new law didn't end up being a whole sloo [sic] of other laws I would be surprised. Maybe some face-to-face with these weapons would be a good thing for politicians. If they see how they are used in 'the Real World' then they may make better amendments."
- (49) The respondent specifically recommended the study rifles only for grizzly bears or moose.
- (50) The respondent stated that his business involved waterfowl hunting, which uses only shotguns.
- (51) The respondent replied: "It is my opinion this is a one sided survey, and does not tell the real meaning and purpose of the survey. And that is to ban all sporting arms in the future. The way this survey is presented is out of line."
- (53) The respondent stated: "I recommend to all my hunters that they join the NRA, vote Republican, and buy a good semi-auto for personal defense."
- (57) The respondent stated that most of his clients use bolt-action rifles. He suggested that semiautomatics are not as accurate as bolt-action rifles.
- (58) The respondent stated that the survey did not pertain to his waterfowl hunting business since only shotguns are used. He added that he did not believe semiautomatics in general present any more threat to the public than other weapons or firearms. However, he suggested that cheaply made assault-type rifles imported from China and other countries are inaccurate and not suitable for hunting.
- (59) The respondent stated that he had no knowledge of the semiautomatic rifles beyond 30.06 or similar calibers for hunting. He added that he did not have a use for "automatic" weapons.

- (64) The respondent stated: "We need to look at weapons and determine what the designer's intent was for the weapon. We really don't need combat weapons in the hunting environment. I personally would refuse to guide for anyone carrying such a weapon."
- (65) The respondent recommended the following calibers for hunting: 7mm, 30.06, .308, .708, 25.06, .243, 22.250, and 300 mag. However, he stated that the study rifles are of no use to the sporting or hunting community whatsoever.
- (71) The respondent stated that he mainly hunts elk but did not recommend any additional information about specific firearms except for using 300 mag and 7 mm mag calibers.
- (73) The respondent recommended any bolt-action or semiautomatic in the 30 or 7mm calibers. However, he stated that he doesn't allow his clients to use any models based on assault rifles: "They are not needed for hunting. A good hunter does not have these."
- (78) The respondent recommended bolt-action rifles for hunting, particularly Browning and Remington.
- (80) Although the respondent stated that he does not conduct guides, he did not see a reason to allow any rifles other those manufactured specifically for hunting and sport shooting: "All assault rifles are for fighting war and killing humans."
- (82) The respondent stated that he used shotguns only.
- (84) The respondent said that he did not allow semiautomatic or automatic rifles in his business. He specifically recommended manually operated rifles.
- (90) The respondent stated that all the semiautomatics like AK47s are absolutely worthless and that he found no redeeming hunting value in any AK47 type of rifle. He further explained that the purpose of hunting is to use the minimum number of shells, not the maximum: "I have only known 1 [person] in 50 years to use an AK47. He shot the deer about 30 times. That wasn't hunting, it was murder." He suggested that he would be willing to testify in Congress against such weapons.
- (92) The respondent stated that he had been contacted in error, as he was not in the hunting guide business.
- (98) The respondent recommended any rifle that a client can shoot the best.
- (101) The respondent wrote a letter saying that his business was too new to provide us with useful information about client use; however, he stated that the Chinese AK47 does a proficient job on deer and similar sizes of game and may be the only rifle that some poor people could afford. He said that he is willing to testify to Congress about the outrageous price of certain weapons.
- (102) The respondent did not recommend rifles but recommended calibers .270, 30.06, .300, and 7mm.

- (103) The respondent stated that he had clients who used semiautomatic rifles, but he didn't know which makes or models.
- (104) The respondent recommended any legal weapons capable of killing game, "including the types mentioned under the 2nd amendment."
- (105) The respondent stated that the semiautomatic rifles used by his clients were Remingtons.
- (112) The respondent stated that he could not provide any useful information because his business was too new.
- (113) The respondent recommended whatever is available to knock down an elk. He recommended specific calibers: 30.06, 300, or 338.
- (115) The respondent questioned why anyone would use a semiautomatic firearm to hunt game: "Anyone using such horrible arms should be shot with one themselves. Any big game animal does not have a chance with a rifle and now you say people can use semiautomatic rifles."
- (116) The respondent had had three clients who used semiautomatics with 30.06 and 270-caliber ammunition; however, he didn't know the makes or models.
- (118) The survey questions were not answered, but the respondent wrote: "This is a stupid survey. No one contends they hunt much for big game with an AK47. The debate is over the right to own one, which the 2nd amendment says we can."
- (119) The respondent recommended bolt-action rifles for hunting.
- (121) The respondent stated that he uses only shotguns in his operation.
- (122) The respondent recommended rifles with the calibers of .270 - 30.06 or larger to the .300 mag or .338 mag. However, he said that anything other than a standard semiautomatic sporting rifle is illegal in Colorado, where his business is conducted.
- (123) The respondent, who is a bighorn sheep outfitter, stated that the semiautomatic rifles have no place in big game hunting. He recommended basic hunting rifles with calibers of 270 or 30.06.
- (124) The respondent, who hunts mainly deer and elk, recommended calibers 270, 30.06, 300 mag, 7mm, 8mm, or 338.
- (125) The respondent said that his clients did use semiautomatics, but he didn't have any specific information about which ones.
- (126) The respondent stated that the study rifles should remain in one's home or on private property. He would like to have some for personal use but would not recommend them for hunting. He further expressed his displeasure with the Brady bill and stated that criminals need to be held accountable for their actions.
- (127) The respondent, who hunts mostly elk and deer, said that the AK47 is not powerful enough to hunt elk; however, it may be ideal for smaller game, like deer or antelope. He recommended any rifles of 30.06 caliber or larger for hunting.

- (131) The respondent recommended bolt-action rifles for his clients with calibers .24, .25, 7 mm, or .30. He cited his preference because of fewer moving parts, their ease to fix, and their lack of sensitivity to weather conditions in the field. He added, however, that he had seen the study rifles used with good success.
- (132) The respondent stated that the study rifles are not worth anything in cold weather.
- (133) The respondent recommended handguns for hunting in calibers 41 or 44 mag.
- (136) The respondent did not recommend any rifles by make, but he did recommend a caliber of .308 or larger for elk.
- (140) The respondent recommended any good bolt or semiautomatic in 270 caliber and up. He added: "I feel the government is too involved in our lives and seek too much control over the people of our country. I am 65 yrs old and see more of our freedom lost every day. I believe in our country but I have little faith in [organizations] like the A.T.F."
- (145) The respondent stated: "Don't send these guns out west. Thanks!"
- (148) The respondent did not hunt turkey or deer and had no additional information to provide.
- (149) The respondent said that he recommends specific rifles to his clients if they ask, usually 270 to 7mm caliber big game rifles.
- (150) The respondent recommended Winchester, Remington, or any other autoloading hunting rifle.
- (152) The respondent said that he recommended caliber sizes but not specific rifles.
- (159) The respondent recommended any gun with which a client can hit a target. He stated that the AK47 could be used for hunting and target shooting.
- (174) The respondent recommended bolt-action rifles to his clients.
- (175) The respondent said that most of his deer-hunting clients use bolt-action rifles, such as Rugers and Remingtons, in calibers of 30.06, 270, or 243. In his duck guide service, only shotguns are used.
- (180) The respondent wrote: "We agree people should not be allowed to have semiautomatics and automatics. This does not mean that you silly bastards in Washington need to push complete or all gun control."
- (182) The respondent felt that the survey is biased because it didn't ask about hunting varmints. He stated that many of the study rifles are suitable for such activity.
- (184) The respondent did not recommend single shots or automatics and only allows bolt action or pumps for use by his clients.

- (188) The respondent wrote that the study guns are good for small game hunting: "I have very good luck with them as they are small, easy to handle, fast-shooting and flat firing guns."
- (192) The respondent submitted a letter with the survey: "I do not recommend the use of semiautomatic weapons for hunting in my area. Most of these weapons are prone to be unreliable because the owner does not know how to properly care for them in adverse weather. The FN-FAL, HK91, HK93, and SIG SG550-1 are excellent and expensive weapons very much suited to competition shooting.
- "Have you surveyed the criminal element on their choice of weapons? I suspect the criminal use of the six weapons you mentioned do law-abiding citizens compare a very small percentage to the same weapon used. I realize that even one wrongful death is too many but now can you justify the over 300,000 deaths per year from government supported tobacco?
- "Gun control does not work - it never has and it never will. What we need are police that capture criminals and a court system with the fortitude to punish them for their crimes."
- (198) The respondent stated that this was his first year in and that it was mainly a bow-hunting business.



DIRECTOR

DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
WASHINGTON, D.C. 20226

DEC 10 1997

O:F:S:DMS
3310

Dear Sir or Madam:

On November 14, 1997, the President and the Secretary of the Treasury decided to conduct a review to determine whether modified semiautomatic assault rifles are properly importable under Federal law. Under 18 U.S.C. section 925(d)(3), firearms may be imported into the United States only if they are determined to be of a type generally recognized as particularly suitable for or readily adaptable to sporting purposes. The firearms in question are semiautomatic rifles based on the AK47, FN-FAL, HK91, HK93, SIG SG550-1, and Uzi designs.

As part of the review, the Bureau of Alcohol, Tobacco and Firearms (ATF) is interested in receiving information that shows whether any or all of the above types of semiautomatic rifles are particularly suitable for or readily adaptable to hunting or organized competitive target shooting. We are asking that your organization voluntarily complete the enclosed survey to assist us in gathering this information. We anticipate that the survey will take approximately 15 minutes to complete.

Responses must be received no later than 30 days following the date of this letter; those received after that date cannot be included in the review. Responses should be forwarded to the Bureau of Alcohol, Tobacco and Firearms, Department HSE, P.O. Box 50860, Washington, DC 20091. We appreciate any information you care to provide.

Sincerely yours,

John W. Magaw
John W. Magaw
Director

Enclosure

ATF SURVEY OF HUNTING/SHOOTING EDITORS FOR RIFLE USAGE

Page 1 of 2

1. Does your publication recommend specific types of centerfire semiautomatic rifles for use in **hunting medium game (for example, turkey) or larger game (for example, deer)?**

_____ Yes (*Continue*) _____ No (*Skip to #3*)

2. If your answer to item 1 is "Yes", please identify the specific centerfire semiautomatic rifles you recommend.

<u>Make</u>	<u>Model</u>	<u>Caliber</u>
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3. Does your publication recommend **against** the use of any semiautomatic rifles whose design is based on the **AK 47, FN-FAL, HK91, HK93, SIG 550-1, or Uzi** for use in **hunting medium game (for example, turkey) or larger game (for example, deer)?**

_____ Yes (*Continue*) _____ No (*Skip to #5*)

_____ Yes, in certain circumstances. Please explain _____

(Continue)

4. If your answer to item 3 is "Yes" or "Yes, in certain circumstances", please identify the specific rifles that you recommend **against** using for **hunting medium game (for example, turkey) or larger game (for example, deer)?**

<u>Make</u>	<u>Model</u>	<u>Caliber</u>
-------------	--------------	----------------

5. Does your publication recommend specific types of centerfire semiautomatic rifles for use in **high-power rifle competition?**

_____ Yes (*Continue*) _____ No (*Skip to #7*)

An agency may not conduct or sponsor, and a person is not required to respond to, the collection of information unless it displays a currently valid OMB control number.

ATF SURVEY OF HUNTING/SHOOTING EDITORS FOR RIFLE USAGE

Page 2 of 2

6. If your answer to item 5 is "Yes", please identify the specific centerfire semiautomatic rifles you recommend.

<u>Make</u>	<u>Model</u>	<u>Caliber</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

7. Does your publication recommend **against** the use of any semiautomatic rifles whose design is based on the AK 47, FN-FAL, HK91, HK93, SIG 550-1, or Uzi for use in **high-power rifle competition**?

_____ Yes (*Continue*) _____ No (*Skip to #9*)

_____ Yes, in certain circumstances. Please explain _____

_____ (*Continue*)

8. If your answer to item 7 is "Yes" or "Yes, in certain circumstances", please identify the specific rifles your publication recommends **against** using for **high-power rifle competition**.

<u>Make</u>	<u>Model</u>	<u>Caliber</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

9. Have you or any other author who contributes to your publication written any articles since 1989 concerning the use of semiautomatic rifles and their suitability for use in hunting or organized competitive shooting? (*Exclude Letters to the Editor.*)

_____ Yes (*Continue*) _____ No (*You are finished with the survey. Thank you.*)

10. If your answer to item 9 is "Yes", please submit a copy of the applicable article(s). Any material you are able to provide will be very beneficial to our study. Please indicate the publication, issue date and page for each article.

An agency may not conduct or sponsor, and a person is not required to respond to, the collection of information unless it displays a currently valid OMB control number.

Editors

Comments:

2. If your answer to item 1 is "Yes," please identify the specific centerfire rifles you recommend:
 - (8) Anything except Uzis.
 - (9) All study rifles except Uzi.
 - (12) See attached articles.
3. Please explain circumstances to question 3: Does your publication recommend against the use of any semiautomatic rifles whose design is based on the AK 47, FN-FAL, HK91, HK93, SIG 550-1, or Uzi for use in hunting medium game (for example, turkey) or larger game (for example, deer)?
 - (12) When the caliber is inappropriate or illegal for the specific game species.
4. Other rifle make recommendations in response to question 4: If your answer to item 3 is "Yes" or "Yes, in certain circumstances," please identify the specific rifles that you recommend against using for hunting medium game (for example, turkey) or larger game (for example, deer)?
 - (12) See attached articles.

The following two items are for the responses to question 6: If your answer to item 5 is "Yes," please identify the specific centerfire semiautomatic rifles you recommend:

Model

- (5) Springfield M1A and Colt AR-15.

Caliber

- (5) 7.62m (M1A) and .223 (Colt).

The following items are for questions 9 and 10 on articles written and the submission of these articles with the survey.

Article 1

- (8) No articles enclosed.
- (9) Semiautomatic Takes Tubb to HP Title.
- (10) No articles attached.

Article 2

- (9) AR-15 Spaceguns Invading Match.



DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
WASHINGTON, D.C. 20226

DIRECTOR

DEC 10 1997

O:F:S:DMS
3310

Dear Sir or Madam:

On November 14, 1997, the President and the Secretary of the Treasury decided to conduct a review to determine whether modified semiautomatic assault rifles are properly importable under Federal law. Under 18 U.S.C. section 925(d)(3), firearms may be imported into the United States only if they are determined to be of a type generally recognized as particularly suitable for or readily adaptable to sporting purposes. The firearms in question are semiautomatic rifles based on the AK47, FN-FAL, HK91, HK93, SIG SG550-1, and Uzi designs.

As part of the review, the Bureau of Alcohol, Tobacco and Firearms (ATF) is interested in receiving information that shows whether any or all of the above types of semiautomatic rifles are particularly suitable for or readily adaptable to hunting or organized competitive target shooting. We are asking that your organization voluntarily complete the enclosed survey to assist us in gathering this information. We anticipate that the survey will take approximately 15 minutes to complete.

Responses must be received no later than 30 days following the date of this letter; those received after that date cannot be included in the review. Responses should be forwarded to the Bureau of Alcohol, Tobacco and Firearms, Department FG, P.O. Box 50860, Washington, DC 20091. We appreciate any information you care to provide.

Sincerely yours,

John W. Magaw
Director

Enclosure

ATF SURVEY OF STATE FISH AND GAME COMMISSIONS
FOR RIFLE USAGE

Page 1 of 2

State: _____

1. Do the laws in your state place any prohibitions or restrictions (other than seasonal) on the use of high-power rifles for hunting medium game (for example, turkey) or larger game (for example, deer)?

____ Yes (Continue) ____ No (Skip to #2)

1a. If "Yes", please cite law(s) and briefly describe the restrictions.

2. Do the laws in your state place any prohibitions or restrictions (other than seasonal) on the use of semiautomatic rifles for hunting medium game (for example, turkey) or larger game (for example, deer)?

____ Yes (Continue) ____ No (Skip to #3)

2a. If "Yes", please cite law(s) and briefly describe the restrictions.

ATF SURVEY OF STATE FISH AND GAME COMMISSIONS
FOR RIFLE USAGE

Page 2 of 2

(Continue)

3. What, if any, is the minimum caliber or cartridge dimensions that may be used for **hunting medium game (for example, turkey) or larger game (for example, deer)?**

Caliber: _____ OR Dimensions: _____

____ There is no minimum.

4. Does your commission or state collect any data on the types of rifles used in your state for **hunting medium game (for example, turkey) or larger game (for example, deer)?**

____ Yes *(Continue)* ____ No *(You are finished with the survey. Thank you.)*

4a. If "Yes", please provide hard copies of any such available data for the past two hunting seasons of 1995 and 1996. Any data that you provide will be most beneficial to our study.

If you would like us to contact you regarding the data, please provide your name and phone number.

Name: _____ Phone: _____

Survey Fish and Game Commissions for Rifle Usage

STATE	Restrictions		Minimum Caliber or Cartridge		Q5
	Q1	Q2	Q3	Q4	
	HiPwr	Semiauto	Minimum Caliber	Minimum Cartridge	Collect Data
Alabama	Yes	Yes	Any center fire rifle	None	No
Alaska	Yes	No	No Centerfire for big game		No
Arizona	No	Yes	.22 mag or larger		No
Arkansas	Yes	No	None	None	No
California	No	No	See Question 1a	See Question 1a	No
Colorado	Yes	Yes	0.24		No
Connecticut	Yes	Yes			
Delaware	Yes	Yes			
Florida	Yes	Yes	No rimfire for deer		No
Georgia	Yes	No	.22 Centerfire or larger		No
Hawaii	No	No			
Idaho	Yes	Yes	.22 rimfire		No
Illinois	Yes	Yes	None	None	No
Indiana	Yes	Yes	None		No
Iowa	Yes	Yes	not provided		No
Kansas	Yes	Yes	.23 caliber or larger		No
Kentucky	No	No			
Louisiana	Yes	No	.22 Centerfire		No
Maine	Yes	No	.22 mag or larger		No
Maryland	Yes	Yes			
Massachusetts	Yes	No	None	None	Yes
Michigan	Yes	Yes	.23 or larger		No
Minnesota	Yes	No	0.23	1.285"	No
Mississippi	Yes	No	None	None	No
Missouri	Yes	Yes	None	None	No
Montana	No	No	None		No
Nebraska	No	No			
Nevada	No	No			No
New Hampshire	Yes	Yes		above .22 rimfire	No
New Jersey	Yes	Yes	None	None	No
New Mexico	Yes	No	.24 centerfire or larger		No
New York	Yes	Yes	Must be centerfire		No
North Carolina	Yes	No	None	None	No
North Dakota	Yes	Yes	.22 Centerfire or larger		No
Ohio	Yes	No	None	None	No
Oklahoma	Yes	Yes	.22 magnum		No
Oregon	Yes	Yes	.22 or .24 or larger		No
Pennsylvania	Yes	Yes	None	None	No
Rhode Island	Yes	Yes		.229 maximum	No
South Carolina	Yes	No	Must be larger than .22		No
South Dakota	Yes	No	None	None	No
Tennessee	Yes	Yes	.24 or larger caliber		No
Texas	Yes	No	None	None	No
Utah	Yes	No		None	No
Vermont	Yes	No			No
Virginia	Yes	Yes	.23 caliber for deer		No
Washington	Yes	Yes	.240 or larger for coyote		No
West Virginia	No	No		Any centerfire	No
Wisconsin	Yes	No	.22 caliber or larger		No
Wyoming	Yes	No		23/100 bullet dia.	No

State Fish and Game Commissions

Restrictions for High Powered Rifles

1a. Please cite law(s) and briefly describe the restrictions.

Alabama

(19) No automatic weapons, no silenced weapons.

Alaska

(23) Bison hunters must use a caliber capable of firing a 200-grain bullet having 2,000 pounds of energy at 100 yards.

Arkansas

(11) No rifles for turkey.

California

(22) Centerfire for big game, 10 gauge or smaller for resident small game.

Colorado

(10) Semiautomatic rifle may not hold more than 6 rounds.

Connecticut

(39) Shotgun only on public lands. Can use any type of rifle on private land.

Delaware

(40) No rifles - shotguns/muzzle loaders only.

Florida

(25) Machine guns and silencers not permitted for any hunting.

Georgia

(29) No hi-power rifles allowed for turkey hunting.

Hawaii

(49) Must have discharge of 1200 foot pounds.

Idaho

(30) No hi-power rifles allowed for hunting turkey.

Illinois

(12) Turkey or deer may not be hunted with rifle. Deer may not be hunted with muzzle loading rifle. No restriction on rifles for coyote, fox, and woodchuck, etc.

Indiana

(34) No hi-power rifles allowed for deer or turkey hunting. Limited restrictions for specified areas.

Iowa

(26) Cannot use rifles for turkey or deer, only shotgun or bow and arrow. No difference if public or private lands. For coyote or fox, there is no restriction on rifles, magazine size, or caliber.

Kansas

(33) Must use ammunition specifically designed for hunting.

Louisiana

(6) No rifles for turkey hunting. Rifles for deer hunting must be no smaller than .22 centerfire.

Maine

(32) No hi-power rifles for turkey and water fowl. Some limited restrictions for specific areas.

Maryland

(42) Some restrictions based on county. They are allowed in western and southern Maryland. Shotguns only in and around Baltimore and Washington, D.C.

Massachusetts

(14) Rifles not permitted for hunting deer and turkey.

Michigan

(27) No turkey hunting with hi-power rifle. No night hunting with hi-power rifle. Deer hunting with hi-power rifle allowed only in lower southern peninsula. Limited restrictions for specific areas.

Minnesota

(13) Caliber must be at least .23. Ammunition must have a case length of at least 1.285". .30 caliber M1 carbine cartridge may not be used.

Mississippi

(15) Restricts turkey hunting to shotguns. However quadriplegics may hunt turkey with a rifle.

Missouri

(5) Rifles not permitted for turkey. Self loading firearms for deer may not have a combined magazine + chamber capacity of more than 11 cartridges.

Nebraska

(43) Allowed and frequently used, but magazine capacity maximum is six rounds.

Nevada

(1) Answer to #3 refers to NAS 501.150 and NAS 503.142. Not for turkey.

New Hampshire

(7) Magazine capacity no more than 5 rounds. Prohibits full metal jacket bullets for hunting. Prohibits deer hunting with rifles in certain towns.

New Jersey

(17) No rifles.

New Mexico

(31) No hi-power rifles allowed for hunting turkey.

New York

(24) No semiautomatics with a magazine capacity of greater than 6 rounds; machineguns and silencers not permitted for any hunting. Limited restrictions for specific areas.

North Carolina

(20) Centerfire rifles not permitted for turkey hunting.

North Dakota

(28) No hi-power rifles for turkey hunting.

Ohio

(3) Prohibits high power rifles for turkey, deer and migratory birds. High power rifles can be used on all other legal game animals.

Oklahoma

(8) Centerfire rifles only for large game. Magazines for .22 centerfire rifles may not hold more than 7 rounds.

Oregon

(2) OAR 635-65-700(1) must be .24 caliber or larger center fire rifle, no full automatic; OAR 635-65-700(2) hunters shall only use centerfire rifle .22 caliber; OAR-65-700(5) no military or full jacket bullets in original or altered form. Limited restrictions for specific areas.

Pennsylvania

(16) Rifles not permitted in Philadelphia & Pittsburgh areas.

Rhode Island

(44) .22 center fire during the summer for woodchucks.

South Carolina

(18) No rifle for turkey, rifle for deer must be larger than .22 caliber

South Dakota

(50) Magazine not more than five rounds.

Tennessee

(37) No hi-power rifles allowed for turkey hunting.

Texas

(21) Rimfire ammunition not permitted for hunting deer, antelope, and bighorn sheep; machine guns and silencers not permitted for hunting any game animals.

Utah

(9) No rifles for turkey hunting.

Vermont

(47) Turkey size less than 10 gauge. Deer/moose/beer, no restriction on caliber.

Virginia

(48) 23 caliber or larger for deer and bear. No restrictions for turkey. No magazine restrictions, shotgun limited to 3 shells. Restrictions vary from county to county - approximately 90 different rifle restrictions in the State of Virginia based on the county restrictions. Sawed-off firearms are illegal to own unless with a permit, if barrel less than 16 inches for rifle, and 18 inches for shotgun.

Washington

(46) Hunting turkey limited to shotguns. Small game limited to shotguns.

Wisconsin

(36) No .22 rimfire rifles for deer hunting.

Wyoming

(4) Big game and trophy animals, firearm must have a bore diameter of at least 23/100 of an inch.

Restrictions for Semiautomatic Rifles

2a. Please cite law(s) and briefly describe the restrictions.

Alabama

(19) Turkey may not be hunted with a centerfire rifle or rimfire rifle. Semiautomatic rifles of proper caliber are legal for all types of hunting. No restrictions on magazine capacity, except wildlife management areas where centerfire rifles are restricted to 10 round max.

Arizona

(38) Magazine cannot hold more than 5 rounds.

Colorado

(10) Semiautomatic rifle may not hold more than 6 rounds.

Connecticut

(39) Shotgun only on public lands. Any type of rifle can be used on private land.

Delaware

(40) No rifles - shotguns/muzzle loaders only.

Florida

(25) No semiautomatic centerfire rifles having a magazine capacity greater than 5 rounds.

Idaho

(30) No hi-power rifles (including semiautomatic) allowed for turkey hunting.

Illinois

(12) See #1.

Indiana

(34) No hi-power rifles allowed for turkey hunting.

Iowa

(26) Cannot use rifles for turkey or deer, only shotgun or bow and arrow. No difference in public or private land. For coyote or fox, there is no restriction on rifle, magazine size, or caliber.

Kansas

(33) Must use ammunition specifically designed for hunting.

Maryland

(42) Some restrictions. Based on county. Shotguns only in and around Baltimore and Washington, D.C.

Michigan

(27) Unlawful to hunt with semiautomatic rifles capable of holding more than 6 rounds in magazine and barrel. Rimfire (.22 cal) rifles excluded from restrictions.

Missouri

(5) Combined magazine + chamber capacity may not be more than 11 cartridges.

New Hampshire

(7) Turkey may not be hunted with rifles. Rifles may not have magazine capacity of more than 5 cartridges.

New Jersey

(17) No rifles.

New York

(24) No semiautomatics with a magazine capacity of greater than 6 rounds.

North Dakota

(28) No hi-power rifles (including semiautomatics) may be used for hunting turkey.

Oklahoma

(8) See #1.

Oregon

(2) OAR 635-65-700(1) and (2) limits magazine capacity to no more than 5 cartridges.

Pennsylvania

(16) Semiautomatic rifles are not lawful for hunting in Pennsylvania.

Rhode Island

(44) Cannot use semiautomatic during the winter, only during the summer months for woodchucks (during daylight from April 1 to September 30).

Tennessee

(37) No hi-power rifles, including semiautomatics, allowed for turkey hunting.

Vermont

(47) Semiautomatic 5 rounds or less.

Virginia

(48) Semiautomatics are legal wherever rifles can be used. 23 caliber or larger for deer and bear. No restrictions for turkey. No magazine restrictions, shotgun limited to 3 shells. Restrictions vary from county to county - approximately 90 different rifle restrictions in the State of Virginia based on the county restrictions. Sawed-off firearms are illegal to own unless with a permit, if barrel less than 16 inches for rifle, and 18 inches for shotgun. Striker 12 - drums holds 12 or more rounds and is illegal.

Washington

(46) Cannot use fully automatic for hunting.

West Virginia

(45) Cannot use fully automatic firearms for hunting.

Comments Provided by Law Enforcement Agencies

- (1) No research.
- (2) No research.
- (3) NOBLE and others forwarded information to a U.S. Senator on circumstances concerning police officers killed or injured by these weapons. No data was provided.
- (4) No research.
- (7) The organization stated: "Most of the data available on guns and crime does not provide the detail needed to identify the types of guns listed. . . . We have conducted several surveys that refer to assault rifles generically, including the Survey of Inmates in State Correctional Facilities 1991, Survey of Inmates in Local Jails 1995, and the Survey of Adults on Probation 1995. The data on assault weapons has not been analyzed in the recently released Survey of Adults on Probation 1995 or in the yet to be released Survey of Inmates in Local Jails 1995.

"Our report Guns Used in Crime includes the results of an analysis of the stolen data from the FBI's National Crime Information Center database. Our analysis was limited to general categories of guns and calibers of handguns. The recent evaluation of the assault weapons ban funded by the National Institute of Justice analyzed a more recent set of the same data with an emphasis on assault weapons. The results of this evaluation were reported in Impact Evaluation of the Public Safety and Recreational Firearms Use Protection Act of 1994."

"BJS [Bureau of Justice Statistics] supports the Firearms Research Information System (FARIS). . . . This database contains firearms-related information from surveys, research, evaluations, and statistical reports. . . . We queried this database for any research on assault weapons. The results of the query include both the reports listed above, as well as several others. Please note that in BJS's report Guns Used in Crime refers to the report Assault Weapons and Homicide in New York City prepared by one of our grantees. While the data are from 1993, the report provides interesting insights into the use of assault weapons and homicide. Another source of data on assault weapons and crime is the FBI's Law Enforcement Officers Killed and Assaulted series, which records the type of gun used in killings of police officers. Several of the reports listed in the FARIS query used these data, including Cop Killers: Assault Weapons Attacks on America's Police, and Cops Under Fire: Law Enforcement Officers Killed with Assault Weapons or Guns with High Capacity Magazines."

- (9) Guns in America: National Survey on Private Ownership and Use of Firearms (May 1997) states: The 1994 NSPOF (National Survey of Private Ownership of Firearms) estimates for the total number of privately owned firearms is 192 million: 65 million handguns, 70 million rifles, 49 million shotguns, and 8 million other long guns.



DIRECTOR

DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
WASHINGTON, D.C. 20226

DEC 10 1997

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Dear Sir or Madam:

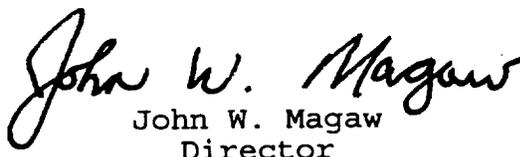
On November 14, 1997, the President and the Secretary of the Treasury decided to conduct a review to determine whether modified semiautomatic assault rifles are properly importable under Federal law. Under 18 U.S.C. section 925(d)(3), firearms may be imported into the United States only if they are determined to be of a type generally recognized as particularly suitable for or readily adaptable to sporting purposes. The firearms in question are semiautomatic rifles based on the AK47, FN-FAL, HK91, HK93, SIG SG550-1, and Uzi designs.

As part of the review, the Bureau of Alcohol, Tobacco and Firearms (ATF) is interested in receiving information that shows whether any or all of the above types of semiautomatic rifles are particularly suitable for or readily adaptable to hunting or organized competitive target shooting.

Although ATF is not required to seek public comment on this study, the agency would appreciate any factual, relevant information concerning the sporting use suitability of the rifles in question.

Your voluntary response must be received no later than 30 days from the date of this letter; those received after that date cannot be included in the review. Please forward your responses to the Bureau of Alcohol, Tobacco and Firearms, Department TA, P.O. Box 50860, Washington, DC 20091.

Sincerely yours,


John W. Magaw
Director

Comments Provided by Industry Members and Trade Associations

- (12) The respondent felt that definitions and usage should be subject to rulemaking. The respondent stated that limits on "sporting" use do not take into account firearms technology and its derivative uses among millions of disparate consumers. Millions of gun owners currently engage in informal target competition.

The respondent stated that the firearms are suitable for sporting purposes and that ATF's practice of making "ad hoc" revisions to import criteria disrupts legitimate commerce. The respondent recommends that all changes to criteria should be subject to rulemaking.

- (19) The respondent submitted a brochure and a statement supported by seven letters from FFL's who sell the SLR-95 and 97 and ROMAK 1 and 2. The respondent and all the supporting letters attest to the suitability of these guns for hunting because (1) they are excellent for deer or varmint hunting; (2) they are used by many for target shooting; (3) their ammunition is readily available and affordable; and (4) they are excellent for young/new hunters because of low recoil, an inexpensive purchase price, durability, and light weight, as well as being designed only for semiautomatic fire.
- (20) One respondent submitted results of its independently conducted survey, which consisted of 30 questions. The results of the survey suggest that 36 percent of those queried actually use AK47-type rifles for hunting or competition, 38 percent use L1A1-type rifles for hunting or competition, and 38 percent use G3-type rifles for hunting or competition. Other uses include home defense, noncompetitive target shooting, and plinking. Of those queried who do not currently own these types of rifles, 35 percent would use AK-type rifles for hunting or competition, 36 percent would use L1A1-type rifles for hunting or competition, and 37 percent would use G3-type rifles for hunting or competition.
- (22) The respondent claims that the majority of the study rifles' length and calibers can be used only for sporting purposes. The respondent asserts that the only technical detail remaining after the 1989 decision that is similar to a military rifle is the locking system. After 1989, the imported rifles have no physical features of military assault rifles. All have features which can be found on any semiautomatic sporting/hunting rifle.

However, the respondent writes that the Uzi-type carbines are "not suitable for any kind of sporting events other than law enforcement and military competitions because the caliber and locking system do not allow precise shooting over long distances."

- (23) One respondent, who imports the SAR-8 and SAR-4800 that are chambered for .308 Winchester ammunition, states that neither rifle possesses any of the characteristics of either the 1989 determination or the 1994 law. The respondent states that both are permitted in match rifle and other competitions. The respondent states that only two questions should be considered to determine hunting suitability of a rifle: Whether the caliber is adequate to take one or more game species and whether the gun is safe and reliable. The respondent states that there is no factual or legal basis to conclude that the rifles are not "particularly suitable" for sporting purposes.
- (24) The respondent writes: "The particular firearms differ from other guns that are universally acceptable only in cosmetic ways. There is no functional difference between semiautomatic firearms based on the external features that have been keyed on in an attempt to implement the import restrictions of the 1994 Crime Bill. As further attempts to differentiate functionally identical firearms by these features for the purposes of culling out those that might be politically suitable for an administrative import ban is wrong."
- (25) The respondent writes that the SLG95 was developed exclusively for hunting and competitive shooting. The respondent points out that it is capable of single firing only and cannot be reassembled for use as an automatic weapon. It is made for endurance and accuracy to 300 meters.
- (26) The respondent recommends AK47 variants specifically, but believes all study rifles are suitable or adaptable for sporting. The respondent states that a Galil-chambered .308/.223 with a two-position rear sight, adjustable front sight, or scope mount channel, are reliable, durable, accurate, and suitable for hunting and organized competitive shooting. The respondent states that the Uzi, which chambers 9mm and 40 S&W, two-position rear sight, and an adjustable front sight is suitable for organized competitive target shooting.
- (27) The respondent states that the SIG-SG550-1, in its original configuration, never possessed assault rifle features. The respondent states that it was built as a semiautomatic, not a fully automatic that was converted or modified to semiautomatic. It does have protruding pistol grip, and its ergonomics are geared toward its original design of goal-precision shooting. The respondent says that the name "Sniper" was a marketing decision, and it is extremely popular in .223 competitions. Its price isolates the gun to the competitor/collector.

- (28) Letters from H&K users were submitted in support of their continued importation and use as sporting arms. Specifically, the SR9 and PSG1 were said to be clearly suitable and utilized daily for hunting and target shooting. The respondent states that sport is defined as "an active pastime, diversion, recreation" and that the use of these is all the justification needed to allow their importation. The PSG1 has been imported since 1974, and the SR9 since 1990. The semiautomatic feature dates to turn of the century.

The respondent states that the cost would dissuade criminals from using them. The respondent refers to ATF's reports "Crime Gun Analysis (17 Communities)" and "Trace Reports 1993-1996" to show that the H&K SR9 and PSG1 are not used in crime. In the 4-year period covered by the reports, not one was traced.

- (29) The respondent faults the 1989 report both for not sufficiently addressing the issue of ready adaptability, as well as for the limited definition of sporting purposes. The respondent states that sport is defined as "that which diverts, and makes mirth; pastime, diversion." The respondent says that the NRA sponsors many matches, and personally attests to the FN-FAL and HK91 as being perfectly suitable for such matches. The respondent states that the rifles are also used for hunting deer, rabbits, and varmints. Further, the respondent remarks that the use of these rifles in crime is minuscule.

Importer/Individual Letters

On January 15, 1998, the study group received a second submission from Heckler and Koch, dated January 14, 1998. It transmitted 69 letters from individuals who appeared to be answering an advertisement placed in Shotgun News by Heckler and Koch. The study group obtained a copy of the advertisement, which requested that past and current owners of certain H&K rifles provide written accounts of how they use or used these firearms. The advertisement stated that the firearms in question, the SR9 and the PSG1, were used for sporting purposes such as hunting, target shooting, competition, collecting, and informal plinking. The advertisement also referred to the 120-day study and the temporary ban on importation, indicating that certain firearms may be banned in the future.

Synopses of Letters:

1. The writer used his SR9 to hunt deer (photo included).
2. The writer used his SR9 to hunt deer (photo included).
3. The writer used his SR9 for informal target shooting and plinking.
4. The writer used his SR9 for target practice and recreation.
5. The writer (a police officer) used SR9 to hunt. Said that it's too heavy and expensive for criminals.

6. The writer used his SR9 for competition.
7. The writer used H&K rifles such as these around the farm to control wild dog packs.
8. The writer used his SR9 to hunt deer.
9. The writer used his SR9 to hunt, participate in target practice, and compete.
10. The writer used his H&K rifles for informal target shooting.
11. The writer used his SR9 to hunt elk because it's rugged, and to shoot targets.
12. The writer used his SR9 to target practice.
13. The writer used his HK91 to hunt varmints and compete in military rifle matches.
14. The writer does not use the firearms but is familiar with their use for target shooting, hunting, and competition.
15. The writer uses HK firearms for DCM marksmanship competition.
16. The writer used his HK93 for 100-yard club matches and NRA-high power rifle matches.
17. The writer does not own the firearms but enjoys shooting sports and collecting.
18. The writer used his HK91 to hunt deer, boar, and mountain goat and in high-power match competitions.
19. The writer used his SR9 to shoot targets and for competitions.
20. The writer used his HK91 to shoot varmints, hunt small and big game, and shoot long-range silhouettes.
21. The writer used his SR8 to hunt deer, target shoot, and plink.
22. The writer used his HK93 to shoot in club competitions.
23. The writer used his SR9 to shoot targets because the recoil does not impact his arthritis.
24. The writer (a police officer) does not own the firearm but never sees HKs used in crime.
25. The writer used his HKs for target shooting, competition, and collection.
26. The writer does not own the firearms but likes recreational target shooting.
27. Writer does not own the firearms but states, "Don't ban."

28. The writer used his SR9 for hunting deer, varmints, and groundhogs; for target shooting; and for occasional competitions.
29. The writer used his SR9 to hunt deer because it's accurate, rugged, and reliable.
30. The writer used his SR9 to hunt deer and elk.
31. The writer used his SR9 to target shoot.
32. The writer used his SR9 to hunt deer and target shoot.
33. The writer used his HK91 to shoot military rifle 100-yard competitions.
34. The writer used his SR9 for hunting varmints and coyotes, for target shooting, and for competitions.
35. The writer used his SR9 to hunt deer and target shoot.
36. The writer (a former FBI employee) used his SR9 for hunting varmints and for precision and target shooting.
37. The writer used his HK for target shooting and competition.
38. The writer used his SR9 for informal target shooting and plinking and his HK91 for bowling pin matches, high-power rifle competitions, informal target shooting, and plinking.
39. The writer used his SR9 to plink and shoot targets, saying it's too heavy for hunting.
40. The writer has an HK91 as part of his military collection and indicates it may be used for hunting.
41. The writer used his SR9 to target shoot.
42. The writer used his SR9 to hunt deer and target shoot.
43. The writer does not own the firearms but says, "Don't ban."
44. The writer used his SR9 and HK93 for hunting deer, for target shooting, and for home defense.
45. The writer states, "Don't ban."
46. Writer states, "Don't ban."
47. Writer states, "Don't ban."
48. The writer owns an SR9; no use was reported.
49. Writer used his SR9 to compete in club matches and "backyard competitions."
50. The writer used his HK to hunt boar and antelope.

51. The writer states, "Don't ban."
52. The writer (a police officer) does not own the firearms but states that the are not used by criminals.
53. The writer used his HK91 to hunt deer.
54. The writer (a police trainer) says that the PSG1 is used for police sniping and competitive shooting because it's accurate. He says that it's too heavy to hunt with and has attached an article on the PSG1.
55. The writer used her two PSG1s for target shooting and fun.
56. The writer used his SR9 and PSG1 to hunt and target shoot.
57. The writer used his two PSG1s to hunt and target shoot.
58. The writer provides an opinion that the SR9 is used to hunt and target shoot.
59. The writer used his PSG1 for hunting deer and informal target shooting.
60. The writer used his PSG1 to target shoot and plink.
61. The writer states, "Don't ban."
62. The writer used his HK91 to target shoot.
63. The writer used his HK91 to target shoot.
64. The writer (a U.S. deputy marshall) used his SR9 to shoot at the range.
65. The writer used his SR9 to hunt deer and coyotes.
66. The writer used his SR9 to competitively target shoot.
67. The writer used his SR9 to hunt deer and bear.
68. The writer uses military-type rifles like these for predator control on the farm.
69. The writer used his SR9 to target shoot, plink, and compete in DCM matches.

Comments Provided by Interest Groups

- (7) Impact Evaluation of the Public Safety and Recreational Firearms Use Protection Act of 1994, Final Report. March 13, 1997.
- (8) Identical comments were received from five members of the JPFO. They are against any form of gun control or restriction regardless of the type of firearm. References are made comparing gun control to Nazi Germany.
- (9) The respondent contends that police/military-style competitions, "plinking," and informal target shooting should be considered sporting. Note: The narrative was provided in addition to survey that Century Arms put on the Internet.

The respondent questions ATF's definition of "sporting" purposes. The respondent contends that neither the Bill of Rights nor the Second Amendment places restrictions on firearms based on use.

- (13) Citing the 1989 report, the respondent states that the drafters of the report determined what should be acceptable sports, thus excluding "plinking."

The respondent states that appearance (e.g., military looking) is not a factor in determining firearms' suitability for sporting purposes. It is their function or action that should determine a gun's suitability. Over 50 percent of those engaged in Practical Rifle Shooting use Kalashnikov variants. Further, citing U.S. vs. Smith (1973), the "readily adaptable" determination would fit all these firearms.

- (14) The respondent states that the vast majority of competitive marksmen shoot either domestic or foreign service rifles. Only 2-3 participants at any of 12 matches fire bolt-action match rifles. If service rifles have been modified, they are permitted under NRA rule 3.3.1.

The respondent says that attempts to ban these rifles "is a joke."

- (15) The respondent states that these firearms are used by men and women alike throughout Nebraska. All of the named firearms are used a lot all over the State for hunting. The AK47 has the same basic power of a 30/30 Winchester. All of these firearms function the same as a Browning BAR or a Remington 7400. Because of their design features, they provide excellent performance.
- (16) The respondent states that the Bill of Rights does not show the second amendment connected to "sporting purposes." The respondent says that all of the firearms in question are "service rifles," all can be used in highpower rifle competition (some better than others), but under no circumstances should "sporting use" be used as a test to determine whether they can be sold to the American public. The respondent states that "sporting use" is a totally bogus question.

- (17) The respondent's basic concern is that the scope of our survey is significantly too narrow (i.e., not responsive to the Presidential directive, too narrow to address the problem, and inadequate to the task). The respondent states, "We do not indicate that our determination will impact modifications made to skirt law. We rely on the opinions of the 'gun press.' At a minimum, the Bureau should deny importation of: any semiautomatic capable of accepting with a capacity of more than 10 rounds, and any semiautomatic rifle with a capacity to accept more rounds than permitted by the State with the lowest number of permitted rounds. Deny any semiautomatic that incorporates cosmetically altered 'rule-beating' characteristics. Deny any semiautomatic that can be converted by using parts available domestically to any of the 1994 banned guns/characteristics. Deny any semiautomatic manufactured by any entity controlled by a foreign government. OR manufactured by a foreign entity that also manufactures, assembles or exports assault-type weapons. Deny any semiautomatic that contains a part that is a material component of any assault type weapon made, assembled, or exported by the foreign entity which is the source of the firearm proposed to be imported."

"A material component of any assault type weapon, assembled or exported by the foreign entity, which is, the source of the firearms proposed to be imported. The gun press has fabricated 'sporting' events to justify these weapons. The manner in which we are proceeding is a serious disservice to the American people."

Attachments: That Was Then, This is Now: Assault Weapons: Analysis, New Research, and Legislation; Assault Weapons and Accessories in America; and Cop Killers. All authored by the Violence Policy Center.

- (30) The respondent states, "At least for handguns, and among young adult purchasers who have a prior criminal history, the purchase of an assault-type firearm is an independent risk factor for later criminal activity on the part of the purchaser."

NOTE: The above study was for assault-type handguns used in criminal activity versus other handguns. The study involved only young adults, and caution should be used in extending these results to other adults and purchasers of rifles. However, the respondent states, it is plausible that findings for one class of firearms may pertain to another closely related class.

- (31) The 1996 National Survey of Fishing, Hunting and Wildlife-Associated Recreation. The publication outlines 1996 expenditures for guide use and percentage of hunters using guides for both big game and small game hunting.

- (32) In a memo from the Center to Prevent Handgun Violence the sections are Legal Background, History of Bureau Application of the "Sporting Purposes" Test, The Modified Assault Rifles under Import Suspension Should Be Permanently Barred from Importation, [The Galils and Uzis Should Be Barred from Importation Because They Are Banned by the Federal Assault Weapon Statute, and All the Modified Assault Rifles Should Be Barred from Importation Because They Fail the Sporting Purposes Test]. The conclusion states: "The modified assault rifles currently under suspended permits should be permanently barred from importation because they do not meet the sporting purposes test for importation under the Gun Control Act of 1968 and because certain of the rifles [Galils and Uzis] also are banned by the 1994 Federal assault weapon law."

Comments Provided by Individuals

- (10) The respondent does not recommend the Uzi, but he highly recommends the others for small game and varmints. He feels that the calibers of these are not the caliber of choice for medium or large game; however, he believes that the SIG and H&K are the best-built semiautomatics available.

He can not and will not defend the Uzi, referring to it as a "piece of junk."

The respondent feels that because of their expense and their being hard to find, the study rifles (excluding the Uzi) would not be weapons of choice for illegal activities.

- (11) The respondent questions ATF's definition of "sporting" and "organized shooting." He feels that ATF's definition is too narrow and based on "political pressure."

The respondent feels that the firearms are especially suitable for competitive shooting and hunting and that the restrictions on caliber and number of cartridges should be left to the individual States. He has shot competitively for 25 years.

- (18) The respondent specifically recommends the MAK90 for hunting because its shorter length makes for easier movement through covered areas, it allows for quicker follow-up shots, its open sights allow one to come up upon a target more quickly, and it provides a quicker determination of whether a clear shot exists through the brush than with telescopic sighting.

- (21) The respondent states that the second amendment discusses "arms," not "sporting arms." The respondent further states that taxpayer money was spent on this survey and ATF has an agenda. A gun's original intent (military) has nothing to do with how it is used now. "The solution to today's crime is much the same as it always has been, proper enforcement of existing laws, not the imposition of new freedom-restricting laws on honest people."

Information on Articles Reviewed

- (1) Describes limited availability of Uzi Model B sporter with thumbhole stock.
- (2) Describes rifle and makes political statement concerning 1989 ban.
- (3) Describes Chinese copy of Uzi with thumbhole stock.
- (4) Quality sporting firearms from Russia.
- (5) Short descriptions of rifles and shotguns available. Lead-in paragraph mentions hunting. Does not specifically recommend any of the listed weapons for hunting.
- (6) Geared to retail gun dealers, provides list of available products. States L1A1 Sporter is pinpoint accurate and powerful enough for most North American big game hunting.
- (7) Discusses the use of the rifle for hunting bear, sheep, and coyotes. Describes accuracy and ruggedness. NOTE: The rifle is a pre-1989 ban assault rifle.
- (8) Deals primarily with performance of the cartridge. Makes statement that AK 47-type rifle is adequate for deer hunting at woods ranges.
- (9) Discusses gun ownership in the United States. Highlighted text (not by writers) includes the National Survey of Private Ownership of Firearms that was conducted by Chilton Research Services of Drexel Hill, Pennsylvania during November and December 1994: 70 million rifles are privately held, including 28 million semiautomatics.
- (10) Discusses pre-1989 ban configuration. Describes use in hunting, and makes the statement that "in the appropriate calibers, the military style autoloaders can indeed make excellent rifles, and that their ugly configuration probably gives them better handling qualities than more conventional sporters as the military discovered a long time ago."
- (15) Not article - letter from Editor of Gun World magazine discussing "sport" and various competitions. Note: Attached submitted by Century Arms.
- (16) Letter addressed to "To Whom It May Concern" indicating HK91 (not mentioned but illustrated in photos) is suitable for hunting and accurate enough for competition. Note: Submitted by Century Arms.
- (17) Describes a competition developed to test a hunter's skill. Does not mention any of the rifles at issue.
- (18) Not on point - deals with AR 15.
- (19) Describes function, makes political statement.
- (20) Discusses function and disassembly of rifle.
- (21) Not on point - deals with AR 15 rifle.

- (22) Discusses competition started to show sporting use of rifles banned for sale in California. Unknown if weapons in study were banned in California in 1990.
- (23) Not on point - deals with national matches.
- (24) Not on point - deals with various surplus military rifles.
- (25) Deals with 7.62x39mm ammunition as suitable for deer hunting and mentions the use in SKS rifles, which is a military style semiautomatic but not a part of the study.
- (26) Not on point - deals with reloading.
- (27) Not on point - deals with reloading.
- (28) Not on point - deals with AR15 rifles in competition.
- (29) Not on point - deals with the SKS rifle.
- (30) Not on point - deals with national matches.
- (31) Not on point - deals with national matches.
- (32) Not on point - deals with national matches.
- (33) Not on point - deals with national matches at Camp Perry.
- (34) Not on point - deals with national matches at Camp Perry.
- (35) Not on point - deals with 1989 national matches at Camp Perry.
- (36) Not on point - deals with Browning BAR sporting semiautomatic rifles.
- (38) Not on point - deals with AR15, mentions rifle in caliber 7.62 x 39.
- (39) Not on point - deals with bullet types.
- (40) Not on point - deals with reloading.
- (41) Discusses tracking in snow. Rifles mentioned do not include any rifles in study.
- (42) Deals with deer hunting in general.
- (43) Deals with rifles for varmint hunting. Does not mention rifles in study.
- (44) Not on point - deals with hunting pronghorn antelope.
- (45) Deals with various deer rifles.
- (46) Not on point - deals with two Browning rifles' recoil reducing system.
- (47) Not on point - deals with bolt-action rifles.
- (48) Not on point - deals with ammunition.

- (49) Deals with modifications to AR15 trigger for target shooting.
- (50) Not on point - deals with M1 Garand as a target rifle.
- (51) Not on point - deals with reloading.
- (52) Deals with impact of banning semiautomatic rifles would have on competitors at Camp Perry.
- (53) Deals with economic impact in areas near Camp Perry if semiautomatic rifles banned. Reprint from Akron Beacon Journal.
- (54) Deals with training new competitive shooters - mentions sporting use of assault rifles, i.e., AR15.
- (55) Not on point - article about Nelson Shew.
- (56) Not on point - deals with reloading.
- (57) Not on point - deals with shooting the AR15.
- (58) Not on point - article about AR15 as target rifle.
- (59) Not on point - article about well known competitive shooter.
- (67) Not on point - deals with reloading.
- (68) Discusses semiautomatic versions of M14.
- (69) Discusses gas operation.
- (70) Discusses right adjustment on M1 and M1A rifles.
- (71) Discusses M1A and AR15-type rifles modified to remove them from assault weapon definition, and their use in competition.
- (72) Deals with AR15 type rifle.
- (73) Not on point - deals with AR15.
- (74) Not on point - deals with target rifle based on AR15/M16.
- (75) Not on point - deals with SKS rifle.
- (76) Not on point - deals with reloading 7.62x39mm cartridge.
- (77) Not on point - deals with reloading. Mentions 7.62x39mm.
- (78) Not on point - deals with ammunition performance.
- (79) Deals with .223 Remington caliber ammunition as a hunting cartridge.
- (80) Describes M1A (semiautomatic copy of M14) as a target rifle.
- (81) Not on point - deals with bullet design.
- (82) Not on point - deals with ammunition performance.

Information on Advertisements Reviewed

- (11) Indicates rifles are rugged, reliable and accurate.
- (12) Describes rifles, lists price.
- (13) Sporting versions of AK 47 and FAL.
- (14) Sporting version of AK 47, reliable, accurate.
- (61) Catalog of ammunition - lists uses for 7.62x39mm ammunition.
- (62) Catalog of ammunition - lists uses for 7.62x39mm ammunition.
- (63) Catalog of ammunition - lists uses for 7.62x39mm ammunition.
- (64) Catalog of ammunition - lists uses for 9mm ammunition.
- (65) Catalog of ammunition - lists uses for 9mm ammunition.
- (66) Catalog of ammunition - lists recommended uses for 9mm ammunition.

EXHIBIT 17

Declaration of Roderick M. Thompson in Support of Sunnyvale's Opposition to Plaintiffs' Motion for Preliminary Injunction

Assault Weapons "Mass Produced Mayhem"



**Brady Center to Prevent Gun Violence
October 2008**

Assault Weapons: “Mass Produced Mayhem”

**Brady Center to Prevent Gun Violence
October 2008**



October 2008

ACKNOWLEDGEMENTS

The Brady Center to Prevent Gun Violence is a national non-profit organization working to reduce the tragic toll of gun violence in America through education, research, and legal advocacy. Through its project, *Gun Industry Watch*, the Brady Center works to monitor and publicly expose gun industry practices that contribute to gun violence, with the goal of bringing about life-saving industry reform. The programs of the Brady Center complement the legislative and grassroots mobilization efforts of its sister organization, the Brady Campaign to Prevent Gun Violence and its network of Million Mom March Chapters.

Assault Weapons: "Mass Produced Mayhem" was written by Brian J. Siebel. Thanks go to Robyn Steinlauf, Sarah McLemore, Molly Warren, Lindsay Brooker, Talesia Simon, Natalie Durham, and Elizabeth Haile for their assistance in preparing this report. If you have questions about any part of this report, or would like a copy, please write to *Gun Industry Watch*, Brady Center to Prevent Gun Violence, 1225 Eye Street, N.W., Suite 1100, Washington D.C. 20005. The report and other Gun Industry Watch reports are also available at www.bradycenter.org/gunindustrywatch and www.gunlawsuits.org.

A Note About the Title

The phrase "mass produced mayhem" is taken from the federal Bureau of Alcohol, Tobacco, Firearms and Explosives's description of assault weapons in its "Assault Weapons Profile" (April 1994).

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Executive Summary

Assault weapons are military-style weapons of war, made for offensive military assaults. It is no accident that when a madman, Gian Luigi Ferri, decided to assault the law offices at 101 California Street in San Francisco, he armed himself with two TEC-9 assault weapons with 50-round magazines, which enabled him to kill eight people and wound six others.¹ Or that the Columbine high school shooters, who killed 12 students and a teacher, included a TEC-9 assault pistol in their arsenal.² Or that the Branch-Davidians at Waco, Texas, accumulated an arsenal of assault weapons to prepare for battle against the federal government, including 123 AR-15s, 44 AK-47s, two Barrett .50 calibers, two Street Sweepers, an unknown number of MAC-10 and MAC-11s, 20 100-round drum magazines, and 260 large-capacity banana clips.³ Or that James Huberty used an UZI assault pistol and a shotgun to kill 21 people and wound 19 others at a McDonald's in San Ysidro, California.⁴ Or that Patrick Purdy used an AK-47 assault rifle to kill five children and wound 29 others and a teacher at an elementary school in Stockton, California. Equipped with a 75-round "drum" magazine, Purdy was able to shoot 106 rounds in less than two minutes.⁵ The list of horrific attacks goes on.⁶

The federal Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has called assault weapons "mass produced mayhem."⁷ They have been weapons of choice for gangs, drug dealers, and mass killers. They have been used to slaughter innocents in numerous high-profile shootings, and have been used to outgun police officers on the streets. They are of no use for hunters and are counterproductive for lawful defense of one's home. Law enforcement throughout the nation has called for them to be banned. Presidents Gerald Ford, Jimmy Carter, Ronald Reagan, Bill Clinton, and George W. Bush did not agree on much, but they all supported an assault weapons ban.

For ten years, from 1994-2004, federal law banned these weapons of war. Although this now-expired law was limited in scope, and was circumvented by many gun manufacturers, it reduced the use of assault weapons in crime. The experience suggests that a stronger, more comprehensive law would enhance public safety even more.

In the four years since the federal ban expired, hundreds of people have been killed in this country with military-style assault weapons. This report lists incidents in which at least 163 people have been killed and 185 wounded in with assault weapons, including at least 38 police officers killed or wounded by them. Moreover, as these incidents are only those that we could find reported in the press, the actual tally of fatalities and injuries is almost certainly much higher.

Since the federal assault weapon expired in 2004, politicians from President George W. Bush to Senator John Warner have called for its renewal. But on this issue, the two major presidential candidates offer two starkly opposing views: Senator Barack



Obama has stated as recently as his convention acceptance speech that it is imperative that criminals be denied the use of assault weapons. Senator John McCain, who has opposed the NRA on gun shows and other issues, has been firm in his opposition to assault weapon bans. The question should be asked of the candidates, "Senator, why should civilians be allowed to wield these weapons of war?"

This report provides the factual basis for answering that question, and makes the evidentiary case for an assault weapons ban. The report also outlines how the availability of assault weapons to criminals has altered the balance of power on urban streets between police and criminals, placing police officers in grave risk of harm.

SWD M-10, M-11, M-11/9, and M-12 Assault Pistol



AK-47 Assault Rifle (Many variants)



Assault Weapons Are Designed to Slaughter People

Assault weapons are semiautomatic versions of fully automatic guns designed for military use. These guns unleash extraordinary firepower. When San Jose, California, police test-fired an UZI, a 30-round magazine was emptied in slightly less than two seconds on full automatic, while the same magazine was emptied in just five seconds on semiautomatic.⁸

As the Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”) has explained:

Assault weapons were designed for rapid fire, close quarter shooting at human beings. That is why they were put together the way they were. You will not find these guns in a duck blind or at the Olympics. **They are mass produced mayhem.**⁹

ATF has also described semiautomatic assault weapons as “large capacity, semi-automatic firearms designed and configured for rapid fire, combat use.... Most are patterned after machine guns used by military forces.”¹⁰ In short, as a Montgomery County, Alabama Sheriff has said: “[T]here’s only one reason for owning a gun like that – killing people. There’s no other use other than to kill people. That’s all they’re made for.”¹¹

Assault weapons have distinct features that separate them from sporting firearms.¹² While semiautomatic hunting rifles are designed to be fired from the shoulder and depend upon the accuracy of a precisely aimed projectile, the military features of semiautomatic assault weapons are designed to enhance their capacity to shoot multiple human targets very rapidly. Assault weapons are equipped with large-capacity ammunition magazines that allow the shooter to fire 20, 50, or even more than 100 rounds without having to reload. Pistol grips on assault rifles and shotguns help stabilize the weapon during rapid fire and allow the shooter to spray-fire from the hip position. Barrel shrouds on assault pistols protect the shooter’s hands from the heat generated by firing many rounds in rapid succession. Far from being simply “cosmetic,” these features all contribute to the unique function of any assault weapon to deliver extraordinary firepower. They are uniquely military features, with no sporting purpose whatsoever.¹³

Accordingly, ATF has concluded that assault weapons “are not generally recognized as particularly suitable for or readily adaptable to sporting purposes” and instead “are attractive to certain criminals.”¹⁴ An ATF survey of 735 hunting guides, conducted during the administration of President George H.W. Bush, found that sportsmen do not use assault weapons.¹⁵ These findings were confirmed in a second study performed by ATF under the Clinton Administration.¹⁶



A researcher hired by the Department of Justice to analyze the effect of the 1994 federal ban on assault weapons confirmed that the firepower of assault weapons gives them greater destructive potential. His analysis found that:

attacks with semiautomatics – including assault weapons and other semiautomatics equipped with large capacity magazines – result in more shots fired, more persons hit, and more wounds inflicted per victim than do attacks with other firearms.¹⁷

This contradicts the National Rifle Association’s (“NRA”) assertion that there are only “cosmetic” differences between the guns affected by the assault weapon ban and other firearms.

TEC-9, TEC-DC-9, and TEC-22 Assault Pistol



Steyr AUG Assault Rifle



Assault Weapons Threaten Law Enforcement and Terrorize Civilians

Since the federal assault weapons ban expired in September 2004, assault weapons have again flooded our streets, causing mayhem. Law enforcement agencies throughout the United States have reported an upward trend in assault weapons violence, forcing many police departments to invest in expensive assault weapons to keep from being outgunned by criminals. However, even with greater firepower and the availability of bulletproof vests, many officers have lost their lives to assault weapon attacks. Hundreds of civilians have also been victimized by assault weapons, many of them in multiple-victim attacks. In an appendix to this report, we list more than 200 assault weapons shootings and attacks that have occurred since the federal ban expired – and the list does not purport to be comprehensive. Assault weapons may not be used in the majority of crimes – handguns are – but they are disproportionately used in crime compared to their numbers in circulation. Moreover, assault weapons have special appeal to terrorists. They have no place in a civilized society.

Police Outgunned

Law enforcement has reported that assault weapons are the “weapons of choice” for drug traffickers, gangs, terrorists, and paramilitary extremist groups. As Los Angeles Police Chief William Bratton said:

There is a reason that these weapons are so appealing to criminals. They are designed to be easily concealed and kill as many people as possible as quickly as possible. Congress must act and act now to protect the American public and our police officers from these deadly weapons. This is about public safety and law enforcement.¹⁸

Law enforcement officers are at particular risk from these weapons because of their high firepower, which often leaves them outgunned by criminals. A researcher for the Department of Justice found that:

[A]ssault weapons account for a larger share of guns used in mass murders and murders of police, crimes for which weapons with greater firepower would seem particularly useful.¹⁹

Indeed, numerous law enforcement officers have been killed with high-firepower assault weapons.²⁰ In black sidebars on the following pages, we list ten cases of officers down since the federal assault weapons ban expired in September 2004. Unfortunately, there have been many more.²¹



OFFICERS DOWN

San Antonio, Texas. September 8, 2008.

A man shot two police officers with an assault rifle when the police attempted to arrest him. A standoff between the suspect and police followed, ending hours later when the suspect shot and killed himself.²²

Tucson, Arizona. June 1, 2008.

A man shot at several houses with an assault rifle, then lead police in pursuit across Tucson for more than an hour. During the chase, the gunman shot at police multiple times, fatally shooting one officer and injuring two Sheriff's deputies.²³

Philadelphia, Pennsylvania. May 3, 2008.

Officer Stephen Liczbinski was shot and killed by an assault rifle as he was responding to a robbery at a Bank of America branch. Three men robbed the bank and were fleeing when Officer Liczbinski stopped their car and exited his patrol car. At that time, one of the bank robbers opened fire with an SKS assault rifle, striking Liczbinski numerous times. One suspect was eventually shot and killed by police and the other two were arrested and charged with murder.²⁴

Miami, Florida. September 13, 2007.

Police spotted a vehicle driving erratically and followed it until it stopped in a residential complex. The suspect got out and hopped a fence to the rear of the home; the officers exited their patrol car and went to the front of the home and were granted permission to search by a female resident. The suspect grabbed a high-powered, military-style assault rifle and fired at the police officers through a window, killing Officer Jose Somohano. The suspect then exited the house and shot three other officers as he escaped. The shooter was caught later that day but would not relinquish his assault rifle so he was shot and killed by police officers.²⁵

Floyd County, Indiana. June 18, 2007.

