

A Class of Accidental Criminals

Weapons Act That Includes Law-Abiding Gun Owners Is Irrational

By Chuck Michel

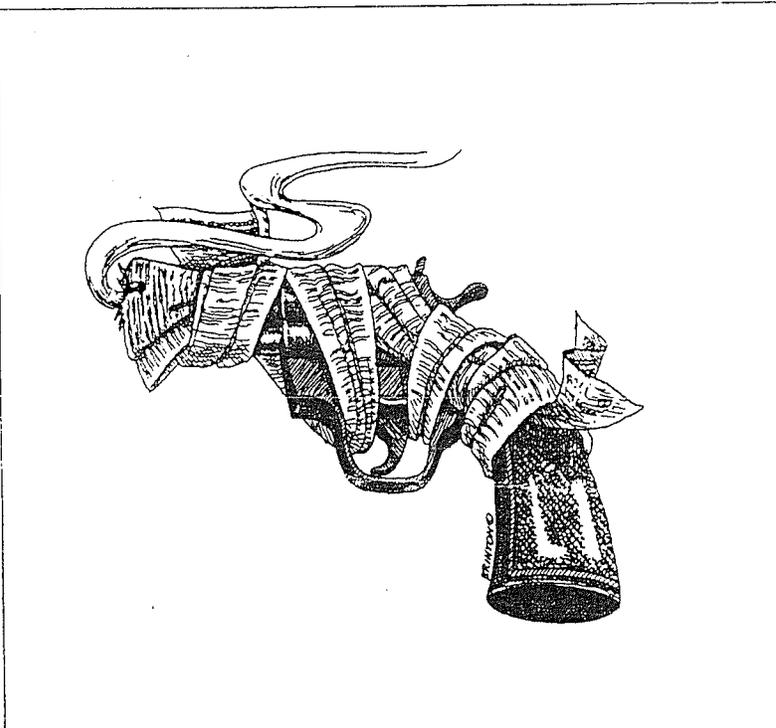
Kasler v. Lungren, 98 Daily Journal D.A.R. 2191 (March 4, 1998), a Court of Appeal decision overturning California's Assault Weapon Act on separation of powers, due process and equal protection grounds, recognized flaws in the law that self-defense civil rights groups pointed out well before the act passed in 1989. The decision was a victory for those citizens who understand the dangers of ill-conceived symbolic laws based on emotion rather than fact.

Far from protecting us from criminals — for whom these difficult-to-conceal rifles are cumbersome and impractical — the law is so technically incompetent and vague that it has turned thousands of otherwise law-abiding gun owners into accidental felons.

Take William Doss, a retired Air Force colonel, commercial pilot and recreational target shooter who moved back to California from Florida in 1995. Before doing so, he wrote the California Department of Justice (to which the Legislature assigned the thankless job of administering the Assault Weapon Act) to ask if the SKS "Sporter" target rifle fell within the act. (If so, it would be a felony for him to bring it into the state.) The DOJ told him, and everyone else who asked, that the SKS "Sporter" was perfectly legal. Based on the DOJ's approval letter, he brought the rifle to California.

The law is particularly vague when it comes to SKS rifles. From 1991 through 1997 the DOJ read it narrowly — as criminal statutes are supposed to be read — and advised gun owners that it referred only to the one SKS model it clearly banned. In late 1997, the DOJ suddenly adopted the broadest reading possible. Gubernatorial election politics had something to do with it. The technical ignorance of new DOJ personnel assigned to the issue compounded the problem. Regardless, Doss received a new letter telling him the SKS "Sporter" rifle had been illegal all along and advising that if he immediately forfeited his rifle to local police they *might* not file felony charges against him.

The DOJ sent similar change-of-position letters to about 350 other SKS owners that they knew about. Problem is, as many as 500,000 SKS rifles were imported, sold and pos-



has no way of notifying those rifle owners that their guns are illegal. Doss allowed his rifle to be confiscated. Others, unaware of the problem, have been prosecuted. Instead of fighting crime, the law created a whole new class of retroactive accidental criminals.

But the act was never really about crime. It was about fear. And fear is the enemy of logic. We were rightly afraid of Patrick Purdy, who killed five children in a Stockton school yard with a "knock-off" AK-47 semiautomatic rifle. As the court's opinion says, the Stockton murders "animated existing but staged legislative efforts to do something. But what?"

For Handgun Control Inc. and its allied groups, our fear was a political opportunity. Contrary to a widespread misconception, fully automatic "machine guns" — true military "assault rifles" — were essentially outlawed in 1934. Those guns already being illegal, some legislators wanted to ban all semiautomatic (one trigger pull equals one bullet) firearms. Others sought a commission to identify "assault weapons." Some wanted to list allowable guns and ban all the rest. Ultimately, they came up with roughly 60 semiautomatic guns to be banned.

The list was about looks and

defense, collectible, target-shooting or hunting value: guns with pistol grips, heat shields, flash suppressors, folding stocks, bayonet mounts or detachable magazines; guns with a military look, HCl spin, masters helped blur the military fully automatic-civilian semiautomatic distinction. The Assault Weapon Act's authors picked the listed guns from picture books. Other guns, identical to those on the list except for having a different name, manufacturer or assembler, were not covered. Ironically, Purdy's rifle was not listed.

Visually frightening guns are not more deadly. Take off the accessories, and a standard medium-caliber rifle remains. And the militarily derived bullet of may semiautomatic guns banned actually makes them less powerful than hunting rifles. They are designed to wound, not to kill — consistent with the Hague Convention. Some of the rifles on the list are unsuitable for hunting because they are too weak. If Purdy had used a shotgun, with its higher killing ratio, we would have buried a lot more children.

All firearms-related deaths are tragedies. But vilifying specific firearms through sloppy laws is not the answer. As the court noted in finding the list irrational: "Drunken

to ban drunken driving of a Toyota Corolla, Dodge Caravan, Ford Probe, Mazda Navajo or Chrysler Concorde while allowing it in their respective twins, the Geo Prizm, Plymouth Voyager, Mazda MX-6, Ford Explorer, Dodge Intrepid and Eagle Vision."

The Assault Weapon Act spawned no less than five costly and divisive lawsuits against the lawmakers' whipping boy — California Attorney General Dan Lungren — who managed to satisfy no one on the issue. The arbitrary selection process and the meaninglessness of an "assault weapon" designation has also spawned a widespread lack of respect among gun owners for the rational integrity of the legal process. For self-defense advocates, firearms collectors, hunters and recreational shooters at least, the court's decision restored a little of that respect.

Chuck Michel, a former criminal defense prosecutor and staff counsel to the Christopher Commission investigating the Los Angeles Police Department, was one of the attorneys representing the prevailing parties in *Kasler*, and represents William Doss and other firearms importers, dealers