Two officers responded to a domestic disturbance call between a mother and her son. The officers were speaking with the mother on the driveway when the 15-year-old son ambushed both officers from an upstairs window and shot at them with a high-powered assault rifle. One officer was killed and the other was seriously wounded.²⁶

In addition, police departments have found that the ban's expiration has led to increased criminal access to assault weapons and levels of violent crime, forcing many to outfit their officers with assault rifles of their own.²⁷ An informal survey of about 20 police departments conducted by the International Association of Chiefs of Police revealed that since 2004, all of the agencies have either added assault weapons to patrol units or replaced existing weapons with military-style assault weapons.²⁸

"We're in an arms race," said Police Chief Scott Knight, chairman of the firearms committee of the International Association of Chiefs of Police.²⁹ Indeed, data collected from ATF found that, since 2005, the first full year after the federal ban on assault weapons expired, ATF recorded an 11% increase in crime gun tracings of AK-47-type assault weapons.³⁰

The Chicago Police Department reported a 10% increase in the number of assault weapons seized. Superintendent Phil Cline said, "[t]hese are guns that can shoot up to 30 rounds with a couple pulls of the trigger. And it puts our police in grave danger out there. So, we'd like still to see some kind of ban, either by the state or federally."³¹

In 2006, law enforcement in Miami noted the effect of the expiration of the assault weapons ban on the rash of crimes used with these now-legal weapons.



County state attorney Katherine Fernandez-Rundle stated that the AK-47 is the “favorite weapon” of dangerous gangs gaining influence in Miami.³² Miami-Dade Police Director Robert Parker stated “there was nothing positively gained by the lifting of the ban on assault weapons by the government.”³³

Just over a year later, Miami police said that the amount of assault weapons they recovered, and homicides using assault weapons, had continued to increase. While just four percent of homicides in Miami in 2004 were committed with assault weapons, in 2007, it was one in five.³⁴ “It’s almost like we have water pistols going up against these high-powered rifles,” said John Rivera, president of the Dade County Police Benevolent Association. “Our weaponry and our bulletproof vests don’t match up to any of those types of weapons.”³⁵

The death of Miami police officer Sgt. Jose Somohano - killed by a shooter wielding a MAK-90 three years to the day after the federal ban expired - prompted Miami Police Chief John Timoney for the first time to authorize officers to start carrying assault weapons. The Chief blamed the expiration of the federal ban for the current “arms race” between police and drug gangs using assault weapons:

This is really a failure of leadership at the national level. We are absolutely going in the wrong direction here. The whole thing is a friggin disgrace.³⁶

He added:

Two or three years ago, we had the lowest homicide rate since 1967 in Miami. Then the homicides skyrocketed with the availability of AK-47s. And it went from 3% of all homicides being committed with AKs, up to 9% two years ago, then 18% last year, and this year it is around 20%. And it’s going up.... We’re being flooded with these AK-47s.³⁷

Shootings involving assault weapons were among the reasons U.S. Attorney R. Alexander Acosta set up an anti-gang task force of federal, state, and local law enforcement officials in Florida in 2007. Fifteen federal prosecutors were assigned to the effort. Said Acosta of assault weapons:

These bullets are very powerful: they go through walls, they go through cars, and if you just spray the general vicinity you’re going to get innocent bystanders. A shooting that might have been an injury previously is now a death.³⁸

Pittsburgh law enforcement also has noticed an increase in criminal use of assault weapons since the expiration of the ban. Firearms like the AK-47 and Soviet SKS Carbine have become the weapons of choice for street criminals. Pittsburgh’s Assistant Chief of Police William Mullen blamed the expiration of the ban for this



OFFICERS DOWN

Biloxi, Mississippi. June 5, 2007. A gunman with an AK-47 ambushed police officers in a shootout, killing one, then shooting himself. The gunman lured police by firing shots in the neighborhood and waiting. After shooting one officer, the gunman unloaded an additional round into the patrol car. The gunman had a cache of backup guns and ammunition waiting inside his home.³⁹

Chantilly, Virginia. May 8, 2006. A teenager with an AK-47 and 5 handguns engaged in a firefight at a police station in suburban Virginia, killing Detective Vicky Armel immediately and wounding two other officers, one of whom, Officer Michael Garbarino, died nine days later from his injuries.⁴⁰

Las Vegas, Nevada. February 1, 2006. A 22-year-old fired at least 50 rounds from an assault rifle, shooting two Las Vegas police officers and killing one, before being shot and killed by the surviving officer.⁴¹

Livingston County, Kentucky. June 2, 2005. A deputy was shot when he responded to a domestic disturbance call placed by a couple's 18-year-old daughter. When the officer entered the home, a male fired at least 8 rounds from an assault rifle at him, hitting him four times and killing him. The officer was able to fire one round which killed the gunman.⁴²

Ceres, California. January 9, 2005. A 19-year-old Marine armed with an SKS assault rifle shot two police officers, killing one, in a gun battle outside a liquor store.⁴³

increase and noted, "[t]here's a lot more assault weapons in the area in districts now than ever before."⁴⁴

In Houston, where homicides were up significantly in 2006, Police Chief Harold Hurtt said the AK-47 assault rifle had become "a weapon of choice" among warring gangs.⁴⁵

Palm Beach County police have noted an alarming trend of AK-47 use in violent crimes. Sheriff's Lieutenant Mike Wallace said: "It seems to be the weapon of choice right now. It's a weapon of war, and the function is to kill and maim. When somebody gets hit with that, it causes horrendous damage."⁴⁶ Sergeant Laurie Pfiel of the same office said: "[Criminals] don't have .38s anymore. They have AK-47s."⁴⁷

Martin County Sheriff's Office Captain Ed Kirkpatrick of Florida details the effect of criminal possession of assault weapons on effective law enforcement: "Everyone is taking more precautions. When you stop a car in the middle of the night, you [didn't] think about it. Now you do. These are very powerful weapons."⁴⁸

Franklin County, North Carolina Sheriff Pat Green said: "I've been in this business 25 years, and it's just getting worse," referring to a report that they have been finding more and more assault weapons at crime scenes in the state.⁴⁹ In South Carolina, Lieutenant Ira Parnell, head of the State Law Enforcement Division's firearms lab, noted that investigators are seeing an increase in criminal use of AK-47 and SKS assault rifles.⁵⁰

Fort Wayne, Indiana police reported a significant spike in seizures of assault weapons since the ban expired, from two in 2003, to nine in 2004, eight in 2005, 29 in 2006, and 20 in 2007. "[W]e're certainly seeing them more and more," said Police Chief Rusty York.⁵¹ Similarly, Omaha, Nebraska police seized 39 assault rifles in 2007, up from nine in 2006.⁵²



In San Francisco, Police Officers Association President Gary Delanges said: “Just about every crook you run into out there [who] is a drug dealer or a gang banger’s got one of these weapons. And it’s putting our officers’ lives at risk.”⁵³ Deputy Chief Morris Tabak displayed some of the seized assault weapons, including a .22 caliber gun modified to hold 100 rounds. “These are what could be described only as anti-personnel weapons,” he said.⁵⁴

Israeli Military Industries Action Arms UZI Assault Rifle



Civilians Massacred

Assault weapons have been used to perpetrate some of the most horrific crimes, including mass murders, ever committed in the United States. Some of the most infamous ones are cited in the Executive Summary of this report. Unfortunately, this gruesome death toll has grown since the expiration of the 10-year federal ban on assault weapons.

As can be seen from the following examples, assault weapons have been used to kill civilians engaged in common activities of life, in all types of circumstances and places. The Appendix lists more than 200 examples from just the last four years.

- **Teens slaughtered at a swimming hole in Wisconsin**

On July 31, 2008, a man used an assault rifle to massacre a group of teenagers, killing three and injuring a fourth near Niagara, Wisconsin. The teens were gathered along a river to go swimming when the gunman emerged from surrounding woods and began shooting.⁵⁵



- **Apartment employees shot by a disgruntled tenant in Virginia**

On March 19, 2008, in Virginia Beach, Virginia, a man shot five people, killing two, with an AK-47 assault rifle and .9mm handgun before killing himself. The man was about to be evicted from his apartment and targeted the apartment complex's employees in his attack.⁵⁶

- **Churchgoers gunned down in Colorado**

On December 9, 2007, a man armed with an assault rifle attacked a missionary training center in Arvada and a church in Colorado Springs. He killed two people and injured two others in Arvada, and killed two and injured three others, including two teenage sisters, in Colorado Springs. He was injured by a security guard and then shot himself.⁵⁷

- **Mall shoppers massacred in Nebraska, Washington, and New York**

On December 5, 2007, nine people were shot to death and five others were injured after a 20-year-old shooter, armed with a military-style assault rifle, attacked shoppers in a department store in an Omaha, Nebraska mall.⁵⁸

On November 20, 2005, a 20-year-old male opened fire in a Tacoma, Washington mall, wounding six. The shooter took four hostages, all of whom were released unharmed.⁵⁹

On February 13, 2005, a gunman fired more than 60 shots from an AK-47 assault rifle in the Hudson Valley Shopping Mall in Ulster, New York, wounding two and causing tens of thousands of dollars of damage before being apprehended. A few hours earlier, the shooter had purchased armor-piercing ammunition from a nearby Wal-Mart.⁶⁰

- **Birthday party celebrants spray-fired in Louisiana**

On September 15, 2007, at least 28 bullets were fired from an AK-47 at an outdoor birthday party for five-year-old twins in the courtyard of a housing complex in Kenner, Louisiana. A 19-year-old was killed and three children were wounded, ages 7, 8 and 13.⁶¹

- **Pregnant woman and child shot while sleeping in Illinois**

On June 25, 2006, in Calumet City, Illinois, a 22-year old pregnant woman and her three-year old son were shot and killed while they were sleeping when an unknown gunman fired 30 rounds from an AK-47 into their home at 1:15 a.m.⁶²



- **Family massacred in a home robbery in Indiana**

On June 2, 2006, in Indianapolis, Indiana, seven family members, four adults and three children, were shot and killed in their home by a robber armed with an assault rifle. Nearly 30 shell casings were found.⁶³

- **Two young girls shot in their homes in Illinois**

On March 11, 2006, 10-year-old Siretha White was killed by a shot to her head as she was celebrating her birthday in her living room. A spray of bullets from an assault weapon peppered the house from a nearby fight.⁶⁴

Just over a week earlier, on March 3, 2006, a stray bullet from an assault rifle struck a 14-year-old honor student as she was looking out the window of her home, killing her instantly.⁶⁵

- **College students murdered while camping in Florida**

On January 7, 2006, two college students camping in the Ocala National Forest in Florida were randomly targeted by a man who shot and killed them with a stolen AK-47.⁶⁶

- **Domestic violence leads to mass shootout on courthouse steps in Texas and triple-slaying in Ohio**

On February 25, 2005, in Tyler, Texas, a gunman who was reportedly fighting with his ex-wife over child support for their two youngest children, shot over 50 rounds from an SKS assault rifle on the steps of his local courthouse, killing his ex-wife and a bystander. The shooter's 23-year-old son and three law enforcement officers were wounded in a shootout.⁶⁷

Just a day earlier in Akron, Ohio, a man shot and killed his girlfriend and her seven-year-old son using an AR-15 assault weapon, then fired more than 100 rounds at a dozen law enforcement officers as he fled the murder scene. The gunman was arrested the next morning inside the apartment of a Kent State University student, who he also murdered with the AR-15 assault weapon. Police subsequently seized 21 weapons kept by the suspect, including an Uzi and an AK-47.⁶⁸

- **Hunters gunned down in the woods in Wisconsin**

On November 21, 2004, near Hayward, Wisconsin, a 36-year-old man opened fire with an SKS semiautomatic rifle, killing six members of a hunting party and wounding two after being asked to leave another hunter's property.⁶⁹



Crime Use Disproportionate

The firepower of assault weapons makes them especially desired by violent criminals and especially lethal in their hands. Prior to the Act, although assault weapons constituted less than 1% of the guns in circulation,⁷⁰ they were a far higher percentage of the guns used in crime. ATF's analysis of guns traced to crime showed that assault weapons "are preferred by criminals over law abiding citizens eight to one.... Access to them shifts the balance of power to the lawless."⁷¹

In arguing against assault weapon bans, the NRA and its supporters have cited Justice Department studies based on surveys of state and federal prisoners to claim that assault weapons are used in only 2% of crimes nationally. These studies, however, actually confirm the disproportionate use of assault weapons in crime. More than 80% of these prisoners used *no firearm* in the commission of their crime. Within the category of inmates who used guns to commit crimes, semiautomatic assault weapons were actually used in 6.8% of state prosecutions and 9.3% of federal prosecutions.⁷² Both percentages are much higher than the estimated 1% of guns in circulation that are assault weapons.⁷³

In addition, research by Dr. Garen Wintemute of the University of California at Davis has found that gun buyers with criminal histories were more likely to buy assault weapons than buyers without such histories. Wintemute further found that the more serious the offender's crimes, the more likely he is to buy assault weapons. Assault weapon buyers also are more likely to be arrested after their purchases than other gun purchasers.⁷⁴

Fabrique Nationale FN/FAL, FN/LAR, and FNC Assault Rifle



Terrorists Armed

As our nation wages a war on terrorism – at home and abroad – one salient fact is especially unassailable: terrorists and assault weapons go together. The assault weapon's capacity to mass-murder within a matter of seconds makes it an ideal weapon for domestic and foreign terrorists alike. The oft-seen file footage of Osama Bin Laden,



aiming his AK-47 at an unknown target, is now a familiar reminder of the incontrovertible connection between terrorism and assault weapons.

After America's bombing of terrorist camps in Afghanistan after 9/11, the *Chicago Tribune* reported that, among the mounds of rubble found at a training facility in Kabul for a radical Pakistan-based Islamic terrorist organization, was a manual entitled "How Can I Train Myself for Jihad" containing an entire section on "Firearms Training."⁷⁵ Tellingly, the manual singles out the United States for its easy availability of firearms and advises al-Qaeda members living in the United States to "obtain an assault weapon legally, preferably AK-47 or variations." Further, the manual sets forth guidelines for how would-be terrorists should conduct themselves in order to avoid arousing suspicion as they amass and transport firearms.

As the following examples indicate, terrorists have sought and obtained assault weapons in the U.S.

- **Conspirators armed to attack within the United States**

On May 7, 2007, five New Jersey men were indicted for conspiring to attack the United States Army base at Fort Dix, NJ. Over several months, the conspirators managed to stockpile numerous assault weapons, along with shotguns and various other small arms, and used these weapons in tactical training for their attack. The men had also arranged to purchase five fully automatic AK-47s and several M-16s at the time of their arrest.⁷⁶

On March 16, 2005, in New York, Artur Solomonyan, an Armenian, and Christian Dewet Spies, of South Africa, were indicted for smuggling a small arsenal of assault weapons into the U.S. from Russia and Eastern Europe. The two men, who had entered the U.S. illegally, stored these weapons in storage lockers in New York, Los Angeles, and Fort Lauderdale. When approached by an FBI informant with ties to terrorist organizations, Solomonyan and Spies offered to sell him AK-47s and machine guns, along with RPG-launchers, mines, and other military-grade ordnance.⁷⁷

In late April 2004, Michael J. Breit of Rockford, Illinois, was arrested after firing his AK-47 in his apartment. Federal agents recovered seven guns, more than 1,300 rounds of ammunition, pipe bomb making components and other explosives, a list of government officials and political and public figures with the word "marked" written next to them, and a written plan for 15 heavily armed men to kill 1,500 people at a Democratic presidential event. Breit's library included *The Turner Diaries*, the anti-government cult novel that inspired Timothy McVeigh, and *Guns, Freedom and Terrorism*, the book authored by NRA CEO Wayne LaPierre, investigators said.⁷⁸

In September 2001, Ben Benu, Vincente Pierre and his wife were arrested in Virginia for illegally buying assault weapons and other guns. The arrests were part of the post-September 11th sweep of terrorism suspects. They were alleged to be part of a militant group called Muslims of America (also linked to a terrorist group called Al



Fuqra). They bought guns including an SKS assault rifle, a 9mm pistol, and AK-47 ammunition.⁷⁹

Street Sweeper/Striker 12 Assault Shotgun



- **Arming terrorists and criminals abroad with assault weapons bought here**

On May 6, 2008, Phoenix gun dealer George Iknadosian and two associates were arrested after receiving a shipment of weapons intended for sale to a Mexican drug cartel. An undercover investigation by ATF indicated that Iknadosian sold at least 650 AK-47 assault rifles for trafficking to Mexico but that the actual number might have been be closer to 1,000. Such weapons feed the on-going conflict between drug traffickers and Mexican authorities, a conflict which resulted in more than 2,000 law enforcement deaths in an 18-month period.⁸⁰

Over several months in 2006, Adan Rodriguez purchased more than 100 assault rifles, along with many other weapons, from Dallas area gun shops on behalf of Mexican drug traffickers who paid him in cash and marijuana. Rodriguez's arrest was one of several key arrests in a five-year crack-down on weapons smuggling to Mexico. AK-47's, AR-15's, and other high-powered assault weapons, obtained either at gun shows or through straw purchasers, fuel an on-going war between major Mexican cartels and police and military officials. Over 4,000 people were killed in this drug-related violence during an 18-month period in 2007-2008.⁸¹

On September 10, 2001, Ali Boumelhem was convicted on a variety of weapons charges plus conspiracy to ship weapons to the terrorist organization Hezbollah in Lebanon. He and his brother had purchased an arsenal of shotguns, hundreds of rounds of ammunition, flash suppressors and assault weapons components at Michigan gun shows. Had it not been for a police informant, these purchases would have eluded any scrutiny.⁸²

Stephen Jorgensen purchased hundreds of firearms, including AK-47 clones called MAK-90s, with plans to ship them overseas from Tampa, Florida. Jorgensen bought 800 MAK-90s, loading them on to small planes. US customs officials say the guns were headed to the FARK guerilla movement in Colombia, a group on the U.S. terrorism watch list. Jorgensen was caught because he illegally exported the guns.⁸³



In June 2001 federal agents arrested Keith Glaude when he tried to purchase 60 AK-47 assault rifles and 10 machine guns in Florida. He told authorities that he intended to ship the guns to an Islamic extremist group in his native Trinidad. Previously, that group had acquired over 100 assault weapons in Florida that it used in a 1990 attempt to overthrow the government of Trinidad and Tobago.⁸⁴

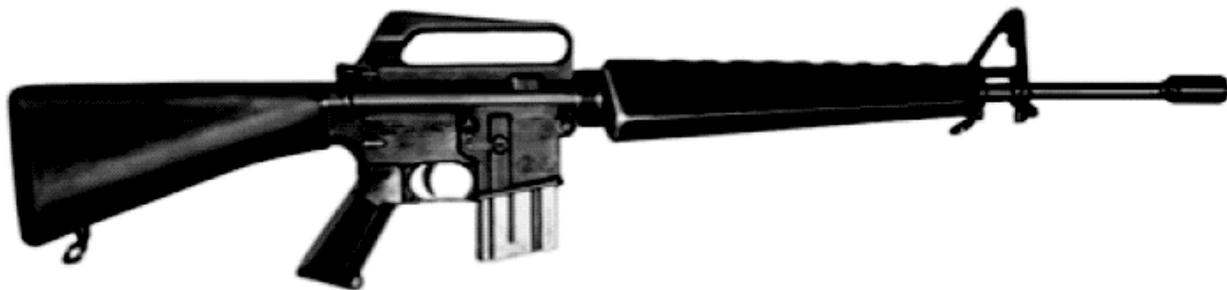
- **Using assault weapons in terrorist attacks**

Over a period of weeks in 2002, John Mohammed, a convicted felon, and his juvenile cohort, Lee Boyd Malvo, terrorized the entire metropolitan Washington, D.C. area by engaging in a series of sniper attacks on randomly-selected victims. In all, they shot 16 victims with a Bushmaster XM-15 E2S .223 caliber semiautomatic assault rifle that one of the snipers allegedly shoplifted from a Tacoma, Washington gun store. Each of the victims was randomly gunned down while going about simple activities of daily living, like closing up a store after work,⁸⁵ filling a car with gas at a service station,⁸⁶ mowing a lawn,⁸⁷ or loading one's car in a mall parking lot.⁸⁸ Both shooters have been convicted of their offenses.

On March 1, 1994, terrorist Rashid Baz opened fire on a van of Hasidic students crossing the Brooklyn Bridge, killing one student and wounding another. Baz used a Cobray M-11 assault pistol in the crime. He assembled it from a mail-order kit.⁸⁹

On January 25, 1993, Pakistani national Mir Aimal Kasi killed 2 CIA employees and wounded 3 others outside the entrance to CIA headquarters in Langley, Virginia. Kasi used a Chinese-made semiautomatic AK-47 assault rifle equipped with a 30-round magazine purchased from a Northern Virginia gun store.⁹⁰ After fleeing the country, he was arrested in Pakistan in June 1997 and convicted by a Virginia jury in November of that year.⁹¹

Colt AR-15 Assault Rifle



Assault Weapons Have No Sporting or Self-Defense Purpose

Prior to passage of the federal assault weapons ban, the importation of certain types of assault weapons from overseas was banned during the Reagan and George H.W. Bush Administrations. These import bans were ordered by ATF under the 1968 Gun Control Act, which bars the importation of guns that are not “particularly suitable for or readily adaptable to sporting purposes.”⁹²

Under the Reagan Administration, ATF blocked the importation of certain models of shotguns that were not suitable for sporting purposes. In 1989, during the George H.W. Bush Administration, ATF expanded this list to permanently ban the importation of 43 types of semiautomatic assault rifles that were also determined not to have a sporting purpose. Later, in 1998, President Clinton banned the importation of 58 additional foreign-made “copycat” assault weapons in order to close a loophole in the existing import ban.⁹³

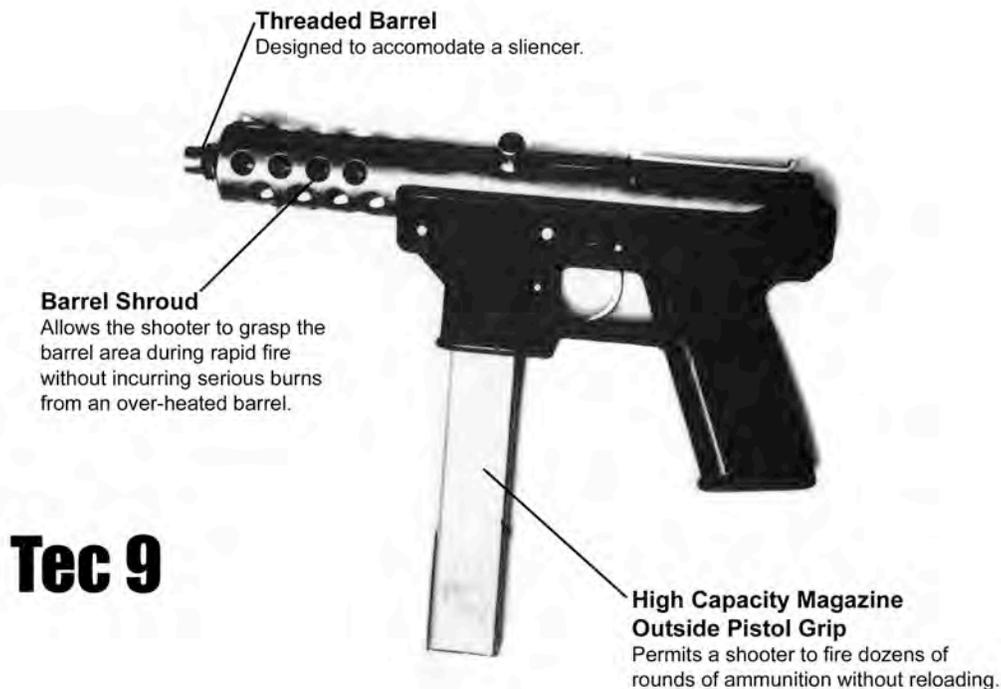
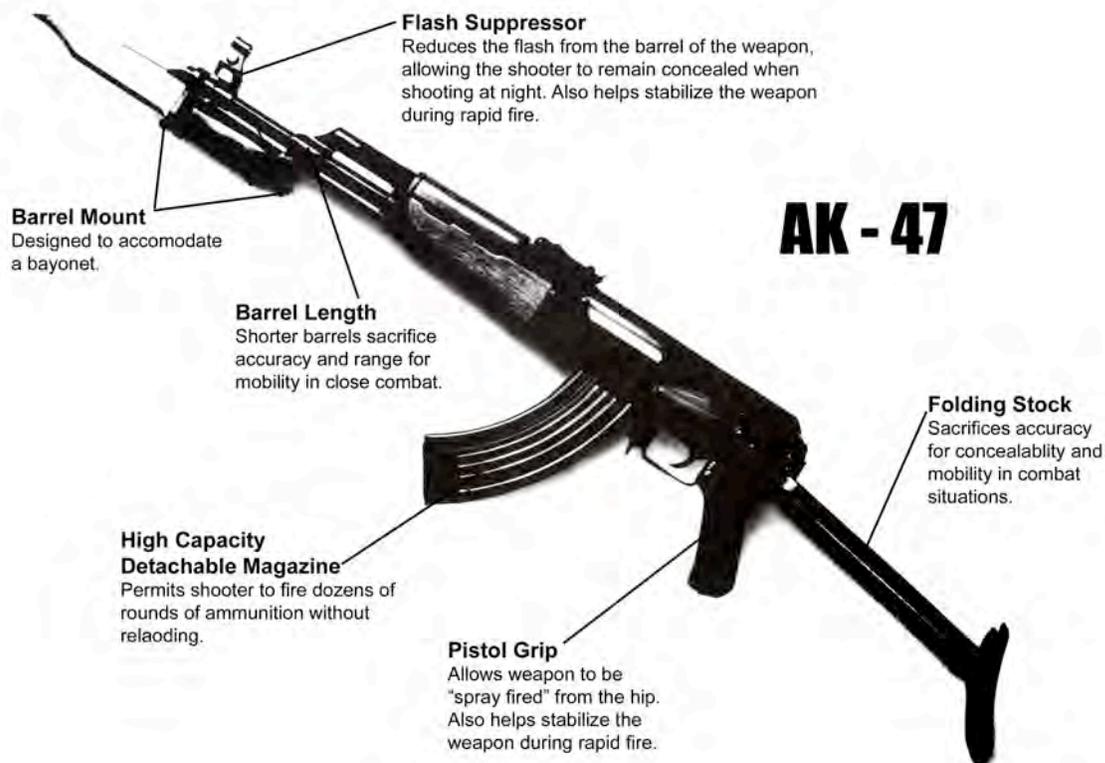
Assault weapons, as opposed to hunting rifles, are commonly equipped with some or all of the following combat features that have no sporting value:

- **A high-capacity ammunition magazine** enabling the shooter to continuously fire dozens of rounds without reloading. Standard hunting rifles are usually equipped with no more than three or four-shot magazines.
- **A folding or telescoping stock**, which sacrifices accuracy for concealability and for mobility in close combat.
- **A pistol grip or thumbhole stock**, which facilitates firing from the hip, allowing the shooter to spray-fire the weapon. A pistol grip also helps the shooter stabilize the firearm during rapid fire.
- **A barrel shroud**, which allows the shooter to grasp the barrel area to stabilize the weapon, without incurring serious burns, during rapid fire.
- **A flash suppressor**, which allows the shooter to remain concealed when shooting at night, an advantage in combat but unnecessary for hunting or sporting purposes. In addition, the flash suppressor is useful for providing stability during rapid fire, helping the shooter maintain control of the firearm.
- **A threaded barrel designed to accommodate a flash suppressor or silencer.** A silencer is useful to assassins but clearly has no purpose for sportsmen. Silencers are also illegal.
- **A barrel mount designed to accommodate a bayonet**, which obviously serves no sporting purpose.



Combat Hardware Commonly Found on Assault Weapons

Assault weapons generally include features that are useful for offensive assaults on people, but have no sporting or self-defense function. Some of these are shown below.



- **A grenade launcher or flare launcher**, neither of which could have any sporting or self-defense purpose.
- **A shortened barrel** designed to reduce the length of an assault rifle to make it more concealable. This reduces accuracy and range.⁹⁴

In addition to utilizing military features useful in combat, but which have no legitimate civilian purpose, assault weapons are exceedingly dangerous if used in self defense, because the bullets many of the weapons fire are designed to penetrate humans and will penetrate structures, and therefore pose a heightened risk of hitting innocent bystanders. As Jim Pasco, executive director of the Fraternal Order of Police has explained: **“An AK-47 fires a military round. In a conventional home with dry-wall walls, I wouldn’t be surprised if it went through six of them.”**⁹⁵ A bullet fired in self-defense that penetrated a home’s walls, could strike bystanders in neighboring rooms, apartments, or houses.

High capacity magazines containing more than 10 rounds, which were also banned as part of the Federal Assault Weapons Act, are also not useful for self-defense, as former Baltimore County Police Department Colonel Leonard J. Supenski has testified:

The typical self-defense scenario in a home does not require more ammunition than is available in a standard 6-shot revolver or 6-10 round semiautomatic pistol. In fact, because of potential harm to others in the household, passersby, and bystanders, too much firepower is a hazard. Indeed, in most self-defense scenarios, the tendency is for defenders to keep firing until all bullets have been expended.⁹⁶

Assault weapons were designed for military use. They have no legitimate use as self-defense weapons.



Sportsman Jim Zumbo Speaks Out “Assault” Rifles are “Terrorist” Rifles

A long-standing writer for *Outdoor Life* magazine, Jim Zumbo, created a huge controversy within the gun lobby when he admitted in an online blog that assault rifles have no place as hunting weapons. Zumbo wrote:

“I must be living in a vacuum. The guides on our hunt tell me that the use of AR and AK rifles have a rapidly growing following among hunters, especially prairie dog hunters. I had no clue. Only once in my life have I ever seen anyone using one of these firearms.

I call them ‘assault’ rifles, which may upset some people. Excuse me, maybe I’m a traditionalist, but I see no place for these weapons among our hunting fraternity. I’ll go so far as to call them ‘terrorist’ rifles. They tell me that some companies are producing assault rifles that are ‘tackdrivers.’

Sorry, folks, in my humble opinion, these things have no place in hunting. We don’t need to be lumped into the group of people who terrorize the world with them, which is an obvious concern. I’ve always been comfortable with the statement that hunters don’t use assault rifles. We’ve always been proud of our “sporting firearms.

This really has me concerned. As hunters, we don’t need the image of walking around the woods carrying one of these weapons. To most of the public, an assault rifle is a terrifying thing. Let’s divorce ourselves from them. I say game departments should ban them from the prairies and woods.”⁹⁷

Israel Military Industries Action Arms Galil Assault Rifle



“Dangerous and Unusual Weapons” Are Not Protected by the Second Amendment

The Second Amendment does not provide constitutional protection for military-style assault weapons. In *District of Columbia v. Heller*,⁹⁸ the Supreme Court recently ruled that the Second Amendment protects an individual right to keep and bear arms for self-defense in the home.⁹⁹ However, the Court also went out of its way to indicate that the right is limited in a number of ways. One limitation, the Court held, is that not all “arms” are protected.

We also recognize another important limitation on the right to keep and carry arms. [*U.S. v.*] *Miller* said, as we have explained, that the sorts of weapons protected were those “**in common use at the time.**” We think that limitation is fairly supported by the historical tradition of prohibiting carrying of “**dangerous and unusual weapons.**”¹⁰⁰

Assault weapons are certainly “dangerous and unusual weapons” according to any reasonable analysis of that phrase. They are military-style offensive weapons designed to slaughter human beings.¹⁰¹ This differentiates them from all hunting rifles and shotguns, as well as common handguns, which are often used in crime but have also been used in self-defense.

Moreover, assault weapons have never been “in common use” at **any** time. As semi-automatic versions of machine guns developed for use during the World Wars of the 20th Century, they are a relatively recent invention. In addition to being banned by the federal government for 10 years, they have been banned in several states.¹⁰² Plus, ATF has twice concluded, after thorough analyses in 1989 and 1998, that assault weapons have no “sporting purpose.”¹⁰³ This conclusion has blocked them from being imported into the United States.

Another factor suggesting that the Second Amendment does not protect assault weapons is that state supreme courts have consistently upheld the constitutionality of assault weapon bans as reasonable regulations designed to protect public safety under broadly-worded right-to-bear-arms provisions in state constitutions.¹⁰⁴ The *Heller* Court relied on these state constitutional provisions, many of which were adopted in the 18th and 19th centuries, to support its interpretation that the Second Amendment protects an individual right to bear arms. Courts construing the Second Amendment, post-*Heller*, can be expected to apply a similar standard of review, and uphold a federal assault weapons ban.



A Strong Federal Assault Weapons Ban Should Be Enacted

In response to mass shootings and mounting public pressure, Congress finally passed a nationwide ban on assault weapons in 1994. In hearings on the bills, the Senate Judiciary Committee explained the need to:

address the carnage wrought by deadly military-style assault weapons on innocent citizens and the law enforcement officers who seek to protect us all. Recent events illustrate again, and with chilling vividness, the tragedy that results from the wide and easy availability of guns with fire power that overwhelm our police, of weapons that have no place in hunting or sport and whose only real function is to kill human beings at a ferocious pace.¹⁰⁵

Those factors are just as prevalent today. Indeed, after 9/11, the need may be greater.

Unfortunately, the 1994 statute's scope and effectiveness were limited in several important ways. First, the law included a 10-year sunset provision allowing it to lapse when it was not re-enacted in 2004. Second, the law contained a list of assault weapons banned by make and model, but this list was not comprehensive. Third, the statute also banned guns by reference to their military features, but required guns to have **two** of these features (in addition to being semiautomatic firearms capable of accepting a detachable, high-capacity ammunition magazine) in order to be banned. The requirement of two military features created a loophole that allowed gun makers to continue manufacturing and selling stripped-down assault weapons.¹⁰⁶

The result was a piece of legislation that was valuable at keeping many of the most dangerous assault weapons out of criminals' hands, but one that also had an opening for gun manufacturers to evade the ban. Some manufacturers evaded the ban by developing guns, like the Bushmaster XM-15, Intratec's AB ("After Ban")-10, and Olympic Arms PCR ("Politically Correct Rifle"), with only minor changes in features to banned weapons.

Effect of the 1994 Ban

According to a study published by the Brady Center in 2004 entitled *On Target: The Impact of the 1994 Federal Assault Weapons Act*, the federal assault weapons ban reduced the incidence of assault weapons use in crime. In the five-year period (1990-1994) before enactment of the ban, assault weapons named in the Act constituted 4.82% of the crime gun traces ATF conducted nationwide. In the post-ban period after 1995,¹⁰⁷ these assault weapons made up only 1.61% of the guns ATF has traced to crime – a drop of 66% from the pre-ban rate.¹⁰⁸ Moreover, ATF trace data showed a steady year-by-year decline in the percentage of assault weapons traced, suggesting that the longer the statute was in effect, the less available these guns became for



criminal misuse. Indeed, the absolute number of banned assault weapons traced also declined. An initial report issued by the Department of Justice supported these findings.¹⁰⁹ These findings were further supported in a later report by one of the same researchers.¹¹⁰

This analysis was based on crime gun trace data compiled by ATF of more than 1.4 million crime guns recovered across the United States between 1990 and 2001.¹¹¹ If the ban had not been enacted, and had the banned assault weapons continued to make up the same percentage of crime gun traces as before the Act's passage, it was estimated that approximately 60,000 more of the banned assault weapons would have been traced to crime in the 10 years the law was in effect. Former ATF officials at Crime Gun Solutions, LLC, including the former Special Agent in Charge of ATF's National Tracing Center, analyzed the data for the Brady Center.

On Target also looked at the problem of "copycat" assault weapons developed by the gun industry to enable the continued sale of high-firepower weapons. The study found that industry efforts to evade the federal ban through the sale of these "copycat" weapons was able to diminish, but not eliminate, the 1994 Act's beneficial effects. Even including copycats of the federally banned guns, there was still a 45% decline between the pre-ban period (1990-1994) and the post-ban period (1995 and after) in the percentage of ATF crime gun traces involving assault weapons and copycat models.

The lesson to be drawn from this study is that a new assault weapons ban should be passed to reduce criminal use of these dangerous weapons, but it should be stronger and more comprehensive than the original federal ban to reduce indirect evasion through the manufacture of "copycat" weapons. One model for a strong assault weapons ban is the law California enacted in 2000 that bans military-style weapons capable of accepting high-capacity ammunition magazines that have even a single combat feature.¹¹² Representative Carolyn McCarthy has introduced similar strong assault weapons legislation in the U.S. House of Representatives.¹¹³

Support by Law Enforcement, the Public, and Presidents

The law enforcement community has long supported strong assault weapons bans. Every major national law enforcement organization in the country supported the Federal Assault Weapons Act and urged its renewal, including the Law Enforcement Steering Committee, Fraternal Order of Police, National Sheriffs' Association, International Association of Chiefs of Police, Major City Chiefs Association, International Brotherhood of Police Officers, National Association of Police Organizations, Hispanic American Police Command Officers Association, National Black Police Association, National Organization of Black Law Enforcement Executives, Police Executive Research Forum, and Police Foundation.

In poll after poll, the American people, regardless of party affiliation, have consistently supported a federal ban on assault weapons. In an ABC/Washington Post poll conducted in August-September 1999, 77% of adults supported a nationwide ban



on the sale of assault weapons.¹¹⁴ That same percentage held firm through the end of 2003 when an NBC News/Wall Street Journal poll found that 78% of adults nationwide expressed support for renewing the federal ban.¹¹⁵ In September 2004, just after the assault weapons ban expired, a Harris poll found that a substantial majority of Americans, 71%, favored reinstatement of the ban.¹¹⁶ As more time has passed without a federal assault weapons ban in effect, support for a ban has grown. For example, a 2007 poll from Illinois found that 80% of voters favored banning semiautomatic assault weapons.¹¹⁷ Newspaper editorial boards have also continued their strong support for getting assault weapons off our nation's streets.¹¹⁸

Presidents across the political spectrum have supported an assault weapons ban. Former Presidents Ford, Carter, and Reagan wrote Congress in support of the 1994 ban to "urge you to listen to the American public and to the law enforcement community and support a ban on the further manufacture of these weapons."¹¹⁹ In 2004, Presidents Ford, Carter, and Clinton wrote to urge re-authorization of the ban.¹²⁰ President George W. Bush also stated that he supported the ban and would sign its reauthorization if it passed Congress.

- **Senator Obama Opposes Assault Weapons for Civilians, While Senator McCain Supports Them**

Of the Presidential candidates, Senator Barack Obama supports banning assault weapons. He also addressed the issue in his acceptance speech to the 2008 Democratic Convention, saying, "The reality of gun ownership may be different for hunters in rural Ohio than they are for those plagued by gang violence in Cleveland, but don't tell me we can't uphold the Second Amendment while keeping AK-47s out of the hands of criminals."

Senator John McCain has consistently opposed an assault weapon ban, saying it "represented an arbitrary restriction on the constitutional rights of law-abiding citizens."



Conclusion

Assault weapons are weapons of war that are sought after and used by street gangs, drug dealers, and terrorists, but are of no use to law-abiding persons who own guns for sporting purposes and self-defense. Law enforcement and an overwhelming majority of the American public realize that these guns have no place in civilian hands, and should be banned. For 10 years, America attempted to limit the mayhem caused by assault weapons and the high-capacity ammunition magazines that they utilize. Although the gun industry worked hard to evade the federal ban by marketing assault weapons stripped of enough features to get by, gun makers were not wholly effective at neutralizing the federal ban's effect. Even accounting for the industry's evasive efforts, the use of assault weapons in crime declined substantially. Unfortunately, President Bush and the 108th Congress allowed it to lapse.

We need to enact a new, stronger federal assault weapons ban to keep these dangerous guns off the streets – a law that will ban all military-style weapons and with no sunset provision.

The lives of our law enforcement officers and our citizens hang in the balance.

Beretta AR 70 Assault Rifle



APPENDIX: Examples of Assault Weapon Violence Since Federal Ban Expired

- **North Tulsa, Oklahoma. October 6, 2008.** A man accidentally shot his roommate with an SKS assault rifle. The victim and shooter were arguing with the victim's estranged wife and another man when the shooter fired warning shots, hitting his roommate inadvertently.¹
- **Madison, Illinois. October 6, 2008.** A 12-year-old boy died after getting caught in the middle of a gunfight. More than 40 shots were fired as a man with an assault rifle exchanged fire with gunmen in cars.²
- **Springfield, Missouri. October 4, 2008.** A 21-year-old shot two men with an AR-15 Assault Rifle during an argument at a nightclub.³
- **Kansas City, Missouri. October 2, 2008.** Two men, one armed with an assault rifle, shot at two undercover police officers. The officers returned fire, injuring the two assailants.⁴
- **Brownsville, Texas. September 30, 2008.** Two men armed with an AK-47 Assault Rifle and .38 revolver shot multiple rounds at a group of men gathered outside a home twice in one night. There was a long-standing argument between the shooters and one of the victims. Nobody was hurt in either incident.⁵
- **Battle Creek, Michigan. September 28, 2008.** A felon with an assault weapon shot two teenagers in retaliation for a shooting several weeks prior.⁶
- **Jackson, Mississippi. September 26, 2008.** Two men armed with an assault rifle shot repeatedly at a house, hitting a woman and a one year old boy inside.⁷
- **Lenoir, North Carolina. September 21, 2008.** A former police officer and army veteran, who was armed with an assault rifle, shot two sheriff's deputies, killing one of them.⁸
- **San Antonio, Texas. September 18, 2008.** A gunman with an AK-47 assault rifle fired more than 15 rounds at a home, hitting a woman sleeping inside twice.⁹

¹ *Man accidentally shot by roommate*, KJRH- TV 2, Tulsa, Oklahoma, Oct. 6, 2008.

² *12 Year Old Shot Dead In Madison, Illinois Overnight*, ASSOCIATED PRESS, Oct. 7, 2008.

³ Dirk Vanderhart, *Shooting prompted by conflict over woman, hat*, SPRINGFIELD NEWS-LEADER, Oct. 7, 2008.

⁴ *KCMO Officers Fired on with Assault Rifle*, WDAF-TV 4, Kansas City, Missouri, Oct. 2, 2008.

⁵ *Police: 10-year grudge prompts downtown shooting*, BROWNSVILLE HERALD, Oct. 3, 2008.

⁶ Trace Christenson, *B.C. man faces attempted murder charge*, BATTLE CREEK ENQUIRER, Oct. 2, 2008.

⁷ *2 men charged in shooting denied bond*, ASSOCIATED PRESS, Oct. 2, 2008.

⁸ Dee Henry, *Armed and dangerous*, HICKORY DAILY HERALD, Sept. 22, 2008.



- **Charlotte, North Carolina. September 15, 2008.** Two people were sitting in a car outside an apartment building when a man shot at them with an assault rifle. One person in the car was hit twice and the other individual was injured by shattered glass.¹⁰
- **Houston, Texas. September 9, 2008.** One person died and two were injured in an overnight shooting. The assailants were carrying several weapons, including an assault rifle.¹¹
- **San Antonio, Texas. September 8, 2008.** A man shot two police officers with an assault rifle when the police attempted to arrest him. A standoff between the suspect and police followed, ending hours later when the suspect shot and killed himself.¹²

Tulsa, Oklahoma. September 7, 2008. A gunman with an assault weapon opened fire on a car carrying five teenagers home from church. Four of the five passengers were hit: Donovan Crutcher died from his wounds, Adrion Crutcher sustained damage to his spinal cord, Jeremy Williams lost the sight in his left eye, and Jahmal Bryant was in the intensive care unit. Four days later, a suspect was arrested in connection with the shooting.¹³

- **Birmingham, Alabama. September 5, 2008.** A man shot and killed his landlord with an SKS assault rifle after the two argued over stolen property.¹⁴
- **Dayton, Ohio. August 26, 2008.** A 31-year-old man sustained severe leg injuries when he was shot multiple times with an assault rifle.¹⁵
- **Hope Mills, North Carolina. August 25, 2008.** An 18-year-old shot a man in the head with an assault rifle. The victim was leaving the shooter's house by car, along with a woman and baby, when the incident occurred.¹⁶
- **Miami, Florida. August 23, 2008.** An intoxicated customer was shot with an AK-47 assault rifle after being kicked out of a strip club. The shooter was then shot by another man, who was also carrying an assault rifle.¹⁷

⁹ *Shooter Opens Fire On Home, Sleeping Woman Hit Twice*, WOAI – TV 4 San Antonio, Sept. 18, 2008.

¹⁰ *Apartment Complex Evacuated After Double Shooting*, WSOC-TV 9, Sept. 16, 2008.

¹¹ *Suspects in Triple Shooting Had Assault Rifle, Multiple Weapons*, FOX 26 TV Houston, Sept. 10, 2008.

¹² *SAPD Details Monday Shooting Investigation*, KSAT12-TV, San Antonio, Texas, Sept. 10, 2008.

¹³ *Arrest made in deadly drive-by*, TULSA WORLD, Sept. 12, 2008.

¹⁴ *Landlord Killed After Argument Over Stolen Copper*, NBC13-TV, Birmingham, Alabama, Sept. 8, 2008.

¹⁵ *Man Targeted By Shooter With Assault Rifle*, WHIOTV, Dayton, Ohio, Aug. 27, 2008.

¹⁶ *Three charged in Hope Mills shooting*, THE FAYETTEVILLE OBSERVER, Aug. 28, 2008.

¹⁷ *2 Dead in Shootout At Strip Club*, NBC6-TV, Miami, Florida, Aug. 23, 2008.



- **Youngsville, North Carolina. August 22, 2008.** A 12-year-old boy accidentally shot an 11-year-old neighbor with an AK-47 assault rifle.¹⁸
- **San Antonio, Texas. August 20, 2008.** A man was chased by a group of young men outside an apartment complex and was shot twice with an assault rifle.¹⁹
- **West Valley City, Utah. August 15, 2008.** Three men in an SUV shot at another car with an assault rifle and then led police on a high-speed chase. The police recovered drugs, alcohol, live casings, and an assault rifle from the car.²⁰

Newark, New Jersey. August 14, 2008. 15-year-old Bukhari Washington was killed after a bullet fired from a Chinese-made Norinco SKS assault rifle struck his bed while he slept. The gun was fired accidentally when its owner, 19-year-old Terrance Perry, was “fiddling” with it in the apartment below. Washington was a student at Christ the King Preparatory School and interned at a nursing home for people with HIV and AIDS.²¹

- **Birmingham, Alabama. August 11, 2008.** A 17-year-old girl was in a car that was sprayed by bullets from an AK-47. The girl exited the car and tried to run home when she was shot twice, once in the chest and again in her left hand, severing it. She died moments later from her injuries.²²
- **New Orleans, Louisiana. August 10, 2008.** One man was injured and another man died after being shot with an AK-47 assault rifle.²³
- **New Orleans, Louisiana. August 8, 2008.** A gunman carrying an assault rifle shot two people.²⁴
- **Niagara, Wisconsin. July 31, 2008.** A man with an assault rifle massacred a group of teenagers, killing three and injuring a fourth. The group was gathered along a river to go swimming when the gunman emerged from surrounding woods and began shooting.²⁵

¹⁸ *Sheriff says boy, 11, shot with AK-47*, THE NEWS & OBSERVER, Aug. 24, 2008.

¹⁹ *Man Chased Down and Shot to Death*, WOAI-TV, San Antonio, Texas, Aug. 21, 2008.

²⁰ *Shooting triggers high-speed chase; 3 arrested*, THE SALT LAKE TRIBUNE, Aug. 15, 2008.

²¹ Jonathan Schuppe, *Senseless Shot, Random Death: Respected teen is slain in bed, to Newark's grief*, THE STAR-LEDGER, Aug. 15, 2008.

²² Dan Barry, *Gunshot, then silence: And the sorrow spreads*, NEW YORK TIMES, Aug. 17, 2008.

²³ Nicole Dungca & Ramon Antonio Vargas, *Two die Sunday in separate slayings*, THE TIMES-PICAYUNE, Aug. 11, 2008.

²⁴ Leslie Williams, *Mob scene follows double shooting*, THE TIMES-PICAYUNE, Aug. 9, 2008.

²⁵ *Niagara, Wisconsin shooting suspect caught*, THE CHICAGO TRIBUNE, Aug. 1, 2008.



- **Pittsburgh, Pennsylvania. July 31, 2008.** Two men with an assault rifle shot and killed two cousins as they talked outside a home.²⁶
- **Orlando, Florida. July 30, 2008.** A man with an assault rifle shot and killed two teenagers and another man over stolen property.²⁷
- **Dallas, Texas. July 29, 2008.** A Dallas Morning News deliveryman was shot multiple times with an assault rifle while delivering papers early in the morning. His 14-year-old son was with him, but was not injured.²⁸
- **Kansas City, Missouri. July 28, 2008.** Three men broke into a home and held up the occupants at 1:30 in the morning. The men were armed with an assault rifle with a bayonet attached.²⁹
- **Detroit, Michigan. July 27, 2008.** Three people died, including a 17-year-old girl, after being shot with an assault rifle while leaving a bar.³⁰
- **Salt Lake City, Utah. July 26, 2008.** A 19-year-old airman shot a 22-year-old with an assault rifle after the two argued at a nightclub. The airman shot another person several months earlier.³¹
- **Chattanooga, Tennessee. July 24, 2008.** Two men armed with an SKS assault rifle shot a 28-year-old man in the head and back.³²

Oakland, California. July 23, 2008. 23-year-old Amanda Hunter was killed when she was accidentally shot in the head with an assault rifle. Hunter was attempting to remove the weapon from her home when it fell to the ground and fired. Her boyfriend, the owner of the weapon and a convicted felon, was arrested for weapons related charges including being a felon in possession of a firearm.³³

- **New Orleans, Louisiana. July 15, 2008.** A man died after being shot repeatedly with an AK-47 while asleep in his trailer.³⁴

²⁶ Jill King Greenwood, *72 killings set bloody pace in city, county*, PITTSBURGH TRIBUNE-REVIEW, Aug. 2, 2008.

²⁷ Vincent Bradshaw & Willoughby Mariano, *Flurry of bullets near Orlando playground kills three*, THE ORLANDO SENTINEL, July 31, 2008.

²⁸ Scott Goldstein, *Father, son survive shooting during News delivery*, THE DALLAS MORNING NEWS, Aug. 7, 2008.

²⁹ Mike Rice, *Home invasion robbery reported in Gladstone*, KANSAS CITY STAR, July 28, 2008.

³⁰ Candice Williams, *Girl, 17, two men fatally shot outside Detroit bar*, THE DETROIT NEWS, July 27, 2008.

³¹ *Airman's arrest for shooting not his first*, STANDARD-EXAMINER, July 29, 2008

³² Jacqueline Koch, *Police investigate assault-rifle shooting*, CHATTANOOGA TIMES FREE PRESS, July 25, 2008.

³³ *Oakland woman killed when assault rifle accidentally fires*, July 24, 2008, available at:

http://www.insidebayarea.com/ci_9977524 (last visited Sept. 26, 2008).

³⁴ Ramon Antonio Vargas, *AK-47 fire kills sleeping former rapper*, THE TIMES PICAYUNE, July 16, 2008.



- **Daytona Beach, Florida. July 13, 2008.** A distraught man fired 30 rounds into the side of an occupied building with an AK-47 assault rifle.³⁵
- **Eatonville, Florida. July 8, 2008.** A father and son were shot during a robbery with an AK-47 assault rifle.³⁶
- **Youngstown, Ohio. July 8, 2008.** A man beat up and attempted to shoot his girlfriend with an assault weapon.³⁷
- **Edwardsville, Illinois. July 7, 2008.** Two 19-year-olds repeatedly shot at a sheriff's deputy with an assault weapon as he pursued them during a car chase.³⁸
- **Van Buren, Michigan. July 6, 2008.** Two 19-year-olds with an assault rifle shot and killed a man they had argued with earlier.³⁹
- **Beaumont, Texas. July 5, 2008.** One person was injured when a man shot an assault rifle into a crowd standing outside a nightclub.⁴⁰
- **Dallas, Texas. July 4, 2008.** A gunman shot at an apartment building with an AK-47 assault rifle, killing a 17-year-old girl inside. The gunman had been arguing with the girl's stepfather outside.⁴¹
- **Buena Vista, Michigan. July 3, 2008.** A gunman shot an AK-47 multiple times into a car carrying two teenage girls, hitting one in the leg.⁴²

³⁵ Julie Murphy, *Outlaws clubhouse shot up. Police: man fires 30 rounds, accuses members of rape*, DAYTONA BEACH NEWS JOURNAL, July 17, 2008.

³⁶ *Shooting may be linked to Orlando Incident*, WESH.COM, Orlando, FL, July 8, 2008, available at: <http://www.wesh.com/print/16817435/detail.html> (last visited Sept. 26, 2008).

³⁷ *Man charged with assault over domestic dispute*, VINDY.COM, July 9, 2008, available at: <http://www.vindy.com/news/2008/jul/09/man-charged-with-assault-over-domestic-dispute/> (last visited Sept. 26, 2008).

³⁸ Sandord J. Schmidt, *Two accused of shooting at deputy*, THE TELEGRAPH.COM, July 8, 2008, available at: http://www.thetelegraph.com/news/county_15966___article.html/madison_accused.html (last visited Sept. 26, 2008).

³⁹ Susan L. Oppat, *2 Van Buren teens charged in slaying*, THE ANN ARBOR NEWS, July, 10, 2008.

⁴⁰ Heather Nolan, *Beaumont police seek help in investigating shooting at night club*, BEAUMONTENTERPRISE.COM, July 7, 2008, available at: http://www.beaumontenterprise.com/news/local/beatmont_police_seek_public_s_help_in_investigaton_07-07-2008_10_43_01.html (last visited Sept. 26, 2008).

⁴¹ Seema Mathur, *Teen hit by stray bullet at dallas apartment*, CBS11TV.COM, July 6, 2008, available at: <http://cbs11tv.com/local/dallas.teen.shot.2.764557.html> (last visited Sept. 26, 2008).

⁴² *Buena Vista gunman fires AK-47, strikes girl*, WNEM.COM, July 8, 2009, available at: <http://www.wnem.com/print/16821122/detail.html> (last visited Sept. 26, 2008).



Warsaw, North Carolina. July 2, 2008. 18-year-old high school football star Derrick Barden was killed after being shot with an AK-47. Three teenagers were charged with his death, which occurred as a group of people played with an AK-47 outside of an apartment complex.⁴³

- **Adairsville, Georgia. June 29, 2008.** A man carrying an AK-47 assault rifle shot a woman twice in the chest during a robbery attempt.⁴⁴
- **Overtown, Florida. June 28, 2008.** A 15-year-old died after he was shot with an assault weapon during a drive-by shooting.⁴⁵
- **Mobile, Alabama. June 27, 2008.** A 6-year-old boy was shot three times and a man twice when a group of men fired AK-47 and SKS assault weapons at the two cars they were riding in.⁴⁶
- **Powhatan, Virginia. June 25, 2008.** A 17-year-old with an assault weapon shot and killed an 18 year old after the two argued.⁴⁷
- **Powhatan County, Virginia. June 24, 2008.** An 18-year-old high school student was shot and killed with an assault rifle following an altercation at a gas station. A juvenile was also wounded in the shooting.⁴⁸
- **Anderson, South Carolina. June 22, 2008.** A man fired more than 30 rounds from an assault rifle at a group of people, killing a 16-year-old who was hit three times and wounding a man.⁴⁹
- **Opa Locka, Florida. June 22, 2008.** A man shot an AK-47 assault rifle at a business, injuring three people inside.⁵⁰

⁴³ Steve Herring, *Three teens charged in player's shooting*, GOLDSBORO NEWS-ARGUS, July 9, 2008.

⁴⁴ Hayden Jennings, *Suspect arrested in Adairsville shooting*, ROMENEWSWIRE.COM, June 30, 2008, available at: <http://www.romenewswire.com/index.php/2008/06/30/suspect-arrested-in-adairsville-shooting/> (last visited Sept. 26, 2008).

⁴⁵ David Ovalle, *2 deaths raise 2008 homicides to 136*, THE MIAMI HERALD, July 2, 2008

⁴⁶ Ron Colquitt, *Four suspects denied bail*, THE PRESS-REGISTER, June 28, 2008.

⁴⁷ *Authorities: Powhatan teen's killer was 17-year-old*, INRICH.COM, June 30, 2008, available at: <http://www.inrich.com/cva/ric/news.PrintView.-content-articles-RTD-2008-06-30-0195.html> (last visited Sept. 26, 2008).

⁴⁸ Linda Dunham & Reed Williams, *Suspects in fatal shooting surrender: Sheriff: Trio wanted in Powhatan teen's death face murder charges; suspected weapon found*, RICHMOND TIMES-DISPATCH, June 29, 2008.

⁴⁹ Craig Stanley, *Westside student, shooting victim, is remembered*, INDEPENDENTMAIL.COM, June 27, 2008, available at: <http://www.independentmail.com/news/2008/jun/27/westside-student-shooting-victim-remembered/> (last visited Sept. 26, 2008).

⁵⁰ *3 shot in Opa Locka*, NBC6.NET, June 22, 2008, available at: <http://www.independentmail.com/news/2008/jun/27/westside-student-shooting-victim-remembered/> (last visited Sept. 26, 2008).



- **Little Rock, Mississippi. June 21, 2008.** A man died after being shot in the head with an AK-47 assault rifle. The gunman and victim had argued over a dice game.⁵¹
- **Elyria, Ohio. June 14, 2008.** A woman died after being shot with an AK-47 assault rifle during a robbery.⁵²
- **Miami, Florida. June 13, 2008.** A man shot six people at a graduation party with an assault rifle. One of the victims died.⁵³
- **Lavaca County, Texas. June 11, 2008.** A 14-year-old boy died after being accidentally shot by his grandfather with an AK-47 assault rifle.⁵⁴
- **Longview, Texas. June 10, 2008.** A man opened fire with an AK-47 assault rifle after arguing with his girlfriend, injuring three people, including a 7-year-old girl.⁵⁵
- **Wilkes, North Carolina. June 6, 2008.** A 17-year-old was seriously injured after being shot with an AK-47 assault rifle. Several teenagers were playing with the gun when it was fired.⁵⁶
- **Shreveport, Louisiana. June 1, 2008.** A 25-year-old man was seriously injured after being shot multiple times with an assault rifle while in his car.⁵⁷
- **Tucson, Arizona. June 1, 2008.** A man shot at several houses with an assault rifle, then lead police in pursuit across Tucson for more than an hour. During the chase, the gunman shot at police multiple times, fatally shooting one officer and injuring two Sheriff's deputies.⁵⁸

⁵¹ Tim Doherty, *Foxworth man held in slaying* THE HATTIESBURG AMERICAN, June 24, 2008.

⁵² Matt Suman, *AK-47 used in deadly Gas USA robbery*, THEMORNINGJOURNAL.COM, June 25, 2008 available at:

http://www.zwire.com/site/news.cfm?newsid=19801129&BRD=1699&PAG=461&dept_id=46371&rfi=6 (last visited Sept. 26, 2008).

⁵³ *Teen shot and killed while leaving graduation party*, WSVN.COM, Miami Gardens, FL, available at: <http://www.wsvn.com/news/articles/local/MI88522/> (last visited Sept. 26, 2008).

⁵⁴ *Teen shot, killed in hunting accident*, KSAT.COM, June 12, 2008, available at:

http://www.zwire.com/site/news.cfm?newsid=19801129&BRD=1699&PAG=461&dept_id=46371&rfi=6 (last visited Sept. 26, 2008).

⁵⁵ *3 wounded in Longview gunfire*, THE DALLS MORNING NEWS, June 10, 2008.

⁵⁶ *Wilkes teens play with rifle, one shot*, GOBLUERIDGE.NET, June 9, 2008, available at:

http://www.goblueridge.net/index.php?option=com_content&task=view&id=3821&Itemid=1 (last visited Sept. 26, 2008).

⁵⁷ Katrina Webber, *Violent weekend in Shreveport leaves 3 with gunshot wounds*, KSLA NEWS 12, June 2, 2008, available at: <http://www.ksla.com/Global/story.asp?S=8410023&nav=0RY5RQCK> (last visited Sept. 26, 2008).

⁵⁸ Brady McCombs & Alexis Huicochea, *Officer on life support after crosstown pursuit*, ARIZONA DAILY STAR, June 2, 2008.



- **New Orleans, Louisiana. May 26, 2008.** Two people were injured when a gunman carrying an AK-47 assault rifle fired more than twenty rounds at them.⁵⁹
- **Jackson, Mississippi. May 26, 2008.** Five people were shot, one fatally, at a Memorial Day barbecue. A man left the party after an argument and returned with an assault rifle and fired indiscriminately into the crowd.⁶⁰
- **Shreveport, Louisiana. May 19, 2008.** A 15-year-old shot a 14-year-old with an assault weapon.⁶¹
- **Brooklyn, Connecticut. May 14, 2008.** A 16-year-old boy with Asperger syndrome shot an assault rifle near a group of people playing basketball in a park who he had argued with earlier.⁶²
- **Miami, Florida. May 14, 2008.** A man was shot multiple times after his car was sprayed with bullets from an assault weapon.⁶³
- **San Jacinto, California. May 12, 2008.** A SWAT team was called in after a man and woman armed with assault rifles shot at security guards and then Sheriff's deputies. The two were killed in the resulting shootout.⁶⁴
- **Raceland, Louisiana. May 12, 2008.** Three men attacked three other men in their car, killing all three. Each victim was shot multiple times with an AK-47 assault rifle.⁶⁵

Calabash, North Carolina. May 8, 2008. James Murdock, 25, was killed in a drive-by shooting. Murdock was sitting in a car when a dark SUV pulled up and fired at him with an assault rifle. He died at the scene. Two men were charged with the murder.⁶⁶

- **San Jacinto, California. May 8, 2008.** A 26-year-old man shot at Sheriff's deputies with an assault rifle. The man was killed when the policemen returned fire.⁶⁷

⁵⁹ *Pair gunned down by AK-47*, WDSU.COM, May 27, 2008, available at:

<http://www.wdsu.com/news/16401761/detail.html> (last visited Sept. 26, 2008).

⁶⁰ Kathleen Baydala, *Man arrested in fatal holiday party shooting*, THE CLARION LEDGER, May 28, 2008.

⁶¹ *Arrest made in shooting of 14 year old boy*, KSLA NEWS 12, May 20, 2008, available at:

http://www.ksla.com/Global/story.asp?S=8350809&nav=menu50_11_16_4 (last visited Sept. 26, 2008).

⁶² Dustin Racioppi & Don Bond, *Conn. teen with autism held in assault rifle shooting*, THE METRO WEST DAILY NEWS, May 15, 2008, available at:

<http://www.metrowestdailynews.com/archive/x2118739287/Conn-teen-with-autism-held-in-assault-rifle-shooting> (last visited Sept. 26, 2008).

⁶³ *Man shot with high-powered assault weapon*, LOCAL 10 NEWS, May 14, 2008, available at:

<http://www.local10.com/print/16261614/detail.html> (last visited Sept. 29, 2008).

⁶⁴ Gillian Flaccus, *Deputies kill 2 in gun battle on Calif. Reservation*, ASSOCIATED PRESS ARCHIVE, May 14, 2008.

⁶⁵ Raymond Legendre, *Grand jury to consider Raceland triple-slaying case*, THE COURIER, August 11, 2008.

⁶⁶ Shannan Bowen, *Two charged in Calabash murder*, STAR-NEWS, May 20, 2008.



- **Ripon, Wisconsin. May 6, 2008.** A 19-year-old accidentally shot and killed an 18-year-old friend with an assault rifle while the two were at a friend's house.⁶⁸

Stafford, Virginia. May 5, 2008. Aaron Poseidon Jackson shot his children, 1-year-old Aaron and 2-year-old Nicole, with a .38 caliber handgun, then shot their mother, Latasha Thomas, with an AK-47. When police arrived at the home, Jackson, wearing a bulletproof vest and surrounded by guns and ammunition, was found dead from a self-inflicted gunshot wound.⁶⁹

- **Burien, Washington. May 4, 2008.** A man died when he was shot in the head with an assault rifle after arguing with the shooter in a bar. The shooter left after the initial incident but returned with the gun.⁷⁰
- **Chicago, Illinois. May 4, 2008.** A college student died after being shot with an assault rifle when she was caught in crossfire from a gang while in a car.⁷¹
- **Cordova, New Mexico. May 4, 2008.** A man killed his 17-month-old son by shooting him in the chest with an assault rifle.⁷²
- **Philadelphia, Pennsylvania. May 3, 2008.** A police officer was shot and killed by an assault rifle as he was responding to a bank robbery. Three men robbed the bank and were fleeing when the officer stopped their car and exited his patrol car. At that time, one of the bank robbers opened fire with an SKS assault rifle, striking the officer numerous times. One suspect was eventually shot and killed by police and the other two were arrested and charged with murder.⁷³
- **San Antonio, Texas. May 2, 2008.** Two teens armed with an assault rifle shot at a man after he tried to stop a fight between groups of teenagers.⁷⁴

⁶⁷ Jose Arballo Jr., Steve Fetbrandt & Michelle DeArmond, *Soboba member killed in gun battle with deputies*, THE PRESS-ENTERPRISE, May 8, 2008.

⁶⁸ *Teen charged with negligent homicide in Ripon shooting posts bond*, NBC 15 NEWS, Feb. 29, 2008, available at: <http://www.nbc15.com/home/headlines/15839617.html> last visited (Sept. 29, 2008).

⁶⁹ Keith Epps & Ellen Biltz, *Gunman heavily armed*, FREDERICKSBURG.COM, May 7, 2008, available at: <http://fredericksburg.com/News/FLS/2008/052008/05072008/377460> (last visited Sept. 26, 2008).

⁷⁰ Casey McNerthney, *Man shot after Burien bar fight dies*, SEATTLE POST-INTELLIGENCER, May 5, 2008.

⁷¹ Annie Sweeney & Stefano Esposito, *We had so many plans*, THE CHICAGO SUN-TIMES, May 6, 2008.

⁷² Isaac Paul Vasquez, *Police allege father killed son*, KFOXTV.COM, May 4, 2008, available at: <http://www.kfoxtv.com/news/16157794/detail.html> (last visited Sept. 26, 2008).

⁷³ Joseph A. Gambardello, *Liczbinski suspect's girlfriend to stand trial*, PHILADELPHIA INQUIRER, July 17, 2008; *Officer shot, killed after bank robbery*, NBC 10.COM, May 3, 2008; See Sergeant Stephen Liczbinski, www.odmp.org, available at: <http://www.odmp.org/officer/19359-sergeant-stephen-liczbinski> (last visited Sept. 30, 2008).

⁷⁴ *Man shot at after breaking up fight*, KSAT TV 12, May 2, 2008, available at: <http://www.ksat.com/news/16136482/detail.html> (last visited Sept. 26, 2008).



- **Compton, California. April 29, 2008.** A 19-year-old with an assault rifle exchanged fire with Sheriff's deputies. No one was injured in the incident.⁷⁵
- **Chicago, Illinois. April 21, 2008.** The owner of a plumbing company was shot in the stomach by an employee using an AK-47 and died as a result. The employee also shot at three police officers later in the evening.⁷⁶
- **York, Pennsylvania. April 11, 2008.** A man died after he was shot multiple times with an assault rifle. The victim and shooter had argued earlier.⁷⁷
- **Miami, Florida. April 5, 2008.** A 16-year-old boy died and his mother was injured when they were shot with an assault rifle outside of their home by people they had previously argued with.⁷⁸
- **Sharonville, Ohio. April 3, 2008.** A 14-year-old girl was shot in the leg when a man fired an assault weapon randomly into the street. The bullet went through a car door and hit the victim.⁷⁹
- **Miami, Florida. April 3, 2008.** A 20-year-old with over thirteen firearms, including four AK-47s, and more than 5,000 rounds of ammunition, was arrested after threatening over the internet that he was going to carry-out a Virginia Tech style massacre.⁸⁰
- **Tarpon Springs, Florida. March 30, 2008.** A man fired several rounds from an assault weapon toward another man who was exiting his car.⁸¹
- **Donaldsonville, Louisiana. March 22, 2008.** A five-year-old boy and a man were injured after being shot with an assault rifle on the street.⁸²
- **Virginia Beach, Virginia. March 19, 2008.** A man shot five people, killing two, with an AK-47 assault rifle and .9 mm handgun before killing himself. The man was

⁷⁵ *Suspect arrested in connection to Compton shootout*, CBS2.COM, May 1, 2008, available at: <http://cbs2.com/local/Compton.Shooting.Arrest.2.713125.html> (last visited Sept. 26, 2008).

⁷⁶ Lisa Donovan et. al., *SWAT will go on patrol*, CHICAGO SUN TIMES, Apr. 22, 2008.

⁷⁷ Kristin Thorne, *York man killed in shooting involving assault rifle*, ABC27 NEWS, Apr. 11, 2008, available at: <http://cfc.whtm.com/printstory.cfm?id=510600> (last visited Sept. 29, 2008).

⁷⁸ *Teen killed, mother injured in shooting*, NBC6.NET, Apr. 6, 2008, available at: <http://www.nbc6.net/news/15806302/detail.html> (last visited Sept. 26, 2008).

⁷⁹ *Teenage girl accidentally shot in Sharonville*, WCPO 9 NEWS, Apr. 3, 2008, available at: http://www.wcpo.com/news/local/story.aspx?content_id=c473d379-e54d-4b46-a24d-397f12369149 (last visited on Sept. 29, 2008).

⁸⁰ *Police: Man threatened to re-enact Virginia Tech-style killings*, ASSOCIATED PRESS, Apr. 4, 2008.

⁸¹ *Tarpon Springs man arrested in assault rifle attack*, TBO.COM, Mar. 31, 2008, available at: <http://suncoastpasco.tbo.com/content/2008/mar/31/tarpon-springs-man-arrested-assault-rifle-attack/> (last visited Sept. 26, 2008).

⁸² Samuel Irvin, *Sheriff promises to boost patrols*, THE ADVOCATE, Mar. 27, 2008 available at: <http://www.2theadvocate.com/news/17040851.html> (last visited Sept. 26, 2008).



about to be evicted from his apartment and targeted the apartment complex's employees in his attack.⁸³

- **Chattanooga, Tennessee. March 15, 2008.** A man fired more than 20 rounds from an assault rifle at another man outside of an apartment building. The victim was not hit.⁸⁴
- **Baton Rouge, Louisiana. March 7, 2008.** A 16-year-old male shot his father in the arm with an AK-47 and was placed in juvenile detention on one count of attempted murder.⁸⁵
- **Kansas City, Missouri. March 5, 6, 7, 2008.** One man was killed and three injured during a drive-by shooting of a tire store. The shooters used two .223-caliber assault rifles, one of which had two large drum magazines and could fire 100 bullets without reloading. Police pursued the shooters, who were eventually apprehended, and were shot at with the same assault rifles. The following day, three retaliatory shootings occurred; the day after, one retaliatory shooting occurred in which a woman was shot seven times in the chest and torso.⁸⁶
- **Roanoke, Virginia. February 29, 2008.** A car chase ended when the driver pulled over and began shooting at police with an SKS assault rifle. The police shot and seriously wounded the driver. None of the police were seriously injured.⁸⁷

Gainesville, Georgia. February 19, 2008. 52-year old Mary Bailey was killed after being shot with an AK-47. Bailey was sleeping on the sofa when her 19-year old son, Derrick Bailey, cleaned his assault weapon and it fired. Derrick claims he did not know the weapon was loaded.⁸⁸

- **Marrero, Louisiana. February 16, 2008.** An 18-year-old was killed and a 16-year-old wounded after being shot with an AK-47 multiple times. The shooter fired more than 20 rounds at the two victims.⁸⁹
- **Pulaski, Kentucky. February 9, 2008.** A man fired more than 50 rounds from his assault rifle into a mobile home and garage after arguing with the owner. The homeowner received only minor injuries in the incident.⁹⁰

⁸³ *Gunman in mass shooting identified*, WVEC 13 NEWS, Mar. 20, 2008, available at: http://www.wvec.com/news/vabeach/stories/wvec_local_031908_vb_shooting.79dfc43.html (last visited Sept. 29, 2008).

⁸⁴ Amy Katcher, *East Lake shootout caught on tape*, WDEF NEWS 12, Mar. 26, 2008, available at: http://wdef.com/news/east_lake_shootout_caught_on_tape/03/2008 (last visited Sept. 26, 2008).

⁸⁵ *Police and fire briefs*, BATON ROUGE ADVOCATE, Mar. 8, 2008.

⁸⁶ Christine Vendel, *Heavy firepower in KC: Officers outgunned by suspects*, KANSAS CITY STAR, Mar. 8, 2007.

⁸⁷ Jessica Marcy, *Shots end U.S. 220 chase in Roanoke County*, WWW.ROANOKE.COM, Mar. 1, 2008, available at: <http://www.roanoke.com/news/roanoke/wb/152736> (last visited Sept. 26, 2008).

⁸⁸ *Gainesville teen: 'I shot my mother'*, WSBT.V.COM, Feb. 19, 2008, available at: <http://www.wsbtv.com/news/15345707/detail.html> (last visited Sept. 26, 2008).

⁸⁹ *Harvey teen booked with murder*, THE TIMES PICAYUNE, Feb. 19, 2008.



- **Phoenix, Arizona. February 9, 2008.** A 17-year-old died and a 23-year-old was injured after being shot with an assault rifle during an attack by four men.⁹¹
- **Indianapolis, Indiana. February 8, 2008.** An 8-year-old girl died after being shot in the head when someone sprayed her house with bullets from an assault weapon.⁹²
- **Macon, Georgia. February 4, 2008.** A man fired over 70 rounds from an assault rifle into the front of a house, killing the woman at the door. The man was looking for the woman's son but shot her after learning he was not at home.⁹³
- **Cleveland, Tennessee. February 2, 2008.** A 20-year-old man died after being shot several times with an assault rifle as he exited a car. The gunman shot at the other people in the car and at a nearby house as well.⁹⁴
- **Pittsburgh, Pennsylvania. January 28, 2008.** A 12-year-old girl was killed and her mother badly injured after they were shot with an AK-47 assault rifle. The two were visiting a family member when an assailant sprayed the house with dozens of bullets.⁹⁵
- **Camp Hill, Alabama. January 22, 2008.** A 19-year-old shot a 17-year-old in the face with an assault rifle after the two argued over the stolen weapon.⁹⁶
- **Miami, Florida. January 20, 2008.** Three cousins were injured when dozens of rounds were fired from an assault rifle into their car. One of the cousins was left brain-dead.⁹⁷
- **Carmichael, California. January 16, 2008.** A 24-year-old man was shot with an assault rifle in a drive-by shooting and died.⁹⁸

⁹⁰ *Eubank man jailed following hail of bullets fired into residence*, WKYT.COM, Feb. 9, 2008, available at: <http://www.wkyt.com/home/headlines/15476381.html> (last visited Sept. 26, 2008).

⁹¹ David Biscobing, *Teen gunned down in Phoenix with rifle*, EAST VALLEY TRIBUNE, Feb. 9, 2008.

⁹² *Community mourns eight-year-old's shooting death*, WTHR 13 NEWS, Feb. 26, 2008, available at: <http://www.wthr.com/Global/story.asp?S=7853369> (last visited Sept. 29, 2008); *Man charged in 8-year-old's shooting death*, WTHR 13 NEWS, Feb. 27, 2008, available at:

<http://www.wthr.com/Global/story.asp?s=7865668> (last visited Sept. 29, 2008).

⁹³ Ashley Tusan Joyner, *Woman died after man sprays home with bullets*, THE MACON TELEGRAPH, Feb. 6, 2008.

⁹⁴ Ryan Harris, *Bradley murder victim identified*, CHATTANOOGA TIMES FREE PRESS, Feb. 5, 2008.

⁹⁵ Michael Hasch, *Girl, 12, killed as 40 shots blast into North Side home*, THE PITTSBURGH TRIBUNE-REVIEW, Jan. 29, 2008.

⁹⁶ *Teen shot in face by assault rifle*, WTVM.COM, Jan. 22, 2008, available at: http://www.wtvm.com/Global/story.asp?S=7757100&nav=menu91_2 (last visited Sept. 26, 2008).

⁹⁷ David Ovalle, *Little Haiti: Gun violence tears family*, THE MIAMI HERALD, January 24, 2008.

⁹⁸ *Two Carmichael killings may be connected*, KCRA.COM, Jan. 16, 2008, available at: <http://www.kcra.com/news/15067608/detail.html> (last visited Sept. 26, 2008).



- **Louisville, Kentucky. January 14, 2008.** A man carrying an assault rifle fired several rounds at a police officer during a traffic stop. The officer was not injured.⁹⁹
- **North Miami Beach, Florida. January 8, 2008.** An off-duty Miami police detective was killed by a man who shot him with an AK-47 assault rifle as he sat in his car.¹⁰⁰
- **Merrillville, Indiana. December 31, 2007.** A 25-year-old man shot a 20-year-old man with an assault rifle. The shooter asked the victim and another man to leave his apartment after they argued, then followed them outside and shot the victim multiple times.¹⁰¹

Little Rock, Arkansas. December 29, 2007. 6-year-old Kamyia Weathersby was shot at least 7 times by gunmen outside her home as she was lying in bed. Police believe at least one assault rifle was used to fire 50 or more rounds at her home. The following day, Kamyia died when her family made the decision to take her off life support.¹⁰²

- **Ozark, Alabama. December 29, 2007.** An 18-year-old man repeatedly shot a 22-year-old man using a SKS assault rifle after the two argued. The 22-year-old died from his injuries.¹⁰³
- **Southington, Connecticut. December 24, 2007.** One man shot another in the head with an assault rifle, killing him, after the two argued.¹⁰⁴
- **Arvada & Colorado Springs, Colorado. December 9, 2007.** One man with an assault rifle attacked a missionary training center in Arvada and a church in Colorado Springs. He killed two people and injured two others in Arvada, and killed two and injured three others in Colorado Springs. He died after being shot by a security guard and then shooting himself.¹⁰⁵

⁹⁹ 4th arrest made in SWAT case, WLKY.com, Jan. 14, 2008, available at: <http://www.wlky.com/news/15048297/detail.html> (last visited Sept. 26, 2008).

¹⁰⁰ David Quinones, *Dispute boils over mourning of detective*, MIAMI HERALD, Jan. 19, 2008; See Detective James Walker, www.odmp.org, available at: <http://www.odmp.org/officer/19128-detective-james-walker> (last visited Sept. 30, 2008).

¹⁰¹ *M'ville man charged in shooting*, THETIMESONLINE.COM, Jan. 4, 2008, available at: http://www.thetimesonline.com/articles/2008/01/04/news/lake_county/doc88e35a05299f4540862573c600061f09.txt (last visited Sept. 26, 2008).

¹⁰² *Girl, 6, dies after being shot 7 times – Ark. police search for suspects, motive*, MEMPHIS COMMERCIAL APPEAL, Jan. 1, 2008.

¹⁰³ *Ozark shooting suspect surrenders*, PRESS-REGISTER, Jan. 1, 2008.

¹⁰⁴ Chris Velardi, *\$2million bond for Southington murder suspect*, WTNH.COM, Jan. 2, 2008, available at: <http://www.wtnh.com/global/story.asp?s=7566985> (last visited on Sept. 29, 2008).

¹⁰⁵ Erin Emery, *Report details church shooting, the document chronicles the days leading up to the Dec. 9 deaths of four young people*, DENVER POST, Mar. 13, 2008.



- **Omaha, Nebraska. December 5, 2007.** Nine people were shot to death and five others were injured after a 20-year-old shooter, armed with a military-style assault rifle, attacked shoppers in a department store in a Nebraska mall.¹⁰⁶
- **Arden, South Carolina. December 4, 2007.** One man was injured when he was shot at close range in the leg and foot with an AK-47 assault rifle.¹⁰⁷
- **Memphis, Tennessee. November 13, 2007.** One man was killed and another injured after an unidentified man opened fire on a grocery store parking lot with an AK-47 assault rifle.¹⁰⁸
- **Vallejo, California. November 4, 2007.** One man died after being shot several times with an assault rifle while arguing with two other men. Witnesses of the shooting pursued the shooters by car and were also shot at, although none were injured.¹⁰⁹
- **Crandon, Wisconsin. October 7, 2007.** An off-duty Sheriff's deputy killed six and wounded a seventh person when he burst into a pizza party and started shooting with an assault weapon. The shooter later killed himself as the police closed in.¹¹⁰
- **West Palm Beach, Florida. September 18, 2007.** Two men were killed and another injured when they were attacked in their car by two men carrying a handgun and an assault rifle. The suspects shot at the police as they escaped.¹¹¹
- **New Orleans, Louisiana. September 15, 2007.** At least 28 bullets were fired from an AK-47 at an outdoor birthday party for 5-year-old twins in the courtyard of a public housing complex. A 19-year-old was killed and three children were wounded, ages 7, 8 and 13.¹¹²
- **Miami, Florida. September 13, 2007.** Police spotted a vehicle driving erratically and followed it until it stopped in a residential complex. The driver got out and hopped a fence to the rear of the home; the officers exited their patrol car and went to the front of the home where they were granted permission to search by a female resident. The suspect grabbed a high-powered, military-grade rifle and fired at the police officers through a window, killing one officer, then exited the house and shot

¹⁰⁶ *The American Way*, REGISTER-GUARD, Dec. 17, 2007.

¹⁰⁷ Clarke Morrison, *Arden man gets 12 years for assault rifle shooting*, THE CITIZEN-TIMES, Aug. 8, 2008.

¹⁰⁸ Chris Conley & Jody Callahan, *Drive-by shooting kills 1—police search for two gunmen in B-52 Market incident*, MEMPHIS COMMERCIAL APPEAL, Nov. 13, 2007.

¹⁰⁹ Henry K. Lee, *Two suspects sought in Vallejo homicide*, SFGATE.COM, Nov. 10, 2007, available at: <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2007/11/10/BAUJT9HSA.DTL> (last visited Sept. 26, 2008).

¹¹⁰ Todd Richmond, *Crandon mass murder-suicide: Questions linger in killing of seven, officials tight-lipped despite suspect's death*, ST. PAUL PIONEER PRESS, Dec. 4, 2007.

¹¹¹ *2 killed in West Palm shootings, suspects escape on foot after one fires at police officer pursuing them*, SOUTH FLORIDA SUN-SENTINEL, Sept. 19, 2007.

¹¹² Mary Sparacello, *Housing Authority reining in parties, Kenner shooting leads to regulations*, THE TIMES PICAYUNE, Oct. 11, 2007.



three other officers as he escaped. The shooter was caught later that day but would not relinquish his assault rifle so he was shot and killed by police officers.¹¹³

- **Aiken, South Carolina. September 12, 2007.** A 20-year-old man died after being shot multiple times with an assault rifle by a 19-year-old when they were having an argument.¹¹⁴
- **Rome, Georgia. August 26, 2007.** One man was killed and a woman seriously injured inside their home. The shooter was found with an AK-47, from which several clips of ammunition had been emptied, and a 12-gauge shotgun when police arrived at the scene.¹¹⁵
- **Treme, Louisiana. August 13, 2007.** Two men were killed and another was seriously wounded as a shooter sprayed the crowd with an AK-47 assault rifle at a recreational league basketball game.¹¹⁶
- **Dallas, Texas. August 12, 2007.** One person was killed and three others wounded in a shooting outside a poetry/coffee shop. The gunman, who used an assault rifle, fled the scene.¹¹⁷

Hialeah, Florida. August 5, 2007. Eric Lopez, 38, was fatally shot in his home, and his wife, Olga, was shot in the leg. The incident began around noon when gunmen entered their home and began firing with a military-style semi-automatic weapon. Police arrested four people in connection with the shooting.¹¹⁸

- **Oakland, California. August 4, 2007.** A gunman with an assault rifle unleashed a barrage of bullets at a van parked on a North Oakland street, killing one man who lived nearby and wounding his brother and their friend. The gunman then fled.¹¹⁹
- **Orangeburg, South Carolina. July 19, 2007.** A man brandishing an assault rifle shot a woman once in the leg. The man was charged with assault and battery with intent to kill.¹²⁰

¹¹³ David Ovalle et al., *The murder and the manhunt started in a South Miami-Dade townhouse, zigzagged...*, MIAMI HERALD, Sept. 15, 2007.

¹¹⁴ Michelle Guffey, *Police seek murder suspects*, THE AUGUSTA CHRONICLE, Sept. 19, 2007.

¹¹⁵ *Man goes on shooting rampage, kills one, severely injures another*, ROMENEWSWIFE.COM, available at: <http://www.romenewswire.com/index.php/2007/08/26/police-on-scene-of-possible-murder-in-west-rome/> (last visited Sept. 29, 2008).

¹¹⁶ Richard A. Webster, *Soaring murder rate in New Orleans undermines recovery strides*, NEW ORLEANS CITY BUSINESS, Aug. 20, 2007.

¹¹⁷ Marissa Alanis, *Peacekeeper is killed outside club, police say: Dallas 3 others injured as gunman fires assault rifle into crowd*, DALLAS MORNING NEWS, Aug. 13, 2007.

¹¹⁸ Laura Figueroa, *Hialeah: 4 charged in 'crime of passion'*, MIAMI HERALD, Aug. 7, 2007.

¹¹⁹ *Two more slain in Oakland weekend violence*, THE OAKLAND TRIBUNE, Aug. 5, 2007.

¹²⁰ Richard Walker, *Woman recovering after being shot with AK-47*, THE TIMES AND DEMOCRAT, July 20, 2007.



- **North Augusta, South Carolina. July 15, 2007.** Twenty-one bullets were shot from an assault rifle into a home, hitting a 14-year-old boy sleeping inside. The bullets reportedly came from a car outside, tore through a foosball table, couch, and the wall to a back bedroom, where they pierced furniture, blasted a TV to the floor, and hit the boy.¹²¹
- **Floyd County, Indiana. June 18, 2007.** Two officers responded to a domestic disturbance call between a mother and her son. The officers were speaking with the mother on the driveway when the 15-year-old son ambushed both officers from an upstairs window and shot at them with a high powered assault rifle. One officer was killed and the other was seriously wounded.¹²²
- **Biloxi, Mississippi. June 5, 2007.** A gunman with an AK-47 ambushed police officers in a shootout, killing one, then shooting himself. The gunman lured police by firing shots in the neighborhood and waiting. After shooting one officer, the gunman unloaded an additional round into the patrol car. The gunman had a cache of backup guns and ammunition waiting inside his home.¹²³
- **Dallas, Texas. March 23, 2007.** A Dallas police officer was killed when he was struck in the neck and chest by an assault weapon as he approached a suspect's car.¹²⁴
- **Metairie, Louisiana. February 27, 2007.** Two AK-47s were among several guns fired into a Metairie apartment that resulted in four men being shot, one fatally and another critically.¹²⁵
- **Philadelphia, Pennsylvania. February 13, 2007.** A gunman used an assault weapon to kill 3 and wound another before killing himself.¹²⁶
- **Palm Beach County, Florida. January 1, 2007.** An 8-month-old baby boy was shot in his car seat after his mom parked in front of a drug house and rivals opened fire with assault rifles.¹²⁷
- **New Bedford, Massachusetts. December 12, 2006.** Three people were killed and two police officers were injured when a gunman opened fire at the Foxy Lady strip

¹²¹ Meredith Anderson, *North Augusta 14-year-old shot*, WRDW 12 NEWS, July 16, 2007, available at: <http://www.wrdw.com/home/headlines/8526357.html> (last visited on Sept. 29, 2008).

¹²² See Officer Frank Charles Denzinger, odmp.org, available at: <http://www.odmp.org/officer/18926-officer-frank-charles-denzinger> (last visited Sept. 30, 2008).

¹²³ Ryan LaFontaine, *Gunman had a large arsenal, Police say Asher used AK-47*, SUN HERALD, June 9, 2007.

¹²⁴ Tanya Eiserer et al., *Dallas officer dies after shootout*, THE DALLAS MORNING NEWS, Mar. 24, 2007.

¹²⁵ Michelle Hunter, *Cops say victim not innocent bystander*, THE TIMES PICAYUNE, Feb. 28, 2007.

¹²⁶ Larry King & Joseph A. Gambardello, *Investor rage, lethal trap*, PHILADELPHIA INQUIRER, Feb. 14, 2007.

¹²⁷ Rochelle E.B. Gilken, *County has most homicides since '89*, PALM BEACH POST, Jan. 6, 2008.



club; the shooter was fatally shot. One of the weapons used was described as an AR-15.¹²⁸

- **Westboro, Massachusetts. December 2, 2006.** Police seized a semiautomatic assault rifle from the bedroom closet of a young Shrewsbury man who posted threatening internet messages and who claimed to admire one of the Columbine High School killers.¹²⁹
- **Newport, Kentucky. November 19, 2006.** A fight at a nightclub led to four people being shot that evening. A 23-year-old was shot several times and left for dead on a bridge. An hour later, police found a 20-year-old man shot dead in his vehicle. Two other people were taken to the hospital with gunshot wounds and police recovered casings from an assault weapon.¹³⁰
- **Chicago, Illinois. October 30, 2006.** Members of the New Breed Street gang shot at Chicago police officers with an AK-47 from their car, injuring one officer. One gang member was killed and another critically wounded in the shoot-out.¹³¹
- **Palm Beach County, Florida. August 15, 2006.** A 50-year-old landscaper was shot at least 15 times as he walked toward a house to collect money for completed yard work. The shooters used assault weapons in the drive-by and police say the shooters mistook the victim for a gang member.¹³²
- **Chapel Hill, North Carolina, July 29, 2006.** A gunman with an assault rifle shot a man multiple times outside a nightclub, killing him. The shooter fled in a getaway car and later turned himself in.¹³³

¹²⁸ Jessica Heslam, *Strip club gunman at 'crossroads', killer bid farewell in cell phone messages*, BOSTON HERALD, Dec. 14, 2006.

¹²⁹ Kevin Keenan, *State police seize weapons*, WORCESTER TELEGRAM & GAZETTE, Dec. 2, 2006.

¹³⁰ *A fight at a Northern Kentucky nightclub lead to a wild shooting spree*, WLEX TV 18, Lexington, KY, Nov. 19, 2006, available at: <http://www.lex18.com/Global/story.asp?S=5704257&nav=EQ1p> (last visited Oct. 2, 2008).

¹³¹ Lisa Donovan et al., *Shoot-out 'looked like a movie': Cops kill 2 men they say were about to execute gang rivals*, CHICAGO SUN TIMES, Oct. 31, 2006.

¹³² Tim Collie, *Two members offer a look inside a South Florida gang*, SOUTH FLORIDA SUN-SENTINEL; July 22, 2007; Jerome Burdi, *'Innocent victim' killing unsolved, family awaits arrest in 2006 Boynton drive-by shooting*, SOUTH FLORIDA SUN-SENTINEL, Aug. 20, 2007.

¹³³ *Chapel Hill nightclub under review after fatal shooting*, WRAL.COM, July 31, 2006, available at: <http://www.wral.com/news/local/story/1056918/> (last visited Sept. 29, 2008).



St. John the Baptist Parish, Louisiana. June 27, 2006. 25-year-old Kelvin Thomas Jr. died after being shot in the abdomen with an assault rifle. Alonzo Bolden, 20, was arrested and booked with second-degree murder in connection with the shooting. Police believe the two men were engaged in an argument that was part of a long-running feud and ended with Bolden firing multiple shots at Thomas at close range. Thomas had three young children.¹³⁴

- **Calumet City, Illinois. June 25, 2006.** A 22-year-old pregnant woman and her 3-year-old son were shot and killed while they were sleeping when an unknown gunman fired 30 rounds from an AK-47 into their home at 1:15 a.m.¹³⁵
- **St. John the Baptist Parish, Louisiana. June 20, 2006.** A man who had killed a deputy police officer and injured another during a crime spree broke into the house of an 81-year-old man and held him hostage with an AK-47 until he eventually gave himself up and released the hostage.¹³⁶
- **Metairie, Louisiana. June 15, 2006.** Police attempted to serve a man with an emergency committal order but the man barricaded himself in his home and engaged in a 12-hour standoff with police. Seven hours into the standoff, the man shot and wounded two Sheriff's deputies with an assault rifle.¹³⁷
- **Reno, Nevada. June 12, 2006.** An owner of a gun shop, with a license to carry concealed weapons and access to a cache of guns, stabbed his wife to death and then shot the family court judge presiding over his divorce with a Bushmaster .223 high-powered assault rifle with sniper capabilities. The judge survived.¹³⁸
- **Howard County, Maryland. June 8, 2006.** County police officers were shot at by a man wielding an assault rifle whom they were attempting to serve a warrant on.¹³⁹
- **Norman, Oklahoma. June 7, 2006.** Two men opened fire on a Native American gathering of over 300 with an SKS assault rifle, killing one man and injuring another.¹⁴⁰

¹³⁴ Allen Powell II, *Garyville man held in fatal shooting, Deputies suspect long-running feud*, THE TIMES PICAYUNE, June 27, 2006.

¹³⁵ Tom Rybarczyk, *Calumet City reels after spray of bullets*, CHICAGO TRIBUNE, June 26, 2006.

¹³⁶ Allen Powell II, *Mourners salute slain St. John deputy*, NEW ORLEANS TIMES PICAYUNE, June 21, 2006.

¹³⁷ Michelle Hunter & Walt Philbin, *2 deputies wounded in Metairie standoff*, THE TIMES PICAYUNE, June 16, 2006.

¹³⁸ FOX NEWS, June 24, 2006.

¹³⁹ Tyrone Richardson, *Man found guilty of murder attempt*, BALTIMORE SUN, Oct. 29, 2006.

¹⁴⁰ Tom Blakely, *Pair arraigned in Sunday crowd shooting*, THE NORMAN TRANSCRIPT, June 7, 2006.



- **Miami, Florida. June 6, 2006.** Three men were killed and another injured when the van they were riding in was shot numerous times by assault weapons. About 50 rounds were fired into the van.¹⁴¹
- **Indianapolis, Indiana. June 2, 2006.** Seven family members, four adults and three children, were shot and killed in their home by a robber armed with an assault rifle. Nearly 30 shell casings were found.¹⁴²
- **San Diego, California. June 2, 2006.** A 17-year-old was wounded in an accidental workplace shooting when the teen's co-worker brought an AK-47 to work and was unaware that there was a live round inside the rifle's chamber.¹⁴³
- **New Milford Township, Pennsylvania. May 27, 2006.** Two brothers were camping with their wives and children when they were awakened by gunshots coming from a neighbor's property at 3:00 a.m. The brothers knew the neighbor so they went to his house to ask him to stop shooting. The neighbor, armed with a shotgun, told the two brothers to leave and then told his stepson to pick up an AR-15 rifle. The brothers were both shot in the stomach and wounded severely.¹⁴⁴
- **West Palm Beach, Florida. May 17, 2006.** Two men carrying AK-47 assault rifles ordered a man out of his car at gun-point, mugged him, and ripped off his pants.¹⁴⁵
- **Kingston, Tennessee. May 14, 2006.** A deputy sheriff and another individual were shot and killed by high-powered assault rifles. The deputy had 33 gunshot wounds.¹⁴⁶
- **Port Salerno, Florida. May 12, 2006.** A deputy sheriff was shot and wounded with an AK-47 assault rifle.¹⁴⁷

¹⁴¹ David Ovalle, *Ambush takes lives of 3 men*, MIAMI HERALD, June 6, 2006.

¹⁴² Ashley M. Heher, *Suspect in slaying of 7 family members surrenders / Indianapolis police say he had nowhere else to go*, HOUSTON CHRONICLE, June 4, 2006.

¹⁴³ Debbi Farr Baker, *Man accidentally shoots co-worker*, SAN DIEGO UNION-TRIBUNE, June 3, 2006.

¹⁴⁴ Nyier Abdou, *Somerville brothers still hospitalized after shooting: Pa. Man charged with assaulting rescue squad members during family camping trip*, THE STAR-LEDGER, May 31, 2006.

¹⁴⁵ *Digest*, SOUTH FLORIDA SUN-SENTINEL, May 17, 2006.

¹⁴⁶ Duncan Mansfield, *'Anti-government' man sought in ambush of Tennessee deputy*, CHARLESTON GAZETTE, May 13, 2006.

¹⁴⁷ Leon Fooksman, *Police fearful of violent crime trend: AK-47 shootings*, SOUTH FLORIDA SUN-SENTINEL, May 13, 2006.



Fort Worth, Texas. May 9, 2006. 16-year-old Derick Giles, an innocent bystander, was killed after being shot in the abdomen in the crossfire of a gang shooting outside a convenience store. Five minutes later, one man was shot in the leg and another in the foot during a second drive-by shooting. One hour and half later, a 50-year-old woman was shot in the shoulder by gunfire from a high-powered assault weapon as she stood in her kitchen.¹⁴⁸

- **Chantilly, Virginia. May 8, 2006.** A teenager with an AK-47 and 5 handguns engaged in a firefight at a police station, killing a female detective immediately and wounding two other officers, one of whom died nine days later from his injuries.¹⁴⁹
- **Los Angeles, California. May 8, 2006.** Police arrested a man and found over 20 assault weapons in his home after the man fired multiple rounds in the air while driving through his neighborhood with a semiautomatic pistol. The man had his young son in the car with him.¹⁵⁰
- **Oskaloosa, Iowa. May 5, 2006.** A 17-year-old shot his 13-year-old friend in the chest with a military-style rifle and then shot himself.¹⁵¹
- **West Palm Beach, Florida. April 28, 2006.** Shots were fired into an apartment at 6:00 in the morning, hitting one man in the right leg and left knee. Seventeen shell casings from an AK-47 were found at the scene.¹⁵²

West Palm Beach, Florida. April 27, 2006. An AK-47 was used to shoot 24-year-old David Paulk and his 16-year-old sister. Mr. Paulk was critically injured and died four days later. The next day, the alleged gunman, Brandon Williams, was shot in the back with an assault rifle and taken to the hospital, where he was treated and left before police were able to find cause to arrest him.¹⁵³ However, he was arrested soon after.¹⁵⁴

¹⁴⁸ Deanna Boyd, *Teen killed in shooting at convenience store*, FORT WORTH STAR-TELEGRAM, May 9, 2006.

¹⁴⁹ Ian Urbina, *Fatal police station attack shocks tranquil community*, NEW YORK TIMES, May 10, 2006; *Officer Killed*, BOSTON GLOBE, May 18, 2006.

¹⁵⁰ *Man said to be on 'edge of Armageddon'*, LONG BEACH PRESS-TELEGRAM, May 9, 2006.

¹⁵¹ AP-News Agenda, Broadcast News, May 5, 2006.

¹⁵² *Police Blotter*, PALM BEACH POST, Apr. 29, 2006; Jerome Burdi, *Rash of shootings hits city in 2 days*, SOUTH FLORIDA SUN-SENTINEL, Apr. 29, 2006.

¹⁵³ Jerome Burdi, *Rash of shootings hits city in 2 days*, SOUTH FLORIDA SUN-SENTINEL, Apr. 29, 2006; Jerome Burdi, *New task force seeks man suspected in 2 shootings*, SOUTH FLORIDA SUN-SENTINEL, Apr. 30, 2006; *Police Blotter*, PALM BEACH POST, Apr. 30, 2006.

¹⁵⁴ Nirvi Shah, *West Palm slaying suspect jailed after Pensacola stop*, PALM BEACH POST, May 8, 2006.



- **Oakland, California. March 19, 2006.** A gunman with an AK-47 opened fire on an apartment building, filling it with bullets and killing a 49-year-old man.¹⁵⁵
- **Lake Worth, Florida. March 17, 2006.** A man angry over an argument with a woman, shot the woman and her roommate with an AK-47 and left the victims in the doorway of their home.¹⁵⁶
- **Chicago, Illinois. March 11, 2006.** A 10-year-old girl was killed by a shot to her head as she was celebrating her birthday in her living room. A spray of bullets from an assault weapon peppered the house from a nearby fight.¹⁵⁷
- **Chicago, Illinois. March 3, 2006.** A stray bullet from an assault rifle struck a 14-year-old honor student as she was looking out the window of her home, killing her instantly.¹⁵⁸
- **Las Vegas, Nevada. February 1, 2006.** A 22-year-old fired at least 50 rounds from an assault rifle, shooting two Las Vegas police officers and killing one, before being shot and killed by the surviving officer.¹⁵⁹
- **Brooklyn, New York. January 20, 2006.** A man was arrested after firing at least two rounds from an Uzi at two members of the New York Police Department.¹⁶⁰
- **Ocala, Florida. January 7, 2006.** Two college students who were camping in the Ocala National Forest were randomly targeted by a man who shot and killed them with a stolen AK-47.¹⁶¹
- **Indianapolis, Indiana. January 2, 2006.** A man dubbed the “Tec-9 Robber” was arrested after being wanted in connection with as many as 23 robberies in four months of fast food restaurants, convenience stores, and gas stations.¹⁶²
- **Caddo Parish, Louisiana. January 1, 2006.** A 19-year-old was arrested after he was found hiding in an alley with an assault weapon. He faces two counts of aggravated assault on a police officer and potential charges for riddling a house with bullets, injuring a man.¹⁶³

¹⁵⁵ Henry K. Lee, *Oakland: Two new slayings brings homicide total to 30*, SAN FRANCISCO CHRONICLE, Mar. 21, 2006.

¹⁵⁶ Kevin Deusch, *Man arrested in assault-rifle shooting*, PALM BEACH POST, Mar. 17, 2006.

¹⁵⁷ *Gov. Blagojevich, victims' families, advocates urge lawmakers in Springfield to pass statewide assault weapons ban*, US STATE NEWS, Mar. 23, 2006.

¹⁵⁸ Charles Sheehan, *Neighborhood buries another child*, CHICAGO TRIBUNE, Mar. 19, 2006.

¹⁵⁹ Omar Sofradzija, *Processions to honor Prendes*, LAS VEGAS REVIEW-JOURNAL, Feb. 7, 2006.

¹⁶⁰ Veronika Belenkaya et al., *Uzi maniac shot by cops. Tied to 3 attacks on city's finest*, NEW YORK DAILY NEWS, Jan. 22, 2006.

¹⁶¹ Stephen Kudak & Sarah Lundy, *Cops: Suspect admits killing 2 campers in Ocala forest*, ORLANDO SENTINEL, Jan. 28, 2006.

¹⁶² CBS 8 WISH, Indianapolis, IN, Jan. 5, 2006.

¹⁶³ CBS 12 KSLA, Shreveport, LA, Jan. 2, 2006.



- **Harper Woods, Michigan. December 31, 2005.** A 40-year-old man was shot sixteen times with an assault weapon while standing on his front porch around 3:15 p.m. and died from his injuries. His wife and daughters were in the house at the time of the shooting. His murder, occurring on the last day of the year, was the first murder of 2005 in his town.¹⁶⁴
- **Miami, Florida. December 28, 2005.** A man dressed in all black used an assault weapon to fire multiple rounds into a house killing a 20-year-old man and injuring another man who was hit in the leg.¹⁶⁵
- **Fortville, Indiana. December 13, 2005.** A man slapped a female relative and fired a round from an assault weapon into his driveway then barricaded himself in his house and threatened to shoot anyone who came to the door. When the 8-hour standoff ended, police found more than 10 weapons in the home.¹⁶⁶
- **Tacoma, Washington. November 20, 2005.** A 20-year-old male opened fire in a Tacoma mall, wounding six. The shooter took four hostages, all of whom were released unharmed.¹⁶⁷

San Francisco, California. October 14, 2005. 22-year-old Derna Wysinger and his two-year-old son, Naemon, were killed when a man opened fire on their car with an assault weapon. The toddler's mother, Jazmanika Ridout, was shot in the foot and survived. The family was leaving the home of the toddler's great aunt, who had been babysitting Naemon so that Wysinger and Ridout could go on a date.¹⁶⁸

- **North Braddock, Pennsylvania. August 12, 2005.** A man was found dead, shot in the back and head. Police found assault rifle bullet casings near the body.¹⁶⁹
- **Denton County, Texas. August 9, 2005.** In a night-long standoff at his home, a man fired his SKS assault rifle at police to avoid being arrested. After shooting an officer in the leg and refusing to negotiate, police shot and killed the suspect.¹⁷⁰
- **New Orleans, Louisiana. August 8, 2005.** While driving, a man was shot and killed when an occupant of another car opened fire with an AK-47 assault rifle.¹⁷¹

¹⁶⁴ NBC 51 WDIV, Detroit, MI, Jan. 4, 2006.

¹⁶⁵ *Man killed in early morning shooting*, MIAMI HERALD, Dec. 28, 2005.

¹⁶⁶ *Eight-hour standoff ends peacefully*, THEINDYCHANNEL.COM, Dec. 13, 2005 available at: <http://www.theindychannel.com/news/5524484/detail.html> (last visited Sept. 29, 2008).

¹⁶⁷ *Suspect: 'follow screams', Man opens fire at mall in Tacoma; 6 wounded*, AKRON BEACON JOURNAL, Nov. 22, 2005.

¹⁶⁸ Christopher Heredia, *San Francisco police ask public for help in finding shooting suspect*, SAN FRANCISCO CHRONICLE, Oct. 16, 2005.

¹⁶⁹ Michael Hasch, *Shooting victim was teen suspect's uncle*, PITTSBURGH TRIBUNE REVIEW, Aug. 17, 2005.

¹⁷⁰ Domingo Ramirez Jr., *Trooper is shot; suspect is killed*, FORT WORTH STAR-TELEGRAM, Aug. 9, 2005.



- **West Palm Beach, Florida. June 25, 2005.** A man was killed and his 9-year-old daughter severely wounded when a man fired into their parked car with an assault weapon that police believe had been converted to fully automatic.¹⁷²
- **Cincinnati, Ohio. June 22, 2005.** Assailants armed with SKS-type assault rifles sprayed over forty armor-piercing bullets in twenty seconds, hitting two women leaving a grocery store.¹⁷³
- **Livingston County, Kentucky. June 2, 2005.** A deputy was shot when he responded to a domestic disturbance call placed by a couple's 18-year-old daughter. When the officer entered the home, a male fired at least 8 rounds from an assault rifle at him, hitting him four times and killing him. The officer was able to fire one round which killed the gunman.¹⁷⁴
- **Fresno, California. May 31, 2005.** A man fired at least eight shots from an assault rifle at two veteran police officers sitting in their patrol car outside the police K-9 facility. The police later found a partially loaded 30 round magazine in the assailant's car.¹⁷⁵
- **Kansas City, Missouri. May 29, 2005.** After being pulled over for a routine traffic stop, a recently fired elementary school janitor shot a Highway Patrol trooper nine times with a 9 mm assault rifle.¹⁷⁶
- **Tulsa, Oklahoma. May 29, 2005.** A gunman fired more than 20 shots from an assault rifle at an apartment building security guard, wounding the guard and hitting his car and surrounding buildings.¹⁷⁷
- **Camden, New Jersey. May 21, 2005.** A mother of three young children was killed by a stray bullet fired from an AK-47 during a shoot-out.¹⁷⁸
- **Jackson, Mississippi. May 18, 2005.** A man fired at least 17 shots from an SKS assault rifle and 9 mm pistol at police during a traffic stop.¹⁷⁹

¹⁷¹ Walt Philbin, *Three men killed in seven hours: All are shot to death on New Orleans streets*, NEW ORLEANS TIMES PICAYUNE, Aug. 9, 2005.

¹⁷² *Gun owners trade in arms, W. Palm Beach shootings spark city buyback*, SOUTH FLORIDA SUN-SENTINEL, July 10, 2005.

¹⁷³ *Two wounded in West End*, CINCINNATI POST, June 24, 2005.

¹⁷⁴ *Livingston County Kentucky Deputy Sheriff killed in gunfight*, LMPD.com, June 3, 2005, available at: <http://www.lmpd.com/index.php?name=News&file=article&sid=291&theme=AutoPrint> (last visited Sept. 30, 2008).

¹⁷⁵ *Two held in assault-rifle attack on two officers*, FRESNO BEE, June 1, 2005.

¹⁷⁶ *Accused man tells trooper he's sorry*, KANSAS CITY STAR, May 30, 2005.

¹⁷⁷ *Security guard at apartment is shot*, TULSA WORLD, May 29, 2005.

¹⁷⁸ *Two more men arraigned in fatal street shoot-out*, THE PHILADELPHIA INQUIRER, June 1, 2005.

¹⁷⁹ *Bond denied for man in shootout*, SUN HERALD, July 20, 2005.



Clayton County, Georgia. April 23, 2005. High school senior Larry Bishop Jr. was killed, and three other teens were wounded, when a gunman opened fire on a group of partygoers. 18-year old Artavious Rashad Abercrombie was arrested in connection with the crime.¹⁸⁰

- **Miami, Florida. April 10, 2005.** Three men were injured during a dispute in a strip club parking lot when a fourth man fired an AK-47 at them.¹⁸¹
- **Canton, Texas. April 8, 2005.** A man shot his son's football coach in the chest with an AK-47 after a dispute.¹⁸²
- **Houston, Texas. April 8, 2005.** Two robbers armed with AK-47s fired nearly twenty rounds at police during a shoot-out outside a pawnshop.¹⁸³
- **New Orleans, Louisiana. March 27, 2005.** A woman was shot in the chest outside her apartment with an AK-47 when she refused to give her purse to two armed robbers.¹⁸⁴

Pittsburgh, Pennsylvania. March 16, 2005. 16-year-old Keith Watts was killed, and two other students were injured, when a shooter fired at least eight rounds from an AK-47 into their parked vehicle.¹⁸⁵

- **Dallas, Texas. March 15, 2005.** Three people were killed after a man fired an assault rifle at them through the sunroof of his car.¹⁸⁶
- **Schertz, Texas. March 3, 2005.** After being pulled over, a man fired more than 30 bullets from a handgun and AK-47 at a state police officer.¹⁸⁷
- **Tyler, Texas. February 25, 2005.** A gunman with a history of domestic violence and a felony conviction, who was reportedly fighting with his ex-wife over child support for their two youngest children, shot over 50 rounds from an SKS assault rifle on the steps of his local courthouse when his ex-wife exited the building. His ex-wife was killed along with a bystander who tried to shoot the gunman. The shooter's 23-year-old son and three law enforcement officers were wounded during the shooting, including a 28-year-old deputy who was in grave condition. The

¹⁸⁰ *Teen faces murder charge*, THE ATLANTA JOURNAL-CONSTITUTION, May 28, 2005.

¹⁸¹ *Pair of early-morning shootings leave six hurt*, MIAMI HERALD, April 11, 2005.

¹⁸² *Gunman attacks coach at school*, FORT WORTH STAR-TELEGRAM, April 8, 2005.

¹⁸³ *Pawnshop heist ends in bloody shootout*, HOUSTON CHRONICLE, April 7, 2005.

¹⁸⁴ *Jeff woman shot in struggle with thief*, THE TIMES-PICAYUNE, March 29, 2005.

¹⁸⁵ *Schools need permission to shield kids from threats*, PITTSBURGH POST-GAZETTE, March 18, 2005.

¹⁸⁶ *Police say revenge went awry for slaying suspects*, DALLAS MORNING NEWS, March 18, 2005.

¹⁸⁷ *Man indicted in Schertz shootout*, SAN ANTONIO EXPRESS-NEWS, March 24, 2005.



gunman fled the scene but was pursued and shot by police when he exited his car and shot toward officers.¹⁸⁸

- **Los Angeles, California. February 24, 2005.** A disgruntled Los Angeles municipal employee opened fire with an AK-47 after being reprimanded at work, killing his supervisor and another employee.¹⁸⁹

Akron, Ohio. February 24, 2005. A man shot and killed his girlfriend and her seven year old son using an AR-15 assault rifle, then fired more than one-hundred rounds at a dozen law enforcement officers as he fled the murder scene. The gunman was arrested the next morning inside the apartment of a Kent State University student, who he also murdered with the AR-15 assault rifle. Police subsequently seized 21 weapons kept by the suspect, including an Uzi and an AK-47.¹⁹⁰

- **Las Vegas, Nevada. February 15, 2005.** A suspected murderer fled from police as his girlfriend fired an assault rifle with a 100 round magazine at pursuing police vehicles. The man was wanted in connection with a drug related murder and for a nonfatal shooting. The man also had convictions for attempted manslaughter and armed robbery, and was suspected of shooting at a Louisiana police officer five months earlier.¹⁹¹
- **Ulster, New York. February 13, 2005.** A gunman fired more than 60 shots from an AK-47 assault rifle in the Hudson Valley Shopping Mall, wounding two and causing tens of thousands of dollars of damage before being apprehended. A few hours earlier, the shooter had purchased armor-piercing ammunition from a nearby Wal-Mart.¹⁹²
- **Lebanon, Tennessee. February 10, 2005.** A second grade student found a Tec-9 inside a closet and brought it to school in his backpack, where it was confiscated by police. The gun was not fired but sixteen bullets were discovered in the magazine.¹⁹³
- **Dayton, Ohio. January 31, 2005.** Three teens were shot with a Russian-made assault rifle following an argument at a grocery store.¹⁹⁴

¹⁸⁸ Bill Hanna & Jack Douglas Jr., *Rampage in Tyler leaves three dead, four wounded*, FORT WORTH STAR-TELEGRAM, Feb. 25, 2005; Jack Douglas Jr. & Bill Hanna, *Police order emergency trace on weapon used in shootings*, FORT WORTH STAR-TELEGRAM, FEB. 26, 2005.

¹⁸⁹ *2 Are Shot to Death at Maintenance Yard*, LOS ANGELES TIMES, Feb. 25, 2005.

¹⁹⁰ Ed Meyer, *Police eye semiautomatic rifles, Brimfield officials want to be prepared after recent shooting rampage that killed 3 people*, AKRON BEACON JOURNAL, Feb. 24, 2005.

¹⁹¹ Brian Haynes, *Wild chase ends in arrests*, LAS VEGAS REVIEW-JOURNAL, Feb. 19, 2005.

¹⁹² *Mall Gunman Had Columbine Fixation, an Official Says*, THE NEW YORK TIMES, Feb. 15, 2005.

¹⁹³ WKRN TV NEWS 2, Nashville, TN, Feb. 10, 2005.

¹⁹⁴ Kelli Wynn, *Assault weapon used in shooting, police say*, DAYTON DAILY NEWS, Feb. 2, 2005.



- **Ravena, Ohio. January 21, 2005.** Three people were killed, including a mother and her seven year old son, when a man fired at least 18 bullets from an assault rifle.¹⁹⁵

Jackson, Tennessee. January 11, 2005. Donna Renee Jordan, 31, David Gordon, 41, and Jerry Hopper, 61, were killed when Jordan's estranged husband, David Jordan, opened fire in a Tennessee Department of Transportation maintenance garage. Two other employees, Larry Taylor and James Goff, were shot and wounded. When David Jordan was arrested shortly after the shootings, police found an SKS assault rifle, a 12-gauge shotgun, and two pistols in his truck. Jordan's wife, whom he shot four times, left behind two children and two stepchildren.

- **Ceres, California. January 9, 2005.** A 19-year-old Marine armed with an SKS assault rifle shot two police officers, killing one, in a gun battle outside a liquor store.¹⁹⁶
- **Newington, Connecticut. December 31, 2004.** A former correction officer used a fully automatic M-16 to fatally shoot a Newington policeman after the officer responded to a domestic disturbance call.¹⁹⁷
- **New Orleans, Louisiana. December 23, 2004.** A mentally challenged 19-year-old was chased through the streets with a high-powered assault rifle before being gunned down outside his former elementary school.¹⁹⁸
- **Hayward, Wisconsin. November 21, 2004.** After being asked to leave another hunter's property, a 36-year-old man opened fire with an SKS semiautomatic rifle, killing six members of a hunting party and wounding two.¹⁹⁹
- **Oak Creek, Wisconsin. November 5, 2004.** A man wearing body armor and armed with a machine gun fled the hotel room where he murdered his girlfriend, firing 30 to 40 rounds down the hotel hallway, killing one man and injuring two others.²⁰⁰
- **Portland, Oregon. October 28, 2004.** A 31-year-old aimed two machine guns out his front window to guard the marijuana growing operation run from his home, which was less than 400 feet from an elementary school. Police seized 29 guns from his home, including several AK-47s and Uzis, a MAC-10 submachine gun and a .50

¹⁹⁵ Stephen Dyer, *Murder suspect pleads insanity*, AKRON BEACON JOURNAL, Feb. 8, 2005.

¹⁹⁶ *Cop, gunman dead: Marine killed after shooting officers*, THE MODESTO BEE, Jan. 11, 2005.

¹⁹⁷ *Officer shot, held hostage*, HARTFORD COURANT, Dec. 31, 2004.

¹⁹⁸ *Barbarity beyond belief*, THE TIMES-PICAYUNE, Dec. 23, 2004.

¹⁹⁹ *Wisconsin Shooting Rampage*, ST. PAUL PIONEER PRESS, Nov. 23, 2004.

²⁰⁰ *2 dead, 2 wounded in hotel shootings*, MILWAUKEE JOURNAL SENTINAL, Nov. 6, 2004.



caliber anti-aircraft gun. He was later sentenced to more than eight years in prison.²⁰¹

- **Minneapolis, Minnesota. October 21, 2004.** A store clerk died after being shot in the chest with an assault rifle during a botched robbery attempt.²⁰²
- **Oakland, California. September 22, 2004.** A 16-year-old honor student was killed on the sidewalk near her home after being struck by errant assault rifle fire.²⁰³

²⁰¹ Local news – Washington County, THE OREGONIAN, May 4, 2006.

²⁰² *3 teens charged with clerk's slaying*, ST. PAUL PIONEER PRESS, Nov. 2, 2004.

²⁰³ *Girl, 16, gunned down in Oakland drive-by*, THE OAKLAND TRIBUNE, Sept. 24, 2004.



Endnotes

- ¹ *Ferri Used Guns That California Ban Does Not Forbid*, SAN FRANCISCO EXAMINER, July 4, 1993.
- ² Michael Janofsky, *Columbine killers thank gun suppliers taped comments revealed in hearing*, CLEVELAND PLAIN DEALER, Nov. 13, 1999.
- ³ *Cult's Massive Weapons Purchases Stir Up a Furor Over Federal Regulation*, FORT WORTH STAR-TELEGRAM, May 2, 1993.
- ⁴ *Satellite College Campus Helps to Heal the Scars at San Ysidro Massacre*, LOS ANGELES TIMES, Mar. 30, 1989; *A 77-Minute Moment in History That Will Never Be Forgotten*, LOS ANGELES TIMES, July 16, 1989.
- ⁵ *The Kinds of Guns School Killer Used*, SAN FRANCISCO CHRONICLE, Jan. 19, 1989; Michael Taylor & Leslie Guevarra, *Myterious Scrawlings and Slogans, School Killer's Last Days, Toy Army in his Room*, SAN FRANCISCO CHRONICLE, Jan. 19, 1989.
- ⁶ In an appendix of this report, we have included 27 pages of assault weapons shootings that have occurred in just the last four years. Moreover, this list is not comprehensive. It is merely representative examples.
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- ⁸ Judith Bonderman, *In Search of Justice: Compensation for Victims of Assault Weapon Violence*, 20 PRODUCT SAFETY & LIABILITY REP. 25 (June 26, 1992). There are numerous examples of test-firing that display the firepower of semi-automatic assault weapons on YouTube. See, e.g., <http://www.youtube.com/watch?v=nCMEqCPCvV4>; <http://www.youtube.com/watch?v=cYRsPzUYMM4>; and <http://www.youtube.com/watch?v=A75O0-QoJJI>.
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- ⁸⁵ 22-year-old Rupinder “Benny” Oberoi was shot in the lower back outside his place of work in Silver Spring, Maryland on September 14th. 52-year-old liquor store manager Claudine Parker was shot and killed as she and a coworker closed the store in Montgomery, Alabama. 45-year-old beauty supply store manager named Hong Im Ballenger was shot and killed outside a store she managed in Baton Rouge, Louisiana on September 23rd.
- ⁸⁶ Premkumar A. Walekar of Olney, Maryland, a 54-year-old male cabdriver, was shot and killed with the Bushmaster assault rifle at a Mobil gas station in Aspen Hill, Maryland on October 3rd.
- ⁸⁷ James L. “Sonny” Buchanan, Jr. of Abingdon, VA, a 39-year-old landscaper, was shot and killed with the Bushmaster assault rifle while mowing grass at a car dealership in White Flint, Maryland On October 3.
- ⁸⁸ Linda Franklin, a 47-year-old FBI employee was shot and killed with the Bushmaster assault rifle while loading packages with her husband in their car in the parking garage of a Home Depot in Seven Corners Shopping Center in Fairfax County, Virginia On October 14.
- ⁸⁹ Second Amended Complaint, *Halberstam v. S.W. Daniel, Inc.*, No. 95-C3323 (E.D.N.Y.1998), Nov. 19, 1997.



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⁹³ In April 1998, ATF determined that the 1989 ban on the importation of assault rifles remained valid and expanded the import ban to include rifles with the "ability to accept a detachable large capacity military magazine" because those weapons "cannot fairly be characterized as sporting rifles." ATF, *Department of the Treasury Study on the Sporting Suitability of Modified Semiautomatic Assault Rifles, supra* note 14.

⁹⁴ See ATF, *Report and Recommendation of the ATF Working Group on the Importability of Certain Semiautomatic Rifles, supra* note 15, at 5-8 (describing numerous military features of assault weapons).

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⁹⁶ Declaration of Leonard J. Supenski in Support of Plaintiffs' Joint Opposition to Navegar, Inc.'s Motion for Summary Judgment or, in the Alternative, Summary Adjudication at 8, In re 101 California Street Bldg., No. 959316 (Sup. Ct. Cal. 1996).

⁹⁷ Jim Zumbo, *Assault Rifles for Hunters?*, available at: http://razoreye.net/mirror/zumbo/zumbo_assault_rifles.html (last visited Oct. 7, 2008).

⁹⁸ *District of Columbia v. Heller*, 128 S.Ct. 2783 (2008).

⁹⁹ The Court was careful to announce only a limited Second Amendment right that was tied to guns used for self-defense in the home. *Id.* at 2821-22. "[W]hatever else [the Second Amendment] leaves to future evaluation, it surely elevates above all other interests the right of law-abiding, responsible citizens to use arms in defense of hearth and home." *Id.* at 2821. "[T]he enshrinement of constitutional rights necessarily takes certain policy choices off the table. These included the absolute prohibition of handguns held and used for self-defense in the home." *Id.* at 2822. "In sum, we hold that the District's ban on handgun possession in the home violates the Second Amendment, as does its prohibition against rendering any lawful firearm in the home operable for the purpose of immediate self-defense." *Id.* at 2821-22.

¹⁰⁰ *Id.* at 55.

¹⁰¹ See *infra* p. 1, *Assault Weapons are Designed to Slaughter People*.

¹⁰² Those include California, which passed the nation's first statewide ban in May 1989, as well as New Jersey (1990), Hawaii (1991), Connecticut (1993), Maryland (1994), Massachusetts (1998), and New York (2000). California expanded its ban in 2000 to include all semiautomatic rifles or pistols that have the ability to accept a detachable magazine and contain any one of a series of military-style features similar to the list found in the federal ban. CAL. PENAL CODE § 12276.1.

¹⁰³ See *infra* p. 14, *Assault Weapons Have No Sporting or Self-Defense Purpose*.

¹⁰⁴ See, e.g., *Benjamin v. Bailey*, 662 A.2d 1226 (Conn. 1995); *Robertson v. Denver*, 874 P.2d 325 (Colo. 1994); *Arnold v. City of Cleveland*, 616 N.E.2d (Ohio 1993).

¹⁰⁵ Hearings Before the Committee on the Judiciary on S. 639 and S. 653, U.S. Senate, 103d Cong. 1 (Aug. 3, 1993) (statement of Hon. Joseph Biden).



¹⁰⁶ The law was intended to cover “copies or duplicates” of named firearms, 18 U.S.C. § 921(30)(A), but it was never successfully applied to ban any of the copycat weapons that emerged after the ban unless they also violated the two-features test.

¹⁰⁷ The data available at the time of the study went up through the end of 2001.

¹⁰⁸ The conclusions in the On Target study were similar to an analysis of assault weapons traced to crime done for United States Senators Dianne Feinstein and Charles Schumer. This analysis showed that the proportion of banned assault weapons traced to crime dropped by more than 65% while the ban was in effect, according to ATF crime gun trace data. See report released on Nov. 5, 2003, *available at* <http://feinstein.senate.gov/03Releases/r-assaultweprate1.htm>.

¹⁰⁹ In addition to the Brady Center’s study, the U.S. Department of Justice, National Institute of Justice conducted a study, mandated by the Act, of the short-term impact on crime of the assault weapons ban. The study, published in 1999, found that the ban had “clear short-term effects on the gun market,” leading to semiautomatic assault weapons “becom[ing] less accessible to criminals because there was at least a short-term decrease in criminal use of the banned weapons.” Jeffrey A. Roth & Christopher S. Koper, *Impacts of the 1994 Assault Weapons Ban: 1994-96* 1, 9 (U.S. Dep’t of Justice, National Institute of Justice 1999) (*available at* <http://www.ncjrs.org/pdffiles1/173405.pdf>).

¹¹⁰ One of the principal authors of that interim study published a follow-up analysis of the effects of the federal ban in June 2004. Christopher S. Koper, *Updated Assessment of the Federal Assault Weapons Ban: Impacts on Gun Markets and Gun Violence, 1994-2003*, U. PA. JERRY LEE CENTER OF CRIMINOLOGY, *supra* note 17. That study documented a dramatic reduction in the incidence of assault weapon use in crime while the ban was in effect. The study found, according to ATF data, that assault weapons, as a percentage of total crime gun traces, fell 70% from 1992-93 to 2001-02. *Id.* at 44. Indeed, the study found it “remarkable” that the annual number of assault weapons traced to crime did not increase during the period the ban was been in effect, even though, due to far more comprehensive tracing of crime guns by ATF, the number of total guns traced to crime increased almost 200% during that same period. *Id.* As the study noted, these results were consistent with the findings of the Brady Center in its On Target report, discussed above. *Id.* at 44, n.43. Koper’s study attributed these declines in the frequency of assault weapon use in crime to the statute itself, in contradiction to the assertions made by some commentators that the decline was due to other factors. The study found that the decline in frequency of assault weapon traces did not begin until 1994, the year of the ban, and concluded that “the ban prevent[ed] a few thousand crimes with assault weapons annually.” *Id.* at 52, n.61.

¹¹¹ The firearms listed in this data are considered by ATF to be “crime guns,” which means they have been illegally possessed, used in a crime, or suspected of having been used in a crime. ATF, *The Youth Crime Gun Interdiction Initiative, Crime Gun Trace Analysis Reports: The Illegal Youth Firearms Market in 27 Communities* 5 (1999).

¹¹² CAL. PENAL CODE § 12276.1.

¹¹³ H.R. 1022, 110th Cong. (2007).

¹¹⁴ See <http://www.pollingreport.com/guns.htm>.

¹¹⁵ *Id.*

¹¹⁶ Majority of U.S. adults favors continuing ban on sales of assault rifles, according to latest Harris poll, Sept. 24, 2004, *available at*: http://www.harrisinteractive.com/harris_poll/index.asp?PID=498 (last visited Oct. 3, 2008).

¹¹⁷ *Survey: 8 out of 10 Illinois voters favor banning assault weapons*, WBBM 780 NEWS, Chicago, IL, Mar. 22, 2007.

¹¹⁸ Numerous newspaper editorials and columnists are in favor of the reinstatement of an assault weapons ban. See, e.g., *Our leaders are fighting to bring back the national assault weapons ban*, DAILY PENNSYLVANIAN, May 29, 2008; Brian Scheid, *Rendell: Reinstate weapons ban*, BUCKS COUNTY COURIER TIMES, May 12, 2008; David Gambacorta, *In wake of Liczbinski slaying, a push for assault-weapon ban*,



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¹¹⁹ See Press Release, Brady Campaign to Prevent Gun Violence, Jim and Sarah Brady “Personally Offended” by Gun Lobby Efforts to Falsify Reagan Record (June 16, 2004) available at: <http://www.bradycampaign.org/media/release.php?release=565> (quoting letter from President Reagan).

¹²⁰ See Press Release, Brady Campaign to Prevent Gun Violence, Former Presidents Ford, Carter, Clinton Urge President Bush to Save the Assault Weapons Ban (June 7, 2004) available at: <http://www.bradycampaign.org/media/release.php?release=569>.



EXHIBIT 18

Declaration of Roderick M. Thompson in Support of Sunnyvale's Opposition to Plaintiffs' Motion for Preliminary Injunction

Print

Municipal Code of Chicago

8-20-010 Definitions.

For purposes of this chapter the following terms shall apply:

“The Act” means the Illinois Firearm Owners Identification Card Act, 430 ILCS 65/1 et seq., as amended.

“Ammunition” means any self-contained cartridge or shotgun shell, by whatever name known, which is designed to be used or adaptable to use in a firearm; excluding however:

- (1) any ammunition used exclusively for line-throwing, signaling, or safety and required or recommended by the United States Coast Guard or Interstate Commerce Commission; or
- (2) any ammunition designed exclusively for use with a stud or rivet driver or other similar industrial ammunition.

“Antique firearm” has the same meaning ascribed to that term in 18 U.S.C. § 921(a)(16).

“Assault weapon” means any of the following, regardless of the caliber of ammunition accepted:

(a) (1) A semiautomatic rifle that has the ability to accept a detachable magazine and has one or more of the following:

- (A) a folding, telescoping or detachable stock;
- (B) a handgun grip;
- (C) a forward grip;
- (D) a threaded barrel;
- (E) a grenade, flare or rocket launcher; or
- (F) a barrel shroud.

(2) A semiautomatic rifle that has a fixed magazine with the capacity to accept more than 10 rounds, except for an attached tubular device designed to accept, and capable of operating only with, .22 caliber rimfire ammunition.

(3) A semiautomatic version of an automatic rifle.

(4) Any part, combination of parts, component, device, attachment, or accessory that is designed or functions to accelerate the rate of fire of a semiautomatic rifle but not convert the semiautomatic rifle into a machine gun.

(5) A semiautomatic shotgun that has one or more of the following:

- (A) a folding, telescoping or detachable stock;

- (B) a handgun grip;
- (C) a fixed magazine with the capacity to accept more than 5 rounds;
- (D) a forward grip; or
- (E) a grenade, flare or rocket launcher.

(6) A semiautomatic handgun that has the ability to accept a detachable magazine and has one or more of the following:

- (A) the capacity to accept a detachable magazine at some location outside of the handgun grip;
- (B) a threaded barrel;
- (C) a barrel shroud; or
- (D) a second handgun grip.

(7) A semiautomatic version of an automatic handgun.

(8) A semiautomatic handgun with a fixed magazine that has the capacity to accept more than 15 rounds.

(9) A machine gun.

(10) All of the following rifles, including any copies or duplicates thereof with the capability of any such weapon:

(A) All AK types, including the following:

(i) AK, AK47, AK47S, AK-74, AKM, AKS, ARM, MAK90, MISR, NHM90, NHM91, Rock River Arms LAR-47, SA85, SA93, Vector Arms AK-47, VEPR, WASR-10, and WUM

(ii) IZHMAASH Saiga AK

(iii) MAADI AK47 and ARM

(iv) Norinco 56S, 56S2, 84S, and 86S

(v) Poly Technologies AK47 and AKS.

(B) All AR types, including the following:

(i) AR-10

(ii) AR-15

(iii) Armalite M15 22LR Carbine

(iv) Armalite M15-T

(v) Barrett REC7

(vi) Beretta AR-70

- (vii) Bushmaster ACR
 - (viii) Bushmaster Carbon 15
 - (ix) Bushmaster MOE series
 - (x) Bushmaster XM15
 - (xi) Colt Match Target Rifles
 - (xii) DoubleStar AR rifles
 - (xiii) DPMS Tactical Rifles
 - (xiv) Heckler & Koch MR556
 - (xv) Olympic Arms
 - (xvi) Remington R-15 rifles
 - (xvii) Rock River Arms LAR-15
 - (xviii) Sig Sauer SIG516 rifles
 - (xix) Smith & Wesson M&P15 rifles
 - (xx) Stag Arms AR rifles
 - (xxi) Sturm, Ruger & Co. SR556 rifles.
- (C) Barrett M107A1.
- (D) Barrett M82A1.
- (E) Beretta CX4 Storm.
- (F) Calico Liberty Series.
- (G) CETME Sporter.
- (H) Daewoo K-1, K-2, Max 1, Max 2, AR 100, and AR 110PC.
- (I) Fabrique Nationale/FN Herstal FAL, LAR, 22 FNC, 308 Match, L1A1 Sporter, PS90, SCAR, and FS2000.
- (J) Feather Industries AT-9.
- (K) Galil Model AR and Model ARM.
- (L) Hi-Point Carbine.
- (M) HK-91, HK-93, HK-94, HK-PSG-1, and HK USC.
- (N) Kel-Tec Sub-2000, SU-16, and RFB.
- (O) SIG AMT, SIG PE-57, Sig Sauer SG 550, and Sig Sauer SG 551.

- (P) Springfield Armory SAR-48.
 - (Q) Steyr AUG.
 - (R) Sturm, Ruger Mini-14 Tactical Rifle M-14/20CF.
 - (S) All Thompson rifles, including the following:
 - (i) Thompson M1SB
 - (ii) Thompson T1100D
 - (iii) Thompson T150D
 - (iv) Thompson T1B
 - (v) Thompson T1B100D
 - (vi) Thompson T1B50D
 - (vii) Thompson T1BSB
 - (viii) Thompson T1-C
 - (ix) Thompson T1D
 - (x) Thompson T1SB
 - (xi) Thompson T5
 - (xii) Thompson T5100D
 - (xiii) Thompson TM1
 - (xiv) Thompson TM1C.
 - (T) UMAREX UZI Rifle.
 - (U) UZI Mini Carbine, UZI Model A Carbine, and UZI Model B Carbine.
 - (V) Valmet M62S, M71S, and M78.
 - (W) Vector Arms UZI Type.
 - (X) Weaver Arms Nighthawk.
 - (Y) Wilkinson Arms Linda Carbine.
- (11) All of the following handguns, including any copies or duplicates thereof with the capability of any such weapon:
- (A) All AK-47 types, including the following:
 - (i) Centurion 39 AK handgun
 - (ii) Draco AK-47 handgun

- (iii) HCR AK-47 handgun
 - (iv) IO, Inc. Hellpup AK-47 handgun
 - (v) Krinkov handgun
 - (vi) Mini Draco AK-47 handgun
 - (vii) Yugo Krebs Krink handgun.
- (B) All AR-15 types, including the following:
- (i) American Spirit AR-15 handgun
 - (ii) Bushmaster Carbon 15 handgun
 - (iii) DoubleStar Corporation AR handgun
 - (iv) DPMS AR-15 handgun
 - (v) Olympic Arms AR-15 handgun
 - (vi) Rock River Arms LAR 15 handgun.
- (C) Calico Liberty handguns.
- (D) PSA SA58 PKP FAL handgun.
- (E) Encom MP-9 and MP-45.
- (F) Heckler & Koch model SP-89 handgun.
- (G) Intratec AB-10, TEC-22 Scorpion, TEC-9, and TEC-DC9.
- (H) Kel-Tec PLR 16 handgun.
- (I) The following MAC types:
- (i) MAC-10
 - (ii) MAC-11
 - (iii) Masterpiece Arms MPA A930 Mini Pistol, MPA460 Pistol, MPA Tactical Pistol, and MPA Mini Tactical Pistol
 - (iv) Military Armament Corp. Ingram M-11
 - (v) Velocity Arms VMAC.
- (J) Sig Sauer P556 handgun.
- (K) Sites Spectre.
- (L) All Thompson types, including the following:
- (i) Thompson TA510D

(ii) Thompson TA5.

(M) All UZI types, including Micro-UZI.

(12) All of the following shotguns, including any copies or duplicates thereof with the capability of any such weapon:

(A) Franchi LAW-12 and SPAS 12.

(B) All IZHMASH Saiga 12 types, including the following:

(i) IZHMASH Saiga 12

(ii) IZHMASH Saiga 12S

(iii) IZHMASH Saiga 12S EXP-01

(iv) IZHMASH Saiga 12K

(v) IZHMASH Saiga 12K-030

(vi) IZHMASH Saiga 12K-040 Taktika.

(C) Streetsweeper.

(D) Striker 12.

(13) All belt-fed semiautomatic firearms, including TNW M2HB.

(14) Any combination of parts from which a firearm described in subparagraphs (1) through (13) can be assembled.

(15) The frame or receiver of a rifle or shotgun described in subparagraph (1), (2), (5), (9), (10), (12), (13), or (18).

(16) A sawed-off shotgun.

(17) A short-barrel rifle.

(18) A .50 caliber rifle.

(b) An “assault weapon” shall not include any firearm that:

(1) is manually operated by bolt, pump, lever, or slide action:

(2) has been rendered permanently inoperable. “Permanently inoperable” means a firearm which is incapable of discharging a projectile by means of an explosive and incapable of being restored to a firing condition; or

(3) is an antique firearm.

(c) For purposes of this definition of “assault weapon” the following terms apply:

(1) “barrel shroud” means a shroud that is attached to, or partially or completely encircles, the barrel of a firearm so that the shroud protects the user of the firearm from heat generated by the barrel. The term

does not include (i) a slide that partially or completely encloses the barrel; or (ii) an extension of the stock along the bottom of the barrel which does not completely or substantially encircle the barrel.

(2) “detachable magazine” means an ammunition feeding device that can be removed from a firearm without disassembly of the firearm action.

(3) “fixed magazine” means an ammunition feeding device that is permanently fixed to the firearm in such a manner that it cannot be removed without disassembly of the firearm.

(4) “folding, telescoping, or detachable stock” means a stock that folds, telescopes, detaches or otherwise operates to reduce the length, size, or any other dimension, or otherwise to enhance the concealability, of a firearm.

(5) “forward grip” means a grip located forward of the trigger that functions as a handgun grip.

(6) “rocket” means any simple or complex tubelike device containing combustibles that on being ignited liberate gases whose action propels the device through the air and has a propellant charge of not more than 4 ounces.

(7) “grenade, flare or rocket launcher” means an attachment for use on a firearm that is designed to propel a grenade, flare, rocket, or other similar device.

(8) “handgun grip” means a grip, a thumbhole stock, or any other part, feature or characteristic that can function as a grip.

(9) “threaded barrel” means a feature or characteristic that is designed to allow for the attachment of a device such as a firearm silencer or a flash suppressor.

(10) “belt-fed semiautomatic firearm” means any repeating firearm that:

(i) utilizes a portion of the energy of a firing cartridge to extract the fired cartridge case and chamber the next round;

(ii) requires a separate pull of the trigger to fire each cartridge; and

(iii) has the capacity to accept a belt ammunition feeding device.

(11) “.50 caliber rifle” means a centerfire rifle capable of firing a .50 caliber cartridge. The term does not include any antique firearm, any shotgun including a shotgun that has a rifle barrel, or any muzzle-loader which uses black powder for hunting or historical re-enactments.

(12) “.50 caliber cartridge” means a fixed cartridge in .50 BMG caliber, either by designation or actual measurement, that is capable of being fired from a centerfire rifle. “.50 caliber cartridge” does not include any memorabilia or display item that is filled with a permanent inert substance or that is otherwise permanently altered in a manner that prevents ready modification for use as live ammunition or shotgun ammunition with a caliber measurement that is equal to or greater than .50 caliber.

“Corrections officer” means wardens, superintendents and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of an offense.

“Department” means the department of police.

“Duty-related firearm” shall mean any firearm which is authorized by any law enforcement agency or employer to be utilized by their personnel in the performance of their official duties.

“Firearm” means any device, by whatever name known, which is designed or restored to expel a projectile or projectiles by the action of any explosive, expansion of gas or escape of gas. Provided, that such term shall not include:

(1) any pneumatic gun, spring gun, paint ball gun or B-B gun which either expels a single globular projectile not exceeding .18 inch in diameter and which has a maximum muzzle velocity of less than 700 feet per second or breakable paint balls containing washable marking colors;

(2) any device used exclusively for line- throwing, signaling, or safety and required or recommended by the United States Coast Guard or Interstate Commerce Commission; or

(3) any device used exclusively for firing explosives, rivets, stud cartridges, or any similar industrial ammunition.

“Firearm case” means any firearm case, carrying box, shipping box or other similar container that is designed for the safe transportation of the firearm.

“FOID” means the Firearm Owner's Identification Card issued pursuant to the Act.

“High capacity magazine” means a magazine, belt, drum, feed strip, or similar device, including any such device joined or coupled with another in any manner, that has an overall capacity of more than 15 rounds of ammunition. A “high capacity magazine” does not include an attached tubular device to accept, and capable of operating only with, .22 caliber rimfire ammunition.

“Laser sight accessory” means a laser sighting device which is either integrated into a firearm or capable of being attached to a firearm.

“Licensed shooting range facility” means a shooting range facility that is duly licensed pursuant to Chapter 4-151.

“Licensee of a licensed shooting range facility” or “licensee” means any person issued a shooting range facility license under Chapter 4-151.

“Machine gun” means any firearm which can fire multiple rounds of ammunition by a single function of the firing device or one press of the trigger.

“Peace officer” means any person who by virtue of his office or public employment is vested by law with a duty to maintain public order or make arrests for offenses, whether that duty extends to all offenses or is limited to specific offenses.

“Sawed-off shotgun” means a shotgun having one or more barrels less than 18 inches in length and any weapon made from a shotgun, whether by alteration, modification or otherwise, if such weapon, as modified, has an overall length of less than 26 inches.

“Short-barreled rifle” means a rifle having one or more barrels less than 16 inches in length, and any weapon made from a rifle, whether by alteration, modification, or otherwise, if such weapon, as modified, has an overall length of less than 26 inches.

“Superintendent” means the superintendent of the department or his designated representative.

“Safety mechanism” means a design adaptation or nondetachable accessory that lessens the likelihood of unanticipated use of the handgun.

“Trigger lock” means a device that when locked in place by means of a key, prevents a potential user from pulling the trigger of the firearm without first removing the trigger lock by use of the trigger lock's key.

“Manager”, “Employee”, “Range Master”, “CCL”, “Shooting range patron” and “Shooting range facility” have the meaning ascribed to those terms in Section 4-151-010.

(Added Coun. J. 7-2-10, p. 96234, § 4; Amend Coun. J. 7-6-11, p. 3073, § 4; Amend Coun. J. 1-17-13, p. 45370, § 4; Amend Coun. J. 7-17-13, p. 57262, § 1; Amend Coun. J. 9-11-13, p. 59869, § 3)

8-20-085 High capacity magazines and certain tubular magazine extensions – Sale and possession prohibited – Exceptions.

(a) It is unlawful for any person to carry, possess, sell, offer or display for sale, or otherwise transfer any high capacity magazine or tubular magazine extension for a shotgun. This section shall not apply to corrections officers, members of the armed forces of the United States, or the organized militia of this or any other state, and peace officers, to the extent that any such person is otherwise authorized to acquire or possess a high capacity magazine or tubular magazine extension for a shotgun, and is acting within the scope of his duties, or to any person while in the manufacturing, transportation or sale of high capacity magazines or tubular magazine extension for a shotgun to people authorized to possess them under this section.

(b) Any high capacity magazine or tubular magazine extension for a shotgun carried, possessed, displayed, sold or otherwise transferred in violation of this section is hereby declared to be contraband and shall be seized by and forfeited to the city.

(Added Coun. J. 7-2-10, p. 96234, § 4; Amend Coun. J. 7-17-13, p. 57262, § 1)

EXHIBIT 19

Declaration of Roderick M. Thompson in Support of Sunnyvale's Opposition to Plaintiffs' Motion for Preliminary Injunction

**Statement of Professors of Constitutional Law: The Second Amendment and the
Constitutionality of the Proposed Gun Violence Prevention Legislation**

January 30, 2013

Several proposed reforms to the nation's gun laws, including universal background checks and restrictions on high-capacity ammunition magazines and assault weapons, are now pending before Congress. Concerns have been raised that these measures might violate the Second Amendment. We, the undersigned professors with expertise in constitutional law, write to address those concerns.

In 2008, the U.S. Supreme Court held that the Second Amendment, which provides, "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," guarantees an individual's right to have a functional firearm in the home for self-defense. The Court's decision in that case, *District of Columbia v. Heller*, struck down a D.C. law that effectively barred the use of any firearm for self-defense. The law is now clear that the government may not completely disarm law-abiding, responsible citizens. The Court also made clear, however, that many gun regulations remain constitutionally permissible. "Like most rights," the Court explained, "the right secured by the Second Amendment is not unlimited." Writing for the Court, Justice Antonin Scalia explained that restrictions on "dangerous and unusual" weapons are constitutional and that "nothing in our opinion should be taken to cast doubt" on laws that prohibit "the possession of firearms by felons or the mentally ill" or laws that impose "conditions and qualifications on the commercial sale of arms."

In this sense, Justice Scalia recognized in *Heller* that, like other constitutional rights, the Second Amendment is not an absolute. The First Amendment, for example, provides that "Congress shall make no law . . . abridging the freedom of speech," but the Supreme Court has long and consistently held that some types of speech – for example, defamation, obscenity and threats – can be regulated; that some people – for example, public employees, members of the military, students and prisoners – are subject to greater restrictions on their speech than others; and that the government can reasonably regulate the time, place and manner of speech. As Justice Scalia explained in *Heller*, the rights guaranteed by the Second Amendment are likewise subject to appropriate regulation in order to enhance public safety.

In acknowledging the presumptive constitutionality of laws designed to prevent gun violence, including restrictions on who has access to firearms and what types of

firearms they may have, *Heller* is consistent with the history of the right to keep and bear arms. The founding fathers who wrote and ratified the Second Amendment also had laws to keep guns out of the hands of people thought to be untrustworthy. Such laws were necessary to ensure that the citizen militia referenced in the Second Amendment was “well regulated.” In the 1800s, many states restricted the sale or public possession of concealable firearms. In the early twentieth century, the federal government restricted access to unusually dangerous weapons, such as machine guns, and states barred people convicted of certain felonies from possessing firearms. Laws such as these were routinely upheld by the courts, which recognized the legitimacy of legislative efforts to keep the most dangerous weapons out of the hands of the most dangerous people.

While the permissibility of any particular reform depends on its details, the reforms currently being considered by Congress are clearly consistent with the Second Amendment. We express no view on the effectiveness or desirability of the policies reflected in the various proposals, but we all agree that none infringes the core right identified by the Court in *Heller*.

Universal background checks, especially those conducted instantaneously through the National Instant Background Check System, do not impose a significant burden on law-abiding citizens. Yet background checks may provide an important safeguard against easy access to guns by members of criminal street gangs, other felons, and the mentally ill. As with other rights that have eligibility criteria, such as the right to vote, the right to keep and bear arms is not offended by neutral measures designed to ensure that only eligible, law-abiding citizens exercise the right. Moreover, background checks imposed at the point of sale are typical of the “conditions and qualifications on the commercial sale of arms” recognized by the Supreme Court in *Heller*.

Restrictions on the manufacture and sale of high-capacity ammunition magazines and assault weapons are also consistent with the Second Amendment. In a recent opinion authored by Judge Douglas Ginsburg and joined by Judge Karen Henderson, the U.S. Court of Appeals for the District of Columbia Circuit held that such regulations are consistent with the Second Amendment and with the Supreme Court’s decision in *Heller*. The court of appeals recognized such weapons and magazines are not necessary for individual self-defense – what *Heller* called the “core lawful purpose” of the Second Amendment. Restrictions on high-capacity magazines and assault weapons, the court of appeals held, do “not effectively disarm individuals or substantially affect their ability to defend themselves.” The Second Amendment, like the First Amendment, does not prevent lawmakers from enacting reasonable regulations that do not seriously interfere with the core right guaranteed by the Constitution.

The Supreme Court has clearly held that the Second Amendment preserves the right of law-abiding citizens to have a firearm in the home for self-defense. As both the historical tradition of the right to bear arms and the Court’s decision suggest,

reasonable and limited measures to enhance public safety that do not unduly burden that right are consistent with the Second Amendment.

Signed,

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EXHIBIT 20

Declaration of Roderick M. Thompson in Support of Sunnyvale's Opposition to Plaintiffs' Motion for Preliminary Injunction



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Woman Wrestled Fresh Ammo Clip From Tucson Shooter as He Tried to Reload

TUCSON, Ariz. Jan. 9, 2011

By KEVIN DOLAK and JUSTIN WEAVER via WORLD NEWS

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Team of Heroes Takes Down Arizona Gunman

NEXT VIDEO
Female Hero Stopped Shooter From Reloading

AUTO START: ON | OFF

Patricia Maisch looks like a grandmother, but she is being hailed as a hero today for helping to stop alleged Tucson shooter Jared Loughner by wrestling away a fresh magazine of bullets as he tried to reload.

Maisch, 61, effectively disarmed the shooter as several men pounced on him and threw him to ground. As they struggled to hold him down, Maisch joined the scrum on the ground, clinging to the gunman's ankles.

Maisch and her fellow heroes -- identified as Bill Badger, Roger Sulzgeber and Joseph Zamudio -- stopped the carnage after 20 people were shot, including Rep. Gabrielle Giffords. Six people died.

"[I] knew right away it was a gun... I heard a continuation of shots," Maisch told a news conference today.

Maisch, who has a crown of snow-white hair, was standing towards the back of the line to greet and snap a photo with Giffords at the "Congress in Your Corner" event at a Safeway grocery store.

Speaking to the press today, Maisch recalled how she stopped Loughner as he tried to reload his Glock 9 mm weapon.

"I could see him coming. [He] shot the lady next to me," Maisch said.

As he was shooting, she said, she was expecting to be hit and she wondered what it would feel like.

There was "lots of blood and confusion," she said.

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She considered trying to run away, she said, but thought that would make her more of a target, so she laid down on the ground. But then something unexpected happened.

"Then he was next to me on the ground," she said. "The gentleman knocked him down.

"I kneeled over him. He was pulling a magazine [to reload] and I grabbed the magazine and secured that. I think the men got the gun, and I was able to get the magazine," she said.

Maisch said Badger and Sulzgeber both sat on the gunman while she held his ankles down. Police said that Zimudie helped by hanging on to Loughner's legs.

Sulzgeber was reportedly standing with his wife, third in line to meet with Giffords, while Zimudie was in the nearby Walgreens and came running out once he heard the shooting.

"I thought I would be shot. I am thankful for those two brave men," Maisch said. "I am not a hero. The other guys are. I just assisted getting the clip."

Badger, a 74-year-old retired army colonel living in Tucson, told Pottsville, Pa.'s Republican-Herald how he helped capture Loughner, and that he was grazed in the back of the head by a bullet.

The Heroes of the Tucson Shooting

"I heard the shots but I thought they were fireworks at first," Badger told the newspaper. "I wasn't sure they were shots until I actually saw the shooter, and I was sure he was really shooting bullets when I felt the sting on the back of my head."

According to Badger, who the Republican-Herald confirmed was treated for an injury at a hospital, he was the first person standing next to a row of chairs leading to Giffords when the first shots rang out.

Badger told the paper, "I turned and saw him running down the line of people on the chairs. He ran between me and the store. Someone hit him with a chair and he flinched a little. That's when I grabbed his left arm. Someone grabbed his right arm and we got him to the ground."

"The other guy put his knee into the back of his neck and I grabbed him around the throat. We held him until police got there. While we had him on the ground I saw blood running and it wasn't until then I realized it was coming from the back of my head," Badger said.

Speaking outside her home this evening, Maisch said that when she noticed that one of the men was bleeding from the head, she ran into the Safeway to get paper towels.

"I put a compress on the man's head while he was securing the shooter," she said.

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The Weight Lifting Granny Who Floored Purse Snatcher

Courtesy Shirley Rupp



Parents Cry Murder After Drunk Teen Killed in Home Invasion

Courtesy Shawn and Jennea Gordley



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Syed Ijaz/AP Photo



Mom Live-Tweets Birth With Unflinching Honesty

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Declaration of Roderick M. Thompson in Support of Sunnyvale's Opposition to Plaintiffs' Motion for Preliminary Injunction



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Sandy Hook Shooter's Pause May Have Aided Students' Escape

Detectives reviewing Lanza's psychiatric records

December 23, 2012 | By EDMUND H. MAHONY, DAVE ALTIMARI and JON LENDER, daltimar@courant.com, The Hartford Courant

As many as a half-dozen first graders may have survived Adam Lanza's deadly shooting spree at Sandy Hook Elementary School because he stopped firing briefly, perhaps either to reload his rifle because it jammed, according to law enforcement officials familiar with the events.

A source said that the Bushmaster rifle that Lanza used in the shootings is at the state police forensic laboratory undergoing several tests, including tests to determine whether it was jammed.

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A Bushmaster semi-automatic rifle, similar to the type used by Adam Lanza... (MICHELLE MCLOUGHLIN, REUTERS)

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The children escaped from the first-grade classroom of teacher Victoria Soto, one of the six educators Lanza killed in Newtown after shooting his way through a glass door with the .223-caliber semiautomatic rifle on the morning of Dec. 14.

On Friday, detectives obtained and began examining records related to psychiatric care Lanza had received in an attempt to determine a motive. Several friends of his mother have said that he suffered from Asperger's syndrome but authorities have not confirmed that or indicated it had anything to do with the shootings.

Lanza killed 27 people — 20 children, four teachers, the school principal, a school psychologist and his mother, Nancy — before shooting himself in the head as police began arriving at the school.

The arriving officers encountered a shocking scene in Soto's classroom. Lanza had shot her, as well as special education teacher Anne Marie Murphy and six of Soto's 6- and 7-year old students. Seven of Soto's students were found huddled and unharmed in a classroom closet, apparently hidden by Soto when she heard shooting. The other students fled the classroom.

Based on initial statements from surviving children and the fact that unfired bullets from Lanza's rifle were found on the ground, detectives suspect that some students were able to run to safety when Lanza stopped firing, probably for a short period of time, the officials said.

It is possible that Lanza, who reloaded the rifle frequently, mishandled or dropped a magazine and unfired bullets fell to the floor, they said.

But it also is possible, they said, that the mechanism that fed bullets into the rifle jammed, causing Lanza to remove the magazine and clear the weapon. Unfired bullets could have fallen to the classroom floor during that process as well, law enforcement officials said.

The six children who escaped Lanza's rampage ran to a home a short distance from the school. Upon reaching the home, one of the boys told the owner that "we obeyed the rules, we stayed on the sidewalk," one of the officials said.

The authorities have learned generally from the children who ran away that something may have happened to Lanza's rifle that caused him to stop firing. The substance of the statements, which are not entirely consistent, is that a piece of the weapon, probably a magazine holding live bullets, was dropped or fell to the classroom floor.

Investigators have decided not to formally interview the children, based on advice from Yale child psychologists. Given the chaotic nature of the scene, it is also possible that some children escaped while Lanza was shooting others in the room.

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State police are expected to wrap up work at the school and release the school as a crime scene in the next few days. They still are trying to determine how many shots Lanza fired.

Lanza killed himself in Soto's classroom with one of the two pistols he carried into the building. He killed himself as police entered the building.

Police found a loaded 20-round shotgun in the trunk of the car similar to what is known as a "street sweeper." Police believe that Lanza didn't bring it into the school because he couldn't carry all of the weapons and ammunition. Lanza, who was about 6 feet tall, weighed barely 110 pounds, law enforcement sources said.

The few people who knew Lanza have portrayed him in the days since the mass shootings as an awkward, emotionally isolated, withdrawn young man. He attended public schools in Newtown, but at times was home-schooled by his mother, who was said by authorities and others to be the only person with whom he was socially engaged.

Lanza lived with his mother. He had two bedrooms and used one of them to keep computer equipment on which he is said to have enjoyed playing video games involving violent war games.

Before the shootings at the elementary school, Lanza shot his mother four times with a .22-caliber rifle as she lay in bed. He left the rifle at the house. All the guns were properly registered to Nancy Lanza.

Adam Lanza also broke apart his computer equipment in a way that has prevented authorities from retrieving data that could reveal with whom he may have corresponded or played video games.

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EXHIBIT 22

**Declaration of Roderick M. Thompson in
Support of Sunnyvale's Opposition to
Plaintiffs' Motion for Preliminary
Injunction**

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO VETERAN POLICE
OFFICERS ASSOCIATION, LARRY
BARSETTI, RAINERIO GRANADOS,
ARTHUR RITCHIE, and RANDALL LOW,

Plaintiffs,

vs.

THE CITY AND COUNTY OF SAN
FRANCISCO, THE MAYOR OF SAN
FRANCISCO, EDWIN LEE in his official
capacity, THE CHIEF OF THE SAN
FRANCISCO POLICE DEPARTMENT,
GREG SUHR, in his official capacity, and
DOES 1-10,

Defendants.

Case No. CV 13-5351 WHA

**CITY AND COUNTY OF SAN FRANCISCO'S
OPPOSITION TO PLAINTIFFS' MOTION
FOR PRELIMINARY INJUNCTION**

Hearing Date: Feb. 13, 2013
Time: 8:00 a.m.
Place: Courtroom 8, 19th Floor

Date Action Filed: Nov. 19, 2013
Trial Date: None Set

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INTRODUCTION

Large-capacity magazines make guns more deadly by allowing a shooter to fire a large number of bullets without pausing to reload. They have been shown in study after study to increase the lethality of criminal attacks where they are used, especially in public mass-shootings, yet all available empirical evidence shows that they are almost never used for self-defense purposes. For that reason, they have been restricted in many jurisdictions, including in the State of California since 2000 under a law that Plaintiffs do not challenge here.

The Second Amendment is compatible with the reasonable regulation of firearms. Under the test applied by nearly all circuits since *Heller v. District of Columbia*, 554 U.S. 570 (2008), including the Ninth Circuit, intermediate scrutiny is appropriate for most firearms regulations except those that lay a heavy burden on the core right to keep and bear arms for self-defense. San Francisco's Police Code § 619 is not such a regulation. It leaves San Franciscans free to defend themselves with any gun of their choosing and limits only the kind of magazine they use to equip that gun. Because this insubstantial burden serves San Francisco's objective of reducing the supply and use of a deadly item, San Francisco's large-capacity magazine ban is constitutional. This Court should deny Plaintiffs' request for a preliminary injunction.

STATEMENT OF FACTS

Large-capacity magazines ("LCMs") are detachable ammunition boxes or drums that contain more than 10 rounds of ammunition and feed that ammunition into a semiautomatic firearm, whether a handgun or a long gun. S.F. Police Code § 619(b) (Declaration of Christine Van Aken ("Van Aken Dec."), Ex. 1); Declaration of Christopher S. Koper ("Koper Dec.") ¶ 5. A semiautomatic firearm fires one bullet for each pull of the trigger and then automatically loads the next round in preparation for the next shot. *Id.* at 3 n.5. Semiautomatic firearms that accept a detachable magazine can be equipped either with an LCM or with a standard-capacity magazine containing 10 rounds or fewer. S.F. Police Code § 619(a)(4); Declaration of SFPD Captain David S. Lazar ("Lazar Dec.") ¶ 10.

I. History of Large-Capacity Magazine Restrictions

Large-capacity magazines have been extensively regulated in the United States for decades. In 1989, the U.S. Department of the Treasury, charged with developing guidelines for which firearms

1 could be imported into the United States, determined that the ability to accept a large-capacity
 2 detachable magazine was a signature characteristic of military firearms, and that detachable LCMs did
 3 not serve any sporting purpose. U.S. Dep't of the Treasury, *1989 Report and Recommendation of the*
 4 *ATF Working Group on the Importability of Certain Semiautomatic Rifles*, July 6, 1989, at 6¹ (Van
 5 Aken Dec., Ex. 2); U.S. Dep't of the Treasury, *Study on the Sporting Suitability of Modified*
 6 *Semiautomatic Assault Rifles*, Apr. 1998, at 3 (Van Aken Dec., Ex. 3). It prohibited importation of
 7 certain rifles on the basis of that and other findings detailed in its reports. Koper Dec. ¶ 38 n.18.

8 During the 1980s and 1990s, assault weapons were used in a number of notorious mass
 9 shootings, including several in California. Koper ¶ 9.² Concerned about these events and increasing
 10 reports of drug dealers and other criminals using assault weapons and LCMs, Congress passed the
 11 federal Violent Crime Control and Law Enforcement Act, in September 1994. *See* H.R. Rep. 103-489,
 12 at 32-33 (1994) (Van Aken Dec., Ex. 4). This statute prohibited the possession or transfer of all
 13 “large-capacity ammunition feeding devices,” defined as those with the capacity to accept more than
 14 10 rounds, except those lawfully possessed at the time of the bill’s enactment.³ *See* Pub. L. 103-322,
 15 Sept. 13, 1994, 108 Stat. 1796, 1998-2000 (formerly codified at 18 U.S.C. § 922(w)). The law, which
 16 also prohibited the possession or transfer of assault weapons (except for those manufactured before
 17 1994) expired by its own terms in 2004. *Id.*, 108 Stat. at 2000.

18 But in 2000, before the federal ban expired, California adopted its own legislation prohibiting
 19 the manufacture, import, keeping or offering for sale, giving, or lending of large-capacity magazines.
 20 Cal. Stats. 1999, ch. 129, §§ 3, 3.5 (Ex. 5 to Van Aken Dec.), presently codified at Cal. Penal Code
 21 § 32310. This prohibition is more restrictive than the federal ban in that it does not permit people who
 22 lawfully possessed large-capacity magazines in 2000 to transfer them within California. Thus, under
 23 the combined effect of federal and state law, the only large-capacity magazines that are lawfully
 24

25 ¹ All exhibit page references are to the document’s internal pagination, where available.

26 ² The term “assault weapons” generally includes semiautomatic pistols, rifles, and shotguns
 with military features. *See* Koper Dec. ¶ 6 n.6.

27 ³ Plaintiffs contend that San Francisco’s use of the term “large-capacity magazines” in its
 28 ordinance and presumably in this brief is “pejorative[]” and that this is a “term[] of opprobrium.” Br.
 at 5:5-8. But the term is a common one that has been used in federal and state law for decades.

1 possessed in San Francisco by civilians were manufactured before 1994 and acquired by someone
 2 living in California before 2000, or by someone in connection with law enforcement service between
 3 2000 and the present. The City is aware of no estimates of how many large-capacity magazines are
 4 lawfully possessed in San Francisco, but they are surely few. *See* Zimring Decl. ¶ 14.

5 The federal government, California, and San Francisco are not alone in restricting the supply of
 6 large-capacity magazines. Prior to 2013, at least eight other jurisdictions restricted the possession or
 7 sale of ammunition magazines on the basis of capacity.⁴ In 2013, after the horrific December 2012
 8 Sandy Hook Elementary School shooting, in which 20 first-graders were murdered by a shooter armed
 9 with an assault weapon and several large-capacity magazines,⁵ four states and several local
 10 governments tightened their LCM restrictions or enacted new restrictions.⁶ The United States
 11 Congress also considered two bills to restrict large-capacity magazines, but these bills failed. *See*
 12 Weisman, “Senate Blocks Drive for Gun Control,” *N.Y. Times*, Apr. 17, 2013 (Van Aken Dec., Ex.
 13 16). Many of the restrictions that states successfully enacted have been challenged by gun-rights
 14 advocates in court, but all have withstood these challenges to date. *See infra* Section II.A.

15
 16
 17 ⁴ *See* Haw. Rev. Stat. § 134-8(c) (prohibiting possession of LCMs capable of use with pistols);
 18 Mass. Gen. Laws Ann. ch. 140, §§ 121, 131M (enacted as 1998 Mass. Stats. ch. 180, § 8) (prohibiting
 19 sale or possession of LCMs); 2002 Md. Sess. Laws ch. 26, § 2 (excerpted at Van Aken Dec., Ex. 6, at
 20 2) (prohibiting sale of magazine with capacity of more than 20 rounds); N.J. Stat. Ann. §§ 2C:39-1(y),
 21 39-3(j) (prohibiting possession of magazines with capacity of more than 15 rounds except magazines
 22 grandfathered under 1990 law); 2000 N.Y. Sess. Laws ch. 189, § 11 (Van Aken Dec., Ex. 7, at 14)
 (prohibiting LCMs except those manufactured before September 13, 1994); City of Rochester, N.Y.,
 City Code No. 47-5 (prohibiting possession of pistol magazines containing more than 17 rounds or
 rifle magazines containing more than five rounds) (Van Aken Dec., Ex. 8, at 4, 7); D.C. Code § 7-
 2506.01 (prohibiting possession of LCMs); Chicago, Ill. Muni. Code §§ 8-20-010, 8-20-075
 (prohibiting possession of magazines with capacity greater than 15 rounds) (Van Aken Dec., Ex. 9).

23 ⁵ *See Report of the State’s Attorney for the Jud. Dist. of Danbury on the Shootings at Sandy*
Hook Elementary School, Nov. 25, 2013 (“*Sandy Hook Report*”), at 1-2 (Van Aken Dec., Ex. 10).

24 ⁶ *See* 2013 Colo. Stats. H.B. 13-1224 (Van Aken Dec., Ex. 11) (prohibits magazines with
 25 capacity to hold more than 15 rounds; grandfathers previously possessed magazines); 2013 Conn. Acts
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 26 prior to the ban and registered with state authorities); 2013 Md. Sess. Laws ch. 427, § 1 (Van Aken
 Dec., Ex. 13, at 15) (reducing magazine restriction to 10-round capacity); 2013 N.Y. Sess. Laws ch. 1,
 27 §§ 38, 41-b (Van Aken Dec., Ex. 14, at 20, 22) (prohibiting LCM possession; eliminating
 grandfathered exceptions); *see also* Sunnyvale, Cal., Muni. Code § 9.44.050 (prohibiting possession of
 28 LCMs) (Van Aken Dec., Ex. 15); Cook County, Ill. Muni. Code § 54-212 (prohibiting possession of
 LCMs).

II. The Use of Large-Capacity Magazines Increases the Lethality of Criminal Attacks

The case for restricting large-capacity magazines, as these many jurisdictions have done, is simple. By increasing the number of bullets that a shooter can quickly and easily fire, these oversized magazines increase the potential lethality of criminal attacks. S.F. Police Code § 619 (a)(5); Koper Dec. ¶ 7; Declaration of Franklin E. Zimring (“Zimring Dec.”) ¶¶ 16, 19; H.R. Rep. 103-489, *supra*, at 35. It cannot be seriously disputed that a shooter using a semiautomatic weapon equipped with an LCM can fire off a large number of rounds faster than a shooter who must reload several times to achieve the same number of discharges. *See* Declaration of Massad Ayoob (“Ayoob Decl.”) ¶¶ 28-29.

No doubt for that very reason, large-capacity magazines are the accessory of choice for shooters bent on maximum destruction, such as Gian Luigi Ferri, who used semiautomatic pistols equipped with large-capacity magazines to kill nine people and wound six people at the San Francisco law offices of Pettit and Martin in 1993. Koper Dec. ¶ 9. Indeed, there is a remarkably high correlation between mass shootings and the use of LCMs. *Id.* ¶¶ 9-10; Zimring Dec. ¶ 18. In the last thirty years, in instances of mass shootings where the magazine capacity used by a killer could be determined, researchers found that 86% of the mass shootings involved a large-capacity magazine. Koper Dec. ¶ 14; *see also* Declaration of Lucy P. Allen (“Allen Dec.”) at ¶ 17 (85% correlation).

Mass shootings involving LCMs are more lethal than other mass shootings. In cases where an oversized magazine was used, an average of about four more people were killed in each shooting and an average of about nine more people were wounded compared to shootings using standard-capacity magazines. Koper Dec. ¶ 20. These differences are statistically significant. *Id.* Other studies have confirmed the dramatically enhanced violent power of LCMs. Dr. Allen found an average of 22 fatalities or injuries per mass shooting with a large-capacity magazine compared to only nine without. Allen Dec. ¶ 14. Another study found that use of LCMs and assault weapons in recent mass shootings was associated with a 151% increase in number of people shot and a 63% increase in deaths. *See* Mayors Against Illegal Guns, *Analysis of Recent Mass Shootings*, Sept. 2013, at 3 (Van Aken Dec., Ex. 35).

The same pattern holds for other crimes. Large-capacity magazines are disproportionately used in the murders of law-enforcement officers. Prior to 2004, a time when about 20% of handguns

1 and long guns were equipped with LCMs, LCMs were used in somewhere between 31% to 41% of
 2 gun murders of police. Koper Dec. ¶ 18 & Ex. D at 160, 162. Indeed, across all kinds of gun attacks,
 3 those committed with semiautomatic weapons, including LCMs, tend to result in more shots fired,
 4 more people wounded, and more wounds per victim than attacks with other weapons. Koper Dec.
 5 ¶¶ 21-26. These results have been confirmed in multiple studies. *Id.* There is also evidence
 6 suggesting that the particularly large ammunition capacities of assault weapons, along with their
 7 military-style features, have special attraction for criminals, who purchase them at higher rates than
 8 those without criminal histories or arrest records. Koper Dec. ¶ 11 & Ex. C at 17.

9 Facing an offender equipped with a large-capacity magazine is a particularly dangerous event
 10 for a police officer. Lazar Dec. ¶ 8. When a shooter pauses, even briefly, to reload a weapon, police
 11 officers have the chance to take tactical action, such as by advancing or taking cover. A shooter who
 12 does not have to reload does not give police that opportunity. *Id.*; Van Aken Dec. Ex. 18 (media
 13 accounts where shooters were subdued by police or bystanders during reloading). The danger that
 14 LCMs pose to police officers in San Francisco is not hypothetical. San Francisco police officers have
 15 been shot at and murdered by shooters with LCMs. Lazar Dec. ¶¶ 8-9 & Ex. A.

16 In addition to the immense human toll of gun murders committed using LCMs, every act of
 17 gun violence results in high social costs. The lifetime medical costs per gunshot injury are nearly
 18 \$30,000, and studies estimate the full societal costs from gun violence to be \$1 million per shooting.
 19 Koper Dec. ¶¶ 53-54. If these estimates are correct, then even a 1% reduction in shootings nationally
 20 could result in hundreds of millions of dollars in savings. *Id.* ¶ 54.

21 **III. Plaintiffs' Evidence Does Not Rebut This Showing of Increased Lethality**

22 To combat any claim that LCMs are more dangerous than standard-capacity magazines,
 23 Plaintiffs offer the declaration of criminologist Gary Kleck. Because this is the only evidence that
 24 Plaintiffs offer that relies on social science evidence, it bears special attention.

25 Dr. Kleck's work on guns and gun violence has been widely discredited in other contexts. He
 26 has famously estimated that 2.5 million Americans use a gun defensively against a criminal attacker
 27 each year. *See* Cook et al., "The Gun Debate's New Mythical Number: How Many Defensive Uses
 28 Per Year?", *J. of Pol'y Analysis & Mgmt*, Vol. 16, No. 3, 1997, at 463 (Van Aken Dec., Ex. 19). This

1 estimate, based on self-reported survey responses, is unreliable. For instance, the survey numbers that
2 Dr. Kleck relied on show 132,000 perpetrators killed or wounded by defenders every year—
3 approximately the same number of people whom hospitals report were killed by gunshots or received
4 treatment for gunshot wounds each year. *Id.* at 465. It cannot be that every gunshot is a self-defense
5 gunshot. Also according to these survey numbers, more guns are wielded to defend against rapes each
6 year than there are actual rapes or attempted rapes each year. *Id.* at 466. It turns out that asking
7 people about their subjective experiences of using guns is just not a very reliable social science
8 method. For that reason, Dr. Kleck’s claim about defensive gun use has been called an “outrageous
9 number” with “no reasonable basis.” *Id.* at 463 (internal quotation marks omitted). “All attempts at
10 external validation [have] reveal[ed] it to be a huge overestimate.” Hemenway, *Private Guns, Public*
11 *Health*, 2004, at 67 (excerpt at Van Aken Dec., Ex. 20).

12 Dr. Kleck’s analysis is no more reliable in this case. His declaration attempts to show, for
13 instance, that LCMs are not often used in mass shootings, and he states that, of the 57 mass shootings
14 between 1994 and July 2014 that he studied, “no LCM was used in . . . 35 incidents (or about 61%).”
15 Kleck Dec. ¶ 14. This is a deeply misleading assertion: A review of the appendix to Dr. Kleck’s
16 declaration reveals that his dataset of mass shootings included only *three* incidents where a magazine
17 of standard capacity was used, 30 incidents where magazine capacity was *unknown*, and 22 incidents
18 where a large-capacity magazine was known to be used. *Id.* at pp. 14-36. In other words, when Dr.
19 Kleck tells the Court that LCMs were not used in 35 incidents, what he means is that either LCMs
20 were not used or magazine capacity was not reported. If one only counts instances where magazine
21 capacity is known, the figure is 22 out of 25 incidents, or 88%.

22 Dr. Kleck also argues that magazine capacity does not make a difference because shooters in
23 mass killings do not achieve rates of fire that are any faster than they could achieve by reloading a new
24 magazine. Kleck Dec. ¶¶ 18-19 & p. 13. This, too, is specious. Dr. Kleck bases his rate-of-fire
25 estimates on media accounts of the number of shots and the length of shooting. But he includes in his
26 dataset several instances where the shooter was known not to have fired continuously but to have
27 walked from place to place during the event to seek out more victims, such as the 2012 Sandy Hook
28 Elementary School shooting and the 2007 Virginia Tech massacre. *See Sandy Hook Report, supra*, at

1 1-2; *Mass Shootings at Virginia Tech: Report of the Review Panel*, Aug. 2007, at 27-28 (Van Aken
2 Dec., Ex. 21). Thus, even assuming that media accounts of the duration of events like these are
3 reliable, Dr. Kleck’s rate-of-fire estimate is simply not an approximation of how fast a mass shooter
4 with a large-capacity magazine can fire. And if it were, it would be contradicted by the account
5 Plaintiffs offer from Massad Ayoob, who reports, “A highly skilled police officer or competitive
6 shooter may be able to accomplish a reload in two seconds. Most people take considerably longer;
7 especially someone who is under the mental duress typically experienced during an attack.” Ayoob
8 Dec. ¶ 27. “By contrast, simply pulling the trigger again on a pistol that still has more ammunition in
9 it can be accomplished in a fraction of a second.” *Id.* ¶ 28.

10 Most importantly, Dr. Kleck’s central contention—that use of LCMs almost never makes a
11 difference in the lethality of mass shootings—is wrong. He asserts that magazine capacity makes a
12 difference to injuries or deaths only where the shooter possesses only one gun and only one LCM,
13 since shooters who have more than one gun or magazine could simply switch guns or magazines to
14 keep firing. Kleck Dec. ¶ 14. He reports that there have been no such cases since 1994. *Id.* There are
15 many problems with this analysis. First, Dr. Kleck is wrong that shooters infrequently have only one
16 gun; Dr. Lucy Allen’s analysis showed a single gun in 41% of mass shooting incidents. Allen Dec.
17 ¶ 17. Dr. Kleck apparently used an incomplete dataset, as he did not include a number of the single-
18 gun incidents that Dr. Allen found using the very well-publicized *Mother Jones* dataset. *Compare*
19 Allen Dec. table 1 (listing, for example, single-gun shootings in 2013 in Hialeah, Florida; and
20 Herkimer, New York) *with* Kleck Dec. at p. 35 (reporting no mass shootings in 2013). Second, Dr.
21 Kleck offers no reason why it is just as fast to switch guns or magazines as it is to keep shooting with
22 the same magazine, and the Ayoob Declaration contradicts that view. Ayoob Dec. ¶¶ 27-28. Third,
23 Dr. Kleck misses the forest for the trees: His narrow criteria for when an LCM matters *exclude the*
24 *single incident where he admits that a shooter was tackled while reloading*—that is, where actual
25 events proved that magazine capacity mattered—because that shooter had three guns and three LCMs.
26 Kleck Dec. ¶ 15; *id.* at p. 17. Plainly, real life demonstrates that Dr. Kleck’s criteria for materiality of
27 LCM use are too narrow.

1 And indeed, real life demonstrates this in many more instances. The shooter who wounded
 2 Gabrielle Giffords and killed six others, including a federal judge, was tackled by bystanders while he
 3 was reloading, according to first-hand accounts of the incident. Dolak & Weaver, *Woman Wrestled*
 4 *Fresh Ammo Clip from Tucson Shooter as He Tried to Reload*, ABC News, Jan. 9, 2011 (Van Aken
 5 Decl., Ex. 22).⁷ In addition to the 1998 Oregon mass shooting where Dr. Kleck acknowledges the
 6 shooter was subdued while reloading, Kleck Dec. ¶ 15, the 1993 Long Island Railroad commuter train
 7 shooter was tackled as he attempted to load a fresh 15-round LCM in his pistol. *See* H.R. Rep. No.
 8 103-322, *supra*, at 33.⁸ And law enforcement sources have stated that a half-dozen children may have
 9 been able to escape from Sandy Hook Elementary School while the shooter was switching magazines.
 10 Mahoney *et al.*, “Sandy Hook Shooter’s Pause May Have Aided Students’ Escape,” *Hartford Courant*,
 11 Dec. 23, 2012 (Van Aken Dec., Ex.) at 1;⁹ *see also* Declaration of John J. Donohue III (“Donohue
 12 Decl.”) ¶ 11 & n.4 (families estimate 11 children saved during Newtown shooter’s reloading).

13 Mass shootings are not the only instances where a killer’s pause to reload has saved lives. In
 14 less well-known incidents where multiple bullets are fired but fatalities are fewer, there are many
 15 occasions where shooters have been subdued while reloading. *See* Van Aken Dec., Ex. 18 (media
 16 reports concerning 42 such incidents). In a case challenging New York State’s LCM ban last year, Dr.
 17 Kleck filed a declaration claiming, inconsistently with his declaration in this case, that he knew of only
 18 one mass shooting event where bystanders had intervened, the 1993 L.I.R.R. shooting described
 19 above, and that “[b]ystander intervention was feasible in that case *only because of its unique location*,”
 20 *i.e.* on a train where bystanders were forced to remain close to the shooter. Declaration of Gary Kleck,
 21 Dkt. 23-9, *NYSRPA v. Cuomo*, Civil No. 1-13-cv-00291, at 4 (Van Aken Dec., Ex. 38) (emphasis
 22 added). The 42 accounts San Francisco has located where bystanders or police intervened during a
 23

24 ⁷ Notably, this event, too, is excluded from Dr. Kleck’s account of cases where LCM use was
 25 material because the shooter had four magazines.

26 ⁸ This shooter had multiple magazines as well. *See* Clines, “Death on the L.I.R.R.,” *New York*
 27 *Times*, Dec. 9, 1993 (Van Aken Dec., Ex. 23).⁹ These officials attributed the children’s escape either to
 28 the shooter’s pause to reload or to a jammed rifle. But the rifle was later tested and functioned
 properly. *Sandy Hook Report, supra*, 22.

⁹ These officials attributed the children’s escape either to the shooter’s pause to reload or to a
 jammed rifle. But the rifle was later tested and functioned properly. *Sandy Hook Report, supra*, 22.

1 shooter's reloading, in a wide variety of locations, demonstrates that Dr. Kleck's understanding is
2 deeply mistaken.

3 Finally, Dr. Kleck offers no evidence to contradict Dr. Koper's and Dr. Allen's empirical
4 evidence that mass shootings with LCMs, or indeed any kinds of crimes committed with LCMs, result
5 in more fatalities and more injuries than with standard-capacity magazines.

6 **IV. Large-Capacity Magazines Are Not Useful for Self-Defense in the Home**

7 There is no credible evidence whatsoever that prohibiting San Franciscans from using large-
8 capacity magazines will impact their ability to defend themselves. The direct case that Plaintiffs make
9 that civilians need military or police firepower in the home is based solely on a handful of anecdotes
10 from across the country, most of them decades old, some of them involving police action or offensive
11 action by the shooter, and nearly all occurring outside the home. *See* Ayoob Decl. ¶¶ 5-9 & n.3; Van
12 Aken Dec., Exs. 25 (Gonzalez account: 1997); 26 (Neel account: 1994; Neel decided to come to the
13 aid of a police officer); 27 (Honeycutt account: 2004; Honeycutt fired 15 rounds at close range into
14 someone who "approach[ed] with a gun).

15 But Plaintiffs present no evidence whatsoever that such occurrences are widespread, and the
16 great weight of the evidence is to the contrary. Even Dr. Kleck has admitted elsewhere that most
17 criminal uses of guns, and most defensive uses of guns, result in few if any shots fired. Kleck, *Point*
18 *Blank: Guns & Violence in America* (1991) (2d paperback ed. 2009), at 111 (Van Aken Dec., Ex. 28)
19 ("Only a tiny fraction of criminal gun assaults involves anyone actually being wounded, even
20 nonfatally, and one would expect the same to be true of defensive gun uses").¹⁰ Gun-rights supporters
21 maintain databases of "self-defense stories" to illustrate the need for firearms in the home, but these
22 stories only illustrate that rarely are more than a few shots fired. Allen Dec. ¶ 7. Dr. Allen's analysis
23 of this database for the last three years showed an average of 2.1 bullets fired by defenders, and there
24 were *no* incidents where the defender reporting firing more than 10 bullets. *Id.* ¶ 9. And an analysis
25 of earlier "self-defense stories" printed on a pro-gun website reported that "the average and median

26 ¹⁰ Dr. Kleck is reported elsewhere by Harvard public health specialist David Hemenway as
27 stating, "There is little or no need for a gun for self-protection [for most Americans] because there's so
28 little risk of crime. People don't believe it, but it's true. You just can't convince most Americans
they're not at serious risk." Hemenway, *Private Guns, supra*, at 64.

1 number of shots fired was 2,” and that “[r]eloading was required in only 3 incidents,” one of which
2 involved an escaped lion. Werner, *The Armed Citizen: A Five-Year Analysis* (Van Aken Dec., Ex. 29,
3 at 3-4). Even where a defender faced multiple offenders, only a few shots were needed. In fact, “[t]he
4 most common responses of criminals upon being shot were to flee immediately or expire. With few
5 exceptions, criminals ceased their advances immediately upon being shot. Even small caliber
6 handguns displayed a significant degree of instant lethality (30 per cent immediate one shot kills)
7 when employed at close range.” *Id.* at 4. Plaintiffs’ witness Massad Ayooob has said much the same
8 thing. Although the declaration he filed in this case insists that LCMs are needed for self-defense, in
9 his 2012 book, the *Gun Digest Book of Concealed Carry*, Ayooob writes, “The bottom line is, it’s not
10 about ‘what gun you have,’ so much as it’s about ‘did you have a gun?’” (Van Aken Dec., Ex. 30.)

11 Indeed, LCMs can be a hazard to bystanders when employed by home defenders. As one
12 police official said, “because of the potential harm to others in the household, passersby, and
13 bystanders, too much firepower is a hazard. Indeed, in most self-defense scenarios, the tendency is for
14 defenders to keep firing until all bullets have been expended.” Brady Ctr. to Prevent Gun Violence,
15 *Assault Weapons: Mass Produced Mayhem*, 2008, p. 16 (Van Aken Dec., Ex. 31); *see* Lazar Dec. ¶ 6.

16 The risk that home defenders will fire too many shots with LCMs seems to be one that
17 Plaintiffs obliquely admit when they argue that home defenders need LCMs because they miss so
18 often. Dr. Kleck cites a study that police have a rate of hitting their targets 37%, and argues that home
19 defenders need LCMs because they will miss at comparable rates. Kleck Dec. ¶ 23. The fact that a
20 person misses a lot does not seem to be a very good reason to give him a magazine with more bullets.
21 But even if it were, Dr. Kleck’s argument is just more speculation. The 37% hit rate for police that he
22 cites is not a per-bullet hit rate, it is a per-incident hit rate. *Id.* There is no reason why the per-bullet
23 hit rate for civilians would be the same as the per-incident hit rate for officers. That is especially true
24 because police officers often fire in difficult circumstances, such as while chasing a fleeing felon, that
25 would not occur in home defense. Lazar Dec. ¶ 7. And in any event, even if Kleck were correct that a
26 civilian is likely to miss with 63% of his bullets, he is still likely to hit a target with a legal 10-round
27 magazine. Kleck has to hypothesize *four or more* attackers to arrive at a scenario where a standard
28 magazine is insufficient, Kleck Dec. ¶ 23, but he offers no evidence that this is a realistic prospect.

1 **V. Plaintiffs Fail to Show that Large-Capacity Magazines Are in Common Use for Self-**
2 **Defense**

3 Plaintiffs contend that large-capacity magazines are popular and widespread based on two
4 kinds of evidence: First, they point to many kinds of popular handguns and long guns that are sold
5 standard with large-capacity magazines, Monfort Dec. Exs. B-D; and second, they offer the
6 declaration of James Curcuruto, an analyst for a gun-industry group. This evidence does not establish
7 their point.

8 Mr. Curcuruto submits a declaration that purports to attach a report describing his estimate that
9 there are 75 million LCMs in private hands in America. Dkt. 18. No such report is attached. Perhaps
10 Mr. Curcuruto meant to include an exhibit that he filed in a case challenging Sunnyvale's LCM
11 prohibition. Van Aken Dec., Ex. 32. But if so, this exhibit is purely conclusory. While federal data
12 provides an aggregate number of long guns and handguns sold, it does not disaggregate the numbers of
13 each make or model sold, nor does Mr. Curcuruto explain how "[f]irearms industry professionals"
14 then attributed numbers of each magazine to the firearms sold. Curcuruto Dec. ¶¶ 11-12. This self-
15 serving estimate deserves little weight. Nor is it probative that Plaintiffs have identified a lot of
16 advertisements for guns that are sold standard with LCMs in firearms catalogs. Monfort Dec., Exs. B-
17 D. None of that establishes the actual number of those guns that are sold, and in any event those guns
18 are not sold with LCMs in California, where such sales have been illegal for nearly 15 years. *See* Cal.
19 Penal Code § 32310; Lazar Dec. ¶ 10.

20 Moreover, even if Plaintiffs were correct that 75 million LCMs are in private hands in this
21 country, that still does not establish that LCMs are widely used for self-defense. First, Plaintiffs offer
22 no evidence directly establishing use for self-defense, and Plaintiffs' indirect evidence about the utility
23 of LCMs for self-defense is dubious for the reasons discussed above. Second, it is highly likely that
24 LCM ownership is very concentrated. Gun ownership in America has been dropping as a percentage
25 of households for decades. Donohue Dec. ¶¶ 3-5. Yet gun sales have risen at the same time.
26 Donohue Dec. ¶ 7. One trend driving these sales is the sale of more weapons, and more powerful
27 weapons, to a smaller group of gun enthusiasts. *See generally* Violence Policy Center, *The*
28 *Militarization of the U.S. Civilian Firearms Market*, June 2011 (Van Aken Dec., Ex. 33); Donohue

1 Dec. ¶¶ 6-8. And studies directly show that gun ownership itself is very concentrated: 20% of gun
2 owners possess 65% of the nation’s guns. *Id.* ¶ 6. Thus, it is likely that LCMs are similarly collected
3 by a small number of enthusiasts, and there is no evidence to indicate that they are widely popular,
4 much less in common use for the purpose of self-defense. *Id.* ¶¶ 9-10.

5 ARGUMENT

6 The Second Amendment right is *not* “a right to keep and carry any weapon whatsoever in any
7 manner whatsoever and for whatever purpose.” *Heller*, 554 U.S. at 626. Instead, “[s]tate regulation
8 under the Second Amendment has always been more robust than of other enumerated rights.”
9 *Kachalsky v. County of Westchester*, 701 F.3d 81, 100 (2d Cir. 2012). “[W]hen the fledgling republic
10 adopted the Second Amendment, an expectation of sensible gun safety regulation was woven into the
11 tapestry of the guarantee.” *Nat’l Rifle Ass’n v. Bureau of Alcohol, Tobacco & Firearms*, 700 F.3d 185,
12 200 (5th Cir. 2012).

13 Even as the Supreme Court recognized that the individual right to keep and bear arms applies
14 to state and local laws, it acknowledged that “state and local experimentation with reasonable firearms
15 regulation will continue under the Second Amendment.” *McDonald v. City of Chicago*, 561 U.S. --,
16 130 S. Ct. 3020, 3046 (2010) (quotation marks omitted). Lower courts have heeded that admonition
17 by keeping familiar firearms laws intact, and only striking down extreme restrictions that make it
18 substantially more difficult to keep a handgun or long gun in the home for self-defense. *See, e.g., Ill.*
19 *Ass’n of Firearms Retailers v. City of Chicago*, -- F. Supp. 2d --, 2014 WL 31339 (N.D. Ill. Jan. 6,
20 2014) (striking city regulation prohibiting all sales of firearms).

21 This is not such a case. Large-capacity magazine restrictions are a familiar and widespread
22 form of regulation that protect against real and proven harms. And because LCMs have little to no
23 value for self-defense, LCM restrictions have no appreciable impact on the ability of citizens to defend
24 themselves in the home or elsewhere. The Ninth Circuit has held that the proper evaluation of
25 firearms laws under the Second Amendment first asks whether the restricted item is protected at all
26 and then, if it is protected, to apply intermediate or strict scrutiny depending on how close the
27 restriction comes to the core of Second Amendment rights and the degree of the burden it imposes.
28 *United States v. Chovan*, 735 F.3d 1127 (9th Cir. 2013). Because Police Code § 619 imposes very

1 little burden on Plaintiffs' rights, leaving them able to use any semiautomatic weapon they choose so
2 long as that weapon is equipped with a magazine of 10 rounds or less, it should be evaluated under
3 intermediate scrutiny. Police Code § 619 readily passes that scrutiny. Indeed, it is arguable that
4 LCMs are not protected items at all under the Second Amendment.

5 Plaintiffs argue for Police Code § 619's unconstitutionality by largely ignoring *Chovan* and
6 advancing an interpretation of *Heller* that no court has adopted. They argue that any firearm (or,
7 presumably, a firearm accessory like a magazine) that is in "common use" may not be prohibited, full
8 stop. But *Heller* does not support this approach. *Heller*'s "common use" test is a test for whether the
9 firearm is protected at all. 554 U.S. at 627. *Heller* does not say that all "common use" firearms are
10 immune from regulation, as Plaintiffs contend.

11 Finally, Plaintiffs are not entitled to a preliminary injunction on this record. Even assuming
12 that the deprivation of a large-capacity magazine causes them irreparable harm, despite the continuing
13 availability of many other firearms and accessories, their merits showing is so weak, and the balance
14 of equities so strongly in San Francisco's favor, that this Court should deny relief.

15 **I. Preliminary Injunction Standard**

16 "A preliminary injunction is an extraordinary remedy never awarded as of right." *Winter v.*
17 *Natural Res. Defense Council*, 555 U.S. 7, 24 (2008). "A plaintiff seeking a preliminary injunction
18 must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in
19 the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is
20 in the public interest." *Id.* at 20. A plaintiff who has proved likely irreparable harm and raised serious
21 questions going to the merits may obtain an injunction if the balance of hardships tips sharply in the
22 plaintiff's favor. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134-35 (9th Cir. 2011).

23 **II. Plaintiffs Are Unlikely to Succeed on the Merits of Their Claims.**

24 **A. Intermediate Scrutiny Should Apply Because the LCM Ban Does Not Impact Plaintiffs' Ability to Defend Themselves in the Home or Elsewhere.**

25 With *Chovan*, 735 F.3d 1127, the Ninth Circuit adopted the approach to evaluating Second
26 Amendment claims after *Heller* that the majority of circuits have adopted.¹¹ In light of the Supreme
27

28 ¹¹ The Second Circuit applies rational basis review to firearms restrictions that do not substantially burden the Second Amendment right. *See infra* n.18.

1 Court’s admonition that not all arms are protected by the Second Amendment, *see Heller*, 554 U.S. at
2 1133, the first step of this test is to determine “whether the challenged law imposes a burden on
3 conduct falling within the scope of the Second Amendment’s guarantee.” *Chovan*, 735 F.3d at 1134
4 (quoting *United States v. Marzzarella*, 614 F.3d 85, 89 (3d Cir. 2010)); *id.* at 1136 (adopting test
5 articulated in *Marzzarella*). If the challenged law in fact burdens conduct protected by the Second
6 Amendment, the court then selects an appropriate level of scrutiny, which “depend[s] on ‘the nature of
7 the conduct being regulated and the degree to which the challenged law burdens the right.’” *Id.* at
8 1138 (quoting *Chester*, 628 F.3d 673, 682 (4th Cir. 2010)). The closer the law comes to burdening the
9 core of the Second Amendment right—“the right of law-abiding, responsible citizens to use arms in
10 defense of hearth and home,” *Heller*, 554 U.S. at 635—the greater scrutiny it should draw. But a law
11 that permits armed self-defense in the home and merely regulates some types of arms, leaving a person
12 “free to possess any otherwise lawful firearm,” operates like a “regulation of the manner” in which
13 persons may lawfully exercise their Second Amendment rights, and is therefore subject only to
14 intermediate scrutiny. *Marzzarella*, 614 F.3d at 97 (cited with approval in *Chovan*, 628 F.3d at 1138);
15 *see also Nat’l Rifle Ass’n*, 700 F.3d at 195 (applying intermediate scrutiny to ban on some handgun
16 sales to young adults); *United States v. Skoien*, 614 F.3d 638, 641 (7th Cir. 2010) (en banc).

17 *Chovan* evaluated the constitutionality of a complete ban on firearms possession for domestic
18 violence misdemeanants, 18 U.S.C. § 922(g). It is difficult to imagine a more complete abrogation of
19 the right to bear arms for those affected by § 922(g), and *Chovan* made clear that domestic violence
20 misdemeanants were not completely excluded from claiming Second Amendment protection. 628
21 F.3d at 1137. But because they were not law-abiding citizens, their rights were outside the core of that
22 protection, and *Chovan* applied only intermediate scrutiny to the law disarming them, notwithstanding
23 the “quite substantial” degree of the burden they bore. *Id.* at 1137-38.

24 By articulating a two-part test—looking both to the degree of the burden, and the burden’s
25 proximity to the core of the right—*Chovan* teaches that only where a law *significantly* burdens the
26 core Second Amendment right to keep and bear arms in the home will strict scrutiny apply. *Id.* at
27 1138. Otherwise, *Chovan* would have had no reason to articulate a two-part test, and could have
28 rested on the fact that domestic violence misdemeanants were not law-abiding citizens.

1 Even assuming Plaintiffs' Second Amendment rights are impacted at all by San Francisco's
 2 LCM ban, *but see infra* Section II.D., intermediate scrutiny is the appropriate level of scrutiny to apply
 3 under the *Chovan* test, for two reasons. First, the LCM ban indirectly impacts conduct within the
 4 home but does not single out home defense for its zone of regulation. *See* S.F. Police Code § 619(c)
 5 (banning possession of LCMs regardless of location).¹² Thus, it does not discriminate against the
 6 conduct at the zenith of the Second Amendment's protection. *Cf. Turner Broad. Sys., Inc. v. FCC*, 512
 7 U.S. 622, 642 (content-based discrimination requires strict scrutiny under the First Amendment).

8 More importantly, the degree of burden that the LCM ban imposes on Plaintiffs' ability to
 9 defend themselves in the home with firearms is so modest that intermediate scrutiny must apply here.
 10 Although Plaintiffs claim on page 2 of their brief ("Br.") that San Francisco's ban is "at the extreme
 11 end of the gun control continuum," a footnote on the same page acknowledges the reality that the State
 12 of California has prohibited the manufacture or sale of LCMs for fourteen years. Br. at 2 n.1 (citing
 13 Cal. Penal Code §§ 32310, 32400-32450). Plaintiffs do not challenge California's laws, but those laws
 14 prevent most people who did not own an LCM in 2000 from acquiring one. Assuming they own
 15 LCMs legally as they aver, Plaintiffs are the beneficiaries of a grandfathered exemption, not
 16 representatives of the interests of most Californians. *See* Zimring Dec. ¶ 14. Far from being an
 17 extreme example of gun control, San Francisco's ordinance merely closes a loophole in a longstanding
 18 state law that state actors have been unable, as yet, to muster the political will to close.¹³

19 But even if California had no prohibition on acquiring LCMs, and San Francisco stood alone,
 20 its ban would still be subject only to intermediate scrutiny because of the triviality of the ban's burden
 21 on self-defense. As discussed above at pages 9-10, there is simply no credible evidence whatsoever

22 ¹² Plaintiffs do not say whether they are entitled under California to carry firearms openly or
 23 concealed in San Francisco, but Larry Barsetti is a retired law enforcement officer who has the right to
 24 carry firearms in public absent some disqualifying reason. Cal. Penal Code §§ 26300 *et seq.* The
 25 Ninth Circuit has not yet decided whether the Second Amendment's protections extend outside of the
 26 home at all, but other circuits that have considered this have determined that this conduct, if protected
 at all, is not at the core of the Second Amendment's concern. *Kachalsky*, 701 F.3d at 89; *Woollard v.*
Gallagher, 712 F.3d 865, 876 (4th Cir. 2013); *Drake v. Filko*, 724 F.3d 426, 430-31 (3d Cir. 2013).
But see Moore v. Madigan, 702 F.3d 933, 940 (7th Cir. 2012) (Illinois's prohibition on all public
 carrying of firearms was categorically unconstitutional).

27 ¹³ A bill to eliminate the state loophole for grandfathered large-capacity magazines passed the
 28 California Senate but failed in the California Assembly during the most recent legislative session. Cal.
 S.B. 396 (2012-13 Sess.)

1 that having a magazine with more than 10 rounds makes a home defender any safer, and in fact
 2 oversized magazines can make home defense less safe by increasing the likelihood that a defender will
 3 discharge more errant rounds and harm the innocent. *See* Kleck ¶ 37 (asserting that 63% of home
 4 defenders’ shots will go astray); Lazar ¶¶ 5-6 (errant rounds create risks to bystanders). Simply
 5 because Plaintiffs can imagine a hyperbolic scenario where they may need large-capacity magazines to
 6 defend themselves does not mean that these magazines are useful or necessary for self-defense.
 7 Because the empirical evidence indicates that Plaintiffs can fully vindicate their right to self-defense in
 8 the home using standard-capacity magazines in the vast run of circumstances they may encounter, any
 9 burden on self-defense here is so minor that only intermediate scrutiny is warranted.

10 This conclusion is underscored by decisions from other circuits on which *Chovan* relies. In
 11 *Heller v. District of Columbia*, 670 F.3d 1244 (D.C. Cir. 2011) (“*Heller II*”), the D.C. Circuit
 12 considered the District of Columbia’s prohibition on the possession of assault weapons and LCMs.
 13 Applying the same two-step test first set out in *Marzzarella* and later adopted in this circuit in *Chovan*,
 14 *Heller II* assumed that possession of LCMs and assault weapons was entitled to at least some Second
 15 Amendment protection,¹⁴ but held that the District of Columbia’s ordinance was nonetheless subject to
 16 intermediate scrutiny in light of the modest burden it imposed:

17 [W]e determine the appropriate standard of review by assessing how severely
 18 the prohibitions burden the Second Amendment right. Unlike the law held
 19 unconstitutional in *Heller*, the laws at issue here do not prohibit the possession
 20 of ‘the quintessential self-defense weapon,’ to wit, the handgun. 554 U.S. at
 21 629, 128 S. Ct. 2783. Nor does the ban on certain semiautomatic rifles prevent
 22 a person from keeping a suitable and commonly used weapon for protection in
 23 the home or for hunting Although we cannot be confident the prohibitions
 24 impinge at all upon the core right protected by the Second Amendment, we are
 25 reasonably certain the prohibitions do not impose a substantial burden upon that
 26 right.

27 670 F.2d at 1262. Because “the prohibition of semi-automatic rifles and large-capacity magazines
 28 does not effectively disarm individuals or substantially affect their ability to defend themselves,” it is
 akin to a regulation of the manner in which an individual may exercise Second Amendment rights.¹⁵

¹⁴ *Heller II* declined to decide whether LCMs and assault weapons are protected by the Second Amendment at all, stating “we cannot be certain whether these weapons are commonly used or are useful specifically for self-defense or hunting.” 670 F.3d at 1261.

¹⁵ *See also Hightower v. City of Boston*, 693 F.3d 61, 71 (1st Cir. 2012) (“large capacity firearm” was not a “weapon[] of the type characteristically used to protect the home”).

1 It leaves open “ample alternative channels” for self-defense and is therefore subject only to
 2 intermediate scrutiny. *Id.* Applying that test, *Heller II* held that the District of Columbia’s ordinance
 3 readily survived that burden. *Id.* at 1262-64. The D.C. Circuit’s reasoning applies with full force here
 4 in light of the overwhelming empirical evidence that large-capacity magazines are almost never
 5 needed for self-defense in the home or elsewhere. Intermediate scrutiny is the appropriate test.

6 *Chovan* also extensively cites *United States v. Marzzarella*, 614 F.3d 85. *See Chovan*, 735
 7 F.3d at 1136-38. *Marzzarella* held that the federal law criminalizing possession of firearms with
 8 obliterated serial numbers did not “severely limit the possession of firearms” and left the defendant
 9 free to possess any otherwise lawful firearm for self-defense. 614 F.3d at 97. It was subject only to
 10 intermediate scrutiny because it was not a prohibition on exercise of Second Amendment rights but
 11 instead regulated merely “the form in which that conduct occurs.” *Id.* Here, too, San Francisco’s
 12 LCM ban does not prohibit the use of broad classes of firearms but only limits the kind of magazine,
 13 and thus the number of bullets, that may be loaded in any otherwise lawful firearm at one time. It is a
 14 regulation that controls not whether someone can use a firearm in self-defense or not but instead how
 15 he may equip it. Under the reasoning of *Marzzarella*, it is subject only to intermediate scrutiny.

16 In fact, application of intermediate scrutiny here is consistent with every decision that San
 17 Francisco has located concerning the effect of LCM prohibitions, or assault weapons prohibitions,¹⁶ on
 18 the right to keep and bear arms. Since 2008, in addition to the *Heller II* decision by the district and
 19 circuit courts of D.C., three federal district courts have refused to strike down prohibitions on LCMs
 20 and assault weapons. In *Tardy v. O’Malley*, Civil No. CCB-13-2861, the District of Maryland denied
 21 a TRO to opponents of Maryland’s prohibition on possession of assault weapons and LCMs because it
 22 did not impinge on the plaintiffs’ ability to carry handguns in the home or other long guns. Order &
 23 TRO Hr’g Tr. at pp. 66-71 (D. Md. Oct. 1, 2013) (Van Aken Dec., Exs. 34 and 35). *Tardy* applied the

24
 25 ¹⁶ Cases discussing assault weapons regulations are relevant here because they, too, involve the
 26 regulation of arms that their proponents claim are in common use, yet which are regulated because
 27 they are unusually dangerous. *See, e.g.*, H.R. Rep. 103-489, *supra*. They are also relevant because
 28 one of the features that characterize assault weapons are their ability to accept LCMs. *See, e.g.*, U.S.
 Dep’t of the Treasury, *1989 Report and Recommendation, supra*, at 6; *Robertson v. City & County of*
Denver, 874 P.2d 325, 333 n.16 (Colo. 1994) (“Two salient features of assault weapons which make
 them particularly threatening are their capability for a rapid rate of fire”—a capability they share with
 all semiautomatic weapons—“and the ability to fire many rounds without reloading.”).

1 same two-step test that *Chovan* adopted. See *Tardy*, TRO Hr'g Tr. at p. 68 (citing *United States v.*
2 *Chester*, 628 F.3d 673 (4th Cir. 2010)); *Chovan*, 735 F.3d at 1136 (adopting *Chester*'s two-step test).
3 In *New York State Rifle & Pistol Ass'n, Inc. v. Cuomo*, the Western District of New York granted
4 summary judgment in favor of the state on its LCM and assault weapons ban. – F. Supp. 2d –, 2013
5 WL 6909955, at *12 (Dec. 31, 2013). It held that intermediate scrutiny should apply to the ban
6 because prohibiting assault weapons and LCMs was akin to a time, place and manner restriction on the
7 use of firearms, leaving open ample alternative channels for self defense. *Id.* at *13. And it concluded
8 that the assault weapon and LCM ban was ultimately constitutional under intermediate scrutiny,
9 although it struck as arbitrary New York's limit on loading a magazine with more than seven rounds.
10 *Id.* at *14-*19.¹⁷ Finally, in *Kampfer v. Cuomo*, the Northern District of New York held that the
11 state's assault weapons ban did not substantially burden an individual's Second Amendment rights at
12 all in light of the number of alternative firearms available to him to use for self-defense, and thus
13 warranted no heightened scrutiny at all. No. 6:13-cv-82 (GLS/ATB), 2014 WL 49961, at *5-*6
14 (N.D.N.Y. Jan. 7, 2014).¹⁸

15 Even before the United States Supreme Court recognized in 2008 that the Second
16 Amendment's protection could be claimed by individuals, many state courts had held that assault
17 weapons bans and large-capacity magazine bans were consistent with state constitutional guarantees of
18 an individual right to keep and bear arms. See *Robertson v. City & County of Denver*, 874 P.2d 325,
19 332-33 & n.16 (Colo. 1994) (local assault weapons ban was a reasonable safety regulation in part in
20 light of "the ability [of assault weapons] to fire many rounds without reloading"); *Benjamin v. Bailey*,
21 662 A.2d 1226, 1232-35 (Conn. 1995) (state assault weapons ban was "reasonable regulation" of right
22 to bear arms); *Arnold v. Cleveland*, 616 N.E.2d 163, 164 n.1, 171-73 (Ohio 1993) (local assault
23

24 ¹⁷ The Second Circuit has a slightly different Second Amendment test than the two-step test
25 adopted by most circuits. The Second Circuit applies rational basis scrutiny to restrictions that do not
26 place "any marginal, incremental or even appreciable restraint on the right to keep and bear arms."
United States v. DeCastro, 682 F.3d 160, 166 (2d Cir. 2012). For restrictions that impose a greater
27 burden than that, the Second Circuit, like the Ninth, chooses a form of heightened scrutiny based on
28 the degree of the burden and its proximity to the core of the right. See *Kachalsky*, 701 F.3d at 93-94.

¹⁸ See also Statement of Professors of Constitutional Law: The Second Amendment and the
Constitutionality of the Proposed Gun Violence Prevention Legislation (Jan. 30, 2013) (Van Aken
Dec. Ex. 39) (submitted to Congress re: 2013 proposal to prohibit LCMs & assault weapons).

1 weapons ban, where assault weapons were defined in terms of their ability to accept 20+ round
 2 magazines, was constitutional); *Beaver v. City of Dayton*, No. 13871, 1993 WL 333641 (Ohio Ct.
 3 App. Aug. 30, 1993) (upholding municipal assault weapons regulation against state constitutional
 4 challenge); *Cincinnati v. Langan*, 640 N.E.2d 200, 206 (Ohio Ct. App. 1994) (upholding local ban on
 5 large-capacity magazines and semiautomatic weapons); *Oregon State Shooting Ass'n v. Multnomah*
 6 *County*, 858 P.2d 1315 (Or. Ct. App. 1993) (rejecting state constitutional challenge to regulation on
 7 sale of assault weapons). *Cf. Olympic Arms v. Buckles*, 301 F.3d 384 (6th Cir. 2002) (on equal
 8 protection challenge, finding federal assault weapons ban to serve rational basis; noting that ability to
 9 accept LCMs “makes a weapon potentially more dangerous”); *Kasler v. Lockyer*, 23 Cal.4th 472, 490-
 10 91 (2000) (rejecting equal protection challenge to California’s assault weapons ban in light of
 11 dangerousness of assault weapons).¹⁹

12 Plaintiffs contend that, if this Court does not categorically invalidate San Francisco’s LCM ban
 13 under *Heller* (a contention San Francisco rebuts in Section II.C., below), it should at least apply strict
 14 scrutiny under *Chovan* because the ban operates on self-defense within the home and “is particularly
 15 severe.” Br. at 16:17-25. As for why this ban is “particularly severe,” Plaintiffs reiterate that it
 16 operates in the home, Br. at 17:1, and then they contend that the impact of the ban is severe because it
 17 is a “government-imposed reduction on the ammunition capacity of citizens’ commonly used
 18 firearms,” where “millions of Americans routinely select *firearms capable of accepting more than ten*
 19 *rounds* for self-defense.” Br. at 17:5-8 (emphasis added).

20 Plaintiffs do not explain how the number of people affected by a regulation is an indicator of
 21 how burdensome the regulation is for each person it affects. Perhaps Plaintiffs mean to argue that the
 22 popularity of “firearms capable of accepting more than ten rounds” demonstrates that they are useful
 23 for self-defense. Br. at 17:6. But notice what is missing from their argument: any claim that LCMs
 24 themselves, rather than *firearms capable of accepting LCMs*, are commonly selected by Americans for

25
 26 ¹⁹ Long before the current controversy over LCM and assault weapons restrictions, states
 27 frequently prohibited entire classes of weapons, such as pistols or other concealable firearms, on the
 28 basis of their particular dangerousness. These regulations were upheld as reasonable even under state
 constitutional guarantees of an individual right to bear arms. *See generally* Brief for Professional
 Historians and Law Professors as *Amici Curiae*, *Heller v. District of Columbia*, D.C. Cir. No. 10-7036,
 at pp. 18-24 (Van Aken Dec., Ex. 40).

1 self-defense. In fact, most semiautomatic handguns and rifles are capable of accepting many kinds of
 2 magazines, including magazines of less than 10-round capacity. *See* Koper Dec. ¶ 6; Lazar Dec. ¶ 10.
 3 Plaintiffs’ contention says only that Americans prefer semiautomatics. And even if these millions of
 4 Americans chose LCMs to equip their semiautomatics, that would not demonstrate that LCMs are
 5 chosen *for self-defense* rather than for other purposes, like hunting, target practice, or competitive
 6 shooting. *See Heller II*, 670 F.3d at 1261. But perhaps most importantly, while people may prefer
 7 some kinds of firearms equipment over others, and may even believe that is in the service of self-
 8 defense, this does not necessarily make it so. Here, Plaintiffs argue nothing more than that the
 9 possibility of “potentially deadly consequences in the event of a self-defense emergency,” if LCMs are
 10 not available to them, constitutes “a severe burden triggering strict scrutiny.” Br. at 17:9-10. In short,
 11 just the unrealistic possibility that they could someday require an exceptionally large magazine for
 12 self-defense creates an entitlement to that magazine, in Plaintiffs’ view, and they have no need to show
 13 (and cannot show) that such a scenario is likely in even the smallest degree.

14 Under that view of the *Chovan* test, firearms law would look dramatically different than it does
 15 today. The LCM bans and assault weapons bans of California and eight other states would fail.²⁰
 16 Other familiar restrictions like bans on Saturday night specials or sawed-off shotguns would be in
 17 doubt if their proponents could articulate any scenario where they might be useful for self-defense.
 18 *See* Zimring Dec. ¶ 11. And governments would have few tools to stop or slow an arms race of more
 19 and more powerful weapons sold on civilian markets. *See generally* Violence Policy Center, *The*
 20 *Militarization of the U.S. Civilian Firearms Market*, *supra*. Nothing in *Chovan* or *Heller* requires such
 21 a result, in light of the overwhelming evidence that LCMs are unnecessary for effective self-defense.

22 **B. The LCM Ban Is Constitutional Because It Advances San Francisco’s Compelling**
 23 **Interest in Mitigating Gun Violence.**

24 Under intermediate scrutiny, San Francisco’s ban on possession of large-capacity magazines is
 25 constitutional if “the government’s stated objective [is] significant, substantial, or important; and

26 _____
 27 ²⁰ For LCM bans, *see supra* at pp. 3-4. For assault weapons bans, *see* Cal. Penal Code
 28 §§ 30600 *et seq.*; Conn. Gen. Stat. § 53-202c; D.C. Code § 7-2502.02; Haw. Rev. Stat. Ann. § 134-8;
 Md. Code Ann., Crim. Law §§ 4-301 *et seq.*; Mass. Gen. Laws Ann. ch. 140, § 131M; N.J. Stat. Ann.
 § 2C:39-5(f); N.Y. Penal Law § 265.02(7).

1 [there is] a reasonable fit between the challenged regulation and the asserted objective.” *Chovan*, 735
2 F.3d at 1139. The LCM ban meets that test.

3 “The regulation of firearms is a paramount issue of public safety, and recent events . . . are a
4 sad reminder that firearms are dangerous in the wrong hands. *Osterweil v. Bartlett*, 706 F.3d 139, 143
5 (2d Cir. 2013) (O’Connor, J.) (citing James Barron, *Gunman Massacres 20 Children at School in*
6 *Connecticut; 28 Dead, Including Killer*, N.Y. Times, Dec. 15, 2012, at A1). Plaintiffs do not dispute
7 that the public safety aims of Police Code § 619 are compelling, nor could they.

8 San Francisco’s ban on large-capacity magazines bears a substantial relationship to this
9 interest. LCM bans operate by decreasing the supply of LCMs that are available. When they are in
10 effect long enough, they depress the supply of LCMs that are available for criminal uses. Koper Dec.
11 ¶ 39. That, in turn, has been shown to have an effect on criminal uses of LCMs. *Id.* ¶¶ 45-51. Thus,
12 Plaintiffs’ argument that San Francisco’s ban will be ineffective because it will affect only the law-
13 abiding and not criminals, Br. at 21-22, misses the point. Koper Dec. ¶ 39.

14 Plaintiffs also criticize San Francisco’s LCM ban because, they contend, the federal assault
15 weapons ban and LCM ban did not impact crime. Br. at 19. But the only academic studies of that ban
16 on which they rely were conducted by Dr. Koper, who believes that it had a limited but meaningful
17 effect, and that its effect would have grown had it not grandfathered existing magazines and assault
18 weapons and had it not expired after 10 years. Koper Dec. ¶¶ 45-52. Plaintiffs mischaracterize Dr.
19 Koper’s views by relying on his work to suggest otherwise. As he attests, Police Code § 619 is “a
20 reasonable and well-constructed measure that is likely to advance San Francisco’s interest in
21 protecting its citizens and its police force,” especially if it is “adopted in other jurisdictions as well.”
22 Koper Dec. ¶¶ 57-58.

23 In any event, the criticisms Plaintiffs mount of the LCM ban are ultimately disagreements with
24 San Francisco’s legislative choices. On intermediate scrutiny, courts defer to legislative judgments
25 about whether a measure is substantially related to a compelling state goal. *Kachalsky*, 701 F.3d at 97;
26 *see also United States v. Carter*, 669 F.3d 411, 418 (4th Cir. 2012). “In the context of firearm
27 regulation, the legislature is ‘far better equipped than the judiciary’ to make sensitive policy judgments
28 (within constitutional limits) concerning the dangers in carrying firearms and the manner to combat

1 those risks.” *Kachalsky*, 701 F.3d at 97 (quoting *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 665
2 (1994)). Plaintiffs’ evidence falls far short of overcoming San Francisco’s reasoned legislative
3 judgment here.

4 **C. Plaintiffs Misread *Heller* When They Ask the Court to Strike Down Police Code
5 § 619 Categorically**

6 Plaintiffs contend that the LCM ban is categorically invalid because large-capacity magazines
7 are “typically possessed by law-abiding citizens for lawful purposes.” Br. at 9 (quoting *Heller*, 554
8 U.S. at 625). Thus, they claim, this Court should treat it the same as the Supreme Court treated the
9 District of Columbia’s handgun ban in *Heller*, and strike it down without resort to any standard of
10 review. As discussed above at pages 11-12, Plaintiffs’ evidentiary showing of the popularity of LCMs
11 is speculative and says nothing about whether they are in common use for self-defense, particularly in
12 California, where they have been illegal for purchase since 2000. But more importantly, Plaintiffs
13 misread *Heller* and the common-use test.

14 Under Plaintiffs’ methodology, the test is this: One looks for whether a firearm (or a firearm
15 accessory, as here) is in “common use” by counting the numbers of that firearm or accessory in
16 circulation. Then, if the number is sufficiently high, the government either can *never* prohibit the sale
17 of that firearm, no matter what dire harm it is someday is proven to cause, or the government can only
18 prohibit its sale if that prohibition withstands strict scrutiny.

19 That would be a perverse test indeed. For the government, it would give incentives to prohibit
20 any new firearms technology as soon as it is developed, lest it become popular and thus unregulable,
21 no matter what its consequences. And it would put a great deal of power in the hands of firearms
22 manufacturers to boost new products at any cost—including the militarized novelty products that that
23 industry has focused on selling to committed gun owners as the number of gun-owning households in
24 America has dropped, *see* Violence Policy Center, *The Militarization of the U.S. Civilian Firearms*
25 *Market, supra*, at 1, 15, 40; Testimony of Laurence H. Tribe before Senate Judiciary Committee, Feb.
26 12, 2013, at 14 (Van Aken Dec. Ex. 36). Such a test would also place the constitutionality of firearms
27 prohibitions in the hands of enthusiasts who could determine the content of constitutional protections
28 simply by stockpiling new items. *Cf.* Donohue Decl. ¶ 8.

1 *Heller* does not demand such a strange test. *Heller* explains, in Section III of the majority
2 opinion, that “the right secured by the Second Amendment is not unlimited.” 554 U.S. at 626. To
3 illustrate the limited nature of the right, *Heller* states that “nothing in our opinion should be taken to
4 cast doubt on” a host of “presumptively lawful regulatory measures,” *id.* at 626-27 & n.26, and that the
5 Second Amendment does not protect all arms. For example, the Second Amendment extends no
6 protection at all to arms that are not “in common use at the time.” *Id.* at 627 (quoting *United States*
7 *v. Miller*, 307 U.S. 174, 179 (1939); *see also* Tribe Testimony, *supra*, at 11 (“[T]he Court carefully
8 frames the scope of the Second Amendment to cover *only* firearms ‘in common use at the time.’”).
9 Such arms can be entirely prohibited without further judicial inquiry. *Heller*, 554 U.S. at 625.

10 But when, in the following Section IV, *Heller* applies these principles to the District of
11 Columbia’s handgun ban, it does *not* say the converse, *i.e.*, that arms in common use cannot be
12 prohibited. Instead, in striking down the handgun ban “[u]nder any of the standards of scrutiny that
13 [the Court has] applied to enumerated constitutional rights,” *Heller* emphasizes both the breadth of
14 D.C.’s ban—“a prohibition of an entire class of ‘arms’”—and how singularly well-suited handguns are
15 for self-defense purposes. 554 U.S. at 628-29. Indeed, *Heller* could hardly have emphasized the
16 utility of handguns for self-defense more: It calls them “the quintessential self-defense weapon,” it
17 lists the many reasons why people prefer handguns to long guns in the event of a self-defense
18 emergency, it says they are “the most preferred firearm in the nation,” and it calls them “the most
19 popular weapon chosen by Americans for self-defense in the home.” *Id.*

20 None of that is true of large-capacity magazines. Police Code § 619 does not prohibit “an
21 entire class of arms” but instead certain varieties of magazines, a type of equipment that can be used
22 with many classes of arms. All otherwise legal varieties of handguns and long guns remain available
23 to Plaintiffs. And far from being singularly well-suited to self-defense, large-capacity magazines are
24 almost never useful in self-defense situations.

25 Moreover, even if large-capacity magazines were useful for self-defense, it would still be
26 inappropriate to apply *Heller*’s categorical treatment of handgun prohibitions to Police Code § 619,
27 because large-capacity magazines are not a class of arms at all. *Heller* defined “arms” as “weapons
28 of offence, or armour of defence.” 554 U.S. at 581 (quoting Samuel Johnson, 1 Dictionary of the

1 English Language 106 (4th ed.) (reprinted 1978)). “Thus, the most natural reading of ‘keep Arms’ in
 2 the Second Amendment is to ‘have weapons.’” *Id.* at 582. Large-capacity magazines are a piece of
 3 equipment used to make weapons more deadly; they are not themselves weapons and they are not an
 4 integral part of any weapon, since smaller magazines can also be used in their stead. Prohibiting them
 5 does not categorically infringe the right to bear arms.

6 **D. Alternatively, Large-Capacity Magazines Are Outside the Second Amendment’s**
 7 **Protections Entirely.**

8 “‘Dangerous and unusual weapons’” are not protected by the Second Amendment at all.
 9 *Heller*, 554 U.S. at 627 (quoting 4 Blackstone’s Commentaries 148-49 (1976)). At least in California,
 10 where they have been prohibited for nearly 15 years except to law enforcement and those who owned
 11 them before the ban took effect, it is arguable whether large-capacity magazines are within the scope
 12 of the Second Amendment at all. And Plaintiffs offer no evidence, beyond anecdote and speculation,
 13 that the purpose for which LCMs are possessed is self-defense or other lawful purposes.²¹

14 Large-capacity magazines show remarkable parallels with short-barreled shotguns. The
 15 National Firearms Act of 1934 imposed a prohibitively high tax on guns with particularly dangerous
 16 features, including rifles with reduced barrels. 8 Stat. 1236 (26 U.S.C. §§ 5801-5821). At the time,
 17 long guns were the most popular guns in circulation, constituting 74% of the guns manufactured
 18 during the first half of the 20th Century. Zimring Dec. ¶¶ 10-11. Thus, the National Firearms Act
 19 restricted citizens’ ability to modify most privately owned guns to make them more dangerous. *Id.*
 20 ¶ 11. The Supreme Court upheld this provision against a Second Amendment challenge. *United*
 21 *States v. Miller*, 307 U.S. 174, 183 (1939). *Heller* later interpreted *Miller* as holding that the Second
 22 Amendment did not protect short-barreled shotguns at all because they were dangerous and unusual
 23 weapons. 554 U.S. at 625.

24 The parallels to this case are plain: LCMs are equipment that can be used with semiautomatic
 25 weapons, which are popular firearms in their day, just as long guns were the essential firearm when

26 _____
 27 ²¹ LCMs are not useful for sporting purposes. The majority of states prohibit their use in
 28 hunting, and federal agencies have consistently confirmed they are not well-suited for sporting
 purposes. *See* U.S. Dep’t of Justice, *ATF Study on the Importability of Certain Shotguns*, Jan. 2011, at
 10, 16-18 (Van Aken Dec., Ex. 37).

1 *Miller* was decided. Yet a modification to a popular firearm that makes it more dangerous—and that
2 is commonly used for unlawful purposes but offers no advantage for nearly all lawful uses—is not
3 protected by the Second Amendment at all. This Court should reject Plaintiffs’ challenge on this basis
4 as well.

5 **III. THE REMAINING PRELIMINARY INJUNCTION FACTORS FAVOR SAN FRANCISCO.**

6 Plaintiffs contend that irreparable injury flows from the denial of their Second Amendment
7 rights. But in view of the speculative nature of their claims that LCMs are necessary for self-defense,
8 they cannot show that they are likely to suffer irreparable harm if they must surrender their LCMs or
9 store them outside of San Francisco while this lawsuit is pending.²² A speculative showing of harm is
10 insufficient to obtain injunctive relief. *Winter*, 555 U.S. at 20 (harm must be “likely”).

11 For the same reasons, Plaintiffs have failed to establish that “the balance of equities tips in
12 [their] favor, and that an injunction is in the public interest.” *Id.* Like a host of other jurisdictions,
13 including the State of California, San Francisco restricts the possession of large-capacity magazines in
14 order to prevent their criminal use. The compelling public safety interest underlying Police Code
15 § 619 tips the equities decisively away from Plaintiffs. This Court should deny Plaintiffs’ motion.

16
17
18 Dated: January 16, 2014

DENNIS J. HERRERA
City Attorney
WAYNE SNODGRASS
CHRISTINE VAN AKEN
Deputy City Attorneys

19
20
21 By: s/Christine Van Aken
22 CHRISTINE VAN AKEN
23 Attorneys for Defendants CITY AND COUNTY OF
24 SAN FRANCISCO, SAN FRANCISCO MAYOR
EDWIN LEE, and SAN FRANCISCO POLICE CHIEF
GREG SUHR

25
26
27 ²² If they surrender their LCMs and later win this case, but cannot buy new LCMs because of
28 California’s prohibition on the transfer of LCMs, that is a consequence of their failure to challenge the
state ban and not something that can create irreparable harm here.

EXHIBIT 23

Declaration of Roderick M. Thompson in Support of Sunnyvale's Opposition to Plaintiffs' Motion for Preliminary Injunction

[ORAL ARGUMENT NOT YET SCHEDULED]

CASE NO. 10-7036

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

DICK ANTHONY HELLER, ABSALOM JORDAN,
WILLIAM CARTER, AND MARK SNYDER

APPELLANTS,

V.

THE DISTRICT OF COLUMBIA AND
ADRIAN M. FENTY, MAYOR, DISTRICT OF COLUMBIA,

APPELLEES.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

**BRIEF FOR PROFESSIONAL HISTORIANS AND LAW PROFESSORS
SAUL CORNELL, PAUL FINKELMAN, STANLEY N. KATZ, AND
DAVID T. KONIG AS *AMICI CURIAE* IN SUPPORT OF APPELLEES**

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CERTIFICATE AS TO PARTIES, RULINGS AND RELATED CASES

Pursuant to Circuit Rule 28(a)(1)(A), the undersigned counsel of record certifies as follows:

(A) **Parties and Amici.** To *amici*'s knowledge, all parties, intervenors, and *amici* appearing in this court are listed in the Brief for Appellees, other than the professional historians and law professors filing this brief as *amici curiae* in support of Appellees.

(B) **Ruling Under Review.** References to the ruling at issue appear in the Brief for Appellants.

(C) **Related Cases.** References to related cases appear in the Brief for Appellants.

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INTERESTS OF *AMICI CURIAE* AND SUMMARY OF ARGUMENT

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INTRODUCTION AND SUMMARY OF ARGUMENT

In *District of Columbia v. Heller*, the Court observed that “the right secured by the Second Amendment is not unlimited,” and that “nothing in our opinion should be taken to cast doubt on” the validity of various historical regulations of gun use. 128 S. Ct. 2783, 2816-17 (2008). It identified some of these historical regulations, such as laws prohibiting “the possession of firearms” by certain types of persons, laws “imposing conditions and qualifications” on gun sales, and noted “the historical tradition of prohibiting the carrying of ‘dangerous and unusual weapons.’” *Id.*

The regulations at issue here fall within the tradition of historical gun use regulations identified in *Heller*. The use of registration requirements to regulate firearms has been a consistent and common historical practice in the United States. For example, early laws regulating the militias, which at the time comprised “the body of all citizens capable of military service,” required regular weapons inspections and registration with the States. Early registration laws often extended even more broadly, as several states conditioned the ownership of firearms on the swearing of an oath of loyalty and also required the recordation of related information. And states and cities continued to use registration requirements into the twentieth century by enacting laws designed to control the new dangers arising from the use of handguns in densely populated urban centers.

State and local governments have also exercised their police powers throughout our nation’s history to limit and ban the use of particularly dangerous weapons and ammunition. At or near the time of the founding, governments regulated the storage of gunpowder in order to protect against fires and accidental shootings. By the early nineteenth century, governments placed many limitations on the use and carrying of certain classes of concealable weapons, which were perceived to pose unique dangers to the citizenry. And state legislatures continued to enact broad restrictions on the possession of dangerous weapons in the years

following adoption of the Fourteenth Amendment. All of these restrictions (if challenged at all) have by and large been upheld by the courts.

ARGUMENT

I. STATES AND MUNICIPALITIES HAVE LONG IMPOSED REQUIREMENTS AKIN TO THE DISTRICT'S REGISTRATION REGULATIONS, AND THESE REQUIREMENTS HAVE BEEN UNDERSTOOD TO BE CONSISTENT WITH THE RIGHT TO BEAR ARMS.

From the nation's founding until today, states have used registration requirements to regulate the possession of firearms. During the founding period, these state and local laws included registration and training requirements, as well as requirements that persons eligible for militia service subject their personal firearms to regular inspection. Several states even conditioned the exercise of gun rights on individual registration with local governments and the swearing of an oath of loyalty to the State. Governments also continued to use registration schemes throughout the nineteenth and twentieth centuries to protect the public safety, most recently as a tool to control new dangers arising from the use of handguns in densely populated urban centers.

A. States in the Early Republic Regularly Conditioned the Right to Bear Arms on Registration, Training, and Reporting with the Authorities.

1. Registration requirements and similar laws date back to the militia-related origins of the Second Amendment. In the early Republic, militias were crucial to the nation's defense, and were responsible for "repelling invasions and

suppressing insurrections.” *District of Columbia v. Heller*, 128 S. Ct. 2783, 2800 (2008). Thus, the Second Amendment states that a “well regulated Militia” is “*necessary to the security of a free State.*” U.S. Const. amend. II (emphasis added). As with the individual right to bear arms, the State militias were “assumed by Article I [and the Bill of Rights] already to be *in existence*” at the time of ratification. *See Heller*, 128 S. Ct. at 2800. Early militias did not consist merely of persons with specialized training or weaponry. Rather, “the conception of the militia at the time of the Second Amendment’s ratification was the body of all citizens capable of military service, who would bring the sorts of lawful weapons that they possessed at home to militia duty.” *Id.* at 2817.¹ Accordingly, during the founding era, most States enacted militia laws regulating large portions of the population deemed eligible for service. *See, e.g.*, 1776 Mass. Acts at 15-22; 1778 N.Y. Laws at 62-71; Act of Mar. 20, 1780, ch. CLXVII, 1780 Pa. Laws 347; Act of Feb. 5, 1782, 1782 Del. Laws 3; Act of Mar. 26, 1784, 1784 S.C. Acts 68; Act of May 8, 1792, 1792 Conn. Pub. Acts 440.

State militia laws generally required that all persons eligible for service submit to training and registration with appropriate authorities, and also required

¹ In New York, for example, the militia consisted of “every able bodied male person Indians and slaves excepted residing within [the] State from sixteen years of age to fifty.” Act of Apr. 3, 1778, ch. 33, 1778 N.Y. Laws 62, 62. In Massachusetts, the militia was divided into different groups, but generally included any “able-bodied Male Persons . . . from sixteen Years old to fifty.” Act of July 19, 1776, ch. I, § 1, 1776 Mass. Acts 15, 15.

those same individuals to submit their arms for inspection. *See* Saul Cornell & Nathan DeNino, *A Well Regulated Right: The Early American Origins of Gun Control*, 73 *Fordham L. Rev.* 497, 508-10 (2004). For example, in South Carolina the Governor could order regimental musters at least once a year, and individual companies could be mustered every two months. *See* 1784 S.C. Acts at 68. In New York, members were required to attend a regimental parade in April and November of every year. *See* 1778 N.Y. Laws at 65. During these parades, the “the arms, ammunition and accoutrements of each man [were] examined, and the defaulters . . . noted.” *Id.* Also noted were the names of those who failed to attend altogether. Individuals who either failed to attend, or whose arms failed inspection, were fined, and the names of those absent were sent to the governor or brigadier general for appropriate disciplinary action. *Id.* Similarly, in Massachusetts, the clerk of each company was required biannually to make “an exact List of [each man in the] Company, and of each Man’s Equipments.” 1776 Mass. Acts at 18. These lists were sent on to the company’s and the regiment’s commanding officers. *Id.* In addition, those who neglected their duties, either by failing to muster or by neglecting their firearms, faced steep fines. *Id.* at 19.

George Washington similarly expressed his understanding that the nation’s security demanded that its citizens submit to regular inspection of their firearms. Thus, Washington stated that the federal militia ought to be “regularly Mustered

and trained, and to have their Arms and Accoutrements inspected at certain appointed times, not less than once or twice in the course of every [year].” George Washington, Sentiments on a Peace Establishment (May 2, 1783), in 3 The Founders’ Constitution 129 (Philip B. Kurland & Ralph Lerner eds., 1987).

The Supreme Court explained in *Heller* that the Framers codified the right to bear arms in the Second Amendment with the aim of protecting and preserving militias as they existed at the time of the founding—including the laws and regulations described above, which were necessary to the militias’ continued existence. *See* 128 S. Ct. at 2801. Accordingly, these laws and regulations, which included requirements that gun-owners regularly assemble for weapons training, submit their firearms for inspection, and identify themselves to the state, would have been understood to be consistent with (and indeed supportive of) the right to bear arms in the early Republic.

2. States in the early Republic also enacted loyalty statutes requiring all males over a certain age to identify themselves and swear allegiance to state and local authorities, or else to be disarmed. These loyalty statutes effectively conditioned the very possession of firearms in the general population on registration and other requirements more burdensome than those at issue in this case.

Virginia, for instance, enacted a law requiring citizens to take a recorded loyalty oath or face disarmament. The law stated that “allegiance and protection are reciprocal, and those who will not bear the former are not entitled to the benefits of the latter,” and accordingly conditioned the possession of arms by “all free born male inhabitants . . . above the age of sixteen years” on the taking of an “oath or affirmation before some one of the justices of the peace of the county, city, or borough, where they shall respectively inhabit.” Act of May 5, 1777, ch. III, 1777 Va. Acts 8. Additionally, the justices of the peace were directed to “make a tour of the county, and tender the oath . . . to every free born male person above the age of sixteen,” to *record* the name and information of oath-takers, and to “cause . . . recusants to be disarmed.” *Id.*

Similar requirements were enforced in states that, as the Supreme Court concluded, had adopted provisions “analog[ous] to the Federal Second Amendment” in their constitutions prior to the ratification of the Bill of Rights. *Heller*, 128 S.Ct. at 2802-03. Pennsylvania’s 1776 Constitution, for example, guaranteed “[t]hat the people have a right to bear arms for the defence of themselves and the state.” Pa. Decl. of Rights § XIII (1776), in 5 *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws* 3081, 3083 (Francis N. Thorpe ed., 1909); *Heller*, 128 S. Ct. at 2802. One year after the ratification of its Constitution, the Pennsylvania government passed the Test Acts,

which required each male white inhabitant above the age of eighteen years to *register* his name with the local justice of the peace and take a loyalty oath before the State or else “be disarmed by the lieutenant or sublieutenants of the City or County [where he inhabits].” *See* Act of June 13, 1777, ch. 21, 1777 Pa. Laws 61, 62-63.

Similarly, Massachusetts required that “every Male Person above sixteen Years of Age . . . who shall neglect or refuse to subscribe a printed or written [loyalty oath] . . . shall be disarmed, and have taken from him . . . all such Arms, Ammunition and Warlike Implements, as by the strictest Search can be found in his Possession or belonging to him.” Act of Mar. 14, 1776, ch. VII, 1776 Mass. Acts 31, 32; *c.f. Heller*, 128 S. Ct. at 2803. A related provision authorized state officials to search a non-compliant person’s home for any weapons, and to seize those weapons upon evidence that he violated the registration and oath requirements. 1776 Mass. Acts at 32-33.

B. States Have Continued to Use Registration for the Sale, Transfer, or Possession of Firearms to Protect the Public Safety

State and local governments continued to use registration to protect the public safety into the twentieth century, primarily as a tool to address new dangers arising from firearms becoming cheaper, deadlier, and more readily available in more densely populated urban centers.

The expanding economy in the nineteenth century increased the availability of pistols and other weapons used for personal self-defense. See Saul Cornell, *A Well-Regulated Militia: The Founding Fathers and the Origins of Gun Control in America* 137 (2006). Major cities, including Boston, Philadelphia, New Orleans, and New York began to issue revolvers to their police forces for the first time. See, e.g., Roger Lane, *Policing the City: Boston, 1822-1885* (1967); Dennis Rousey, *Policing the Southern City: New Orleans, 1805-1889* (1996). The growth of urban centers was also bringing more people of more varied backgrounds closer together than ever before. This combination of urbanization and the increased availability of firearms brought new dangers, and gun-related homicide rates steadily increased. See *Revolver Killings Fast Increasing; Legislative Measure to be Urged for Curbing the Sale of Firearms*, *New York Times*, Jan. 30, 1911.

States and localities once again turned to registration and licensing requirements to address these public safety concerns. An assassination attempt on New York's Mayor William J. Gaynor in 1910, for example, led the state to consider its first major gun reform, which included significant licensing and registration requirements. See Cornell, *A Well Regulated Militia*, *supra*, at 197. The legislation, which was signed into law on May 29, 1911, required the issuance of a license by the local government for the possession of a pistol, revolver, or other concealable firearm. See Act of May 25, 1911, ch. 195, § 1, 1911 N.Y. Laws

442, 443. It also directed sellers to record the “date of sale, name, age, occupation and residence of every purchaser of such a pistol, revolver or other firearm, together with the calib[er], make, model, manufacturer’s number or other mark of identification on such pistol, revolver or other firearm.” *Id.* § 2, 1911 N.Y. Laws at 444.

Many other states enacted similar licensing and registration requirements during this period. Although the details of these varied, as a general matter they required individuals to provide detailed information to, and obtain permission from, a government official in order to bear arms. In addition, some states required inspection of weapons and obtaining particular licenses. For example:

- In California, any person selling, leasing, or transferring a firearm of the type which could be concealed was required to “keep a register” containing information about the sale and the purchaser, and the seller and the purchaser were directed to sign a form with the information and submit it to government officials. Act of May 4, 1917, ch.145, § 7, 1917 Cal. Laws 221, 222-23.
- Connecticut made it a crime for any person to “carry . . . any pistol [or] revolver . . . unless such person shall have been granted a written permit issued and signed by the mayor or chief of police of a city, warden of a borough, or the first selectman of a town, authorizing such person to carry such weapon or instrument within such city, borough or town.” Act of Apr. 10, 1917, ch. 129, 1917 Conn. Laws 98, 98.
- Georgia made it “unlawful for any person to have or carry about his person, in any county in the State of Georgia, any pistol or revolver without first taking out a license from the Ordinary of the respective counties in which the party resides.” Act of Aug. 12, 1910, No. 432, § 1, 1910 Ga. Laws 134, 134. A public official was directed to “keep a record of the name of the person taking out such license, the name of the maker of the fire-arm to be

carried, and the caliber and number of the same.” *Id.* § 2, 1910 Ga. Laws at 135.

- A Nevada law made it “unlawful for any person . . . to wear, carry or have concealed upon his person, in any town any . . . pistol . . . or other dangerous weapon, without first obtaining permission from the Board of County Commissioners.” Act of Mar. 17, 1903, ch. CXIV, § 1, 1903 Nev. Laws 208, 208-09.
- A New Hampshire law provided that “[t]he selectmen of towns or the mayor or the chief of police of cities may, upon the application of any person issue a license to such person to carry a loaded pistol or revolver in this State, if it appears that the applicant is a suitable person to be so licensed.” Act of Apr. 6, 1909, ch. 114, § 3, 1909 N.H. Laws 451, 451-52.
- Oregon law stated that “[n]o person shall carry in any city, town or municipal corporation of this State any pistol, revolver or other firearm . . . of a size which may be concealed upon his or her person, without a license or permit therefor, issued to him or her [by the local government] . . . ” Act of Feb. 21, 1917, ch. 377, § 1, 1917 Or. Laws 804.
- In West Virginia, it was a misdemeanor to “carry about [one’s] person any revolver or other pistol,” but a license could be obtained by publishing in a newspaper notice of intent to acquire a license, and making a showing to a circuit court judge that the applicant was of good moral character and had cause for carrying a weapon. Act of Apr. 23, 1925, ch. 95, 1925 W.V. Laws 389, 389-90.
- Hawaii also generally prohibited carrying a pistol or revolver outside the home without a license. Small Arms Act, Act 206, 1927 Haw. Laws 209. Licenses were issued by “[t]he judge of a court of record or the sheriff of a county, or city and county . . . if it appears that the applicant has good reason to fear an injury to his person or property, or has any other proper reason for carrying a pistol or revolver, and that he is a suitable person to be so licensed.” *Id.* § 7, 1927 Haw. Laws at 210.
- Michigan enacted a law that required “any person within this State who owns weapons or has in his possession a pistol” to “present such weapon for safety inspection to the commissioner or chief of police A certificate of inspection shall thereupon be issued . . . [and] mailed to the commissioner of public safety and filed and indexed by him and kept as a permanent official

record for a period of six years.” Act of June 2, 1927, No. 372, § 9, 1927 Mich. Laws 887, 891.

For these reasons, it has been common practice for jurisdictions across the United States to condition the right to bear arms on an individual’s willingness to provide information to government officials and register his or her firearms.

II. STATES AND MUNICIPALITIES HAVE LONG BANNED DANGEROUS WEAPONS, AND COURTS HAVE UPHELD THESE REGULATIONS AS CONSISTENT WITH THE RIGHT TO BEAR ARMS.

Since the Founding, states and municipalities have possessed broad “police power” to enact safety regulations protecting the public. *See* William J. Novak, *The People's Welfare: Law and Regulation in Nineteenth-Century America* 53-54 (1996). Jurisdictions have exercised their police powers to regulate arms in many ways, including, as explained above, with laws akin to the registration requirements challenged here. But one constant has been that governments have repeatedly banned weapons that the community views to be particularly dangerous in that jurisdiction. That was the case with gunpowder in cities in the eighteenth century, with certain types of knives and handguns in nineteenth-century states and towns, and with certain types of semi-automatic weapons and ammunition in more recent years. And courts have repeatedly upheld these types of bans of dangerous weapons against constitutional challenges.

A. States and Cities Have Historically Outlawed Dangerous Weapons.

1. In one early form of regulation, several states regulated the storage of gunpowder in order to protect against the accidental discharge of a weapon during a fire, in some instances effectively banning the possession of loaded weapons in the home.² As Chief Justice Marshall observed, “[t]he power to direct the removal of gunpowder is a branch of the police power, which unquestionably remains, and ought to remain, with the States.” *Brown v. Maryland*, 25 U.S. (12 Wheat.) 419, 443 (1827). He explained that “[t]he removal or destruction of infectious or unsound articles is, undoubtedly, an exercise of that power.” *Id.* at 444.

Shortly thereafter, other states, including Ohio, Tennessee, and Virginia, enacted laws regulating the discharge of guns, particularly in potentially crowded public places like the town square.³ Since the Founding, then, states and local

² See, e.g., Act of June 26, 1792, ch. 10, 1792 Mass. Acts 208; Act of Apr. 13, 1784, ch. 28, 1784 N.Y. Laws 627; Act of Dec. 6, 1783, ch. 1059, 11 Pa. Stat. 209; see also *Heller*, 128 S. Ct. at 2819 (stating that the Massachusetts law would have been construed to permit self-defense and, “[i]n any case, we would not stake our interpretation of the Second Amendment upon a single law, in effect in a single city”); *id.* at 2849 (Breyer, J., dissenting) (describing various laws regulating gunpowder). Antebellum courts repeatedly upheld such regulations. See, e.g., *Foote v. Fire Dep’t of New York*, 5 Hill 99, 101 (N.Y. Sup. Ct. 1843) (“The statute is a mere police regulation—an act to prevent a nuisance to the city”); *Williams v. City Council*, 4 Ga. 509, 512 (1848).

³ See, e.g., Act of Feb. 17, 1831, ch. 834, § 6, in 3 *The Statutes of Ohio and of the Northwestern Territory* 1740 (Salmon P. Chase ed., 1835); Act of Dec. 3, 1825, ch. 292, § 3, 1825 Tenn. Priv. Acts 306; Act of Jan. 30, 1847, ch. 79, 1846-1847 Va. Acts 67; Act of Feb. 4, 1806, ch. 94, 1805-1806 Va. Acts 51.

governments have regulated arms when necessary to protect citizens from such threats to public safety as fires and accidental shootings.

2. In the early part of the nineteenth century, the states were confronted with an additional problem concerning firearms. In the years since the colonial era, weapons had grown smaller and cheaper, and the practice of traveling with concealed weapons, such as handguns and knives, had become both common and dangerous. *See* Cornell, *A Well-Regulated Militia, supra*, at 137-40. Perceiving a threat to their citizens' safety, many state legislatures responded to this new danger by enacting laws prohibiting the carrying of concealed weapons. *See id.* at 140. Kentucky passed the first of these in 1813, prohibiting the wearing of a "pocket pistol, dirk, large knife, or sword in a cane, concealed as a weapon," with a narrow exception for "when traveling on a journey." Act of Feb. 13, 1813, ch. 89, 1813 Ky. Acts 100, *in* Cramer, *supra*, at 143-44. Louisiana passed a similar ban the same year. Other states soon followed suit.⁴

Several states went further in response to this new threat, deciding not only to outlaw the carrying of concealed weapons, but to proscribe entire classes of concealable weapons, which by their nature posed threats to public safety. In 1837, for example, Alabama imposed a tax on the sale or giving of Bowie Knives

⁴ See statutes from Alabama, Virginia, Arkansas, and Indiana, *in* Clayton E. Cramer, *Concealed Weapon Laws of the Early Republic: Dueling, Southern Violence, and Moral Reform* 145-46, 150-52 (1999), and from Ohio, Act of Mar. 18, 1859, 1859 Ohio Laws 56.

or Arkansas Tooth-picks. *See* Act of June 30, 1837, 1837 Ala. Acts 11, *in Cramer, supra*, at 146. The following year, Tennessee altogether banned the wearing, sale, or giving of the same weapons. *See* Act of Jan. 27, 1838, ch. CXXXVII, 1837-1838 Tenn. Pub. Acts 200, *in Cramer, supra*, at 148-49; *see also* Cornell, *A Well-Regulated Militia, supra*, at 142 (describing the Alabama and Tennessee statutes as “more robust” than earlier statutes by “effectively moving from regulation to prohibition of certain classes of weapons”). The Founders understood the protections of the Second Amendment to apply to these edged weapons, as they were typically associated with the militia. *See* Saul Cornell, *The Original Meaning of Original Understanding: A Neo-Blackstonian Critique*, 67 Md. L. Rev. 150, 157 n.42 (2007). It was therefore generally recognized in the period before the Civil War that American governments could react to threats to the public safety through reasonable regulation of the right to bear arms, including outlawing certain classes of particularly dangerous weapons.

3. States continued to enact broad restrictions on the possession of weapons in the years following the Civil War. These regulations were more pervasive than those enacted during the antebellum period. Even when new state constitutions contained a right to bear arms not expressly subject to legislative regulation,⁵

⁵ *See* Ala. Const. of 1868, art. I, § 28; Ark. Const. of 1868, art. I, § 5; Del. Const. of 1897, art. I, § 20; Or. Const. of 1857, art. I, § 27; Pa. Const. of 1874, art. I, § 21;

legislatures still regulated firearms.⁶ Several even imposed outright bans on handguns.

The most common regulations of the period were concealed-weapons laws. At least fifteen states prohibited the carrying of concealed pistols and deadly weapons, some explicitly covering all firearms or all weapons.⁷ Although three of these statutes created exceptions for travelers, persons on their own premises, or those with a legitimate fear of attack,⁸ the majority contained no such exceptions.

But concealed-weapons laws were not the only legislative prerogative exercised at the time. At least four states banned the possession of all non-military handguns. Tennessee criminalized carrying, “publicly or privately, any . . . belt or pocket pistol, revolver, or any kind of pistol, except the army or navy pistol, usually used in warfare, which shall be carried openly in the hand.” 1879 Tenn.

S.C. Const. of 1868, art. I § 28; S.D. Const. of 1889, art. VI, § 24; Wash. Const. of 1889, art. I, § 24; Wyo. Const. of 1889, art. I, § 24.

⁶ See Act of Apr. 1, 1881, 1881 Ark. Acts 191; Act of Feb. 18, 1885, ch. 8, § 1–4, 1885 Or. Laws 33; 1880 S.C. Acts 448, § 1; S.D. Terr. Pen. Code § 455 (1877); Wash. Code § 929 (1881); 1876 Wyo. Laws ch. 52, § 1.

⁷ See Act of Apr. 1, 1881, 1881 Ark. Acts 191; Colo. Rev. Stat. § 149, at 229 (1881); Fla. Act of Feb. 12, 1885, ch. 3620, § 1; Ill. Act of Apr. 16, 1881; Ky. Gen. Stat., ch. 29, § 1 (1880); Neb. Cons. Stat. § 5604 (1893); 1879 N.C. Sess. Laws, ch. 127; N.D. Pen. Code § 457 (1895); Act of Feb. 18, 1885, ch. 8, §§ 1–4, 1885 Or. Laws 33; 1880 S.C. Acts 448, § 1; S.D. Terr. Pen. Code § 457 (1877); Tex. Act of Apr. 12, 1871; 1869–1870 Va. Acts 510; Wash. Code § 929 (1881); W. Va. Code ch. 148, § 7 (1870).

⁸ See Neb. Cons. Stat. § 5604 (1893); 1879 N.C. Sess. Laws, ch. 127; 1880 S.C. Acts 448, § 1.

Pub. Acts, ch. 186. The only persons exempted from the statute were military personnel and those performing specified law enforcement functions. *Id.* Perhaps most pertinent here, the Tennessee Supreme Court construed the act to apply even “upon one’s own farm or premises, or in fact in *any place.*” *Dycus v. State*, 74 Tenn. 584, 585 (1880) (emphasis added); *see also Barton v. State*, 66 Tenn. 105, 105-06 (1874).

Tennessee was not alone in such regulation. Wyoming likewise forbade anyone from “bear[ing] upon his person, concealed or openly, any fire-arm or other deadly weapon, within the limits of any city, town or village.” 1876 Wyo. Laws ch. 52, § 1. Arkansas and Texas enacted similar bans. *See* Act of Apr. 1, 1881, No. 96, 1881 Ark. Acts 191; Tex. Act of Apr. 12, 1871. States also outlawed the sale of non-military pistols,⁹ or prohibited specific weapons elected officials determined were public dangers.¹⁰

Municipalities likewise enacted their own regulations. Dodge City, Kansas, for example, banned the carrying of pistols and other dangerous weapons in response to violence accompanying western cattle drives. *See* Dodge City, Kan., Ordinance No. 16, § XI (Sept. 22, 1876); Robert R. Dykstra, *The Cattle Towns* 121-22 (1968).

⁹ *See* Ark. Act of Apr. 1, 1881; 1879 Tenn. Pub. Acts, ch. 96.

¹⁰ *See* Fla. Act of Aug. 8, 1868; Ill. Act of Apr. 16, 1881; 1850 Mass. Laws, ch. 194, § 2; N.D. Pen. Code § 457 (1895); S.D. Terr. Pen. Code § 455 (1877).

B. Courts Have Historically Upheld Restrictions On Dangerous Weapons

1. In the early Republic, state courts repeatedly upheld arms-regulating statutes against constitutional attack, even when the pertinent state constitution explicitly protected the right to bear arms. *See, e.g., Day v. State*, 37 Tenn. 496, 499 (1857); *Aymette v. State*, 21 Tenn. 154, 159-61 (1840) (right to keep weapons is unqualified, but right to bear arms for purposes other than the common defense can be regulated); *State v. Buzzard*, 4 Ark. 18, 21 (1842); *State v. Chandler*, 5 La. Ann. 489, 489-90 (1850) (upholding a ban on concealed weapons that was “absolutely necessary to counteract a vicious state of society, growing out of the habit of carrying concealed weapons”); *State v. Jumel*, 13 La. Ann. 399, 400 (1858) (upholding a concealed-weapons law because it only banned a “*particular mode* of bearing arms which is found dangerous to the peace of society”); *State v. Reid*, 1 Ala. 612, 616-17 (1840) (holding that it was permissible for the state to regulate weapons “merely to promote personal security” by prohibiting the wearing of weapons “in such a manner as is calculated to exert an unhappy influence upon the moral feelings of the wearer, by making him less regardful of the personal security of others”). Courts thus recognized that states and localities had authority to exercise their police powers to regulate weapons deemed particularly dangerous.

Against this backdrop, there are two major outliers. The first is *Bliss v. Commonwealth*, 12 Ky. 90, 91, 93 (1822), in which the Kentucky Supreme Court declared Kentucky's concealed-weapons ban in conflict with its Constitution. As commentators in the era of the Fourteenth Amendment recognized, *Bliss* is properly understood as the exception, not the rule, in judicial decisions involving challenges to gun-safety regulations. See 2 Joel Prentiss Bishop, *Commentaries on the Criminal Law* § 125, at 75-76 (4th ed. 1868). And, indeed, it was so anomalous that the legislature responded by amending the state constitution to allow a concealed-weapons ban. See Ky. Const. of 1850, art. XIII, § 25.

The second outlier is *Nunn v. State*, in which the Georgia Supreme Court used broad language in upholding a constitutional challenge against part of a Georgia law banning the open carry of a horseman's pistol. *Nunn v. State*, 1 Ga. 243, 251 (1846). The same court, however, upheld the portion of the law which prohibited the carry of "certain weapons secretly." And the Georgia Supreme Court has since taken a narrow reading of *Nunn*, stating on two separate occasions that "evidently [*Nunn*] was never intended to hold that men, women, and children had some inherent right to keep and carry arms or weapons of every description, which could not be infringed by the legislature, unless as a result of the constitutional provision under consideration." *Strickland v. State*, 137 Ga. 1, 8 (1911); *Carson v. State*, 241 Ga. 622, 627-28 (1978). Indeed, the Georgia

Supreme Court later cited *Nunn* in *upholding* a 1910 law that prohibited any person from carrying a revolver without a license. *Strickland*, 137 Ga. at 8.

Similarly, the vast majority of state and local laws regulating or outlawing dangerous arms were upheld as paradigmatic examples of the exercise of police power. “The acknowledged police power of a State extends often to the destruction of property. A nuisance may be abated. Every thing prejudicial to the health or morals of a city may be removed.” *Thurlow v. Massachusetts (The License Cases)*, 46 U.S. (5 How.) 504, 589-91 (1847) (McLean, J., dissenting). This power, Justice McLean explained, is “essential to self-preservation, and exists, necessarily, in every organized community. It is, indeed, the law of nature, and is possessed by man in his individual capacity. He may resist that which does him harm, whether he be assailed by an assassin, or approached by poison.” *Id.* at 589. Thus, for example, in light of the “explosive nature of gunpowder, a city may exclude it” as an “act[] of self-preservation.” *Id.* For “[i]ndividuals in the enjoyment of their own rights must be careful not to injure the rights of others.” *Id.*

2. In the wake of the Civil War and adoption of the Fourteenth Amendment, courts continued to recognize state legislative authority to regulate dangerous weapons, including handguns. The Tennessee Supreme Court’s *Andrews v. State* decision is illustrative. 50 Tenn. 165, 171 (1871). The plaintiffs there challenged

a statute forbidding any person to “publicly or privately carry any . . . pocket pistol . . . or revolver,” Tenn. Act of June 11, 1870, asserting “that it is in violation of, and repugnant to” the Second Amendment of the U.S. Constitution and Tennessee’s constitution. 50 Tenn. at 171. The court interpreted the statute to “amount[] to a prohibition to keep and use such weapon for *any and all purposes*.” *Id.* at 187 (emphasis added). Although the court held that the federal Constitution did not limit the state legislature, *id.* at 175, it interpreted the state right-to-bear-arms provision *in pari materia* with the Second Amendment, *id.* at 177. Nevertheless, this right did not extend to “every thing that may be useful for offense or defense.” *Id.* at 179. Weapons such as the pocket pistol and revolver could be prohibited *altogether*. *Id.* Even the use of weapons such as “the rifle . . . , the shot gun, the musket, and repeater,” could “be subordinated to such regulations and limitations as are or may be authorized by the law of the land, passed to subserve the general good.” *Id.* at 179-80; *see also State v. Wilburn*, 66 Tenn. 57, 59-60 (1872).

Similarly, the Arkansas Supreme Court upheld that state’s prohibition on carrying pistols. *See Fife v. State*, 31 Ark. 455 (1876). Tracking the reasoning of *Andrews*, the Arkansas Supreme Court upheld that State’s prohibition as a lawful “exercise of the police power of the State without any infringement of the constitutional right” to bear arms. *Id.* at 461. So, too, the Texas Supreme Court

upheld a conviction for carrying an unloaded pistol for the purpose of getting it repaired, and concluded that such carrying is not “in any way protected either under the State or Federal Constitution.” *English v. State*, 35 Tex. 473, 473, 478 (1871).

Courts in Georgia, West Virginia, and Oklahoma followed suit. *See Hill v. State*, 53 Ga. 472, 474 (1874); *State v. Workman*, 35 W. Va. 367, 373 (1891); *Ex parte Thomas*, 97 P. 260, 262 (Okla. 1908). In the Georgia case, the author of the Court’s opinion noted that he was “at a loss to follow the line of thought that extends the guarantee”—in the state Constitution of the “right of the people to keep and bear arms”—“to the right to carry pistols, dirks, Bowie-knives, and those other weapons of like character, which, as all admit, are the greatest nuisances of our day.” *Hill*, 53 Ga. at 474.

C. Leading Treatises Recognized States’ and Cities’ Authority to Regulate Arms to Protect the Public Safety.

Major legal treatises, including those from the earliest periods of American history cement the conclusion that governments were widely understood to have broad authority to regulate and ban dangerous weapons. In *Heller*, the Supreme Court cited John Norton Pomeroy’s treatise as representative of “post-Civil War 19th-century sources” commenting on the right to bear arms. 128 S. Ct. at 2812. As the Court noted, Pomeroy observed that while “[t]he object of” the Second Amendment “is to secure a well-armed militia,” “a militia would be useless unless

the citizens were enabled to exercise themselves in the use of warlike weapons,” and so the government “is forbidden by any law or proceeding to invade or destroy the right to keep and bear arms.” John Norton Pomeroy, *An Introduction to the Constitutional Law of the United States* 152 (1868). The very next sentence in Pomeroy’s treatise is: “But all such provisions, all such guarantees, must be construed with reference to their intent and design. This constitutional inhibition is certainly not violated by laws forbidding persons to carry dangerous or concealed weapons, or laws forbidding the accumulation of quantities of arms with the design to use them in a riotous or seditious manner.” *Id.* at 152-53.

One early commentator on the right to bear arms similarly observed that the “right in the people to keep and bear arms, although secured by . . . the constitution, is held in subjection to the public safety and welfare.” Joel Tiffany, *A Treatise on Government, and Constitutional Law* 394 (1867). Even where there is a right to bear arms, “the peace of society and the safety of peaceable citizens plead loudly for protection against the evils which result from permitting other citizens to go armed with dangerous weapons.” *The Right to Keep and Bear Arms for Public and Private Defence*, 1 Cent. L.J. 259, 287 (Hon. John F. Dillon & Seymour D. Thompson, eds., 1874). And so the law must “strike some sort of balance between these apparently conflicting rights.” *Id.*

In his authoritative survey of police power, published in 1904, Ernst Freund reviewed nineteenth-century weapons regulations to conclude that the constitutional guarantees of the Second Amendment and similar state constitutional provisions had “not prevented the very general enactment of statutes forbidding the carrying of concealed weapons, and the *possession or use of certain deadly weapons.*” Ernst Freund, *The Police Power: Public Policy and Constitutional Rights* 90-91 (1904) (emphasis added). He deemed this a classic illustration of the more general principle whereby “constitutional rights must if possible be so interpreted as not to conflict with the requirements of peace, order and security.” *Id.* at 91.

CONCLUSION

For the foregoing reasons this Court should affirm the decision below.

/s/ Matthew M. Shors

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Dated: September 20, 2010 *Attorney for Amici Curiae*

CERTIFICATE OF COMPLIANCE WITH RULE 29(d)

In accordance with D.C. Circuit Rule 29(d), the undersigned certifies that the accompanying brief is necessary. *Amici* are Professional Historians and Law Professors who have taught courses and published scholarship on the Second Amendment and legal and constitutional history. The Supreme Court in *Heller v. District of Columbia*, 128 S. Ct. 2783 (2008), looked to historical gun regulations in determining the Second Amendment's application to current gun laws. *Amici* are not aware of any other brief in this case that describes in detail the history of registration requirements and regulations of dangerous weapons dating back to the early Republic.

Dated: September 20, 2010

/s/ Matthew M. Shors

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CERTIFICATE OF SERVICE

I hereby certify that on September 20, 2010, I caused a true and accurate copy of the Brief for Professional Historians and Law Professors Saul Cornell, Paul Finkelman, Stanley N. Katz, and David T. Konig as *Amici Curiae* in Support of Appellees to be served upon the following counsel for the parties via the Court's ECF system:

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EXHIBIT 24

**Declaration of Roderick M. Thompson in
Support of Sunnyvale's Opposition to
Plaintiffs' Motion for Preliminary
Injunction**

2002 Maryland Laws Ch. 26 (H.B. 11)

MARYLAND 2002 SESSION LAWS
REGULAR SESSION

Additions are indicated by <<+ Text +>>; deletions by <<- Text ->>. Changes in tables are made but not highlighted.

Ch. 26
H.B. No. 11
CRIMINAL LAW

AN ACT concerning

Criminal Law

FOR the purpose of adding a new article to the Annotated Code of Maryland, to be designated and known as the “Criminal Law Article”, to revise, restate, and recodify the laws of the State relating to criminal law; revising, restating, and recodifying certain provisions relating to consignment of agricultural products and other goods, humane slaughter of livestock, disposition of certain materials and returnable containers, use of organizational insignia, operation of junkyards and automobile recycling facilities, powers of child welfare organizations, citations for certain alcoholic beverages violations, certain alcoholic beverages violations and crimes, debt adjustment, false advertising, required reports of certain injuries, misuse of certain food containers, operation of certain vessels and related boating provisions, real estate settlements, fortune telling, and local animal control; defining certain terms; providing for the construction and application of this Act; providing for the continuity of certain units and the terms of certain officials; providing for the continuity of the status of certain transactions, employees, rights, duties, titles, interests, licenses, registrations, certifications, and permits; providing a delayed effective date for certain provisions of this Act; and generally relating to Maryland criminal laws.

BY repealing Article 27—Crimes and Punishments Section 2 and the subheading “Abduction”; 2A and the subheading “Accessory After the Fact”; 3 and the subheading “Adultery”; 4 and the subheading “Appropriating Property by Bailee”; 5 through 11 and the subheading “Arson and Burning”; 12 through 12A–7 and the subheading “Assault”; 18 and 19 and the subheading “Bigamy”; 20 and the subheading “Blasphemy”; 21 and the subheading “Boating”; 22 through 27 and the subheading “Bribery; Obstructing Justice”; 27A through 27C and the subheading “Bulletproof Body Armor”; 28 through 35B and the subheading “Burglary and Related Offenses”; 35C and 35D and the subheading “Abuse of Children or Vulnerable Adults”; 35E and the subheading “Child Selling”; 36 and the subheading “Carrying or Wearing Weapon”; 36A and the subheading “Carrying Deadly Weapons on Public School Property”; 36A–1 and the subheading “Disarming a Law Enforcement Officer”; 36B, 36D, 36E(l), 36F(c) through (g), (i), and (k), 36G, and 36H; 36H–1 through 36H–6 and 36K; 38 through 40 and the subheading “Conspiracy”; 40A and the subheading “Clove Cigarettes—Sales Prohibited”; 40B and the subheading “Code Grabbing”; 41 and 41A and the subheading “Contraceptives—Sale by Vending Machines”; 44 through 58 and the subheading “Counterfeiting and Forgery”; 59 through 70E and the subheading “Cruelty to Animals”; 79A and the subheading “Debt Adjustment”; 80 and the subheading “Defaulters”; 81 through 87 and the subheading “Desecration of the National or State Flag”; 111 through 118 and the subheading “Destroying, Injuring, etc., Property Maliciously”; 120A and the subheading “Grocery Carts”; 120B and the subheading “Food Packages or Containers”; 121 and 122 and the subheading “Disturbing the Public Peace and Disorderly Conduct”; 123 and 124 and the subheading “Harassment and Stalking”; 125 ½ and the subheading “Interference in Athletic Events”; 125A and the subheading “Emergency Communications—Interference”; 126 through 135 and the subheading “Embezzling Property and Writings”; 136 through 139 and the subheading “Escape and Contraband in Places of Confinement”; 139A through 139D and the subheading “Destructive Devices”; 140 through 144 and the subheading “Bad Checks”; 145 and 146 and the subheading “Credit Card Offenses”; 150 through 151C and the subheading “False Statements”; 152 and 153 and the subheading “Female Sitters”; 156 and the subheading “Fire

Also in the introductory language of subsection (a) of this section, the former effective date “June 1, 1994” is deleted as obsolete.

In subsection (a)(2) of this section, the former phrase “in the State” is deleted because the State's jurisdiction is limited to activities within the State.

Defined terms: “Assault pistol” § 4–301

“Person” § 1–101

<< MD CRIM LAW § 4–304 >>

<<+4–304. Same—Seizure and disposition.+>>

<<+A law enforcement unit may seize as contraband and dispose of according to regulation an assault pistol transported, sold, transferred, purchased, received, or possessed in violation of this subtitle.+>>

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 36H–4.

The word “unit” is substituted for the former word “agency” to conform with standard terminology used to describe governmental bodies. *See* General Revisor's Note to article.

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that it is unclear which “regulation” on contraband and disposal the law enforcement unit may use—that of the State, the United States, or a local government.

Defined term: “Assault pistol” § 4–301

<< MD CRIM LAW § 4–305 >>

<<+4–305. Detachable magazines—Prohibited.+>>

<<+(a) Scope.+>>

<<+This section does not apply to a .22 caliber rifle with a tubular magazine.+>>

<<+(b) Prohibited.+>>

<<+A person may not manufacture, sell, offer for sale, purchase, receive, or transfer a detachable magazine that has a capacity of more than 20 rounds of ammunition for a firearm.+>>

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 36H–5(b).

The former reference to “any type of” firearm is deleted as surplusage.

Defined term: “Person” § 1–101

<< MD CRIM LAW § 4–306 >>

<<+4–306. Penalties.+>>

<<+(a) In general.+>>

<<+A person who violates this subtitle is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 3 years or a fine not exceeding \$5,000 or both.+>>

<<+(b) Use in a felony or crime of violence.+>>

<<+(1) A person who uses an assault pistol, or a magazine that has a capacity of more than 20 rounds of ammunition, in the commission of a felony or a crime of violence as defined in Article 27, § 441 of the Code is guilty of a misdemeanor and on conviction, in addition to any other sentence imposed for the felony or crime of violence, shall be sentenced under this subsection.+>>

<<+(2)(i) For a first violation, the person shall be sentenced to imprisonment for not less than 5 and not exceeding 20 years.+>>

<<+(ii) The court may not impose less than the minimum sentence of 5 years.+>>

<<+(iii) The mandatory minimum sentence of 5 years may not be suspended.+>>

EXHIBIT 25

**Declaration of Roderick M. Thompson in
Support of Sunnyvale's Opposition to
Plaintiffs' Motion for Preliminary
Injunction**

BILL TEXT:

STATE OF NEW YORK

S. 8234

A. 11535

SENATE - ASSEMBLY

June 22, 2000

IN SENATE -- Introduced by Sens. PDAVAN, SPANO, GOODMAN, BALBONI,
LACK,
MARCELLINO, RATH, VELELLA -- (at request of the Governor) --
read
twice and ordered printed, and when printed to be committed to
the
Committee on Rules

IN ASSEMBLY -- Introduced by COMMITTEE ON RULES -- (at request of M.
of
A. Silver, Dinowitz, Matusow, Weisenberg, Koon, Abbate, Arroyo,
Aubry,
Bea, Boyland, Brennan, Brodsky, D. Butler, Cahill, Canestrari,
Carroz-
za, Clark, A. Cohen, M. Cohen, Colton, Cook, Cymbrowitz, Davis,
Denis,
Diaz, DiNapoli, Englebright, Espaillat, Eve, Farrell, Galef,
Gantt,
Glick, Gottfried, Grannis, Green, Greene, Griffith, Hikind,
Hochberg,
Hoyt, John, Kaufman, Lafayette, Lentol, Lopez, Luster,
Magnarelli,
Markey, Mayersohn, Mazarrelli, McEneny, Millman, Morelle,
Nolan,
Norman, Ortiz, Perry, Pheffer, Pretlow, Ramirez, Rhodd-
Cummings,
Rivera, Sanders, Seddio, E. C. Sullivan, Vann, Weinstein,
Weprin,
Wright) -- (at request of the Governor) -- read once and referred
to
the Committee on Codes

AN ACT to amend the criminal procedure law, the general business law
and
the penal law, in relation to assault weapons and large capacity
ammu-
nition feeding devices, gun locking devices, creating a
ballistic
identification databank, sales of firearms, rifles or shotguns at
gun

shows and establishing a minimum age to possess a firearm; to amend the executive law and the state finance law, in relation to establishing a gun trafficking interdiction program and a gun tracer program; to amend the penal law, in relation to requiring the report of a stolen or lost weapon to a police agency; and to authorize a study relating to the availability and effectiveness of existing technology for use of smart guns

The People of the State of New York, represented in Senate and Assembled, do enact as follows:

1 Section 1. Subparagraph (iv) of paragraph (d) of subdivision 5
of
2 section 220.10 of the criminal procedure law, as amended by chapter
33
3 of the laws of 1999, is amended to read as follows:

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

01-0
11535 S. 8234 2 A. LBD12429-

1 (iv) Where the indictment charges the class D violent felony
offenses
2 of criminal possession of a weapon in the third degree as defined
in
3 subdivision four of section 265.02 of the penal law and the
provisions
4 of subparagraph (iii) of this paragraph do not apply, or
subdivision
5 five, seven or eight of section 265.02 of the penal law, then a plea
of
6 guilty must include at least a plea of guilty to a class E violent
felo-
7 ny offense.

8 § 2. Subparagraph (v) of paragraph (b) of subdivision 3 of
section
9 220.30 of the criminal procedure law, as amended by chapter 33 of
the
10 laws of 1999, is amended to read as follows:

11 (v) A plea of guilty, whether to the entire indictment or part of
the
12 indictment, for any crime other than a violent felony offense as
defined
13 in section 70.02 of the penal law, may not be accepted on the
condition

14 that it constitutes a complete disposition of one or more other
 indict-
 15 ments against the defendant wherein is charged the class D violent
 felo-
 16 ny offenses of criminal possession of a weapon in the third degree
 as
 17 defined in subdivision four [~~of~~], five, seven or eight of section
 265.02
 18 of the penal law; provided, however, a plea of guilty, whether to
 the
 19 entire indictment or part of the indictment, for the class A
 misdemeanor
 20 of criminal possession of a weapon in the fourth degree as defined
 in
 21 subdivision one of section 265.01 of the penal law may be accepted
 on
 22 the condition that it constitutes a complete disposition of one or
 more
 23 other indictments against the defendant wherein is charged the
 class D
 24 violent felony offense of criminal possession of a weapon in the
 third
 25 degree as defined in subdivision four of section 265.02 of the penal
 law
 26 when the defendant has not been previously convicted of a class A
 misde-
 27 meanor defined in the penal law in the five years preceding the
 commis-
 28 sion of the offense.

29 § 3. The general business law is amended by adding a new section
 396-
 30 ee to read as follows:

31 § 396-ee. Sale of certain weapons; locking devices therefor. (1)
No
 32 person, firm or corporation engaged in the retail business of
selling
 33 rifles, shotguns or firearms, as such terms are defined in
section
 34 265.00 of the penal law, shall sell, deliver or transfer any such
rifle,
 35 shotgun or firearm to another person unless the transferee is
provided
 36 at the time of sale, delivery or transfer with a gun locking device
and
 37 a label containing the quoted language specified in subdivision two
of
 38 this section is either affixed to such rifle, shotgun or firearm
or
 39 placed in the container in which such rifle, shotgun or firearm is
sold,
 40 delivered or transferred. For the purposes of this section, the
term
 41 "gun locking device" shall mean an integrated design feature or
an
 42 attachable accessory that is resistant to tampering and is effective
in

43 preventing the discharge of such rifle, shotgun or firearm by a
44 person
45 who does not have access to the key, combination or other mechanism
46 used
47 to disengage the device. The division of state police shall develop
48 and
49 promulgate rules and regulations setting forth the specific devices
50 or
51 the minimum standards and criteria therefor which constitute an
52 effec-
53 tive gun locking device.

49 (2) Every person, firm or corporation engaged in the retail
50 business
51 of selling rifles, shotguns or firearms, as such terms are defined
52 in
53 section 265.00 of the penal law, shall, in the place where such
54 rifles,
55 shotguns or firearms are displayed or transferred to the purchaser,
56 post
57 a notice conspicuously stating in bold print that: "The use of a
58 locking
59 device or safety lock is only one aspect of responsible firearm
60 storage.

55 For increased safety firearms should be stored unloaded and locked in
61 a
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63 location that is both separate from their ammunition and inaccessible
64 to
65 children and any other unauthorized person."

66 (3) Any person, firm or corporation who fails to comply with
67 the
68 provisions of this section shall be guilty of a violation punishable
69 as
70 provided in the penal law. Any person, firm, or corporation who fails
71 to
72 comply with the provisions of this section after having been
73 previously
74 convicted of a violation of this section shall be guilty of a class
75 A
76 misdemeanor, punishable as provided in the penal law.

77 § 4. The general business law is amended by adding a new section
78 ff to read as follows:

79 § 396-ff. Pistol and revolver ballistic identification databank.

80 (1)
81 For the purposes of this section, the following terms shall have
82 the
83 following meanings:

84 (a) "Manufacturer" means any person, firm or corporation possessing
85 a
86 valid federal license that permits such person, firm or corporation
87 to
88 engage in the business of manufacturing pistols or revolvers or
89 ammuni-
90 tion therefor for the purpose of sale or distribution.

18 (b) "Shell casing" means that part of ammunition capable of being
19 used
20 in a pistol or revolver that contains the primer and propellant
21 powder
22 to discharge the bullet or projectile.
23 (2) On and after March first, two thousand one, any manufacturer
24 that
25 ships, transports or delivers a pistol or revolver to any person in
26 this
27 state shall, in accordance with rules and regulations promulgated by
28 the
29 division of state police, include in the container with such pistol
30 or
31 revolver a separate sealed container that encloses:
32 (a) a shell casing of a bullet or projectile discharged from
33 such
34 pistol or revolver; and
35 (b) any additional information that identifies such pistol or
36 revolver
37 and shell casing as required by such rules and regulations.
38 (3) A gunsmith or dealer in firearms licensed in this state
39 shall,
40 within ten days of the receipt of any pistol or revolver from a
41 manufac-
42 turer that fails to comply with the provisions of this section,
43 either
44 (a) return such pistol or revolver to such manufacturer, or (b)
45 notify
46 the division of state police of such noncompliance and thereafter
47 obtain
48 a substitute sealed container through participation in a program
49 oper-
50 ated by the state police as provided in subdivision four of
51 this
52 section.
53 (4) The division of state police shall no later than October
54 first,
55 two thousand, promulgate rules and regulations for the operation
56 of a
57 program which provides a gunsmith or a dealer in firearms licensed
58 in
59 this state with a sealed container enclosing the items specified
60 in
61 subdivision two of this section. The program shall at a minimum:
62 (a) be operational by January first, two thousand one;
63 (b) operate in at least five regional locations within the state;
64 and
65 (c) specify procedures by which such gunsmith or dealer is to
66 deliver
67 a pistol or revolver to the regional program location closest to his
68 or
69 her place of business for testing and prompt return of such pistol
70 or
71 revolver.
72 (5) On and after March first, two thousand one, a gunsmith or
73 dealer

50 in firearms licensed in this state shall, within ten days of
delivering
51 to any person a pistol or revolver received by such gunsmith or
dealer
52 in firearms on or after such date, forward to the division of
state
53 police, along with the original transaction report required by
subdivi-
54 sion twelve of section 400.00 of the penal law, the sealed
container
55 enclosing the shell casing from such pistol or revolver either
(a)
56 received from the manufacturer, or (b) obtained through participation
in
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1 the program operated by the division of state police in accordance
with
2 subdivision four of this section.

3 (6) Upon receipt of the sealed container, the division of state
police
4 shall cause to be entered in an automated electronic databank
pertinent
5 data and other ballistic information relevant to identification of
the
6 shell casing and to the pistol or revolver from which it was
discharged.

7 The automated electronic databank will be operated and maintained by
the
8 division of state police, in accordance with its rules and
regulations
9 adopted after consultation with the Federal Bureau of Investigation
and
10 the United States Department of Treasury, Bureau of Alcohol, Tobacco
and
11 Firearms to ensure compatibility with national ballistic technology.

12 (7) Any person, firm or corporation who knowingly violates any of
the
13 provisions of this section shall be guilty of a violation, punishable
as
14 provided in the penal law. Any person, firm or corporation who
knowingly
15 violates any of the provisions of this section after having been
previ-
16 ously convicted of a violation of this section shall be guilty
of a
17 class A misdemeanor, punishable as provided in the penal law.

18 § 5. The general business law is amended by adding a new article
39-DD
19 to read as follows:

20 ARTICLE 39-DD
21 SALE OF FIREARMS, RIFLES OR SHOTGUNS
22 AT GUN SHOWS

23 Section 895. Definitions.
24 896. Operation of a gun show.
25 897. Sale of a firearm, rifle or shotgun at a gun show.

26 § 895. Definitions. For the purposes of this article:
 27 1. "Gun show" means an event sponsored, whether for profit or not,
 by
 28 an individual, national, state or local organization, association
 or
 29 other entity devoted to the collection, competitive use, sporting
 use,
 30 or any other legal use of firearms, rifles or shotguns, or an event
 at
 31 which (a) twenty percent or more of the total number of exhibitors
 are
 32 firearm exhibitors or (b) ten or more firearm exhibitors are
 participat-
 33 ing or (c) a total of twenty-five or more pistols or revolvers
 are
 34 offered for sale or transfer or (d) a total of fifty or more
 firearms,
 35 rifles or shotguns are offered for sale or transfer. The term gun
 show
 36 shall include any building, structure or facility where firearms,
 rifles
 37 or shotguns are offered for sale or transfer and any grounds used
 in
 38 connection with the event.
 39 2. "Firearm exhibitor" means any person, firm, partnership,
 corpo-
 40 ration or company that exhibits, sells, offers for sale, transfers,
 or
 41 exchanges firearms, rifles or shotguns at a gun show.
 42 3. "Gun show operator" means any person, firm, partnership,
 corpo-
 43 ration or company that organizes, produces, sponsors or operates a
 gun
 44 show.
 45 4. "Firearm" has the same meaning as that term is defined in 18
 U.S.C.
 46 921(a)(3), but shall not include an "antique firearm" as that term
 is
 47 defined in 18 U.S.C. 921(a)(16).
 48 5. "Rifle" has the same meaning as that term is defined in 18
 U.S.C.
 49 921(a)(7).
 50 6. "Shotgun" has the same meaning as that term is defined in 18
 U.S.C.
 51 921(a)(5).
 52 § 896. Operation of a gun show. 1. A gun show operator shall:
 53 (a) at all times during such show conspicuously post and
 maintain
 54 signs stating "A National Instant Criminal Background Check must
 be
 55 completed prior to all firearm sales or transfers, including sales
 or
 56 transfers of rifles or shotguns". Signs must be posted at all
 entrances

1 to the gun show, at all places where admission tickets to the gun
2 show
3 are sold and not less than four additional locations within the
4 grounds
5 of the gun show;
6 (b) notify all firearm exhibitors in writing that a national
7 instant
8 criminal background check must be completed prior to all firearm
9 sales
10 or transfers, including sales or transfers of rifles or shotguns; and
11 (c) provide access at the gun show to a firearm dealer licensed
12 under
13 federal law who is authorized to perform a national instant
14 criminal
15 background check where the seller or transferor of a firearm, rifle
16 or
17 shotgun is not authorized to conduct such a check by (i)
18 requiring
19 firearm exhibitors who are firearm dealers licensed under federal
20 law
21 and who are authorized to conduct a national instant criminal
22 background
23 check to provide such a check at cost or (ii) designating a
24 specific
25 location at the gun show where a firearm dealer licensed under
26 federal
27 law who is authorized to conduct a national instant criminal
28 background
29 check will be present to perform such a check at cost. Any
30 firearm
31 dealer licensed under federal law who performs a national instant
32 crimi-
33 nal background check pursuant to this paragraph shall provide the
34 seller
35 or transferor of the firearm, rifle or shotgun with a copy of the
36 United
37 States Department of Treasury, Bureau of Alcohol, Tobacco and
38 Firearms
39 Form ATF F 4473 and such dealer shall maintain such form and make
40 such
41 form available for inspection by law enforcement agencies for a
42 period
43 of ten years thereafter.
44 2. Whenever the attorney general shall believe from evidence
45 satisfac-
46 tory to him or her that a gun show operator has violated any of
47 the
48 provisions of this section, the attorney general may bring an action
49 or
50 special proceeding in the supreme court for a judgment enjoining
51 the
52 continuance of such violation and for a civil penalty in an amount
53 not
54 to exceed ten thousand dollars. If it shall appear to the
55 satisfaction
56 of the court or justice that the defendant has violated any
57 provisions

31 of this section, no proof shall be required that any person has
been
32 injured thereby nor that the defendant intentionally violated
such
33 provision. In such action preliminary relief may be granted under
arti-
34 cle sixty-three of the civil practice law and rules. In connection
with
35 any such proposed application, the attorney general is authorized
to
36 take proof, issue subpoenas and administer oaths in the manner
provided
37 in the civil practice law and rules.

38 § 897. Sale of a firearm, rifle or shotgun at a gun show. 1.
A
39 national instant criminal background check shall be conducted and
no
40 person shall sell or transfer a firearm, rifle or shotgun at a gun
show,
41 except in accordance with the provisions of 18 U.S.C. 922(t).

42 2. No person shall offer or agree to sell or transfer a firearm,
rifle
43 or shotgun to another person at a gun show and transfer or deliver
such
44 firearm, rifle or shotgun to such person or person acting on his or
her
45 behalf thereafter at a location other than the gun show for the
purpose
46 of evading or avoiding compliance with 18 U.S.C. 922(t).

47 3. Any person who knowingly violates any of the provisions of
this
48 section shall be guilty of a class A misdemeanor punishable as
provided
49 for in the penal law.

50 § 6. Paragraphs (c) and (d) of subdivision 1 of section 70.02 of
the
51 penal law, paragraph (c) as amended by chapter 635 of the laws of
1999
52 and paragraph (d) as amended by chapter 378 of the laws of 1998,
are
53 amended to read as follows:

54 (c) Class D violent felony offenses: an attempt to commit any of
the
55 class C felonies set forth in paragraph (b); assault in the
second
56 degree as defined in section 120.05, stalking in the first degree,
as

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1 defined in subdivision one of section 120.60, sexual abuse in the
first
2 degree as defined in section 130.65, course of sexual conduct against
a
3 child in the second degree as defined in section 130.80,
aggravated

4 sexual abuse in the third degree as defined in section 130.66,
criminal
5 possession of a weapon in the third degree as defined in
[subdivisions]
6 subdivision four, five [and], six, seven or eight of section 265.02,
and
7 intimidating a victim or witness in the second degree as defined
in
8 section 215.16.
9 (d) Class E violent felony offenses: an attempt to commit any of
the
10 felonies of criminal possession of a weapon in the third degree
as
11 defined in [subdivisions] subdivision four, five [and], six, seven
or
12 eight of section 265.02 as a lesser included offense of that section
as
13 defined in section 220.20 of the criminal procedure law.
14 § 7. Paragraph (b) and the opening paragraph of paragraph (c)
of
15 subdivision 2 of section 70.02 of the penal law, as amended by
chapter
16 33 of the laws of 1999, are amended to read as follows:
17 (b) Except as provided in subdivision six of section 60.05 and
subdi-
18 vision four of this section, the sentence imposed upon a person
who
19 stands convicted of a class D violent felony offense, other than
the
20 offense of criminal possession of a weapon in the third degree
as
21 defined in [subdivisions] subdivision four [and], five, seven or
eight
22 of section 265.02, must be in accordance with the applicable
provisions
23 of this chapter relating to sentencing for class D felonies
provided,
24 however, that where a sentence of imprisonment is imposed which
requires
25 a commitment to the state department of correctional services,
such
26 sentence shall be a determinate sentence in accordance with
paragraph
27 (c) of subdivision three of this section.
28 Except as provided in subdivision six of section 60.05, the
sentence
29 imposed upon a person who stands convicted of the class D violent
felony
30 offenses of criminal possession of a weapon in the third degree
as
31 defined in [subdivisions] subdivision four [and], five, seven or
eight
32 of section 265.02 or the class E violent felonies of attempted
criminal
33 possession of a weapon in the third degree as defined in
[subdivisions]

34 subdivision four [~~and~~], five, seven or eight of section 265.02 must
be a
35 sentence to a determinate period of imprisonment, or, in the
alterna-
36 tive, a definite sentence of imprisonment for a period of no less
than
37 one year, except that:
38 § 8. Subdivision 3 of section 265.00 of the penal law, as amended
by
39 chapter 264 of the laws of 1988, is amended to read as follows:
40 3. "Firearm" means (a) any pistol or revolver; or (b) a shotgun
having
41 one or more barrels less than eighteen inches in length; or (c) a
rifle
42 having one or more barrels less than sixteen inches in length; or
(d)
43 any weapon made from a shotgun or rifle whether by alteration,
modifica-
44 tion, or otherwise if such weapon as altered, modified, or otherwise
has
45 an overall length of less than twenty-six inches; or (e) an
assault
46 weapon. For the purpose of this subdivision the length of the barrel
on
47 a shotgun or rifle shall be determined by measuring the distance
between
48 the muzzle and the face of the bolt, breech, or breechlock when
closed
49 and when the shotgun or rifle is cocked; the overall length of a
weapon
50 made from a shotgun or rifle is the distance between the extreme ends
of
51 the weapon measured along a line parallel to the center line of
the
52 bore. Firearm does not include an antique firearm.
53 § 9. Subdivisions 8 and 9 of section 265.00 of the penal law,
subdi-
54 vision 8 as amended by chapter 588 of the laws of 1972 and
subdivision 9
55 as amended by chapter 462 of the laws of 1974, are amended to read
as
56 follows:
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1 8. "Gunsmith" means any person, firm, partnership, corporation
or
2 company who engages in the business of repairing, altering,
assembling,
3 manufacturing, cleaning, polishing, engraving or trueing, or
who
4 performs any mechanical operation on, any firearm, large capacity
ammu-
5 nition feeding device or machine-gun.
6 9. "Dealer in firearms" means any person, firm, partnership,
corpo-

7 ration or company who engages in the business of purchasing,
 selling,
 8 keeping for sale, loaning, leasing, or in any manner disposing of,
 any
 9 assault weapon, large capacity ammunition feeding device, pistol
 or
 10 revolver.

11 § 10. Section 265.00 of the penal law is amended by adding three
 new
 12 subdivisions 21, 22 and 23 to read as follows:

13 21. "Semiautomatic" means any repeating rifle, shotgun or
pistol,
 14 regardless of barrel or overall length, which utilizes a portion of
the
 15 energy of a firing cartridge or shell to extract the fired
cartridge
 16 case or spent shell and chamber the next round, and which
requires a
 17 separate pull of the trigger to fire each cartridge or shell.

18 22. "Assault weapon" means (a) a semiautomatic rifle that has an
abil-
 19 ity to accept a detachable magazine and has at least two of the
follow-
 20 ing characteristics:
 21 (i) a folding or telescoping stock;
 22 (ii) a pistol grip that protrudes conspicuously beneath the action

of
 23 the weapon;
 24 (iii) a bayonet mount;
 25 (iv) a flash suppressor or threaded barrel designed to accommodate
a
 26 flash suppressor;
 27 (v) a grenade launcher; or
 28 (b) a semiautomatic shotgun that has at least two of the

following
 29 characteristics:
 30 (i) a folding or telescoping stock;
 31 (ii) a pistol grip that protrudes conspicuously beneath the action

of
 32 the weapon;
 33 (iii) a fixed magazine capacity in excess of five rounds;
 34 (iv) an ability to accept a detachable magazine; or
 35 (c) a semiautomatic pistol that has an ability to accept a

detachable
 36 magazine and has at least two of the following characteristics:
 37 (i) an ammunition magazine that attaches to the pistol outside of
the
 38 pistol grip;
 39 (ii) a threaded barrel capable of accepting a barrel extender,
flash
 40 suppressor, forward handgrip, or silencer;
 41 (iii) a shroud that is attached to, or partially or completely
encir-
 42 cles, the barrel and that permits the shooter to hold the firearm
with
 43 the nontrigger hand without being burned;

44 (iv) a manufactured weight of fifty ounces or more when the pistol
is
45 unloaded;
46 (v) a semiautomatic version of an automatic rifle, shotgun or
firearm;
47 or
48 (d) any of the weapons, or functioning frames or receivers of
such
49 weapons, or copies or duplicates of such weapons, in any caliber,
known
50 as:
51 (i) Norinco, Mitchell, and Poly Technologies Avtomat Kalashnikovs
(all
52 models);
53 (ii) Action Arms Israeli Military Industries UZI and Galil;
54 (iii) Beretta Ar70 (SC-70);
55 (iv) Colt AR-15;
56 (v) Fabrique National FN/FAL, FN/LAR, and FNC;
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1 (vi) SWD M-10, M-11, M-11/9, and M-12;
2 (vii) Steyr AUG;
3 (viii) INTRATEC TEC-9, TEC-DC9 and TEC-22; and
4 (ix) revolving cylinder shotguns, such as (or similar to) the
Street
5 Sweeper and Striker 12;
6 (e) provided, however, that such term does not include: (i) any
rifle,
7 shotgun or pistol that (A) is manually operated by bolt, pump, lever
or
8 slide action; (B) has been rendered permanently inoperable; or (C) is
an
9 antique firearm as defined in 18 U.S.C. 921(a)(16);
10 (ii) a semiautomatic rifle that cannot accept a detachable
magazine
11 that holds more than five rounds of ammunition;
12 (iii) a semiautomatic shotgun that cannot hold more than five
rounds
13 of ammunition in a fixed or detachable magazine;
14 (iv) a rifle, shotgun or pistol, or a replica or a duplicate
thereof,
15 specified in Appendix A to section 922 of 18 U.S.C. as such weapon
was
16 manufactured on October first, nineteen hundred ninety-three. The
mere
17 fact that a weapon is not listed in Appendix A shall not be construed
to
18 mean that such weapon is an assault weapon; or
19 (v) a semiautomatic rifle, a semiautomatic shotgun or a
semiautomatic
20 pistol or any of the weapons defined in paragraph (d) of this
subdivi-
21 sion lawfully possessed prior to September fourteenth, nineteen
hundred
22 ninety-four.

23 23. "Large capacity ammunition feeding device" means a magazine,
 belt,
 24 drum, feed strip, or similar device, manufactured after September
 thir-
 25 teenth, nineteen hundred ninety-four, that has a capacity of, or
 that
 26 can be readily restored or converted to accept, more than ten rounds
 of
 27 ammunition; provided, however, that such term does not include
 an
 28 attached tubular device designed to accept, and capable of
 operating
 29 only with, .22 caliber rimfire ammunition.

30 § 11. Subdivisions 4, 5 and 6 of section 265.02 of the penal
 law,

31 subdivision 4 as added by chapter 1041 of the laws of 1974,
 subdivision

32 5 as amended by chapter 175 of the laws of 1981 and subdivision 6
 as

33 added by chapter 378 of the laws of 1998, are amended and two new
 subdi-

34 visions 7 and 8 are added to read as follows:

35 (4) [~~He~~] Such person possesses any loaded firearm. Such
 possession

36 shall not, except as provided in subdivision one or seven, constitute
 a

37 violation of this section if such possession takes place in
 such

38 person's home or place of business[~~+~~]; or

39 (5) (i) [~~He~~] Such person possesses twenty or more firearms; or
 (ii)

40 [~~he~~] such person possesses a firearm and has been previously
 convicted

41 of a felony or a class A misdemeanor defined in this chapter within
 the

42 five years immediately preceding the commission of the offense and
 such

43 possession did not take place in the person's home or place of
 busi-

44 ness[~~+~~]; or

45 (6) [~~He~~] Such person knowingly possesses any disguised gun[~~+~~]; or

46 (7) Such person possesses an assault weapon; or

47 (8) Such person possesses a large capacity ammunition feeding
device.

48 § 12. Section 265.10 of the penal law, subdivisions 1 and 2 as
 amended

49 by chapter 378 of the laws of 1998, subdivision 3 as amended by
 chapter

50 695 of the laws of 1987, subdivision 4 as amended by chapter 233 of
 the

51 laws of 1980, subdivision 5 as amended by chapter 3 of the laws of
 1978

52 and subdivision 7 as amended by chapter 1041 of the laws of 1974,
 is

53 amended to read as follows:

54 § 265.10 Manufacture, transport, disposition and defacement of
 weapons

55 and dangerous instruments and appliances.
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1 1. Any person who manufactures or causes to be manufactured
 any
 2 machine-gun, assault weapon, large capacity ammunition feeding device
 or
 3 disguised gun is guilty of a class D felony. Any person who
 manufactures
 4 or causes to be manufactured any switchblade knife, gravity knife,
 pilum
 5 ballistic knife, metal knuckle knife, billy, blackjack, bludgeon,
 metal
 6 knuckles, Kung Fu star, chuka stick, sandbag, sandclub or slungshot
 is
 7 guilty of a class A misdemeanor.
 8 2. Any person who transports or ships any machine-gun, firearm
 silenc-
 9 er, assault weapon or large capacity ammunition feeding device
 or
 10 disguised gun, or who transports or ships as merchandise five or
 more
 11 firearms, is guilty of a class D felony. Any person who transports
 or
 12 ships as merchandise any firearm, other than an assault weapon,
 switch-
 13 blade knife, gravity knife, pilum ballistic knife, billy,
 blackjack,
 14 bludgeon, metal knuckles, Kung Fu star, chuka stick, sandbag or
 slung-
 15 shot is guilty of a class A misdemeanor.
 16 3. Any person who disposes of any machine-gun, assault weapon,
large
 17 capacity ammunition feeding device or firearm silencer is guilty of
 a
 18 class D felony. Any person who knowingly buys, receives, disposes of,
 or
 19 conceals a machine-gun, firearm, large capacity ammunition
feeding
 20 device, rifle or shotgun which has been defaced for the purpose
 of
 21 concealment or prevention of the detection of a crime or
 misrepresenting
 22 the identity of such machine-gun, firearm, large capacity
ammunition
 23 feeding device, rifle or shotgun is guilty of a class D felony.
 24 4. Any person who disposes of any of the weapons, instruments
 or
 25 appliances specified in subdivision one of section 265.01,
 except a
 26 firearm, is guilty of a class A misdemeanor, and he is guilty of a
 class
 27 D felony if he has previously been convicted of any crime.
 28 5. Any person who disposes of any of the weapons, instruments,
 appli-

29 ances or substances specified in section 265.05 to any other
person
30 under the age of sixteen years is guilty of a class A misdemeanor.

31 6. Any person who wilfully defaces any machine-gun, large
capacity

32 ammunition feeding device or firearm is guilty of a class D felony.

33 7. Any person, other than a wholesale dealer, or gunsmith or dealer
in

34 firearms duly licensed pursuant to section 400.00, lawfully
in

35 possession of a firearm, who disposes of the same without first
notify-

36 ing in writing the licensing officer in the city of New York and
coun-

37 ties of Nassau and Suffolk and elsewhere in the state the
executive

38 department, division of state police, Albany, is guilty of a
class A

39 misdemeanor.

40 § 13. Subdivision 1 of section 265.11 of the penal law, as amended
by

41 chapter 310 of the laws of 1995, is amended to read as follows:

42 (1) sells, exchanges, gives or disposes of a firearm or large
capacity

43 ammunition feeding device to another person; or

44 § 14. Subdivision 3 of section 265.15 of the penal law, as amended
by

45 chapter 219 of the laws of 1995, is amended to read as follows:

46 3. The presence in an automobile, other than a stolen one or a
public

47 omnibus, of any firearm, large capacity ammunition feeding
device,

48 defaced firearm, defaced rifle or shotgun, defaced large capacity
ammu-

49 nition feeding device, firearm silencer, explosive or incendiary
bomb,

50 bombshell, gravity knife, switchblade knife, pilum ballistic
knife,

51 metal knuckle knife, dagger, dirk, stiletto, billy, blackjack,
metal

52 knuckles, chuka stick, sandbag, sandclub or slungshot is
presumptive

53 evidence of its possession by all persons occupying such automobile
at

54 the time such weapon, instrument or appliance is found, except under
the

55 following circumstances: (a) if such weapon, instrument or appliance
is

56 found upon the person of one of the occupants therein; (b) if such
weap-

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1 on, instrument or appliance is found in an automobile which is
being

2 operated for hire by a duly licensed driver in the due, lawful and
prop-

3 er pursuit of his or her trade, then such presumption shall not apply
to
4 the driver; or (c) if the weapon so found is a pistol or revolver
and
5 one of the occupants, not present under duress, has in his or
her
6 possession a valid license to have and carry concealed the same.

7 § 14-a. The penal law is amended by adding a new section 265.17
to
8 read as follows:

9 § 265.17 Criminal purchase of a weapon.

10 A person is guilty of criminal purchase of a weapon when:

11 1. Knowing that he or she is prohibited by law from possessing
a
12 firearm, rifle or shotgun because of a prior conviction or because
of
13 some other disability which would render him or her ineligible
to
14 lawfully possess a firearm, rifle or shotgun in this state, such
person
15 attempts to purchase a firearm, rifle or shotgun from another person;

or
16 2. Knowing that it would be unlawful for another person to possess
a
17 firearm, rifle or shotgun, he or she purchases a firearm, rifle or
shot-
18 gun for, on behalf of, or for the use of such other person.

19 Criminal purchase of a weapon is a class A misdemeanor.

20 § 15. Paragraph 2 of subdivision a of section 265.20 of the penal
law,
21 as amended by chapter 328 of the laws of 1986, is amended to read
as
22 follows:

23 2. Possession of a machine-gun, large capacity ammunition
feeding
24 device, firearm, switchblade knife, gravity knife, pilum
ballistic
25 knife, billy or blackjack by a warden, superintendent, headkeeper
or
26 deputy of a state prison, penitentiary, workhouse, county jail or
other
27 institution for the detention of persons convicted or accused of
crime
28 or detained as witnesses in criminal cases, in pursuit of official
duty
29 or when duly authorized by regulation or order to possess the same.

30 § 15-a. Subdivision a of section 265.20 of the penal law is amended
by
31 adding a new paragraph 7-e to read as follows:

32 7-e. Possession and use of a pistol or revolver, at an indoor
or
33 outdoor pistol range located in or on premises owned or occupied
by a
34 duly incorporated organization organized for conservation purposes or
to
35 foster proficiency in small arms or at a target pistol shooting
competi-

36 tion under the auspices of or approved by an association or
organization
37 described in paragraph 7-a of this subdivision for the purpose of
load-
38 ing and firing the same by a person at least eighteen years of age
but
39 under the age of twenty-one who has not been previously convicted of
a
40 felony or serious offense, and who does not appear to be, or
pose a
41 threat to be, a danger to himself or to others; provided however,
that
42 such possession shall be of a pistol or revolver duly licensed to
and
43 shall be used under the immediate supervision, guidance and
instruction
44 of, a person specified in paragraph seven of this subdivision.

45 § 16. Paragraph 8 of subdivision a of section 265.20 of the penal
law,
46 as amended by chapter 378 of the laws of 1998, is amended to read
as
47 follows:

48 8. The manufacturer of machine-guns, assault weapons, large
capacity
49 ammunition feeding devices, disguised guns, pilum ballistic
knives,
50 switchblade or gravity knives, billies or blackjacks as merchandise
and
51 the disposal and shipment thereof direct to a regularly constituted
or
52 appointed state or municipal police department, sheriff, policeman
or
53 other peace officer, or to a state prison, penitentiary,
workhouse,
54 county jail or other institution for the detention of persons
convicted
55 or accused of crime or held as witnesses in criminal cases, or to
the
56 military service of this state or of the United States.
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1 § 17. Paragraphs 11 and 16 of subdivision a of section 265.20 of
the
2 penal law, paragraph 11 as added by chapter 498 of the laws of 1976
and
3 paragraph 16 as added by chapter 378 of the laws of 1998, are amended
to

4 read as follows:
5 11. Possession of a [~~pistol or revolver~~] firearm or large
capacity
6 ammunition feeding device by a police officer or sworn peace officer
of
7 another state while conducting official business within the state of
New
8 York.

9 16. The terms "rifle," "shotgun," "pistol," "revolver," and
 "firearm"
 10 as used in paragraphs three, four, five, seven, seven-a, seven-b,
 nine,
 11 nine-a, ten, twelve, thirteen and thirteen-a of this subdivision
 shall
 12 not include a disguised gun or an assault weapon.
 13 § 18. Subdivision 1 of section 400.00 of the penal law, as amended
 by
 14 chapter 446 of the laws of 1997, is amended to read as follows:
 15 1. Eligibility. No license shall be issued or renewed pursuant to
 this
 16 section except by the licensing officer, and then only after
 investi-
 17 gation and finding that all statements in a proper application for
 a
 18 license are true. No license shall be issued or renewed except for
 an
 19 applicant (a) twenty-one years of age or older, provided, however,
that
 20 where such applicant has been honorably discharged from the
United
 21 States army, navy, marine corps, air force or coast guard, or
the
 22 national guard of the state of New York, no such age restriction
shall
 23 apply; (b) of good moral character; [~~(b)~~] (c) who has not been
 convicted
 24 anywhere of a felony or a serious offense; [~~(e)~~] (d) who has
 stated
 25 whether he or she has ever suffered any mental illness or been
 confined
 26 to any hospital or institution, public or private, for mental
 illness;
 27 [~~(d)~~] (e) who has not had a license revoked or who is not
 under a
 28 suspension or ineligibility order issued pursuant to the provisions
 of
 29 section 530.14 of the criminal procedure law or section eight
 hundred
 30 forty-two-a of the family court act; [~~(e)~~] (f) in the county of
 West-
 31 chester, who has successfully completed a firearms safety course
 and
 32 test as evidenced by a certificate of completion issued in his or
 her
 33 name and endorsed and affirmed under the penalties of perjury by a
 duly
 34 authorized instructor, except that: (i) persons who are
 honorably
 35 discharged from the United States army, navy, marine corps or
 coast
 36 guard, or of the national guard of the state of New York, and
 produce
 37 evidence of official qualification in firearms during the term
 of

38 service are not required to have completed those hours of a
firearms
39 safety course pertaining to the safe use, carrying, possession,
mainte-
40 nance and storage of a firearm; and (ii) persons who were licensed
to
41 possess a pistol or revolver prior to the effective date of this
para-
42 graph are not required to have completed a firearms safety course
and
43 test; and [~~(f)~~] (g) concerning whom no good cause exists for the
denial
44 of the license. No person shall engage in the business of gunsmith
or
45 dealer in firearms unless licensed pursuant to this section. An
appli-
46 cant to engage in such business shall also be a citizen of the
United
47 States, more than twenty-one years of age and maintain a place of
busi-
48 ness in the city or county where the license is issued. For such
busi-
49 ness, if the applicant is a firm or partnership, each member
thereof
50 shall comply with all of the requirements set forth in this
subdivision
51 and if the applicant is a corporation, each officer thereof shall
so
52 comply.
53 § 19. Subdivision 2 of section 400.00 of the penal law, as amended
by
54 chapter 378 of the laws of 1998, is amended to read as follows:
55 2. Types of licenses. A license for gunsmith or dealer in
firearms
56 shall be issued to engage in such business. A license for a pistol
or
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1 revolver, other than an assault weapon or a disguised gun, shall
be
2 issued to (a) have and possess in his dwelling by a householder;
(b)
3 have and possess in his place of business by a merchant or
storekeeper;
4 (c) have and carry concealed while so employed by a messenger
employed
5 by a banking institution or express company; (d) have and
carry
6 concealed by a justice of the supreme court in the first or second
judi-
7 cial departments, or by a judge of the New York city civil court or
the
8 New York city criminal court; (e) have and carry concealed while
so
9 employed by a regular employee of an institution of the state, or of
any

10 county, city, town or village, under control of a commissioner
 of
 11 correction of the city or any warden, superintendent or head keeper
 of
 12 any state prison, penitentiary, workhouse, county jail or other
 institu-
 13 tion for the detention of persons convicted or accused of crime or
 held
 14 as witnesses in criminal cases, provided that application is made
 there-
 15 for by such commissioner, warden, superintendent or head keeper;
 (f)
 16 have and carry concealed, without regard to employment or place
 of
 17 possession, by any person when proper cause exists for the
 issuance
 18 thereof; and (g) have, possess, collect and carry antique pistols
 which
 19 are defined as follows: (i) any single shot, muzzle loading pistol
 with
 20 a matchlock, flintlock, percussion cap, or similar type of
 ignition
 21 system manufactured in or before 1898, which is not designed for
 using
 22 rimfire or conventional centerfire fixed ammunition; and (ii) any
 repli-
 23 ca of any pistol described in clause (i) hereof if such replica--
 24 (1) is not designed or redesigned for using rimfire or
 conventional
 25 centerfire fixed ammunition, or
 26 (2) uses rimfire or conventional centerfire fixed ammunition which
 is
 27 no longer manufactured in the United States and which is not
 readily
 28 available in the ordinary channels of commercial trade.
 29 § 20. Subdivision 8 of section 400.00 of the penal law, as amended
 by
 30 chapter 320 of the laws of 1992, is amended to read as follows:
 31 8. License: exhibition and display. Every licensee while
 carrying a
 32 pistol or revolver shall have on his or her person a license to
 carry
 33 the same. Every person licensed to possess a pistol or revolver
 on
 34 particular premises shall have the license for the same on such
 prem-
 35 ises. Upon demand, the license shall be exhibited for inspection to
 any
 36 peace officer, who is acting pursuant to his or her special duties,
 or
 37 police officer. A license as gunsmith or dealer in firearms shall
 be
 38 prominently displayed on the licensed premises. A gunsmith or dealer
 of
 39 firearms may conduct business temporarily at a location other than
 the

40 location specified on the license if such temporary location is
the
41 location for a gun show or event sponsored by any national, state,
or
42 local organization, or any affiliate of any such organization devoted
to
43 the collection, competitive use or other sporting use of firearms.

Any
44 sale or transfer at a gun show must also comply with the provisions
of
45 article thirty-nine-DD of the general business law. Records of

receipt
46 and disposition of firearms transactions conducted at such
temporary
47 location shall include the location of the sale or other disposition
and
48 shall be entered in the permanent records of the gunsmith or dealer
of
49 firearms and retained on the location specified on the license.

Nothing
50 in this section shall authorize any licensee to conduct business
from
51 any motorized or towed vehicle. A separate fee shall not be required
of
52 a licensee with respect to business conducted under this
subdivision.

53 Any inspection or examination of inventory or records under this
section
54 at such temporary location shall be limited to inventory consisting
of,
55 or records related to, firearms held or disposed at such
temporary

56 locations. Failure of any licensee to so exhibit or display his or
her

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1 license, as the case may be, shall be presumptive evidence that he
or
2 she is not duly licensed.

3 § 21. The executive law is amended by adding a new section 230 to
read
4 as follows:

5 § 230. Gun trafficking interdiction program. 1. There is
hereby
6 created within the division of criminal justice services a gun
traffick-
7 ing interdiction program to be administered by the commissioner of
the
8 division of criminal justice services to distribute funds in
accordance
9 with the provisions of this section for the purpose of interdicting
guns
10 and components of guns illegally entering New York with a focus on
those
11 "supplier" states from which substantial numbers of guns illegally
enter

12 this state.
13 2. The superintendent of the division of state police, in
cooperation
14 with the United States department of treasury, bureau of alcohol,
tobac-
15 co and firearms and district attorneys in New York state, shall
develop
16 and implement a strategy for the interdiction of guns illegally
entering
17 New York from supplier states. The strategy shall include
identifying
18 and prosecuting gun traffickers and suppliers of such guns who may
be
19 violating federal, state or local laws, and cooperating with the
United
20 States department of treasury, bureau of alcohol, tobacco and
firearms
21 and appropriate prosecutorial agencies and law enforcement agencies
in
22 supplier states in the investigation and enforcement of such
laws.
23 District attorneys are authorized to enter into collaborative
agreements
24 with prosecutorial and other governmental agencies and entities
in
25 supplier states in an effort to stop the movement of illegal guns
into
26 New York.
27 3. The commissioner of the division of criminal justice services
shall
28 award grant monies to district attorneys for programs which are
designed
29 to interdict the flow of illegal guns across New York state borders.
In
30 order to qualify for such grant monies, a district attorney must
submit
31 an application to the commissioner of the division of criminal
justice
32 services in accordance with guidelines prescribed by the division
of
33 criminal justice services. The application shall identify a
strategy
34 and implementation plan for preventing the entry of illegal guns
across
35 New York's borders. Funds awarded under this section shall not be
used
36 to supplant federal, state or local funds. No more than fifty
percent
37 of the funds available pursuant to this section in any one fiscal
year
38 shall be awarded for programs within a single city, county, town
or
39 village.
40 4. The superintendent of the division of state police shall
establish
41 and maintain within the division a criminal gun clearinghouse
as a

42 central repository of information regarding all guns seized,
forfeited,
43 found or otherwise coming into the possession of any state or local
law
44 enforcement agency which are believed to have been used in the
commis-
45 sion of a crime. The superintendent of the division of state
police
46 shall adopt and promulgate regulations prescribing reporting
procedures
47 for such state or local law enforcement agencies, including the form
for
48 reporting such information. In addition to any other information
which
49 the superintendent of the division of state police may require, the
form
50 shall require (a) the serial number or other identifying information
on
51 the gun, if available and (b) a brief description of the
circumstances
52 under which the gun came into the possession of the law
enforcement
53 agency, including the crime which was or may have been committed
with
54 the gun.

55 5. In any case where a state or local law enforcement agency
investi-
56 gates the commission of a crime in this state and a specific gun
is

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1 known to have been used in such crime, such agency shall submit
a
2 request to the national tracing center of the United States
Department
3 of Treasury, bureau of alcohol, tobacco and firearms to trace the
move-
4 ment of such gun and such federal agency shall be requested to
provide
5 the superintendent of the division of state police and the local
law
6 enforcement agency with the results of such a trace. This
subdivision
7 shall not apply where the source of a gun is already known to a
local
8 law enforcement agency.

9 § 22. The state finance law is amended by adding a new section 97-
www
10 to read as follows:
11 § 97-www. Gun trafficking interdiction fund. 1. There is hereby
estab-
12 lished in the custody of the state comptroller a special fund to
be
13 known as the "gun trafficking interdiction fund".
14 2. Such fund shall consist of all moneys appropriated for the
purpose

15 of such fund, all other moneys credited or transferred to such
fund
16 pursuant to law, all moneys required by the provisions of this
section
17 or any other law to be paid into or credited to such fund, and
all
18 moneys received by the fund or donated to it.
19 3. Moneys of such fund shall be available for appropriation and
allo-
20 cation to the division of criminal justice services for the purpose
of
21 funding the gun trafficking interdiction program as set forth in
section
22 two hundred thirty of the executive law.
23 4. Moneys shall be paid out on the audit and warrant of the
comp-
24 troller on vouchers certified or approved by the commissioner of
the
25 division of criminal justice services.

26 § 23. Subdivision 1 of section 400.10 of the penal law, as added
by

27 chapter 531 of the laws of 1984, is amended to read as follows:

28 1. (a) Any owner or other person lawfully in possession of a
firearm,
29 rifle or shotgun who suffers the loss or theft of said weapon
shall
30 within twenty-four hours of the discovery of the loss or theft
report
31 the facts and circumstances of the loss or theft to a police
department
32 or sheriff's office.

33 (b) Whenever a person reports the theft or loss of a firearm, rifle
or
34 shotgun to any [~~peace officer,~~] police department or sheriff's
office,
35 the officer or department receiving such report shall forward notice
of
36 such theft or loss to the division of state police via the New
York
37 [~~State Automated Criminal Justice Information System~~] Statewide
Police
38 Information Network. The notice shall contain information in
compliance
39 with the New York Statewide Police Information Network Operating
Manual,
40 including the caliber, make, model, manufacturer's name and
serial
41 number, if any, and any other distinguishing number or
identification
42 mark on the weapon.

43 § 24. Section 400.10 of the penal law is amended by adding a
new
44 subdivision 3 to read as follows:

45 3. Notwithstanding any other provision of law, a violation of
para-
46 graph (a) of subdivision one of this section shall be punishable only
by

47 a fine not to exceed one hundred dollars.

48 § 25. The legislature believes that many needless deaths caused
by
49 firearms may be prevented by the use of personalized firearms,
more
50 commonly known as "smart guns", which may only be fired by the
author-
51 ized user. As an important first step in the possible use of this
new
52 type of personalized or "smart gun", the legislature is hereby
directing
53 the division of state police to conduct a comprehensive study of
the
54 feasibility of requiring the use of personalized firearms in this
state.

55 2. The superintendent of the division of state police shall,
in
56 consultation with the United States Secretary of the Treasury, bureau
of
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1 alcohol, tobacco and firearms, the National Law Enforcement
and
2 Correction Technology Lab located in Rome, New York, and such
other
3 private and public entities as the superintendent deems
appropriate,
4 conduct a comprehensive study of the availability and effectiveness
of
5 existing technology for the use of personalized firearms, commonly
known
6 as "smart guns" which may only be fired by the authorized user.
Such
7 study, shall include, but not be limited to, an examination of
the
8 availability and effectiveness of personalized firearms that
incorporate
9 within their design, and as part of their original manufacture,
technol-
10 ogy which limits their operational use and an examination of the
avail-
11 ability and effectiveness of technology to transform non-
personalized
12 firearms into personalized firearms. Such technology may involve a
vari-
13 ety of systems, such as mechanical or electronic systems, which
restrict
14 the operation of the firearm through radio frequency tagging,
touch
15 memory, remote control, fingerprint, magnetic encoding or other
auto-
16 mated user identification systems. In addition, the superintendent
shall
17 examine and evaluate reports and studies conducted on the use of
person-
18 alized firearms.

19 The superintendent of the division of state police shall, in
collab-
20 oration with the United States Secretary of the Treasury, bureau
of
21 alcohol, tobacco and firearms, the National Law Enforcement
and
22 Correction Technology Lab located in Rome, New York, and such
other
23 public or private entities as the superintendent deems
appropriate,
24 formulate the necessary testing procedures for personalized firearms
and
25 test such firearms and prototypes of firearms or observe the testing
of
26 firearms and prototypes of firearms, to evaluate the effectiveness
and
27 safety of such firearms, including, but not limited to, whether
such
28 personalized firearms effectively preclude or prevent the
personalized
29 characteristics of such firearms from being deactivated.
30 A report, with recommendations, shall be submitted to the governor
and
31 the legislature not later than October 1, 2001. As part of such
report,
32 the superintendent of the division of state police shall make
recommen-
33 dations as to the feasibility or desirability of requiring the use
of
34 personalized firearm technology for all firearms
manufactured,
35 possessed, sold, offered for sale, received, transferred,
shipped,
36 transported or distributed within this state, including whether, or
to
37 what extent the use of personalized firearm technology may not be
appro-
38 priate for certain categories of firearms. For purposes of this
section,
39 the terms: (a) "authorized user" means the person who lawfully owns
the
40 firearm or a person to whom the owner has given express consent
to
41 lawfully use the firearm; and (b) "firearm" means a pistol or
revolver.
42 § 26. Nothing in this act shall be construed to prohibit a
munici-
43 pality or other unit of local government from adopting or maintaining
a
44 stricter standard regulating the subject matters contained in
sections
45 three, ten or the amendments made to paragraph (a) of subdivision 1
of
46 section 400.00 of the penal law by section eighteen of this act by
local
47 law or ordinance.

48 § 27. Severability. If any clause, sentence, paragraph, section
or
49 part of this act shall be adjudged by any court of competent
jurisdic-
50 tion to be invalid, the judgment shall not affect, impair or
invalidate
51 the remainder thereof, but shall be confined in its operation to
the
52 clause, sentence, paragraph, section or part of this act
directly
53 involved in the controversy in which the judgment shall have
been
54 rendered.

55 § 28. This act shall take effect immediately; provided, however,
that:

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1 1. Sections one through three, six through nineteen and twenty-
three
2 and twenty-four of this act shall take effect on the first day of
Novem-
3 ber next succeeding the date on which it shall have become a
law;
4 provided, further, however, that effective immediately the division
of
5 state police is authorized and directed to promulgate such rules
and
6 regulations as may be necessary to effectuate the provisions of
sections
7 three and four of this act; provided, further, that the amendments
to
8 subdivision 3 of section 265.00 of the penal law made by section
eight
9 of this act shall apply to offenses committed in violation of
article
10 265 or 400 of the penal law on or after the first day of November
next

11 succeeding the date on which this act shall have become a law; and
12 2. The gun trafficking interdiction program and gun tracer
program

13 contained in section twenty-one of this act shall take effect
November
14 1, 2000, provided further, however, that the superintendent of the
divi-
15 sion of state police is authorized and directed to immediately
adopt,
16 amend and promulgate such rules and regulations as may be necessary
and
17 desirable to effectuate the purposes of sections twenty-one and
twenty-
18 two of this act.

EXHIBIT 26

**Declaration of Roderick M. Thompson in
Support of Sunnyvale's Opposition to
Plaintiffs' Motion for Preliminary
Injunction**

City of Rochester, NY
Sunday, January 12, 2014

Chapter 47. DANGEROUS ARTICLES

[HISTORY: Adopted by the Rochester City Council 11-25-1941. Amendments noted where applicable.]

§ 47-1. (Reserved)

Editor's Note: Former § 47-1, Squawkers, was repealed 11-10-1987 by Ord. No. 87-370.

§ 47-2. Darts, arrows and pointed instruments.

[Amended 6-22-1954; 10-13-1987 by Ord. No. 87-347]

No person shall sell, offer for sale, keep for sale, give, loan or lease to any person under 18 years of age any metal-tipped arrow or sharp pointed wooden or plastic arrow, or any sharp pointed wooden, plastic or metal instrument or weapon, so weighted and constructed as to be capable of being thrown or hurled to strike a person or object with its sharpest point, commonly known as a "dart"; or any sword, machete or knife other than a folding pocketknife with no blade more than three inches in length; nor shall any person under 18 years of age possess any such object. The provisions of this section shall not apply to the use of bows and arrows and darts in supervised recreation programs and on archery ranges.

§ 47-3. (Reserved)

Editor's Note: Former § 47-3, Writing implements made of glass, was repealed 11-10-1987 by Ord. No. 87-370.

§ 47-4. Storage and display of firearms, ammunition and explosives.

Editor's Note: Former § 47-4, Sale or gift of dangerous weapons, was repealed 3-16-1993 by Ord. No. 93-62.

[Added 9-24-1996 by Ord. No. 96-297]

A. Purpose and intent. The Council finds that it is necessary to regulate the commercial storage, possession and display of firearms, ammunition or explosives pursuant to § 139-d of the General Municipal Law in order to provide for the public health, safety and welfare of all persons in the City of Rochester. The Council finds that the location of such activities close to residential uses is not compatible with residential uses and can pose a danger to residents through fire or explosion or as a result of burglaries at such locations. The Council therefore intends to regulate the location of such activities and to place additional regulations upon those activities in order to assure that such activities are conducted in a safe manner. The restrictions found herein shall be in addition to restrictions found in Chapter **120** of the Municipal Code, Zoning Code, and whichever regulations are more restrictive shall be

applicable to any potential location where such activities are to be conducted.

[Amended 11-19-2002 by Ord. No. 2002-354]

- B. Location. The storage, possession or display of firearms, ammunition or explosives within a building occupied by a residential use, or within a building located within 100 feet of any residential use, which distance shall be measured from the closest point of the building, or portion thereof, used for the storage, possession or display of firearms, ammunition or explosives to the nearest point of the lot line of the property with a residential use, is hereby prohibited.
- C. Standards of design, construction and maintenance of buildings and structures in which firearms, ammunition or explosives are stored.
- (1) Perimeter doorways. All perimeter doorways shall meet one of the following:
 - (a) A windowless steel security door equipped with a high-security cylinder lock;
 - (b) A windowed metal door that is equipped with a high-security cylinder lock. If the window has an opening of five inches or more measured in any direction, the window shall be covered with steel bars of at least one-half-inch diameter no further than six inches apart, or metal grating of at least nine gauge which has no spaces larger than six inches wide measured in any direction, affixed to the exterior or interior of the door; or
 - (c) A metal grate or a metal folding scissors gate of at least nine gauge which has no spaces larger than six inches wide measured in any direction that is padlocked and affixed to the premises independent of the door and doorframe when the premises is not open for business.
 - (2) Windows. All windows shall be covered with steel bars of a least one-half-inch diameter no further than six inches apart; or metal grating of at least nine gauge which has no spaces larger than six inches wide measured in any direction, affixed to the exterior or interior of the window frame; or a metal grate or a metal folding scissors gate of at least nine gauge which has no spaces larger than six inches wide measured in any direction that is padlocked and affixed to the premises independent of the door and doorframe when the premises is not open for business.
 - (3) Heating, ventilating, air-conditioning and service openings. All heating, ventilating, air-conditioning and service openings shall be secured with steel bars, metal grating or an alarm system.
 - (4) Alarm systems. Any building or structure used for the storage, possession and display of firearms, ammunition or explosives shall be protected by an alarm system which, when activated, directly notifies either a security guard on duty at the location, the Emergency Communications Center (through a designated line other than 911), an answering service or a central station, of a fire or smoke or intrusion or attempted intrusion into the premises. If an answering service or central station is used, the answering service or central station shall provide the service of receiving on a continuous basis through trained employees, emergency signals from the alarm systems and, thereafter, immediately relaying the message by live voice to 911.
- D. Visibility of interior to be maintained at all times. The interior of any building or structure used for the storage, possession and display of firearms, ammunition or explosives shall be visible through any windows at all times when open for business, and no drapes or blinds should be used that would block the view of police or passersby who might observe unusual activity within the premises. The exterior of the premises shall be illuminated at night and during the hours when business is not conducted within.
- E. Combustible materials. Combustible materials shall not be stored in any building or structure or

that portion thereof used for the storage, possession and display of firearms, ammunition or explosives.

- F. Fire-extinguishing equipment. Fully operable listed fire-extinguishing equipment shall be maintained in any building or structure used for the storage, possession and display of firearms, ammunition or explosives and made easily accessible.
- G. Smoking and open flames prohibited. Smoking, matches, spark-producing devices and open flames shall be prohibited in any building or structure or that portion thereof used for the storage, possession and display of firearms, ammunition or explosives.
- H. Standards of security for storage of firearms, ammunition or explosives.
- (1) Storage of ammunition and explosives. All ammunition and explosives shall be stored in compliance with 9 NYCRR 1176 et seq. and 12 NYCRR 39 et seq. Further, all ammunition when being displayed shall be kept in locked cases or behind the counter in an area not accessible to the public.
 - (2) Storage of firearms when open for business.
 - (a) No firearms shall be stored, exhibited or displayed in windows of the premises.
 - (b) Firearms storage or inventory areas shall be physically separated from counter and display areas and access to these areas shall be carefully controlled.
 - (c) All firearm display cases shall be kept locked and secured at all times and not readily accessible to the public. All keys to such display cases shall not leave the control of authorized personnel.
 - (d) Trigger locks which disable firearms and prevent them from functioning must be locked to each firearm at all times, or the firearms must be secured in a locked case or be otherwise locked, or the firearms must be dispensed in an area behind the counter that is not accessible to the public. These requirements shall not apply to a firearm being shown to a customer, being repaired, or otherwise being worked on.
 - (3) Storage of firearms when not open for business. When not open for business, all firearms shall be stored in accordance with one of the following:
 - (a) All firearms shall be stored in a locked fireproof safe or vault located in the business premises;
 - (b) All firearms must be secured by a hardened steel rod or cable of at least 1/8 inch in diameter through the trigger guard of the firearm. The steel cord or cable shall be secured with a hardened steel lock that has a shackle. The lock and shackle shall be protected or shielded from the use of a bolt cutter and the rod or cable shall be anchored in a manner that prevents the ready removal of the firearms from the premises; or
 - (c) All firearms shall be secured in a manner that prevents the ready removal of the firearms from the premises, as approved by the Chief of Police or the Chief's designee.
- I. The regulations provided for herein shall not apply to the personal possession, use or ownership of firearms or ammunition therefor.

§ 47-5. Firearms, shotguns, rifles and other dangerous weapons.

Editor's Note: For additional provisions relating to firearms, see Ch. 43, Cemeteries, § 43-11, and Ch. 79, Parks, § 79-5.

[Amended 9-11-1951; 1-11-1955; 5-10-1960; 1-27-1970 by Ord. No. 70-36; 5-28-1974 by Ord. No. 74-180; 5-27-1986 by Ord. No. 86-163; 3-16-1993 by Ord. No. 93-62]

- A. Purpose and intent. The Council finds that violent crime is a serious problem in the City and

firearms and other dangerous weapons are frequently used in the commission of crimes, particularly homicides and assaults. The possession of such weapons also often leads to accidental deaths and injuries. The possession and use of assault weapons and ammunition feeding devices for criminal purposes is increasing and poses a serious danger to public safety. The use of weapons by persons under the influence of drugs and/or alcohol can readily lead to serious injury or death. The possession of weapons in public facilities and places also poses a serious danger to public safety. The possession of toy or imitation weapons which substantially duplicate actual weapons poses a danger to the person possessing the weapon and to others. In order to promote and protect the health, safety and welfare of the public, the Council finds it necessary to place restrictions upon the possession and use of such weapons. The restrictions imposed by this section are intended to be in addition to restrictions found in state law and are not intended to conflict with state law provisions.

B. As used in this section, the following terms shall have the meanings indicated:

AIR GUN

Any pistol, revolver, rifle or shotgun which fires projectiles by means of a spring or compressed air or other gas, instead of an explosive.

[Amended 12-15-2009 by Ord. No. 2009-410 Editor's Note: This ordinance provided an effective date of 1-11-2010.]

AMMUNITION

Explosives suitable to be fired from a firearm, machine gun, pistol, revolver, rifle, shotgun, assault weapon or other dangerous weapon.

AMMUNITION FEEDING DEVICE

Magazines, belts, feedstrips, drums or clips capable of being attached to or utilized with any center-fire rifle, shotgun or pistol which employs the force of the expanding gases from a discharging cartridge to chamber a fresh round after each single pull of the trigger which, in the case of a rifle or shotgun holds in excess of five cartridges, or in the case of a pistol holds in excess of 17 cartridges.

ASSAULT WEAPON

- (1) Any center-fire rifle or shotgun which employs the force of the expanding gases from a discharging cartridge to chamber a fresh round after each single pull of the trigger, and which is loaded or capable of being loaded with a combination of more than six cartridges in the ammunition feeding device and chamber combined. For the purposes of this section, a weapon is capable of being loaded if it is possessed by one who, at the same time, possesses:
 - (a) In the case of a rifle, a fixed or detachable ammunition feeding device which is attached to or utilized with or capable of being attached to or utilized with such rifle and which has a capacity of more than five cartridges; or
 - (b) In the case of a shotgun, an ammunition feeding device which is attached to or utilized with or capable of being attached to or utilized with such shotgun and which has a capacity of more than five cartridges.
- (2) A center-fire rifle or shotgun which employs the force of expanding gases from a discharging cartridge to chamber a fresh round after each single pull of the trigger, and which has:
 - (a) A flash suppressor attached to the weapon reducing muzzle flash;
 - (b) A grenade launcher;
 - (c) A sighting device making a target visible at night;
 - (d) A barrel jacket surrounding all or a portion of the barrel to dissipate heat therefrom; or

- (e) A multi-burst trigger activator.
- (3) Any stockless pistol grip shotgun.
- (4) The following weapons manufactured prior to the effective date of this section.
[NOTE: This section was found unconstitutional by the Honorable Charles J. Siragusa, Supreme Court Justice, Monroe County, in Citizens for a Safer Community v. City of Rochester, Index No. 93-08421.]
- (5) For purposes of this section, the term "assault weapon" shall not include any of the following:
- (a) Any weapon which has been modified to render it permanently inoperable or permanently make it a device no longer defined as an "assault weapon";
 - (b) Weapons that do not use cartridges or shells;
 - (c) Manually operated bolt-action weapons, lever-action weapons, slide-action weapons or single-shot weapons;
 - (d) Multiple-barrel weapons, revolving-cylinder weapons except shotguns, weapons that use exclusively a rotary Mannlicher-style magazine; or
 - (e) Any antique firearm as defined in § 265.00 of the New York State Penal Law or any curio or relic as defined under United States law which is possessed by a licensed collector in accordance with United States Law.

DISPOSE OF

To dispose of, give away, give, lease, loan, keep for sale, offer, offer for sale, sell, transfer or otherwise dispose of.

DRUG

Any substance listed in § 3306 of the Public Health Law of the State of New York.

DWELLING

As defined in Chapter 120 of the Municipal Code, Zoning Code.

[Amended 11-19-2002 by Ord. No. 2002-354]

FIREARM

Any pistol or revolver; or a shotgun having one or more barrels less than 18 inches in length or any weapon made from a shotgun (whether by alteration, modification or otherwise) if such weapon as modified has an overall length of less than 26 inches; or a rifle having one or more barrels less than 16 inches in length or any weapon made from a rifle (whether by alteration, modification or otherwise) if such weapon as modified has an overall length of less than 26 inches. For purposes of this definition, the length of the barrel on a shotgun or rifle shall be determined by measuring the distance between the muzzle and the face of the bolt, breech or breechlock when closed and when the shotgun or rifle is cocked; the overall length of a weapon made from a shotgun or rifle is the distance between the extreme ends of the weapon measured along a line parallel to the center line of the bore. Such definition, except as otherwise indicated, shall include both loaded and unloaded firearms, except that it shall not include any antique firearm as defined in federal or New York State law or any curio or relic as defined under United States law which is possessed by a licensed collector in accordance with United States law.

PARK

As defined in § 79-1 of the Municipal Code.

POSSESS

Have physical possession or otherwise to exercise dominion or control over. The presence in an automobile of any firearm, rifle or shotgun which is openly visible is presumptive evidence of its possession by all persons occupying such automobile at the time such

firearm, rifle or shotgun is found, except if such firearm, rifle or shotgun is found in a vehicle for hire.

PUBLIC FACILITY

Any building or facility owned, leased, operated or controlled by or on behalf of any government, municipality or public authority or corporation within the boundaries of the City, except buildings or facilities used for educational purposes.

PUBLIC PLACE

Any street, including the sidewalk portion thereof, park, playground, recreation area, cemetery or lot owned, leased, operated or controlled by or on behalf of any government, municipality or public authority or corporation within the boundaries of the City, which is generally accessible to the public, except grounds used for educational purposes.

RIFLE

A weapon designed or redesigned, made or remade and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.

SHOTGUN

A weapon designed or redesigned, made or remade and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.

- C. No person shall possess a loaded or unloaded firearm, rifle, shotgun or air gun, or a dagger, dangerous knife, dirk, razor or stiletto, in a public place or public facility in the City. This prohibition shall not apply to:
- (1) A police officer or peace officer authorized to possess the same;
 - (2) A government employee or licensed security guard authorized or required by employment or office to possess the same while acting within the scope of such employment;
 - (3) A person in the military service of the State of New York or the United States when duly authorized to possess the same;
 - (4) A person transporting a rifle or shotgun in a motor vehicle in the City in accordance with the provisions of § 11-0931, Subdivision 2, of the New York State Environmental Conservation Law, or otherwise transporting an unloaded rifle, shotgun or air gun in the City, provided that the same is completely enclosed or contained in a nontransparent carrying case and either:
 - (a) Said carrying case is locked; or
 - (b) A locking device is attached to the weapon and locked in a manner so as to prevent the weapon from being fired;
 - (5) An authorized person who, for the purpose of shooting practice, possesses a weapon at an established target range in a public place other than a park or public facility;
 - (6) A person voluntarily surrendering the same in accordance with the provisions of § 265.20 of the Penal Law; or
 - (7) Possession of a firearm by a person licensed to carry a firearm pursuant to § 400.00 of the Penal Law or possession or transportation by a gunsmith or dealer in firearms in accordance with a license issued by the State of New York or the United States, except that this subsection shall not apply in a park or a public facility other than a parking garage.
- D. No person shall store a firearm, rifle, shotgun or air gun in a dwelling in the City unless said

firearm, rifle, shotgun or air gun is completely enclosed or contained in a nontransparent locked carrying case or in a locked gun rack, cabinet, closet or safe, or a locking device is attached to the weapon and locked in a manner so as to prevent the weapon from being fired. This requirement shall not apply to a rifle, shotgun or licensed firearm carried on the body of the owner or within such close proximity of the owner that the owner can retrieve it as quickly and easily as if it were carried on the owner's body.

- E. No person shall dispose of any firearm, rifle, shotgun, air gun or ammunition in the City. This prohibition shall not apply to:
- (1) A gunsmith or dealer in firearms duly licensed by the State of New York or the United States;
 - (2) A person disposing of the same to a gunsmith or dealer in firearms duly licensed by the State of New York or the United States;
 - (3) A person voluntarily surrendering the same in accordance with the provisions of § 265.20 of the Penal Law;
 - (4) A person disposing of a licensed firearm in accordance with law;
 - (5) Disposition by intestate or testamentary bequest; or
 - (6) A person disposing of a rifle, shotgun, air gun or ammunition to a family member.
- F. No person shall possess an assault weapon or an ammunition feeding device in the City. This prohibition shall not apply to:
- (1) A police officer or peace officer authorized to possess the same;
 - (2) A person in the military service of the State of New York or the United States when duly authorized to possess the same;
 - (3) A person voluntarily surrendering the same in accordance with the provisions of § 265.20 of the Penal Law; or
 - (4) A gunsmith or dealer in firearms duly licensed by the State of New York or the United States for weapons to be used by police officers or persons in the military service or for delivery outside of the City.
- G. No person shall dispose of an assault weapon or ammunition feeding device in the City. This prohibition shall not apply to:
- (1) A person voluntarily surrendering the same in accordance with the provisions of § 265.20 of the Penal Law; or
 - (2) A gunsmith or dealer in firearms duly licensed by the State of New York or the United States for weapons to be used by police officers or persons in the military service or for delivery outside of the City.
- H. No person shall carry a firearm, shotgun, rifle or air gun in the City while such person has 1/10 of 1% or more by weight of alcohol in the person's blood as shown by chemical analysis of the person's blood, breath, urine or saliva.
- I. No person shall carry a firearm, shotgun, rifle or air gun in the City while in an intoxicated condition.
- J. No person shall carry a firearm, shotgun, rifle or air gun in the City while the person's ability to safely carry such weapon is impaired by the use of a drug.
- K. Any person who carries a firearm, shotgun, rifle or air gun in this City shall be deemed to have given consent to a breath test and a chemical test of the person's breath, blood, urine or saliva for the purpose of determining the alcoholic or drug content of the person's blood, provided that any test is administered at the direction of a police officer having reasonable grounds therefor. A chemical test must be administered within two hours after such person has been placed under arrest for a violation of this section or any other law or ordinance involving the use or possession of a firearm, rifle, shotgun or air gun, or within two hours after

a breath test indicates that alcohol has been consumed by such person. Upon the trial of any action arising out of an arrest for a violation of Subsection **H**, **I** or **J** of this section, the court shall admit evidence of the amount of alcohol or drugs in the blood of the person carrying the firearm, shotgun, rifle or air gun as shown by a test administered pursuant to this section. Evidence of a refusal to submit to a chemical test shall be admissible in any trial, proceeding or hearing based upon a violation of such subsections, but only upon a showing that the person was given sufficient warning, in clear and unequivocal language, of the effect of such refusal and the person persisted in such refusal.

- L. [NOTE: This section was found unconstitutional by the Honorable Charles J. Siragusa, Supreme Court Justice, Monroe County, in Citizens for a Safer Community v. City of Rochester, Index No. 93-08421.]
- M. Discharge of weapons; permits.
- (1) No person shall discharge an air gun, shotgun, rifle, assault weapon, machine gun, submachine gun or a firearm of any kind or description in the City, except police officers, peace officers, members of the military and persons holding permits as in this subsection provided.
 - (2) The Chief of Police is hereby authorized to grant permits for the discharge of shotguns at clay pigeons at any particular location or for the discharge of weapons at target ranges subject to such restrictions and conditions as the Chief may deem necessary. Any person holding such a permit shall obey all the restrictions and conditions contained herein.
- N. The owner of a firearm, shotgun, rifle, assault weapon, machine gun or submachine gun, which becomes lost or stolen, shall report the loss or theft to the Rochester Police Department within 24 hours after the loss or theft is discovered or reasonably should be discovered. The owner of such a weapon shall store the weapon in a safe and secure manner as required in Subsection **D** of this section and shall check such weapon at least once each week, or immediately upon returning to the City if the owner is absent from the City for more than one week. Failure to perform such a check shall not be a defense to a prosecution for a violation of this subsection.

[Added 9-15-1998 by Ord. No. 98-345 Editor's Note: This ordinance also relettered former Subsections N and O as Subsections O and P.]

- O. Notwithstanding the penalties contained in § 47-8, a violation of any provision of this section shall be punishable by a fine not to exceed \$1,000 or by imprisonment not to exceed 180 days, or by both such fine and imprisonment.
- P. The provisions of this section are severable, and if any of its provisions shall be held unconstitutional or invalid, the decision of the court shall not affect or impair any of the remaining provisions of the same. It is hereby declared to be the intention of the Council that this section would have been adopted had such unconstitutional or invalid provision not been included herein. If any term or provision of this section shall be declared unconstitutional, invalid or ineffective in whole, or in part, by a court of competent jurisdiction, then to the extent that it is not constitutional, invalid or ineffective, such term or provision shall be in force and effect, nor shall such determination be deemed to invalidate the remaining terms or provisions thereof.

§ 47-6. (Reserved)

Editor's Note: Former Subsection A of § 47-6, Barbed wire, as amended, was redesignated as § 39-307D and former Subsection B was deleted 4-15-1997 by Ord. No. 97-133.

§ 47-7. Discarded refrigerators and other containers.

[Added 9-8-1953]

It shall be unlawful for any person, firm or corporation to leave outside of any building or dwelling in a place accessible to children any abandoned, unattended or discarded icebox, refrigerator or any other container of any kind which has an airtight door or lock which may not be released for opening from inside of said icebox, refrigerator or container. It shall be unlawful for any person, firm or corporation to leave outside of any building or dwelling in a place accessible to children any abandoned, unattended or discarded icebox, refrigerator or any other container of any kind which has an airtight snap-lock or other device thereon without first removing the said snap-lock or doors from said icebox, refrigerator or container.

§ 47-8. Penalties.

[Amended 7-22-1969 by Ord. No. 69-329]

Any person or corporation violating any of the provisions of this chapter shall, upon conviction be punishable by a fine not exceeding \$150, or by imprisonment not exceeding 15 days, or by both such fine and imprisonment, or by a penalty of not less than \$5 nor more than \$500 to be recovered by the City of Rochester in a civil action.

EXHIBIT 27

To

**Declaration of Roderick M. Thompson in
Support of Sunnyvale's Opposition to
Plaintiffs' Motion for Preliminary
Injunction**

DEATH ON THE L.I.R.R.: The Rampage; Gunman in a Train Aisle Passes Out Death

By FRANCIS X. CLINES
Published: December 09, 1993

When the gunman emptied his first clip into passengers at the rear of the car and stopped to reload, Kevin Zaleskie, crouching in panic a few seats farther along, realized he had one small chance to flee before aim was taken at him as the stalker worked the aisle, shooting to the right, then to the left, as methodical as if he were taking tickets.

"I got up to run, but the aisle was jammed with someone," Mr. Zaleskie, a financial analyst for I.B.M., said today, recalling what he thought would be the violent ending of his life amid the most banal routine of commuting home. "I didn't think I was going to get out. I was very panicky. I ducked back down in the seat. The guy was moving in my direction, shooting again." A Ticket and a Gun

The rampage by the gunman aboard the 5:33 evening commuter train from Pennsylvania Station had moved Mr. Zaleskie and 80 other passengers in the third car from the easiest of lulling habits to an instantaneous scramble of terror and fear.

A man intent on murder who carefully paid for his ticket back in New York City was firing methodically with a 9-millimeter pistol, a hallmark of modern America's pathology of violence and fear. In three minutes of gunfire, he reduced the defenseless commuters in the third car to casualties on a one-sided battlefield.

As the gunman was finally brought to ground, tackled by one brave passenger and pinned by two others as he sought to reload his pistol for a third 15-shot rampage, David Farrell joined a reinforcement group that came from hiding to grab his legs and arms. "We held on and the gunman said, 'Oh God, what did I do? What did I do? I deserve whatever I get.' "

One of the men who subdued him could be heard commanding again and again from within the bloody scrimmage: "Stay where you are. Shut up. Shut up. Shut up."

Passengers farther away in the train would not discover the carnage until well after the gunman was subdued and the first of his 25 victims limped or were carried onto the Long Island Rail Road platform. One passenger, William A. Warshowsky, had scrambled for his life from the gunman's approach, leaped with a crowd into the darkness from the stopped train and ran all the way home, finally checking his body for wounds and celebrating his survival intact.

Another passenger, Margaret Richards, was amazed even beyond the bloodied windows and three victims she saw slumped tightly together with head wounds, when she saw the gunman handcuffed later in a patrol car. "He was very calm. No emotions showing. Everything fine, you know, 'dum-de-dum,' " she related, songlike. "And then someone came over from all the blood of the train and lost it and began shouting, 'How can he be sitting there so calm after everything he did?' "

In the moment after the gunman had been subdued, Mr. Zaleskie had turned in his mind from the next likely victim to someone of immeasurable good fortune. In a minute, he was taking off his necktie and began making a tourniquet for a woman bleeding nearby, delivered from the terrifying stalker.

"The guy kept coming down the aisle with the gun," Mr. Zaleskie related of the height of the carnage. "And I just put my briefcase in front of my face and hunched down with two other people in the seat," he said, describing something close to fearful resignation. "He walked past, still shooting. And I didn't feel any bullets," the passenger continued in a very tight, very grateful monotone of recollection and survival.

At this point, more than a score of passengers were already cast about the car, wounded and bleeding, and the gunman tended his pistol, the second 15-shot clip exhausted.

"So he's reloading again and he was certainly going to keep shooting," Mr. Zaleskie recalled. "But someone yells, 'Grab him!' "

That was when one passenger tackled the gunman in the center of the car before he could get off another round and two more men piled onto him. The killer was pinned in a seat in the blood- and gore-smeared third car of the train, which had come to a stop at the Merillon Avenue station, panic spreading in all directions.

"A horror," said Mr. Zaleskie of the scene inside the car, suddenly quiet after the outrageous siege. "An absolute horror, and lying around in the aisles and in the seats, you see these people you never quite got to know across years of commuting," he said, his tone tinged with wonder. "Faces you recognize each day, but don't really know. And this horror has happened to them."

At the front of the car, Mr. Warshowsky had got up to wait by the door as the train approached the station when he heard the pop of the 9-millimeter gunfire and mistook it for something harmless, caps or fireworks. "A woman yelled, 'He's got a gun! He's shooting people!' " the passenger recalled, saying he was instantly moving in an adrenal blur, jumping down into a seat to hide as the bullets sprayed about the car.

"I heard 15 shots," said the 26-year-old purchasing department worker at The New York Times. "The gunman was pressing the trigger every half second or so. Going side to side shooting people. Not rapid fire, but pressing the trigger steadily -- pop, pop, pop. When he stopped to reload I made a run for the next car. We were trampling each other. I thought the guy was right at my back," said the New York City native, in his

second year of suburban life.

In the next car, the second in the 12-car train, some passengers, unaware of the killing going on next door, seemed annoyed at the unruly influx. "Be calm," one shouted at Mr. Warshowsky, who joined a crowd that manually forced open a door as the train pulled into the station. He burst forth to freedom.

The gunman had moved backward down the aisle, suddenly, briefly, facing each victim as or after he fired. The gunman was identified by the police today as Colin Ferguson, a 35-year-old native of the island of Jamaica who authorities said was a rage-filled individual from a furnished room in Brooklyn.

Police officials reported that the suspect was carrying scraps of angry notes cast in racist tones but directed across a spectrum of institutions and ethnic groups, including whites, Asians and black officials police said he characterized in his angry jottings as corrupt and racist. None of his victims was black, and police officials, who described his siege as methodical and inclusive, were unable to say whether there were other black passengers aboard the train.

"This was the work of a deranged, maniacal person who for a variety of reasons decided to explode," said Chief Joseph Flynn of the Long Island Rail Road police.

When Mr. Warshowsky began fleeing, he saw a conductor peer into the bloody third car from the second, spot the gunman and make an about-face. The railroad defended the crew's performance, saying the engineer, informed of the shooting, thought it best not to open the doors immediately because two of the cars were not at the platform. A conductor finally managed to climb from a train window and open some doors from outside so the panicky throng could flee.

As the gunman had moved in vicious pathology down the aisle, one passenger heard a man suddenly shout, "I have seven kids. Please don't kill me." His fate was unknown.

Police detectives said it appeared that the gunman had been planning his foray for more than a week. In the aftermath, it was his relentlessness that was most often recalled with lingering fear.

In the fourth car, Lorraine Oltadel's first notion of something going wrong aboard the 5:33 was the sudden shout, "He is coming with a gun!"

She did not immediately comprehend the warning but looked into the third car and saw the full threat, gun in hand, leveling passengers. "There he was. He was coming."

Then came a pause free of gunfire. A man shouted, "I think he has run out of bullets." But then, Ms. Oltadel recalled, someone screamed anew in the train: "He's coming again."

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EXHIBIT 28

To

**Declaration of Roderick M. Thompson in
Support of Sunnyvale's Opposition to
Plaintiffs' Motion for Preliminary
Injunction**

C

UCLA Law Review
June, 2009

Symposium

The Second Amendment and the Right to Bear Arms After D.C. v. Heller

*1171 THE HELLER PARADOX

[Dennis A. Henigan \[FNa1\]](#)

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In this Article, I argue that the Heller majority, in discovering a new Second Amendment right to possess guns for personal self-defense, engaged in an unprincipled abuse of judicial power in pursuit of an ideological objective. The ideological nature of Justice Scalia's opinion is revealed in his inconsistent brand of textualism, in which Scalia's own longtime insistence on the importance of context is cast aside as he interprets "the right of the people to keep and bear Arms" by divorcing it from its particular context in the Second Amendment. The majority's ideological approach is further revealed by Scalia's selective manipulation of the relevant historical record, particularly his dismissal of key elements of the Amendment's legislative history, misleading account of analogous state right-to-bear-arms guarantees, and misunderstanding of the "well regulated Militia." I find the majority opinion a paradox. Although its interpretation of the Second Amendment is driven by ideology, the opinion nevertheless is unlikely to pose a substantial constitutional threat to gun regulation and may actually weaken the Second Amendment as an argument against the adoption of new gun control laws. Finally, Heller, by taking a general gun ban "off the table" as a policy option, may eventually weaken the gun lobby's use of the slippery slope argument to frame the gun control debate in cultural terms, allowing a greater focus on the public safety benefits of specific reforms designed to reduce access to guns by dangerous persons.

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***1172** Introduction

Charlton Heston was nearing the end of his rousing speech to the 2000 National Rifle Association (NRA) Convention in Charlotte, North Carolina, where he accepted a third term as the group's president. After decrying “the divisive forces that would take freedom away,” [FN1] he hoisted in one hand, high above his head, a colonial-era musket, symbol of rebellion against the powerful to ensure American liberty. Then, in his booming baritone, Heston issued his trademark challenge to the faithful gathered to heed the call: “From my cold, dead hands!” [FN2]

Heston's musket drew a direct, visible link between the fight against tyranny that gave birth to our nation and the NRA's fight against the perceived tyranny of gun control. Patriots then and patriots now. For the committed NRA activist, moreover, Heston was symbolically drawing a connection to the Founding Fathers that is real, eternal and indelibly written into the charter of our freedoms--the Bill of Rights.

For the gun rights partisan, the Second Amendment is the trump card in the gun debate, the argument of last resort. The gun control advocate can talk about the far greater lethality of guns versus other weapons, [FN3] the thirty thousand Americans killed by gunfire every year, [FN4] and the need to regulate guns at least as much as other dangerous products like automobiles. But these arguments invariably draw the response that guns aren't like other dangerous products because the right to possess guns is uniquely protected by the Constitution.

There has, however, always been a problem with the NRA's use of the Second Amendment: Its words don't quite fit the NRA's narrative. If its intent was to guarantee a right to possess guns for private purposes like self-defense and hunting, its words seem oddly chosen:

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. [FN5]

*1173 The gun rights community has always been somewhat vexed by the language about the “well regulated Militia” and its necessity “to the security of a free State.” What are such words doing in a provision that guarantees the right to have guns to defend one's home and family? What is their function? Even the phrase “keep and bear Arms” seems strange. The Framers could have written something like: The right of the people to possess and use guns shall not be infringed. Why didn't they?

For many years, the NRA's primary strategy for dealing with the troublesome language about the “well regulated Militia” was to pretend it isn't there. The NRA headquarters building on Thomas Circle in Washington, D.C. long featured a heavily edited version of the Second Amendment on its façade. The first thirteen words were omitted.

Until its recent decision in *District of Columbia v. Heller*, [FN6] the U.S. Supreme Court had been unwilling to interpret the Second Amendment by ignoring half of its text. In fact, in *United States v. Miller*, [FN7] the Supreme Court's only extensive discussion of the Amendment prior to *Heller*, the Court assigned decisive importance to the militia language. In *Miller*, a unanimous Court held that the “obvious purpose” of the guarantee of the people's right to “keep and bear Arms” was “to assure the continuation and render possible the effectiveness” of state militia forces, and that the Amendment “must be interpreted and applied with that end in view.” [FN8] Indeed, in *Miller*, the Court upheld the defendants' indictment for transporting a sawed-off shotgun across state lines without complying with the National Firearms Act because there was no evidence that such a gun could have a “reasonable relationship to the preservation or efficiency of a well regulated militia.” [FN9] The Court further noted that it could not simply take judicial notice “that this weapon is any part of the ordinary military equipment or that its use could contribute to the common defense.” [FN10] The *Miller* Court found no reason to even address the question whether such a gun could have utility for self-defense or some other nonmilitia activity.

Prodigious historical research into the origins of the Second Amendment confirms that it was intended to address the distribution of military power in society, not the need to have guns for self-defense or other private purposes. [FN11] *1174 The Anti-Federalists, who opposed the Constitution as written and sought the addition of a Bill of Rights, were deeply worried that the Constitution had given Congress the power to raise a standing army (meaning a professional military force) that many feared would become a tool of federal tyranny, while also giving Congress excessive power over the state militias. The state militias were nonprofessional military forces composed of ordinary citizens and were regarded as a strong check on the power of a federal standing army.

Leading Anti-Federalists argued that the Constitution's grant of power to Congress to organize and arm the militia amounted to an exclusive power to do so, thus rendering the state militias vulnerable to federal hostility or neglect. For example, Anti-Federalist George Mason argued during the Virginia ratification debates that Congress' new power would allow Congress to destroy the militia by “rendering them useless--by disarming them . . . Congress may neglect to provide for arming and disciplining the militia; and the state governments cannot do it, for Congress has an exclusive power to arm them.” [FN12]

Historians tell us that the Second Amendment was an effort by the Federalist defenders of the Constitution to allay these concerns by making the keeping and bearing of arms in a state militia a “right of the people,” not dependent on federal action. [FN13] The Second Amendment was passed as a fail-safe provision, ensuring that the state militias would be armed, even if Congress abandoned them. In the words of Professors H. Richard Uviller and William Merkel, the Amendment was “concerned with federalism, and the preservation of states' capacities to defend themselves against disorder, insurrection, and invasion

whenever the national government should refrain from acting, or find itself unable to act under the federal military or militia powers.” [FN14]

For decades after Miller the lower courts consistently held that the Second Amendment guarantees the people the right to be armed only in *1175 connection with service in an organized state militia. [FN15] Since the state militia of the founding era--a system of compulsory military service imposed on much of the adult, male population--had long ago disappeared into the mists of time, the courts routinely upheld gun control laws of every conceivable variety against Second Amendment challenge. Indeed, the judicial consensus on the meaning of the Amendment had grown so strong that, in 1990, former Nixon Administration Solicitor General and Harvard Law School Dean Erwin Griswold wrote, “that the Second Amendment poses no barrier to strong gun laws is perhaps the most well-settled proposition in American constitutional law.” [FN16] A year later, former Chief Justice Warren Burger--a gun owner himself--accused the NRA of perpetrating a “fraud on the American public” by insisting that the right to be armed existed apart from service in an organized militia. [FN17]

Then in 2008, by a 5-4 vote, with Justice Scalia writing for the majority, joined by Justices Thomas, Kennedy, Roberts and Alito, the Supreme Court wiped away the consensus militia-purpose view in *District of Columbia v. Heller*. In striking down the District of Columbia's handgun ban, the Court found that the Second Amendment “elevates above all other interests the right of law-abiding, responsible citizens to use arms in defense of hearth and home.” [FN18] The Court gave the NRA and its allies the interpretation of the Second Amendment they had long sought. The constitutional right to own guns for personal use--an article of faith for those who cheered Charlton Heston's upraised musket--was now a legal reality. Many observers treated the ruling as an unqualified victory for the opponents of gun control. Yet was it?

Heller is, in fact, the new paradox of the gun control debate. In *Heller*, the conservative majority on the Supreme Court did, indeed, make history by creating a new Constitutional right to be armed. It did so, however, only by engaging in an unprincipled abuse of judicial power in the pursuit of an ideological objective. Not quite *Bush v. Gore*, [FN19] but close. Yet, as argued below, *Heller* is *1176 likely to have relatively little impact as a legal weapon against other current and future gun laws. Indeed, and of even greater significance, it is likely to alter the public debate over gun control so as to weaken, not strengthen, the gun lobby's power to block sensible gun control proposals that will dominate the debate in the future.

To understand just how confounding the *Heller* paradox may turn out to be, we should begin by understanding how indefensible the decision is as a matter of Constitutional law.

I. *Heller* as Ideology

A. Text Without Context

We have seen that the NRA has conformed the Second Amendment's text to its own constitutional preconceptions by simply pretending that its first thirteen words were never written. Justice Scalia's majority opinion in *Heller* similarly obliterates half of the Amendment, but is somewhat more sophisticated in attempting to disguise its editing of the Constitution.

Justice Scalia is well known for his insistence that the text of the Constitution is of primary importance in deciding constitutional questions, not the search for the intent of the Framers [FN20] and not changes in society since the Constitution was drafted. [FN21] Yet the brand of textualism he uses to interpret the Second Amendment is inconsistent and artificial, showing

little respect for the words the Framers actually wrote and ratified.

Scalia's overarching inconsistency is his highly selective use of context to inform meaning. The core of his textual argument is devoted to listing various eighteenth and nineteenth century uses of the phrases "keep arms" and "bear arms" to refer to a right to be armed unrelated to militias. For example, he cites a 1734 text providing, "[y]et a Person might keep Arms in his House, or on his Estate, on the Account of Hunting, Navigation, Travelling, and on the Score of Selling them in the way of Trade or Commerce, or such *1177 Arms as accrued to him by way of Inheritance." [FN22] In this instance, the use of "keep Arms" does appear to refer to the possession of arms for private purposes unrelated to militias. But how do we know this? Only because the context in which the phrase appears suggests that it refers to nonmilitia activities.

To take another of Scalia's examples, he cites various state constitutional provisions, all enacted after the ratification of the Second Amendment, that guarantee "every citizen a right to bear arms in defence of himself and the State." [FN23] We know "bear arms" includes a nonmilitia right in those provisions only because of the context in which the phrase appears, particularly the phrase "defence of himself," suggesting private self-defense, not community defense as part of an organized militia. Scalia's own examples demonstrate that context is critical to meaning. As he wrote on another occasion, "[i]n textual interpretation, context is everything" [FN24]

When it comes to the Second Amendment, however, Scalia interprets the phrase "keep and bear Arms" by ripping the phrase out of context; that is, by artificially separating the phrase from the words that precede it about ensuring "a well regulated Militia . . . necessary to the security of a free State" and determining its meaning without reference to the militia language. [FN25] Thus, the Heller majority arrives at the conclusion that the right guaranteed is "the individual right to possess and carry weapons in case of confrontation," prior to addressing the meaning of the militia language. [FN26]

The issue is not, however, whether the phrases "keep Arms" and "bear Arms" could have nonmilitia meanings in other contexts. The issue is the meaning of the phrase "keep and bear Arms" as it is used in the context of a provision of the Constitution declaring the importance of a "well regulated Militia to the security of a free State." Justice Scalia proudly points to the "many sources" presented in his opinion in which "bear arms" was used in "nonmilitary contexts," [FN27] but ignores the particular context in which the phrase appears in the Second Amendment. Moreover, Scalia's move to address the meaning of the right apart from its context is problematic even under his own definition of originalism. At the outset of his opinion, he defines the interpretive task as determining the "normal meaning" of the text *1178 "to ordinary citizens in the founding generation." [FN28] Even assuming this to be the proper definition of the Court's task, the issue should be: What would such ordinary citizens have understood to be the "right of the people to keep and bear Arms" in the context of the militia language?

Justice Scalia's opinion also notably insists on interpreting the phrase "keep and bear Arms" by slicing and dicing it into the phrases "keep Arms" and "bear Arms," before presenting multiple examples of the use of each phrase, in isolation from the other, in nonmilitia contexts. Only in passing does the opinion note the Massachusetts Declaration of Rights of 1780, [FN29] in which the two phrases appear joined together as "the right to keep and to bear arms," much as they appear in the Second Amendment. It is worth quoting the Massachusetts provision in its entirety, which Scalia does not do:

The people have a right to keep and to bear arms for the common defense. And as, in time of peace, armies are dangerous to liberty, they ought not to be maintained without the consent of the legislature; and the military power shall always be held in an exact subordination to the civil authority, and be governed by it. [FN30]

Can there be any doubt that, in this provision, context establishes that the phrase “right to keep and to bear arms” refers entirely to military matters and has nothing whatever to do with private self-defense? The provision guarantees “a right to keep and to bear arms for the common defense,” and is followed by an articulation of the dangers of standing armies and the need for civilian control of the military. It is hardly surprising that the Supreme Judicial Court of Massachusetts has held, in *Commonwealth v. Davis*, [FN31] that this provision is directed at “service in a broadly based, organized militia,” and not “guaranteeing individual ownership or possession of weapons.” [FN32] The militia language of the Second Amendment functions in the same way to elucidate the meaning of a similar phrase as referring to military matters.

Incredibly, though, the *Heller* majority claims, without even acknowledging the *Davis* case, that the state's highest court has determined that the Massachusetts right is not confined to a state-organized militia. [FN33] While ignoring the controlling authority of *Davis*, the *Heller* opinion instead relies on an 1825 libel case, *Commonwealth v. Blanding*, [FN34] in which the scope of the *1179 “right to keep and to bear arms” was not even before the Court and which suggests only that the right to be armed does not extend to those who use arms irresponsibly. [FN35] The Scalia majority opinion in *Heller* thus concludes that, in the Massachusetts provision, the right is not confined to militia service, but rather “secured an individual right to bear arms for defensive purposes.” [FN36] This implausible reading of the Massachusetts language strongly suggests that Justice Scalia would find that the right to “keep and bear Arms” has a nonmilitia meaning in every possible context. What became of Scalia's conviction that in interpreting Constitutional text, “context is everything”? [FN37] When it comes to the Second Amendment, context apparently is nothing. Rather, the imperative to discover a right to be armed for self-defense is everything.

Justice Scalia's majority opinion disguises its unprincipled discarding of context through the sleight-of-hand of referring to the militia language as merely “prefatory” as opposed to the other “operative” language of the Amendment. It is critical to Scalia's argument that the importance of the militia language be diminished by labeling it as a “preface” or a “preamble.” It allows him to marshal the support of various rules of statutory construction regarding the limited role of such prefatory language. For example, he argues that although a prefatory clause may be used to resolve ambiguity in an operative clause, “a prefatory clause does not limit or expand the scope of the operative clause.” [FN38] Moreover, according to Scalia, “the preamble cannot control the enacting part of the statute in cases where the enacting part is expressed in clear, unambiguous terms.” [FN39] But, of course, the issue at hand is whether one can properly determine the meaning of the right guaranteed by the Second Amendment--and therefore determine whether the phrase “right of the people to keep and bear Arms” is ambiguous or clear--without first taking the militia language into account. Simply attaching the label “prefatory” or “preamble” to the militia language should not be sufficient to resolve that issue. [FN40]

*1180 Scalia's argument for interpreting the meaning of the right without regard to the militia language turns largely on what he seems to consider a self-evident analogy between the militia language of the Second Amendment and nonoperative “whereas” clauses in legislation, as well as an analogy to the nonoperative language in the preamble to the Constitution itself. [FN41] It is true that statutory language often is preceded by a series of “whereas” clauses discussing the problem the legislation is designed to address and stating its purpose, but having no independently enforceable effect as law. But the analogy of these “whereas” clauses to the militia language of the Second Amendment is invalid. The portion of the Constitution analogous to statutory “whereas” clauses is the Constitution's own preamble which, in language that speaks to the ages, sets out the broad values that “We the people” sought to pursue in establishing the new government--“to insure domestic Tranquility,” and “to secure the Blessings of Liberty to ourselves and our Posterity”--but is not independently enforceable as law. [FN42] The first thirteen words of the Second Amendment, however, are less operative than the remainder of its text only because five Justices of the Supreme Court have now decreed it to be so. [FN43]

Indeed, in his own writings, Justice Scalia has distinguished the Constitution's famous preamble from the remainder of the document, writing *1181 that the preamble sets forth only the “[t]he aspirations of those who adopted it,” while the “operative provisions of the document, on the other hand, including the Bill of Rights, abound in concrete and specific dispositions.” [FN44] Yet in *Heller*, when the goal is to create, by all means necessary, a new right unrelated to the militia, the Amendment's first thirteen words become the only portion of the Bill of Rights that is not operative. Justice Scalia's textualism apparently allows him to select the words of the Constitution that are operative, at least when it becomes necessary to support his predetermined conclusion about what the Constitution means. And there can be no doubt that, at least as to Justice Scalia himself, the *Heller* conclusion was predetermined. Over a decade before *Heller*, Scalia wrote that the Second Amendment concerned a “right of self-defense” that was “absolutely fundamental.” [FN45]

In deciding that some words of the Second Amendment are not operative, the *Heller* majority violated what the Supreme Court itself has called “the first principle of constitutional interpretation.” [FN46] This principle--applied first in *Marbury v. Madison* [FN47]--holds that the Constitution must be interpreted such that “real effect should be given to all the words its uses” [FN48] and that interpretations rendering some of its words “mere surplusage” must be avoided. [FN49] This principle is based on the profound respect accorded the constitutional text by the courts. As the Supreme Court phrased it long ago:

Every word appears to have been weighed with the utmost deliberation, and its full force and effect to have been fully understood. No word in the instrument, therefore, can be rejected as superfluous [FN50]

Well, at least until *Heller*. The phrase “mere surplusage” nicely describes the militia language under the *Heller* majority's reading of the Second Amendment. Long before the *Heller* decision, Justice Scalia had written that “textualism is no ironclad protection against the judge who wishes to impose his will” [FN51] What better proof of this statement can be offered than his own majority opinion in *Heller*?

Justice Scalia's peculiar brand of textualism thus “elevates above all other interests the right of responsible citizens to use arms in defense of hearth and *1182 home” [FN52] in a text in which this interest is entirely hidden and in which the “security of a free State,” not the security of “hearth and home” is the only expressed purpose of the guarantee. [FN53] This is ideology talking. It certainly is not constitutional interpretation.

B. Manipulating History

The *Heller* majority's arrogation of the power to edit the constitutional text is particularly disturbing in the case of the Second Amendment because the history of the Amendment's drafting by the First Congress demonstrates how important the Framers regarded the now-meaningless militia language. Indeed, the changes made in the Amendment's text by its ratifiers in the First Congress were made to the very language the *Heller* majority now has cast aside. Consider the text of the Amendment as originally drafted by James Madison and presented to the First Congress:

The right of the people to keep and bear arms shall not be infringed; a well armed, and well regulated militia being the best security of a free country; but no person religiously scrupulous of bearing arms, shall be compelled to render military service in person. [FN54]

The First Congress made the following changes to the text before ratifying it: (1) the reference to “well armed” in the description of the militia was deleted; (2) the description of the militia as “being the best security of a free country” was

changed to “necessary to the security of a free State”; (3) the language barring compelled military service of those “religiously scrupulous of bearing arms” was *1183 dropped; and (4) the position of the militia language in the Amendment was changed to make it more prominent. Other changes proved to be only temporary. For example, at one point in the process the words “composed of the body of the people” were inserted to describe the militia, but the phrase was deleted from the final version. [FN55]

The choice to begin the text with the militia language is particularly interesting because, without that change, Justice Scalia could not treat the militia language as merely prefatory, and therefore not operative. Under Madison's original version, there was nothing prefatory about the militia language; its placement in that version was itself inconsistent with its being a preface or prologue. Is it plausible that the First Congress sought to diminish the importance of the militia language by having it precede the guarantee of the right?

I will leave it to others to debate the significance of each of these changes in the Amendment's text. My point is only that they at least reflect the serious attention given by the Framers to the entire text of the Second Amendment, particularly the militia language. Why would the Framers have so actively edited these words if they, as does Justice Scalia, regarded them as merely aspirational (and thus analogous to the Constitution's preamble), having no effect whatever on the Amendment's meaning? Justice Scalia is well known for his view that constitutional interpretation should be governed by the “original meaning of the text, not what the original draftsmen intended.” [FN56] Thus, he places little importance on the “legislative history” of the Constitution, including its drafting history and the statements made by those involved in writing and ratifying the Constitution. The Heller opinion is a strong example of how his disdain for legislative history leads him to distort the “original meaning” of the text.

One aspect of the legislative history deserves special attention: the conscientious objection clause that appeared in Madison's draft but was deleted by the First Congress. The clause provided that “no person religiously scrupulous of bearing arms, shall be compelled to render military service in person.” The appearance of the provision in Madison's original version provides yet more context establishing that the right to “keep and bear Arms” had to do exclusively with military service.

The conscientious objector clause should end all doubt as to the meaning of the phrase “bear Arms” in the Amendment. Unless one subscribes to the absurdity that “bear arms” and “bearing arms” had different meanings within *1184 Madison's original proposal, the conscientious objection clause establishes forcefully that “bear Arms” in the Second Amendment refers to rendering military service. Justice Scalia responds by arguing that, since Quakers opposed not just military service, but the use of arms for any reason, the clause should be read to mean that “those opposed to carrying weapons for potential violent confrontation” would not be compelled to render military service in which such carrying of weapons would be required. [FN57] For Scalia, therefore, the conscientious objection clause is compatible with the view that “bear Arms” in the Amendment means to “carry Arms.” Of course, under Scalia's account, it would make far more sense for the conscientious objection clause to refer to persons “religiously scrupulous of keeping Arms,” rather than “bearing Arms,” unless we are to believe that a Quaker's religious objection is not to having arms, but rather to physically carrying them.

In any event, Justice Stevens' dissent destroys Scalia's speculation by quoting a similar conscientious objection clause from the Constitutional amendments proposed by Virginia's ratifying convention, in which Madison was an important participant. Two of the Virginia proposals had a transparently obvious influence on the text of the Second Amendment:

17th, That the people have a right to keep and bear arms; that a well regulated Militia composed of the body of the people trained to arms is the proper, natural and safe defence of a free State. That standing armies are dangerous to liberty, and therefore ought to be avoided, as far as the circumstances and protection of the Community will admit; and that in all cases the military should be under strict subordination to and be governed by the civil power.

19th, That any person religiously scrupulous of bearing arms ought to be exempted, upon payment of an equivalent to employ another to bear arms in his stead. [FN58]

Two points are important here. First, as demonstrated by the second sentence, the seventeenth proposal clearly uses the phrase “right to keep and bear arms” in an entirely military context. Second, the nineteenth proposal, by specifying that conscientious objectors must pay a fee to avoid military service, unequivocally uses “bear arms” to mean compelled military service, not the voluntary carrying of arms for self-defense. The notion that Madison *1185 was using “bearing arms” to have an entirely different meaning in his Second Amendment conscientious objector language is completely implausible. [FN59]

Even if Scalia's account of “bearing Arms” in the conscientious objector language were correct, the appearance of the clause in Madison's initial proposal would still be inexplicable under the Heller majority's view of the Second Amendment. Under that view, the original meaning of the Amendment was to guarantee individuals the right to choose to have a gun for private purposes or, presumably, to choose not to have a gun. If this was the meaning, why would it have ever occurred to Madison to include a clause allowing conscientious objection to compelled military service? Indeed, under this meaning, the internal logic of Madison's proposal would collapse. Madison's inclusion of a conscientious objector clause is comprehensible only if the right to “keep and bear Arms” in its text refers to the right to be armed in connection with service in the militia--service which, as we will see below, was compulsory, not a matter of choice. As Justice Stevens observed in dissent, “The State simply does not compel its citizens to carry arms for the purpose of private ‘confrontation,’ or for self-defense.” [FN60]

Justice Scalia's opinion cautions against reliance on text that was deleted from the Second Amendment, [FN61] but the legislative history, by illuminating why the conscientious objector provision was deleted, also undercuts Scalia's argument. The core objection to the clause was that it would be used to weaken the militia. Representative Elbridge Gerry argued, for example, that the clause would enable the government to “declare who are those religiously scrupulous, and prevent them from bearing arms.” [FN62] Gerry continued, “What, sir, is the use of the militia? It is to prevent the establishment of a standing army, the bane of liberty.” [FN63] It is certainly reasonable to assume that the clause was deleted because of this anticipated effect on the militia. On the other hand, one might also argue that it was deleted because it was unnecessary, indeed nonsensical, to have a conscientious objector exception in a provision having *1186 only to do with guaranteeing individuals the freedom to possess guns for private, nonmilitia use. However, there is certainly no evidence that this was the case.

According to Justice Scalia, the “most prominent” founding-era examples of the “unambiguous” use of “bear arms” to have a nonmilitia meaning were state constitutional provisions enshrining a right of citizens to “bear arms in defense of themselves and the state,” or “bear arms in defense of himself and the state.” [FN64] As noted above, the latter formulation provides a context for “bear arms” entirely different than the Second Amendment, since “defense of himself” strongly suggests a non-militia self-defense use. Moreover, all the examples of this formulation postdate the ratification of the Bill of Rights and could be regarded as efforts by states to grant a private, nonmilitia right entirely distinct from the militia-related right already granted by the federal Constitution. As to state declarations of rights in existence at the time of the framing, only two--Pennsylvania and Vermont--had right to bear arms provisions using the phrase “in defense of themselves and the state.” [FN65] Thus, even if Scalia is correct in his interpretation of this language, it would mean that, at the time of the ratification of the Second Amendment, only two states granted a right to bear arms for nonmilitia purposes. Moreover, even if Scalia is properly reading these two state provisions, it is certainly relevant that the language they used, “in defense of themselves,” does not appear in the

Second Amendment. [FN66]

However, strong evidence exists--entirely ignored by Justice Scalia (and by the dissenters as well)--that neither Pennsylvania's nor Vermont's guarantee had anything to do with private self-defense. Both the Pennsylvania and Vermont Constitutions at the time also had conscientious objection clauses similar to that in Madison's draft Second Amendment, in which the phrase "bearing arms" referred exclusively to military service. The Pennsylvania clause read: "Nor can any man who is conscientiously scrupulous of bearing arms be justly compelled thereto, if he will pay such equivalent." [FN67] The Vermont version was identical. [FN68] Language in these clauses allowing those "conscientiously*1187 scrupulous" of bearing arms to escape service by paying its "equivalent" (similar to the Virginia proposal discussed above) establishes that "bearing arms" referred to military service, not simply the carrying of guns. Thus, Scalia's interpretation of the right granted by Pennsylvania and Vermont requires the unlikely conclusion that their Constitutions used "bearing arms" to have a military meaning in one part of the document, and "bear arms" to have a nonmilitary meaning in another part of the same document. Given that "bear arms" had a military meaning, the reference to "defence of themselves" should thus be taken to concern defense of the community, an idea distinct from "defense of the state," which is a reference to a governmental entity. [FN69]

Scalia also avoids quoting the entirety of the Pennsylvania and Vermont provisions in which the "right to bear arms" appears. Pennsylvania's provision states as follows:

That the people have a right to bear arms for the defence of themselves and the state; and as standing armies in the time of peace are dangerous to liberty, they ought not to be kept up; And that the military should be kept under strict subordination to, and governed by, the civil power. [FN70]

Vermont's provision is similar:

That the people have a right to bear arms for the defence of themselves and the State; and as standing armies, in the time of peace, are dangerous to liberty, they ought not to be kept up; and that the military should be kept under strict subordination to, and governed by, the civil power. [FN71]

By failing to quote the entirety of these provisions, the Heller majority again avoids the impact of context which, in these provisions, strongly suggests that their subject matter entirely concerned military affairs. Moreover, considerable historical scholarship, available to but ignored by the Heller Court, [FN72] indicates that the phrase "defence of themselves" in the Pennsylvania provision was addressed entirely to community, not personal, defense. [FN73]

*1188 What, therefore, do state constitutions at the time of the framing tell us about the Second Amendment? Contrary to Justice Scalia's suggestion that they "unambiguously" used "bear arms" to have a nonmilitia meaning, the weight of the evidence is that not a single state constitution at the time of the framing of the Second Amendment guaranteed a right to possess guns for personal self-defense. Moreover, the Massachusetts Declaration of Rights, as we have seen, guaranteed the "right to keep and bear Arms" entirely for community defense. One other state constitution--North Carolina's--gave the people "a right to bear arms for the defense of the State," in a provision similar to those in Massachusetts, Pennsylvania and Vermont, addressing the dangers of standing armies and the need for civilian control of the military. [FN74] The North Carolina provision is entirely ignored by Justice Scalia.

Given the preexisting state guarantees of a right to be armed for the common defense, and the relevant legislative history of the Second Amendment, it is entirely natural to read the Amendment as guaranteeing a right confined to militia service, having

nothing to do with individual self-defense. Just as telling, though, is the Framers' failure to adopt an alternative version, based on other proposals made at the time, that would have guaranteed an individual right for private, nonmilitia purposes.

We have seen that Madison's original proposal bore a striking resemblance to the militia-based proposed amendment of the Virginia ratification convention. Justice Stevens' dissenting opinion cites proposals originating in other states that guaranteed the right to be armed, with no reference to the militia. [FN75] For example, the New Hampshire proposal read: "Congress shall never disarm any Citizen unless such as are or have been in Actual Rebellion." Another proposal, rejected by the Pennsylvania ratifying convention, read:

That the people have a right to bear arms for the defense of themselves and their own State, or the United States, or for the purpose of killing game; and no law shall be passed for disarming the people or any of them unless for crimes committed, or real danger of public injury from individuals . . . [FN76]

*1189 Like the Virginia proposal, this language was then followed by expressions of the dangers of standing armies and the need for civilian control of the military. But the reference to "killing game" and the far-reaching prohibition on disarming law-abiding citizens, indicate that the "right to bear arms" in the defeated Pennsylvania proposal was not confined to militia service. No such language appeared in the Virginia proposal and nothing like it appears in the Second Amendment.

Justice Stevens' dissent points to another proposal, which failed to muster a majority in the Massachusetts ratification convention: "[T]hat the said Constitution never be construed to authorize Congress to . . . prevent the people of the United States, who are peaceable citizens, from keeping their own arms." [FN77] It is surely instructive that this broader formulation was rejected by the Massachusetts Convention, while the narrower "common defense" language was already part of the Massachusetts Constitution and remains in that Constitution to the present day. These broader formulations of the right to be armed presumably were known by Madison and the First Congress. [FN78] The Heller majority offers no explanation for the Framers' failure to adopt such language, if their intent was to guarantee a broad, personal right.

If the Heller majority's reading of the Second Amendment is right, then Madison and the First Congress sought to guarantee a nonmilitia right by choosing language emphasizing the importance of a "well regulated Militia," while avoiding other available formulations making no reference to the militia at all. Unlikely, to say the least. [FN79]

In place of the well established principle that the Constitution must be interpreted to give each word meaning and effect, Justice Scalia's opinion *1190 substitutes a new principle--for which he cites no support in prior Supreme Court cases--that the only requirement is that there be a "logical connection" between words and phrases in the Constitution. [FN80] Having determined, without reference to the militia language, that the Second Amendment guarantees a right to have arms for self-defense, Scalia then finds that the only remaining task is to ensure that this right "is consistent with the announced purpose" expressed in the militia clause. [FN81] He finds this consistency by asserting that the right to be armed for self-defense "further the purpose of an effective militia no less than (indeed, more than) the dissent's interpretation." [FN82] However, Justice Scalia is reduced to arguing for a disconnect between the "central component" of the Second Amendment right--which he says is "self-defense"--and the entirely separate reason the right was "codified"--which he says was "to prevent elimination of the militia." [FN83] Scalia offers no justification for reading the Amendment in a manner which creates a dissonance between the nature of the right and the reason the right was written into the Constitution. The idea of such a disconnect simply demonstrates the lengths to which the Heller majority was willing to go to resist a natural and internally consistent reading of the Second Amendment. In any event, the majority's own requirement that there at least be a logical connection between the

militia language and the right to be armed for self-defense is not met under its reading of the Amendment.

Scalia's claimed logical connection is based on a gross misunderstanding of the nature of the "well regulated Militia" and how it was armed. In the Founding Era, the militia was not, as Justice Scalia seems to presume, simply an unorganized "pool" of "able-bodied men" from which the Congress had the power to organize an effective fighting force. [FN84] By its very nature, a militia existed only to the extent that it was organized. Indeed, the definition of "militia" in Noah Webster's famous dictionary--cited by Scalia himself [FN85]--undercuts the concept of an unorganized militia: "The militia of a country are the able bodied men organized into companies, regiments and brigades . . . and required by law to attend military exercises on certain days only, but at other times left to pursue their usual occupations." [FN86]

Justice Scalia is correct in observing that the militia existed prior to the Constitution, but he is wrong in asserting that it was an unorganized collection *1191 of individuals. The state militias existing at the time of the Constitution were creatures of state law. As discussed in Justice Stevens' dissent, these preexisting state militia statutes imposed extensive requirements on those enrolled in the militia. Of greatest significance for Second Amendment purposes was the common requirement that militiamen "keep arms" in their homes for use when called to militia duty. Stevens quotes the Virginia militia law requiring militiamen to "constantly keep the aforesaid arms, accoutrements, and ammunition, ready to be produced whenever called for by his commanding officer." [FN87] In fact, one year after the Constitution was ratified, Congress enacted the Second Militia Act of 1792, requiring that each militiaman, "within six months" after enrollment in the new federally-organized militia, "provide himself with a good musket or firelock." [FN88] Thus, not only was the militia inherently organized, but the arming of the militia was a matter of government command, not simply reliance on the individual choices of militiamen to acquire guns.

Justice Scalia describes the militia at the time of ratification as "the body of all citizens capable of military service, who would bring the sorts of lawful weapons that they possessed at home to militia duty." [FN89] He fails to mention that these militiamen were required by law to keep militia weapons at home. As Justice Stevens comments, "'keep and bear arms' thus perfectly describes the responsibilities of a framing-era militia member." [FN90]

*1192 Once the founding-era militia is properly understood as a government-organized system of compulsory armed service involving much of the adult male population, it becomes plain that there is no logical connection between the militia and a guaranteed right to possess guns for purposes unrelated to militia service. Nor is there any logic to the inclusion of language about the importance of the militia in a provision guaranteeing the right to possess guns "in defense of hearth and home." [FN91]

According to Justice Scalia, reading the Second Amendment as protecting only the right to "keep and bear Arms" in an organized militia "fits poorly" with the description of the "the people" as the holder of the right. [FN92] But the fit is poor only if it is assumed that the right is unrelated to militia service, which, of course, is precisely the issue at hand. If "the people" have the right to be armed only to the extent that they are armed in connection with militia service, then there is no awkwardness of fit between "the people" and the nature of the right. There is no question that the Second Amendment right is granted to "the people." The issue is the nature and scope of the right granted to "the people." [FN93]

Nor does Justice Scalia's insistence that the Second Amendment guarantees a preexisting right help to decide the issue. As we have seen, the militia system as an institution of state government preexisted the Constitution; indeed, the Articles of Confederation had required that "every state shall always keep up a well regulated and disciplined militia, sufficiently armed

and accoutered, and shall provide and constantly have ready for use, in public stores, a due number of field pieces and tents and a proper quantity of arms, ammunition and camp equipage.” [FN94] Moreover, as we also have seen, state constitutions pre-dating the Second Amendment had referred to the people’s “right to keep and bear arms for the common defence” [FN95] and to the people’s “right to bear arms *1193 for the defence of the State.” [FN96] There is no basis for Justice Scalia’s assumption that a preexisting right to be armed could not be militia related. [FN97]

A principled approach to interpreting the Second Amendment--that is, one not determined, by hook or by crook, to arrive at a predetermined conclusion--would surely look to the Amendment’s text as an integrated whole, reading each word in context and giving each a functional meaning. Instead, the Heller majority’s slice and dice approach--surgically removing the second half from its connection to the first half, then carving up the phrase “keep and bear Arms”--gives the Amendment a meaning that would have been foreign to those who ratified it. Moreover, Justice Scalia’s opinion is devoid of any evidence that ordinary citizens in the founding generation would have interpreted the Amendment by blinding themselves to its first thirteen words, then attaching separate meanings to “keep Arms” and “bear Arms,” before ensuring a logical connection between the various words of the Amendment. In showing the folly of the Court’s approach, I cannot improve on Justice Stevens’ analogy to the parable of the six blind men and the elephant. He applied the parable to what he called “the Court’s atomistic, word-by-word approach”:

In the parable, each blind man approaches a single elephant; touching a different part of the elephant’s body in isolation, each concludes that he has learned its true nature. One touches the animal’s leg, and concludes that the elephant is like a tree; another touches the trunk and decides that the elephant is like a snake; and so on. Each of them, of course, has fundamentally failed to grasp the nature of the creature. [FN98]

In approaching the meaning of the words and phrases of the Second Amendment in isolation from one another, the Heller majority, too, failed to grasp the nature of the Amendment as a whole.

It is not surprising that the Heller majority opinion has been the subject of scathing scholarly attack for its results-oriented approach. Indeed, some of the sharpest criticism has come from conservative legal theorists with a long *1194 history of opposition to judicial activism. [FN99] In an extraordinary article disclosing his own family’s gun violence tragedy some years ago, Pepperdine University law professor Douglas Kmiec, who once shared an office with Samuel Alito in the Reagan Justice Department, praised Justice Scalia’s career of “reminding his fellow judges how important it is not to read their own personal experiences or desires into the law.” [FN100] But Kmiec found that principle dishonored in Scalia’s Heller opinion. “From their high bench on that morning,” he wrote, “it would not be the democratic choice that mattered, but theirs. Constitutional text, history, and precedent all set aside.” [FN101]

Judge Richard Posner of the U.S. Court of Appeals for the Seventh Circuit, undoubtedly the most prolific conservative legal thinker of our time, found the Heller decision to be “evidence that the Supreme Court, in deciding constitutional cases, exercises a freewheeling discretion strongly flavored with ideology.” [FN102] Commenting on the sheer length of Scalia’s majority opinion (almost twenty thousand words), Posner found it “evidence of the ability of well-staffed courts to produce snow jobs.” [FN103]

A third broadside has come from Judge J. Harvie Wilkinson III of the U.S. Court of Appeals for the Fourth Circuit, who was on the short list for the Supreme Court throughout the George W. Bush Administration. Judge Wilkinson is somewhat more charitable than Kmiec and Posner to the evidence offered by the Heller majority. Nevertheless, he sees Heller as im-

proper “judicial lawmaking” in defiance of conservative legal principles counseling restraint and deference to the judgments of popularly elected legislatures. [FN104] “In fact,” Wilkinson writes, “Heller encourages Americans to do what conservative jurists warned for years they should not do: bypass the ballot and seek to press their political agenda in the courts.” [FN105] Wilkinson especially singles out Justice Scalia for committing the same sins of judicial activism in Heller that Scalia has spent a career denouncing in *Roe v. Wade*. [FN106]

*1195 III. Heller as a Legal Weapon to Attack Gun Control Laws

As internally inconsistent, manipulative, and ideologically driven as the Heller majority opinion is in manufacturing a new right to have handguns in the home, the majority's discussion of the implications of this right is likely to make it a less-than-potent legal weapon against other gun laws.

Section III of the majority opinion features some extraordinary language suggesting that a wide range of gun control laws do not violate the new right: “Like most rights, the right secured by the Second Amendment is not unlimited.” [FN107] According to the Court, “[T]he right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.” [FN108] It is highly unusual for a court, in interpreting the Constitution, to comment on the constitutionality of laws not before it, particularly when it is not citing prior court rulings on the issue. The Heller majority, however, goes out of its way to offer the assurance that “nothing in our opinion should be taken to cast doubt” on a wide range of gun control laws, which the Court said remain “presumptively lawful” under the Court's ruling. [FN109] These include:

- “[L]aws imposing conditions and qualifications on the commercial sale of arms” (a category broad enough to include background checks, waiting periods, licensing, registration, safety training, limits on large-volume sales, etc.);
- “[P]rohibitions on [gun] possession by felons and the mentally ill;”
- “[P]rohibitions on carrying concealed weapons” (a more restrictive policy than simply requiring a license to carry concealed weapons);
- “[L]aws forbidding the carrying of firearms in sensitive places such as schools and government buildings;” and;
- Bans on “dangerous and unusual weapons” (which could include machine guns and assault weapons). [FN110]

As if this list were not enough to make the NRA squirm, the Court added that these “presumptively lawful regulatory measures” are given “only as examples” and that the list “does not purport to be exhaustive.” [FN111]

The Court also stated that its analysis does not “suggest the invalidity of laws regulating the storage of firearms to prevent accidents,” [FN112] which presumably *1196 would include laws against leaving loaded guns accessible to children. [FN113] It is equally significant that the Court, in commenting on the many cases in which gun laws have been upheld against Second Amendment challenge under the militia-purpose view, cautioned that “it should not be thought that the cases decided by these judges would necessarily have come out differently under a proper interpretation of the right.” [FN114]

Why did the Heller majority so gratuitously suggest that its historic ruling recognizing a constitutional right to be armed for self-defense may have only a limited practical impact on gun control laws? What effect is Section III likely to have on national gun policy?

First, it seems reasonably clear that these comments function as a direct response to the dissenters' argument that the Heller majority has launched the Supreme Court on an endless and treacherous adventure in making life-and-death policy decisions

about guns. Justice Stevens' dissent charges the majority with improperly entering a “political thicket” and warns that the District of Columbia's law “may well be just the first of an unknown number of dominoes to be knocked off the table.” [FN115] Justice Breyer's dissent predicts that the Heller ruling “will encourage legal challenges to gun regulation throughout the Nation . . . , will leave the Nation without clear standards for resolving those challenges,” and will threaten “to leave cities without effective protection against gun violence and accidents during that time.” [FN116] “As important,” writes Justice Breyer, “the majority's decision threatens severely to limit the ability of more knowledgeable, democratically elected officials to deal with gun-related problems.” [FN117] Read in the context of these critiques, the majority's discussion of other gun laws can be seen as effectively moving other dominoes away from the edge of the table, thus ensuring that gun policy issues will continue largely to be decided by elected officials, free of activist second-guessing by federal courts.

Second, it is not unreasonable to speculate that much of the Section III language was inserted as the price of getting four other Justices to join Justice Scalia's opinion. Intuitively, it seems unlikely that such language originated with Justice Scalia (one of former Vice President Dick Cheney's hunting *1197 buddies and an obvious gun enthusiast), rather than being a concession by him to other Justices. The language strongly indicates that one or more of the Justices in the majority were willing to join Scalia's opinion only if it allowed substantial continued deference to legislative decisionmaking on gun policy. Such deference is of substantial benefit to public safety, given the strong evidence that even modest gun control laws can be successful. [FN118]

Third, although the Court did not expressly adopt a constitutional standard for the future evaluation of gun laws, its discussion of other presumptively constitutional laws surely must be read as a rejection of the strict scrutiny standard used in certain First Amendment cases and urged on the Court by the respondent. [FN119] Such a standard would have required courts reviewing gun laws to determine whether the law being challenged is “narrowly tailored to achieve a compelling government interest.” [FN120] Though the prevention of death and injury from gunfire would seem to qualify as a compelling government interest, the requirement that the law be narrowly tailored would invite activist judges to decide that gun control laws they don't like are insufficiently narrow in their impact on gun rights. Whereas strict scrutiny would have erected a strong presumption against the constitutionality of gun control laws, requiring narrow tailoring to overcome the presumption, the Heller majority described a lengthy list of gun control measures as *1198 presumptively lawful. As Justice Breyer accurately noted in dissent, [FN121] the Heller majority thus implicitly rejected strict scrutiny.

Although the Heller majority makes some comparison of its new Second Amendment right to our First Amendment rights, [FN122] the majority's surprising Section III commentary on gun control laws, and failure to invoke strict scrutiny, suggest that at least some Justices in the majority understand that the right to possess handguns in the home is materially different in nature from our First Amendment rights. As interpreted by Heller, the Second Amendment, unlike the First Amendment, guarantees a right to possess a lethal weapon. It should be obvious, but bears saying anyway, that the right to possess lethal weapons affects the public's interest in safety and security more directly than the right to express oneself about lethal weapons (among other topics). Researchers have found, for example, a strong association between gun prevalence and high homicide rates, suggesting that “an increase in gun prevalence causes an intensification of criminal violence--a shift toward greater lethality, and hence greater harm to the community.” [FN123] Pro-gun advocates will continue to make indefensible analogies to the First Amendment, like David Kopel of the libertarian Independence Institute who asserts that “[g]uns are like books or churches.” [FN124] But it is hard to maintain that the Heller decision treats guns like books or churches.

It is unclear how the majority derived its categories of presumptively lawful gun control measures. Although the majority

seems to attach great importance to whether the gun restrictions at issue are longstanding, the opinion leaves unclear how longstanding they must be. [FN125] It also is unclear whether a specific restriction (such as a waiting period) must be longstanding, or whether the specific restriction must be part of a category of restrictions (such as laws imposing conditions and qualifications on the sale of arms) that is longstanding. Some initial lower court rulings applying *Heller* reject the idea that the *1199 specific restriction at issue must have historical antecedents, requiring only that the specific restriction be of the kind found presumptively lawful in *Heller*. [FN126]

But even granting its uncertain scope, the Section III discussion is nonetheless of great significance to the constitutional assessment of other gun laws. It is likely to be interpreted by the lower federal courts as indicating a sharp and decisive distinction between laws (like the District of Columbia law at issue in *Heller*) that function to ban guns commonly possessed in the home for self-defense, and other laws that regulate guns, even strictly, yet allow individuals, not governments, to make the ultimate decision about gun ownership. Such a distinction should serve to frustrate efforts to expand the scope of the right beyond the possession of guns for self-defense in the home, as well as to make it difficult to successfully challenge regulations that affect the right, but do not unduly burden its exercise. Although some will dismiss the Court's discussion of other gun laws as dicta, it is likely to be among the most influential dicta in the Court's history.

The *Heller* ruling is already prompting an avalanche of Second Amendment lawsuits and legal claims. The NRA's Wayne LaPierre called the ruling "the opening salvo," telling his members that the fight "is just beginning." [FN127] Within forty-eight hours of the *Heller* decision, the NRA and its allies filed six lawsuits against local jurisdictions with handgun bans. [FN128] Within months of *Heller*, the NRA was talking about the need to "expand its reach." [FN129] *Heller* has also been embraced by criminal defense lawyers anxious to challenge the *1200 gun laws under which their clients are being prosecuted. [FN130] Indeed, the vast majority of legal claims based on *Heller* likely will arise in criminal cases.

There is no question that there is greater uncertainty about the constitutionality of gun regulation after *Heller*. It is also regrettable that government lawyers will need to consume public resources to fend off efforts to persuade courts to use *Heller* to second-guess the wisdom of judgments about gun policy made by elected officials. Moreover, future changes in the Supreme Court's composition may well affect the strength of the new right to be armed as a legal weapon against gun control laws. Based on the *Heller* decision alone, however, it seems likely that the vast majority of gun laws will ultimately survive the post-*Heller* attacks. [FN131] When the constitutional dust settles, the legal significance of our newly found constitutional right to have handguns in the home may prove to be more symbol than substance.

III. *Heller* and the Second Amendment as an Argument Against Gun Control

We have seen that *Heller* may pose only a limited threat to the future constitutionality of gun laws less restrictive than a broad gun ban. Although the legal risk to gun laws may be low, there is yet another possible impact of *Heller* to consider. *Heller* gives guns a protected constitutional status enjoyed by no other product. Doesn't that special status help the gun lobby to argue forcefully against analogies between guns and other dangerous products for which government regulation is commonplace and widely accepted?

For example, one might draw an analogy between guns and automobiles. Our nation has long been comfortable with laws requiring that drivers be licensed, that they demonstrate basic competency before being given a license, that the government retain records of sales transactions involving autos, and that autos meet minimum safety standards. The argument could be

made that guns should be subject to at least these kinds of regulations.

***1201** The cars/guns analogy may draw the response that the Constitution guarantees a right to possess guns, but not cars. Before *Heller* it was possible to dispute this asserted constitutional protection for guns. Not so after *Heller*. We have seen that, from a strictly legal standpoint, *Heller* does not seem to create a new presumption against gun control laws generally. But does it create a new presumption against gun control in the public's mind, placing a greater burden on gun control advocates to justify their proposals as sound policy?

Heller would appear to have this impact on the gun control debate if support for gun control before *Heller* were dependent, to a substantial extent, on the public's belief that the Second Amendment guarantees only a militia-related right. Public opinion polls show that super-majorities of the public have long supported a broad gun control agenda, the only exception being a ban on handguns. For example, a recent poll shows that 87 percent of those surveyed favor requiring background checks on all private sales at gun shows. [FN132] Registration of handguns is supported by 75 percent of Americans. [FN133] If this support were somehow premised on the public's conviction that the Constitution does not protect a right to gun ownership for private purposes, then *Heller*, by destroying that premise, could be expected to shake the foundation of the public's support for gun control.

But, in fact, public opinion surveys have long shown that the public believes that the Second Amendment is concerned with personal rights, not militias. A 1995 U.S. News & World Report poll reported that 75 percent of Americans believe that "the Constitution guarantees you the right to own a gun." [FN134] On the day *Heller* was argued in the Supreme Court, the Washington Post released a nationwide poll showing that 72 percent of those surveyed believe the Second Amendment "guarantees the right of individuals to own guns," while only 20 percent said it guarantees "only the right of the states to maintain militias." [FN135] On the day the *Heller* ruling was issued, a Gallup Poll was released asking the question, "Do you believe the Second Amendment to the U.S. Constitution guarantees the rights of Americans to own guns, or do you believe it only guarantees members of state militias such as National ***1202** Guard units the right to own guns?" [FN136] Seventy-three percent of those surveyed chose the individual rights option, while only 20 percent said the right was confined to militias. [FN137] While one could quarrel with the wording of some of these poll questions, they do suggest that the militia-purpose view--long dominant in the courts--has not seriously penetrated the public's consciousness in the modern era.

This means that a large majority of Americans believes simultaneously in a broad gun control agenda and in a broad interpretation of the Second Amendment. For the general public, the *Heller* ruling is consistent with what it already understood to be true: The Second Amendment guarantees a right to have guns, but that right is not absolute and is subject to sensible restrictions.

Given the public's longstanding view of how the Second Amendment affects gun control, *Heller* may actually weaken the argument that gun control proposals should be rejected because the Constitution guarantees a right to possess guns.

Before *Heller*, there were two primary responses to the Second Amendment argument available to gun control advocates. First, they could argue that the courts had already determined that the Second Amendment relates only to the militia and thus was no barrier to gun control laws. Although this argument was true, it did not conform to the public's beliefs about the Amendment's meaning--beliefs that were difficult to alter given the constant din of gun lobby propaganda on the constitutional issue, the fact that courts don't issue press releases about their rulings, and the strangeness to modern ears of the words "well

regulated Militia.” [FN138] Second, gun control advocates could assert that even if the Second Amendment extended beyond militia service, no rights are absolute and the right to be armed surely should be subject to reasonable restrictions. This argument had substantial persuasive appeal before Heller because it was consistent with public attitudes. It has even greater appeal after Heller, given the Heller Court's reassuring language about the presumptive constitutionality of gun regulation. When pro-gun partisans trot out the Second Amendment--joyfully citing Heller--they can now be met with the response that the Heller opinion itself--written by one of the most conservative and *1203 gun-loving Justices in recent history--found no inconsistency between the Second Amendment and a host of gun regulations.

Barack Obama's message about guns during the 2008 campaign took full advantage of Heller in successfully overcoming the NRA's virulent opposition (and his own reference to “bitter” people who “cling to guns”). [FN139] Obama constantly emphasized his support for the Second Amendment--and, specifically, for the Heller interpretation--while not backing down from his record of support for reasonable gun laws. [FN140] His message was consistent with Heller and reflected the views of most Americans.

As we have seen, the public's support for gun control in the modern era has not been premised on a belief that the Second Amendment guarantees only a militia-related right. The polling data suggest that the views of most Americans about gun control are not dependent on their beliefs about the Second Amendment. Indeed, it is more true to say that most Americans simply accommodate their views about the Second Amendment to their views about gun control. If they think gun control is sound public policy, they will conclude that it is not prohibited by the Constitution.

Putting the point another way, few Americans who believe that gun control laws save lives will nevertheless oppose them because they think they violate the Second Amendment. And because most Americans support gun control laws, they believe the Second Amendment to be of secondary importance. For many years, the Pew Research Center has asked Americans whether they think it is more important to “protect gun owners' rights” or “control gun ownership.” [FN141] In April 2008, 58 percent of those surveyed said it was more important to “control gun ownership,” while only 37 percent said it was more important to “protect gun owners' rights.” [FN142] The results were virtually identical in 1993, fifteen years before. [FN143]

*1204 For all the Second Amendment's symbolic and emotional importance to the NRA, the gun lobby has never convinced the public that gun control violates our constitutional values. By both recognizing gun rights and, at the same time, confirming the public's long-held belief that gun regulation is entirely compatible with those rights, Heller is likely, over the long term, to further diminish the importance of the Second Amendment argument as a barrier to the enactment of strong gun laws.

IV. Heller, the Slippery Slope, and the Gun Control Debate

A common refrain of gun control opponents is that even modest regulation of guns is but the first step down a slippery slope toward more draconian gun restrictions. Indeed, there may be no other public policy issue where the slippery slope argument is as frequently used. [FN144] Wayne LaPierre of the NRA invoked the argument as a key reason to oppose a waiting period for handgun purchases:

This brings us back to the real intent behind waiting periods. Waiting periods are only a first step. Regardless of what they promise to do or not to do, they are nothing more than the first step toward more stringent “gun control”

measures.

Some people call it “the camel’s nose under the tent,” some call it “the slippery slope,” some call it a “foot in the door,” but regardless of what you call it, it’s still the same--the first step. [FN145]

The NRA has made it clear what it sees at the bottom of the slippery slope--the end of private ownership of firearms: “The plan is now obvious to all who would see: First Step, enact a nationwide firearms waiting period law. Second Step, when the waiting period doesn’t reduce crime, and it won’t, enact a nationwide registration law. Final Step, confiscate all the registered firearms.” [FN146]

Although slippery slope arguments are commonly used in other public policy debates, they are especially important to the gun lobby for several reasons.

First, because it is difficult for the pro-gun forces to persuasively argue that such reasonable and popular measures as waiting periods, background checks, licensing and safety training, registration of gun sales, curbs on large-volume gun sales, and mandatory consumer safety standards are objectionable *1205 in their own right, it becomes essential to argue that they will ultimately lead to policies that have far less popular support and may be more difficult to justify. For example, given the reality that gun traffickers buy large numbers of handguns from dealers and that few law-abiding gun owners really need to buy more than one handgun per month, the benefits of a national law restricting large volume sales appear to substantially outweigh any inconvenience to ordinary gun owners. [FN147] For this reason, the NRA’s strategy is to suggest that the real problem with such laws is that they set a dangerous precedent that would lead to far greater restrictions in the future. Thus, the NRA argues that “one-gun-a-month” could be changed to “one-per-year,” “one-per-lifetime” or “none-ever”. [FN148] This is classic slippery slope argumentation. Since the NRA knows it is on weak ground if the issue is whether large-volume handgun purchases should be prohibited, it recasts the issue to be whether the government should have the power to ban all gun purchases.

Second, the NRA must sell the slippery slope argument to convince gun owners and sportsmen that they have an important stake in the gun control fight. Polls consistently show that gun owners, and even those who identify themselves as members of the NRA, actually support the gun control proposals that are anathema to the gun lobby’s leadership. 61 percent of gun owners favor registration of handguns, while 62 percent favor requiring a police permit to purchase a handgun. [FN149] Even most self-identified NRA members support handgun registration and mandatory safety training before purchasing a firearm. [FN150] This must be quite discomfiting to the NRA. If the NRA’s core constituency does not view gun control as a threat to gun ownership, the foundation of the organization’s political power will weaken. It is essential to the NRA’s long-term viability that any gun control proposal be viewed by millions of Americans as an attack on guns as valued personal possessions. Indeed, the NRA’s strategy is to go even further--to portray even modest gun control as an attack on a way of life for which the gun is both an important tool and, more importantly, a powerful symbol. Charlton *1206 Heston spoke to the 2000 NRA Convention of the “sacred stuff” that “resides in that wooden stock and blued steel.” [FN151] “When ordinary hands can possess such an extraordinary instrument,” he said, “that symbolizes the full measure of human dignity and liberty.” [FN152]

Framing the gun issue as one of cultural values immediately elevates the stakes in the gun debate because it suggests that gun control proposals may be seen as attacks on a set of core beliefs that define many Americans, particularly those in rural areas for whom guns embody important values of self-reliance and personal liberty. For the gun lobby, it is strategically critical that the debate be conducted in these terms. If the gun debate is seen as addressing only the efficacy of specific, practical proposals to reduce death and injury, then the NRA is on shaky ground, because even its own members do not have strong objections to many such proposals. However, if the gun debate is seen as fundamentally about larger issues involving the value

systems of millions of gun-owning Americans, then the NRA is able to radicalize and mobilize those Americans who see their values as under attack. Gun control is then seen as an attack on gun-owning Americans and how they live their lives.

The NRA's Congressional allies understand well the importance of making the gun issue about culture and values. In the summer of 2006, House Republicans unveiled their legislative priorities, calling them the "American Values Agenda." [FN153] One of the bills would have made it more difficult for the federal Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) to revoke the licenses of gun dealers who violate the law. [FN154] How, it may be asked, is protecting lawless gun dealers an American value? I'm not sure how the House Republicans would respond, but it seems clear that they would go to great lengths to cast the debate as about gun ownership as a core American value, not about whether it makes sense to curb the power of the ATF to crack down on lawbreaking dealers. The NRA issued a press release applauding the Republican leadership for including gun ownership rights in its American Values Agenda. [FN155]

For the gun lobby, then, the gun debate needs to be a debate about banning all guns. The slippery slope argument is the NRA's primary means *1207 of achieving this goal. As writer Osha Gray Davidson put it, "the religious fervor of many gun-owners when it comes to firearms restrictions also has its roots in a less mystical and more pragmatic concern: the fear that all gun-control laws lead inexorably to the complete confiscation of all firearms." [FN156]

After Heller, however, an obvious question comes to mind. If a ban on private ownership of guns is now unconstitutional under Heller, to what extent has the slippery slope argument been deprived of its power to inspire opposition to more modest gun regulations?

Even after Heller, there is no doubt that the gun lobby will try to frame gun control as a cultural issue, portraying gun control advocates as elitists who have nothing but contempt for gun owners and their values. But it is difficult to believe that this message will resonate with the same force among gun owners in the post-Heller era, in which the legal system has erected a new constitutional barrier to a general gun ban by declaring gun ownership for self-defense a constitutional right. The NRA will not stop insisting that the real agenda of gun control advocates is to ban all guns, but the reality is that such an agenda is now, in Justice Scalia's words, "off the table." [FN157]

After Heller, we may see the slippery slope argument assume a somewhat different form. Instead of arguing that regulation of guns will lead to eventual confiscation, the gun lobby may assert that each new restriction will lead to another restriction, which will lead to another restriction, and so on, until the burden and expense of gun ownership will be so great as to amount to a de facto gun ban, even if no law banning guns is ever passed.

It is hard to imagine that this "de facto gun ban" argument will ever generate the emotional response from gun owners that the gun lobby has long provoked with the "slippery slope to confiscation" argument. For one thing, Americans, including gun owners, have personal experience with extensive regulation of dangerous products--such as automobiles, pharmaceuticals, and alcohol--that has not amounted to a de facto ban on the products. Second, in states with extensive laws regulating the sale and possession of guns, such as California and New Jersey, there are still lots of guns and gun owners. Some of those gun owners no doubt complain about overregulation, but they have no argument that the existing restrictions amount to a de facto gun ban. Third, the Heller decision itself suggests a constitutional limit on the burdens that can be placed on gun possession. After Heller, opponents of gun laws will be free to argue to courts that the particular law at issue, judged in the *1208 context of other preexisting regulation, puts such a severe incremental burden on gun possession for self-defense in the home that it infringes the

Heller-created right.

Over the long term, therefore, Heller should lead to a weakening of gun owner activism against the gun control proposals likely to dominate the debate in the foreseeable future, such as mandating background checks on private gun sales at gun shows and elsewhere, or curbs on large-volume handgun sales. Indeed, at least one prominent figure in the gun rights movement has acknowledged this likely effect. In a revealing discussion on Los Angeles public radio a few days after the Heller ruling, Chuck Michel, a California lawyer who has long represented the NRA and other pro-gun groups, was asked about Heller's effect on gun registration and licensing. Here's what he said:

The problem has always been that registration and licensing led to confiscation and I . . . still think registration and licensing is . . . problematic in multiple respects . . . , but I think that now . . . there are a lot of people in the gun control movement who are really gun . . . banners. They're in favor of civilian disarmament. These folks are never going to get their way now as a result of this [Heller] opinion, so I think licensing and registration is . . . going to be . . . tougher to criticize. [FN158]

In a startling moment of candor, Mr. Michel had admitted that, because Heller has taken a general gun ban off the table, the slippery slope argument has lost power, making it more difficult for the NRA to successfully argue against licensing and registration.

By the same token, Heller may enhance the efforts of gun control advocates to frame the debate in terms of public safety, not cultural norms. It will help them force their opponents to explain why reforms like background checks for private sales, curbs on multiple sales, greater enforcement power for ATF, and consumer safety standards for guns can't work, or cause greater problems than they solve. If the debate can focus on the pros and cons of *1209 specific proposals, free from the distraction of the gun ban issue, gun control may well be on a new path to victory.

Heller also may make it harder, over the long run, for politicians to hide behind the slippery slope argument when opposing sensible gun laws. The argument has long furnished easy political cover for politicians anxious to curry favor with the gun lobby by opposing even modest reforms. Heller may put greater pressure on legislators to explain their opposition to such measures without resorting to imaginary threats of gun confiscation.

Conclusion: Heller as a Paradox

From this writer's particular vantage point as a gun control advocate, before the Heller ruling was handed down, the prospect of the Supreme Court addressing the constitutionality of a broad gun ban under the Second Amendment seemed loaded with an odd mixture of risk and promise.

The risk, of course, largely had to do with constitutional law. There was a concrete risk that the Court would issue the kind of ruling long sought by the gun lobby and radical libertarians--a ruling that would declare a personal right to gun possession closely analogous to our First Amendment rights, inviting courts to render their own judgments on the wisdom of laws enacted by our elected officials. Under the militia-purpose view of the Second Amendment, the disappearance of the citizen militia meant that gun control laws were virtually immunized from successful Second Amendment challenge. This, of course, guaranteed that the difficult policy and empirical issues raised by the gun control debate would be resolved in the legislative and political arenas where they belong. The Heller case could have resulted in a radically different constitutional regime under

which supporters of sensible gun laws, having won necessarily hard-fought legislative victories (thereby allowing the public's views to prevail) against a disproportionately influential gun lobby, would be faced with having to prove the case for stronger laws yet again before the federal judiciary.

In *Heller*, this did not happen. Although the Supreme Court defied constitutional text and history to create a new private right to be armed, it proceeded not only to limit its scope, but also to make it clear that a wide swath of gun control is entirely compatible with the new right. Put simply, the potential in *Heller* for grave legal risk to gun control likely was not realized. Moreover, in the public debate over gun control, advocates of stronger gun laws now can rely on an opinion written by Justice Antonin Scalia, and joined by four other solid conservatives, for the proposition that reasonable regulation of guns is consistent with the Second Amendment.

***1210** Though seldom discussed, before *Heller* it was possible to anticipate that a Supreme Court ruling taking broad gun bans off the table would have considerable benefits for gun control advocates long burdened by the slippery slope argument and its use to frame the issue as about cultural norms, not public safety and health. It is intriguing to wonder if the NRA's leadership may also have understood this before *Heller*, though it could never have publicly acknowledged it. From a pre-*Heller* perspective, however, the potential risk of a new constitutional barrier to gun laws, at least to many gun control supporters, seemed to outweigh the potential benefits from flattening the slippery slope. After the ruling, it is now possible to see *Heller* as perhaps the worst possible result for the gun lobby and the best possible result for gun control advocates. *Heller* seems unlikely to create substantial additional legal risk to other gun laws, while it deprives the gun lobby and its supporters of perhaps their most potent argument against stronger gun laws. The gun control movement may be somewhat embarrassed to benefit from a ruling that is so constitutionally indefensible, but a little embarrassment will be a small price to pay for stronger laws and countless lives saved.

So we return to the paradox of the *Heller* ruling. In *Heller* the gun rights advocates achieved vindication for their view of the meaning of the Second Amendment, though the Supreme Court had to abandon every pretense of devotion to neutral, principled constitutional adjudication to give them that victory. There is, however, good reason to believe that *Heller* may prove sharply disappointing to the gun lobby as a legal weapon against gun control laws short of a handgun ban, while weakening both the slippery slope argument and the constitutional argument itself as reasons to oppose gun regulation.

Viewing *Heller* from the perch of the NRA's leadership, an old expression comes to mind: Be careful what you wish for. It could come true.

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[FN1]. Charlton Heston, Opening Remarks to Members at the NRA Annual Meeting in Charlotte, North Carolina (May 20, 2000), available at <http://www.nra.org/Speech.aspx?id=6044>.

[FN2]. *Id.*

[FN3]. For a discussion of the differential lethality of guns, see Franklin E. Zimring & Gordon Hawkins, *Crime Is Not the Problem: Lethal Violence in America* 113-18 (1997).

[FN4]. See Nat'l Ctr. for Injury Control & Prevention, Ctr. for Disease Control, WISQARS Injury Mortality Reports, 1999-2005 (2005), http://webapp.cdc.gov/sasweb/ncipc/mortrate10_sy.html (select "Firearm" radio button under the section entitled "What was the cause or mechanism of the injury;" then press "submit request" button).

[FN5]. U.S. Const. amend. II.

[FN6]. 128 S. Ct. 2783 (2008).

[FN7]. 307 U.S. 174 (1939).

[FN8]. *Id.* at 178.

[FN9]. *Id.*

[FN10]. *Id.*

[FN11]. The historical case supporting the militia-purpose view was persuasively presented in a brief of amici curiae filed in *Heller* by fifteen academic historians. See Brief of Amici Curiae Jack N. Rakove et al., in Support of Petitioners, *District of Columbia v. Heller*, 128 S. Ct. 2783 (2008) (No. 07-290). Only one professional historian--Professor Joyce Lee Malcolm of George Mason University Law School--filed a brief in *Heller* presenting historical arguments opposing the militia purpose view. See Brief of the CATO Institute and History Professor Joyce Lee Malcolm as Amici Curiae in Support of Respondent, *District of Columbia v. Heller*, 128 S. Ct. 2783 (2008) (No. 07-290).

[FN12]. *District of Columbia v. Heller*, 128 S. Ct. 2783, 2833 (2008) (Stevens, J., dissenting) (quoting 3 Debates in the Several State Conventions, on the Adoption of the Federal Constitution 379 (Jonathon Elliot ed., 2d ed., Buffalo, Hein 1863)).

[FN13]. For a discussion of the militia purpose view of the Second Amendment from some of the leading historical texts, see generally Saul Cornell, *A Well Regulated Militia: The Founding Fathers and the Origins of Gun Control in America* (2006); *The Second Amendment in Law and History* (Carl Bogus ed., 2000); H. Richard Uviller & William G. Merkel, *The Militia and the Right to Arms, or, How the Second Amendment Fell Silent* (2002).

[FN14]. Uviller & Merkel, *supra* note 13, at 105.

[FN15]. See *Heller*, 128 S. Ct. at 2823 (Stevens, J., dissenting) ("Since our decision in *Miller*, hundreds of judges have relied on the view of the Amendment we endorsed there....").

[FN16]. Erwin N. Griswold, Phantom Second Amendment 'Rights', Wash. Post, Nov. 4, 1990, at C7.

[FN17]. See The MacNeil/Lehrer Newshour: Nuclear Nightmare? (PBS television broadcast Dec. 16, 1991).

[FN18]. *Heller*, 128 S. Ct. at 2821.

[FN19]. 531 U.S. 98 (2000). The description by Professor Alan Dershowitz of the Supreme Court's ruling in *Bush v. Gore*, in which a different conservative majority, in a 5-4 vote, ended the 2000 Presidential election by stopping the hand recount of Florida ballots, invokes a theme of unprincipled inconsistency also applicable to the *Heller* majority opinion: "[T]he disturbing aspect of this decision--the element that makes it different from any decision previously rendered by the Supreme Court--is that the justices were willing not just to ignore their own long-held judicial philosophies but to contradict them in order to elect the presidential candidate they preferred." Alan M. Dershowitz, *Supreme Injustice: How the High Court Hijacked Election 2000*, at 93 (2001).

[FN20]. In discussing statutory construction, Scalia approvingly quotes this remark of Justice Holmes: "Only a day or two ago--when counsel talked of the intention of a legislature, I was indiscreet enough to say I don't care what their intention was. I only want to know what the words mean." Antonin Scalia, *A Matter of Interpretation: Federal Courts and the Law* 22-23 (1997). He applies the same principle to constitutional interpretation. See *id.* at 37-38.

[FN21]. Justice Scalia is a sharp critic of the idea of a "Living Constitution." See *id.* at 41-47.

[FN22]. *Heller*, 128 S. Ct. at 2792 n.7 (citing John Ayliffe, *A New Pandect of Roman Civil Law* 195 (London 1734)).

[FN23]. *Id.* at 2793 (citing *Conn. Const. of 1818, art I, §17*, reprinted in *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws* 538 (Francis N. Thorpe ed., 1909)) [hereinafter Thorpe].

[FN24]. Scalia, *supra* note 20, at 37.

[FN25]. See *Heller*, 128 S. Ct. at 2789-90.

[FN26]. *Id.* at 2797.

[FN27]. *Id.* at 2795.

[FN28]. *Id.* at 2788.

[FN29]. See *id.* at 2803.

[FN30]. *Mass. Const. of 1780, pt. 1, art. XVII*, reprinted in 3 Thorpe, *supra* note 23, at 1892, 1892.

[FN31]. 343 N.E.2d 848 (Mass. 1976).

[FN32]. *Id.* at 849.

[FN33]. See 128 S Ct. at 2803.

[FN34]. 20 Mass. (3 Pick.) 304 (1825).

[FN35]. See *id.* at 313-14.

[FN36]. *Heller*, 128 S. Ct. at 2803.

[FN37]. Scalia, *supra* note 20, at 37.

[FN38]. *Heller*, 128 S. Ct. at 2789.

[FN39]. *Id.* at 2789 n.3 (quoting 2A J.G. Sutherland, *Statutes and Statutory Construction* 146 (Norman J. Singer ed., 5th ed. 1992) (1943)).

[FN40]. Justice Scalia concedes that it “might be argued, we suppose, that the prologue itself should be one of the factors that go into the determination of whether the operative provision is ambiguous—but that would cause the prologue to be used to produce ambiguity rather than just to resolve it.” *Id.* at 2790 n.4. Again, this begs the question at hand: whether the militia language of the Second Amendment is appropriately consigned to secondary status as a mere prologue, or whether it should be regarded as providing the context necessary to determine the meaning of the right guaranteed. Scalia attempts to diminish the importance of the issue by claiming that “even if we considered the prologue along with the operative provision we would reach the same result we do today, since (as we explain) our interpretation of ‘the right of the people to keep and bear arms’ furthers the purpose of an effective militia no less than (indeed, more than) the dissent’s interpretation.” *Id.* (citation omitted). As explained *infra* pp. 1189-91, this assertion is based on a misunderstanding of the nature of the founding-era militia.

[FN41]. See *Heller*, 128 S. Ct. at 2789 n.3.

[FN42]. The sources cited by the *Heller* majority also address the effect of preambles to statutes, which are not independently enforceable because they are not considered part of the enactment, although they may furnish guidance in interpreting the words that are actually enacted into law. According to Sutherland, for example, “[a] preamble consists of statements which come before the enacting clause in a statute,” which “[b]ecause of its position preceding the enacting clause, it has often been said that matter in the preamble, not having been ‘enacted,’ cannot be given any binding legal effect.” Sutherland, *supra* note 39, at 145 (citing *Yazzo & M.V.R. Co. v. Thomas*, 132 U.S. 174 (1889)). Statutory preambles, understood this way, may be analogous to the preamble to the United States Constitution, but not to the militia language of the Second Amendment, unless that language is regarded as distinct from that which was enacted by the ratifiers of the Bill of Rights. There is no reason to believe that the First Congress thought it was enacting into law only the last half of the Second Amendment. As discussed *infra* pp. 1182-83, it is highly relevant that the militia language began its life (in James Madison’s initial proposal) following the

language guaranteeing the people the right to keep and bear arms, not preceding it. It strains credulity to believe that the First Congress, by changing the positioning of the militia language within the Second Amendment, sought to separate that language from that which it was “enacting” as part of the Bill of Rights, thereby making the militia language analogous to statutory preambles.

[FN43]. I am not here arguing that rules of statutory construction are not relevant to constitutional interpretation, but rather that, even if they are, the militia language of the Second Amendment is not analogous to “whereas” clauses in the preambles of statutes.

[FN44]. Scalia, *supra* note 20, at 134 (emphasis added).

[FN45]. *Id.* at 43.

[FN46]. *Wright v. United States*, 302 U.S. 583, 588 (1938).

[FN47]. See *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 174 (1803).

[FN48]. *Myers v. United States*, 272 U.S. 52, 151-52 (1926) (citing *Prout v. Starr*, 188 U.S. 537, 544 (1903)).

[FN49]. See *Wright*, 302 U.S. at 588.

[FN50]. *Holmes v. Jennison*, 39 U.S. 540, 571 (1840).

[FN51]. Scalia, *supra* note 20, at 132.

[FN52]. *District of Columbia v. Heller*, 128 S. Ct. 2783, 2821 (2008).

[FN53]. It is notable that the *Heller* majority largely avoids invoking the “insurrectionist theory” of the Second Amendment long urged by the National Rifle Association (NRA) and other gun partisans, emphasizing instead the right to have guns for personal self-defense in the home. The notion that the Second Amendment guarantees a right to be armed for potential insurrection against the government likely proved far too frightening to command a majority of the Supreme Court. Nevertheless, Justice Scalia veers close to this theory when, in discussing why the militia might be regarded as “necessary to the security of a free state,” he comments that “when the able-bodied men of a nation are trained in arms and organized, they are better able to resist tyranny.” *Id.* at 2801. This observation occurs in a self-contradictory paragraph in which he also observes that the militia “is useful in repelling invasions and suppressing insurrections.” *Id.* at 2800. Assuming that insurrection is the means by which the able-bodied men would resist tyranny, Scalia appears to be asserting that the militia is a means both to foment insurrection and suppress it. For a positive treatment of the insurrectionist theory, see generally Sanford Levinson, *The Embarrassing Second Amendment*, 99 *Yale L.J.* 637 (1989). For a critical treatment of the theory, see Garry Wills, *A Necessary Evil* 207-21 (1999). See also generally Dennis Henigan, *Arms, Anarchy and the Second Amendment*, 26 *Val. U. L. Rev.* 107 (1991) (arguing that the text and history of the Constitution contradict the insurrectionist theory).

[FN54]. *Heller*, 128 S. Ct. at 2835 (Stevens, J., dissenting) (quoting *The Complete Bill of Rights* 169 (Neil H. Cogan ed., 1997)).

[FN55]. For an insightful history of the consideration of the Second Amendment by the First Congress, see Uviller & Merkel, *supra* note 13, at 97-106.

[FN56]. Scalia, *supra* note 20, at 38.

[FN57]. *Heller*, 128 S. Ct. at 2796.

[FN58]. *Id.* at 2833 (Stevens, J., dissenting) (quoting 3 *Debates in the Several State Conventions on the Adoption of the Federal Constitution*, *supra* note 12, at 659) (emphasis added).

[FN59]. It also is worth noting that in the seventeenth Virginia proposal, as in Madison's original proposal to the First Congress, the militia language does not precede, but rather follows, the guarantee of the right. This forecloses Justice Scalia's gambit of diminishing the importance of the militia language by suggesting an analogue to statutory preambles. The text of the Virginia proposal underscores the point that it is highly unlikely that the Framers regarded the militia language in the Second Amendment as analogous to a statutory preamble, rather than simply viewing it as providing the necessary context in which to understand the meaning of the right being guaranteed, whether in the seventeenth Virginia proposal or in the Second Amendment.

[FN60]. *Heller*, 128 S. Ct. at 2836 (Stevens, J., dissenting) (citation omitted).

[FN61]. See *id.* at 2796 (majority opinion).

[FN62]. *Id.* at 2836 (Stevens, J., dissenting) (quoting *Creating the Bill of Rights* 182 (Helen E. Veit et al. eds., 1991)).

[FN63]. *Id.* at 2836 n.25 (quoting *Creating the Bill of Rights* *supra* note 62, at 182).

[FN64]. *Id.* at 2793 (majority opinion) (citing various state constitutions from the eighteenth and nineteenth centuries).

[FN65]. See Pa. Const. of 1776, Declaration of Rights, §VIII, reprinted in 5 Thorpe, *supra* note 23, at 3083; Vt. Const. of 1776, ch. 1, §X, available at http://avalon.law.yale.edu/18th_century/vt02.asp.

[FN66]. Justice Stevens, in dissent, appears to agree with the majority that the Pennsylvania and Vermont provisions confer a nonmilitia right, but notes the “contrast between those two declarations and the Second Amendment.” See *Heller*, 128 S. Ct. at 2825-26 (Stevens, J., dissenting).

[FN67]. Pa. Const. of 1776, Declaration of Rights, §VIII, *supra* note 65, at 3083.

[FN68]. Vt. Const. of 1776, ch. 1, §X, available at http://avalon.law.yale.edu/18th_century/vt02.asp.

[FN69]. As to the Heller majority's contention that "free State" in the Second Amendment really means "free country," 128 S. Ct. at 2800 (citations omitted), it is surely relevant that the First Congress altered Madison's proposal to change "being the best security of a free country" to "necessary to the security of a free State." If the First Congress had meant to say "free country," why did it change that very phrase? This is yet another example of how Justice Scalia is led astray by his refusal to examine legislative history.

[FN70]. Pa. Const. of 1776, Declaration of Rights, §XIII, *supra* note 65, at 3083.

[FN71]. Vt. Const. of 1777, ch. 1, art. 16, reprinted in 6 Thorpe, *supra* note 23, at 538.

[FN72]. See generally Brief of Amici Curiae Jack N. Rakove, et al. in Support of Petitioners, *District of Columbia v. Heller*, 128 S. Ct. 2783 (2008) (No. 07-290) (providing an historical analysis supporting the position that the framers did not intend the Second Amendment to confer an individual right to bear arms).

[FN73]. See Saul Cornell, *The Early American Origins of the Modern Gun Control Debate: The Right to Bear Arms, Firearms Regulation, and the Lessons of History*, 17 *Stan. L. & Pol'y Rev.* 571, 578-81 (2006). See generally Nathan Kozuskanich, *Defending Themselves: The Original Understanding of the Right to Bear Arms*, 38 *Rutgers L.J.* 1041 (2007) (arguing that the Pennsylvania provision guaranteed neither a personal individual right nor a state right, but rather mandated that individual citizens bear arms so that they could participate in a militia in order to protect the public).

[FN74]. N.C. Const., Declaration of Rights, §XVII, reprinted in 5 Thorpe, *supra* note 23, at 2788.

[FN75]. See *District of Columbia v. Heller*, 128 S. Ct. 2783, 2834-35 (2008) (Stevens, J., dissenting).

[FN76]. *Id.* at 2834 (quoting *The Address and Reasons of Dissent of the Minority of the Convention of the State of Pennsylvania to Their Constituents* (1787), in 2 Bernard Schwartz, *The Bill of Rights* 665 (1971)).

[FN77]. *Id.* at 2834-35 (quoting Proposal from the Massachusetts State Convention (Feb. 6, 1788), in *The Complete Bill of Rights*, *supra* note 54, at 181).

[FN78]. Justice Scalia also places great weight on Article VII of the English Bill of Rights of 1689, see *id.* at 2798-99 (majority opinion), which reads "That the subjects which are protestants may have arms for their defense suitable to their condition and as allowed by law." Bill of Rights, 1689, 1 *W. & M., c. 2*, §7 (Eng.). However, Article VII functions as yet another example of a right to be armed expressed in a text that, as Justice Stevens notes, was "framed in markedly different language" than the Second Amendment, *Heller*, 128 S. Ct. at 2838 (Stevens, J., dissenting), yet was well known to the Framers of the American Bill of Rights.

[FN79]. Justice Scalia responds by insisting that Justice Stevens' view must be wrong because it "relies on the proposition, unsupported by any evidence, that different people of the founding period had vastly different conceptions of the right to keep

and bear arms.” [Heller](#), 128 S. Ct. at 2804. One would have thought that, to a self-described textualist like Justice Scalia, the most powerful evidence that different people had different conceptions of the right to be armed would be the vastly different ways in which the right was expressed in various texts written by different people. But, in a boldly circular argument, Justice Scalia insists that this cannot possibly be the case since “the Bill of Rights codified venerable, widely understood liberties,” *id.*, which he assumes included only the personal right to be armed for self-defense.

[FN80]. See *id.* at 2789-90.

[FN81]. *Id.* at 2790.

[FN82]. *Id.* at 2790 n.4.

[FN83]. See *id.* at 2801.

[FN84]. See *id.* at 2799-2800.

[FN85]. *Id.* at 2799.

[FN86]. *Id.* (quoting N. Webster, *American Dictionary of the English Language* (Philip Babcock Gove ed., Merriam-Webster 1989) (1828)).

[FN87]. *Id.* at 2830 (Stevens, J., dissenting) (quoting Acts Passed at a General Assembly of the Commonwealth of Virginia, ch. 1, §3, at 2 (1785)).

[FN88]. Ch. 33, 1 Stat. 271 (repealed 1903). This statute was responsive to the Anti-Federalist fear that animated the push for the Second Amendment, namely that Congress would fail to exercise its new power to organize and arm the militia. As noted at *supra* p. 1174, the Second Amendment was designed as a fail-safe measure to protect the citizen militia against the possibility of federal destruction through hostility or neglect. This is not, as suggested by the *Heller* majority, inconsistent with the division of federal and state authority over the militia in [Article I, §8 of the Constitution](#). See [Heller](#), 128 S. Ct. at 2802 & n.17. Rather, the Second Amendment contemplates the possibility that Congress would not exercise its new constitutional authority to organize and arm the militia. In that eventuality (which did not arise), the Second Amendment bars Congress from taking action to prevent the people from keeping and bearing arms in state militias. See Dennis A. Henigan, [Self-Inflicted Wounds: The D.C. Circuit on the Second Amendment](#), 18 *Geo. Mason U. Civ. Rts. L.J.* 209, 222 n.69 (2008).

[FN89]. [Heller](#), 128 S. Ct. at 2817.

[FN90]. *Id.* at 2830 (Stevens, J., dissenting). In response, Justice Scalia insists that using the early militia statutes to give a militia meaning to “keep Arms” “is rather like saying that, since there are many statutes that authorize aggrieved employees to ‘file complaints’ with federal agencies, the phrase ‘file complaints’ has an employment-related connotation. ‘Keep arms’ was simply a common way of referring to possessing arms, for militiamen and everyone else.” *Id.* at 2792 (majority opinion). This is yet another illustration of Justice Scalia’s misidentification of the issue. The Second Amendment issue is analogous to de-

termining the meaning of the term “file complaints” in a hypothetical statute providing that “aggrieved employees of federal agencies may file complaints to seek relief.” The phrase “file complaints” certainly has an employment-related meaning in that context, although its meaning may be unrelated to employment in other contexts. Similarly, the “right of the people to keep and bear Arms” cannot be determined apart from its particular context as part of a provision recognizing the importance of the militia, although in other contexts the phrase “keep Arms” may have a nonmilitia meaning.

[FN91]. *Id.* at 2821.

[FN92]. *Id.* at 2791.

[FN93]. Nor is there any force to Justice Scalia's argument that since the right is granted to “the people,” it means that all the people must be able to exercise the right, regardless of their participation in a militia. See *id.* at 2790-91. As Justice Stevens points out in dissent, even the majority view of the Second Amendment concedes that some of “the people” are disqualified from asserting the right—that is, those who are not “law-abiding, responsible citizens.” See *id.* at 2827 (Stevens, J., dissenting).

[FN94]. Articles of Confederation, art. VI.

[FN95]. *Heller*, 128 S. Ct. at 2802 (quoting *Mass. Const. of 1780 pt. 1, Art. XVII*, reprinted in 3 Thorpe, *supra* note 23, at 1888, 1892).

[FN96]. *Id.* (quoting N.C. Const. Declaration of Rights § XVII, reprinted in 5 Thorpe, *supra* note 23, at 2787, 2788).

[FN97]. Justice Scalia dismisses reliance on the legislative history of the Second Amendment as “dubious” because the “text was widely understood to codify a pre-existing right, rather than to fashion a new one.” *Id.* at 2804. Apart from citing no evidence that the Second Amendment was so widely understood, Scalia furnishes no explanation for why it would not be useful to examine legislative history to determine whether those who wrote and ratified the Second Amendment thought it codified a preexisting right, as well as to determine the content and scope of the right.

[FN98]. *Id.* at 2831 n.14 (Stevens, J., dissenting) (citing John Godfrey Saxe, *The Poems of John Godfrey Saxe* 135-36 (Boston, James R. Osgood and Co. 1873)).

[FN99]. See Adam Liptak, *Ruling on Guns Elicits Rebuke From the Right*, N.Y. Times, Oct. 21, 2008, at A15.

[FN100]. Douglas W. Kmiec, *Guns and the Supreme Court: Dead Wrong*, The-Tidings.com, July 11, 2008, <http://www.the-tidings.com/2008/071108/kmiec.htm>.

[FN101]. *Id.*

[FN102]. Richard A. Posner, *In Defense of Looseness: The Supreme Court and Gun Control*, New Republic, Aug. 27, 2008, at 32, 32.

[FN103]. Id. at 35.

[FN104]. See J. Harvie Wilkinson III, *Of Guns, Abortions, and the Unraveling Rule of Law*, 95 Va. L. Rev. 253, 273-76 (2009).

[FN105]. Id. at 254.

[FN106]. See id. at 256-57.

[FN107]. *Heller*, 128 S. Ct. at 2816.

[FN108]. Id.

[FN109]. Id. at 2816-17, 2817 n.26.

[FN110]. Id. at 2816-17.

[FN111]. Id. at 2817 n.26.

[FN112]. Id. at 2820.

[FN113]. Twenty-seven states have statutes imposing some form of criminal or civil liability for leaving guns accessible to children. See Legal Cmty. Against Violence, *Regulating Guns in America* 234-35 (2008). These laws are easily distinguishable from the District of Columbia gun storage law struck down in *Heller*, which the majority interpreted as requiring “that firearms in the home be rendered and kept inoperable at all times” thus making “it impossible for citizens to use them for the core lawful purpose of self-defense....” *Heller*, 128 S. Ct. at 2818.

[FN114]. *Heller*, 129 S. Ct. at 2815 n.24.

[FN115]. Id. at 2846 & n.39 (Stevens, J., dissenting).

[FN116]. Id. at 2868 (Breyer, J., dissenting).

[FN117]. Id.

[FN118]. For example, during the first ten years of the Brady Act, over 1.2 million criminals and other prohibited purchasers were blocked from buying guns from licensed dealers, Bureau of Justice Statistics, U.S. Dep't of Justice, *Background Checks for Firearm Transfers*, 2005, at 2 (2006), and the evidence suggests that the statute contributed to a historic decline in gun crime. During that same period, gun homicides dropped 37 percent, see Bureau of Justice Statistics, U.S. Dep't of Justice, *Key Facts at a Glance, Crimes Committed With Firearms, 1973-2006, Murders, Robberies, and Aggravated Assault in Which Firearms Were Used, Numbers of Offenses and Rates Per 100,000 Population, 1973-2006*, available at <http://>

www.ojp.usdoj.gov/bjs/glance/tables/guncrimetab.htm (last visited, May 26, 2009), driving a 34 percent decline in all homicides, Bureau of Justice Statistics, U.S. Dep't of Justice, Homicide Trends in the United States, Long Term Trends, Homicide Victimization 1950-2005, available at <http://www.ojp.usdoj.gov/bjs/homicide/tables/totalstab.htm> (last visited May 26, 2009), and nonlethal gun crimes plummeted an astounding 73 percent. See Bureau of Justice Statistics, U.S. Dep't of Justice, Key Facts at a Glance, Nonfatal Firearm-Related Violent Crimes, 1993-2005, available at <http://www.ojp.usdoj.gov/bjs/glance/tables/firearmnonfataltab.htm> (last visited May 26, 2009). In the five years preceding Brady, the percentage of violent crimes committed with firearms had increased every year. Bureau of Justice Statistics, U.S. Dep't of Justice, Key Facts at a Glance, Crime Committed With Firearms, 1973-2006, Percent of Murders, Robberies, and Aggravated Assaults in Which Firearms Were Used, 1973-2006, available at <http://www.ojp.usdog.gov/bjs/glance/tables/guncrimetab.htm> (last visited May 26, 2009).

[FN119]. See Respondent's Brief at 54-62, [District of Columbia v. Heller](#), 128 S. Ct. 2783 (2008) (No. 07-290).

[FN120]. [Heller](#), 128 S. Ct. at 2851 (Breyer, J., dissenting) (quoting [Abrams v. Johnson](#), 521 U.S. 74, 82 (1997)).

[FN121]. *Id.*

[FN122]. See *id.* at 2821 (majority opinion).

[FN123]. Philip J. Cook & Jens Ludwig, The Social Costs of Gun Ownership, 90 J. Pub. Econ. 379, 387 (2006); accord Matthew Miller et al., Rates of Household Firearm Ownership and Homicide Across US Regions and States, 1988-1997, 92 Am. J. Pub. Health 1988, 1989 (2002); Matthew Miller et al., State-level Homicide Victimization Rates in the US in Relation to Survey Measures of Household Firearm Ownership, 2001-2003, 64 Soc. Sc. & Med. 656, 660-61, 663 (2007).

[FN124]. James Oliphant, Gun-rights Ruling Could Ricochet Across Nation, Chi. Trib., Mar. 16, 2008.

[FN125]. Given that the *Heller* majority invokes post-Civil War commentary to inform our understanding of the Second Amendment, see [Heller](#), 128 S. Ct. at 2811-12, it would seem arbitrary for the Court to require that gun regulations have historical antecedents dating to the founding era to qualify as longstanding.

[FN126]. See, e.g., [United States v. Luedtke](#), 589 F. Supp. 2d 1018, 1021 (E.D. Wis. 2008) (“[T]he Court’s examples are best understood as representing the types of regulations that pass constitutional muster.”); [United States v. Booker](#), 570 F. Supp. 2d 161, 163 (D. Me. 2008) (finding a statute barring gun possession by persons convicted of misdemeanor crimes of domestic violence to be sufficiently similar to prohibitions on possession of guns by felons and the mentally ill to be included in list of “longstanding prohibitions” surviving Second Amendment scrutiny under *Heller*).

[FN127]. Wayne LaPierre, An Individual Right Affirmed, Am.'s 1st Freedom, Aug. 2008, at 8.

[FN128]. These challenges to local handgun ban laws raise the threshold issue of whether the new private right to possess handguns applies to states and the cities and counties that derive their existence from states. Because the District of Columbia is a federal district, with a hybrid of local and federal legislative authority, the *Heller* Court did not address whether the new right

to be armed applies as a limit on state and other local gun laws. See [Heller](#), 128 S. Ct. at 2813 n.23. This raises the issue of “incorporation” of the Bill of Rights; that is, whether the Bill of Rights, though originally applicable only as a restraint on federal laws, has been “incorporated” against the states and their localities through the post-Civil War enactment of the Due Process Clause of the Fourteenth Amendment. Supreme Court precedent dating to the 1870s holds that the Second Amendment applies only to Congress, not the states. See [Presser v. Illinois](#), 116 U.S. 252, 265 (1886); [United States v. Cruikshank](#), 92 U.S. 542, 553 (1876). The incorporation issue is beyond the scope of our discussion here. But, as argued in the text, the Heller opinion suggests that, even if the post-Heller Second Amendment eventually is held to be incorporated against the states, most state and local gun laws short of a handgun ban will likely survive constitutional challenge.

[FN129]. Chris Cox, *The Court Speaks, and the Fight Goes On, Am.'s 1st Freedom*, Sept. 2008, at 51.

[FN130]. See e.g. [Luedtke](#), 589 F. Supp. 2d at 1020 and cases cited therein.

[FN131]. This is particularly likely since the federal courts will be considering the constitutionality of gun control laws under Heller against the backdrop of decades of unsuccessful challenges to state gun laws brought under state “right to bear arms” provisions that have been interpreted to guarantee a personal right unrelated to the militia. As Professor Adam Winkler has demonstrated, forty-two states apply their “right to bear arms” as a personal, nonmilitia right, yet “[o]nly a fraction of state gun laws have been invalidated on the basis of the right to bear arms since World War II.” Adam Winkler, *The Reasonable Right to Bear Arms*, 17 *Stan. L. & Pol’y Rev.* 597, 599 (2006). Heller’s Section III comments will likely be used by the lower federal courts to support deferential Second Amendment review of gun laws similar to that employed by state courts under state constitutional provisions.

[FN132]. Press Release, Greenberg Quinlan Rosner Research and The Terrance Group, *Americans Support Common Sense Measures to Cut Down on Illegal Guns* (Apr. 10, 2008), available at http://www.mayorsagainstillegalguns.org/downloads/pdf/polling_memo.pdf.

[FN133]. David Hemenway, *Private Guns, Public Health* 163 (2004).

[FN134]. Gordon Witkin et al., *The Fight to Bear Arms*, *U.S. News & World Rep.*, May 22, 1995, at 28, 28.

[FN135]. *The Washington Post Poll: Most Say Amendment Covers Individuals and Militias*, *Wash. Post*, Mar. 16, 2008, available at <http://www.washingtonpost.com/wp-dyn/content/graphic/2008/03/16/GR2008031600072.html?sid=ST2008031502430>.

[FN136]. See Jeffrey M. Jones, *Americans in Agreement With Supreme Court on Gun Rights*, *Gallup*, June 26, 2008, <http://www.gallup.com/poll/108394/Americans-Agreement-Supreme-Court-Gun-Rights.aspx>.

[FN137]. *Id.*

[FN138]. Of course, in 1791, the public would have had no difficulty understanding the concept of a “well regulated Militia” in which the people have a right to keep and bear arms in defense of the community.

[FN139]. See Brady Campaign to Prevent Gun Violence, *Guns & the 2008 Elections: Common Sense Gun Laws Won, the NRA Lost, & What It Means* 8, 13 (2008), available at <http://www.bradycenter.org/xshare/pdf/reports/guns-2008election.pdf>.

[FN140]. On the day of the Heller ruling, Obama released a statement saying, "I have always believed that the Second Amendment protects the right of individuals to bear arms, but I also identify with the need for crime-ravaged communities to save their children from the violence that plagues our streets through common-sense, effective safety measures." Press Release, Sen. Barack Obama, Statement of Barack Obama on Supreme Court decision in *District of Columbia v. Heller* (June 26, 2008), available at <http://my.barackobama.com/page/community/post/stateupdates/gG5NxL>. In that same statement, he reiterated his support for "closing the gun show loophole and improving our background check system, so that guns do not fall into the hands of terrorists or criminals." *Id.*

[FN141]. Press Release, Pew Research Ctr. for the People & the Press, *Public Continues to Oppose Banning Handgun Sales* (May 14, 2008), available at <http://people-press.org/reports/pdf/419.pdf>.

[FN142]. *Id.*

[FN143]. See *id.*

[FN144]. For example, Professor Volokh frequently uses gun-related arguments in his general discussion of slippery slope arguments in Eugene Volokh, *The Mechanisms of the Slippery Slope*, 116 *Harv. L. Rev.* 1026 (2003).

[FN145]. Wayne LaPierre, *Guns, Crime and Freedom* 48 (1994).

[FN146]. Nat'l Rifle Ass'n Inst. for Legislative Action, *Firearms Registration: New York City's Lesson* (Jan. 27, 2000), <http://www.nraila.org/Issues/FactSheets/Read.aspx?ID=41>.

[FN147]. Three states--Virginia, Maryland, and California--have enacted laws prohibiting the purchase of more than one handgun in any thirty-day period. See Legal Cmty. Against Violence, *supra* note 113, at 140. Virginia's law has dampened the flow of handguns from Virginia dealers into the illegal market in the Northeast. See Douglas S. Weil & Rebecca C. Knox, *Effects of Limiting Handgun Purchases on Interstate Transfer of Firearms*, 275 *J. Am. Med. Ass'n* 1759, 1760 (1996).

[FN148]. Nat'l Rifle Ass'n Inst. for Legislative Action, *One Gun a Month: Rationing a Constitutionally-Protected Right* (Mar. 9, 2000), <http://www.nraila.org/Issues/FactSheets/Read.aspx?ID=140>.

[FN149]. Tom W. Smith, *Public Opinion on Gun Control* 53 (Dec. 2003) (unpublished manuscript, on file with author).

[FN150]. Douglas S. Weil & David Hemenway, *I am the NRA: An Analysis of a National Random Sample of Gun Owners*, 8 *Violence & Victims* 353, 361 (1993).

[FN151]. Heston, *supra* note 1.

[FN152]. Id.

[FN153]. See Mark Preston, House GOP Promotes Its “American Values Agenda,” Cnn.com, June 28, 2006, <http://www.cnn.com/2006/POLITICS/06/28/mg.thu>.

[FN154]. Bureau of Alcohol, Tobacco, Firearms, and Explosives (BAFTE) Modernization and Reform Act of 2006, H.R. 5092, 109th Cong. (2006)).

[FN155]. Press Release, Nat'l Rifle Ass'n Inst. for Legislative Action, NRA Applauds Congressional Leaders for Including Gun Ownership Rights in Their “American Values Agenda” (June 29, 2006), available at <http://www.nraila.org/GrassrootsAlerts/Read.aspx?ID=344>.

[FN156]. Osha Gray davidson, Under Fire: The NRA and the Battle for Gun Control 44 (1993).

[FN157]. *District of Columbia v. Heller*, 128 S. Ct. 2783, 2822 (2008).

[FN158]. Paul Helmke, President, Brady Campaign to Prevent Gun Violence, NRA: Gun Licensing and Registration “Tougher to Criticize” Now, Brady Blog, July 3, 2008, <http://www.bradycampaign.org/blog> (quoting To the Point: Does Gun Control Have a Future? (Public Radio International broadcast July 1, 2008)) (emphasis added). Moments later, Michel realized the implications of what he had said:

Well, let me just first clarify, so I don't get overly criticized by the members of the NRA that may be listening, you can't license a civil right. So, I'm not talking about a license to own a gun or to have a gun. There are certain types of licensing which will survive and others that won't....

Id. Though a noble attempt at self-preservation, this is hardly enough to negate Michel's acknowledgement of the unintended impact of Heller on the slippery slope argument.