

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

JUNE SHEW, et al.	:	No. 3:13-CV-0739 (AVC)
<i>Plaintiffs,</i>	:	
	:	
v.	:	
	:	
DANNEL P. MALLOY, et al.	:	
<i>Defendants.</i>	:	OCTOBER 11, 2013

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Respectfully Submitted,

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CERTIFICATION

I hereby certify that on October 11, 2013, a copy of the foregoing Defendants' Exhibit List was filed electronically. Notice of this filing will be sent by electronic mail to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Maura Murphy Osborne
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EXHIBIT 53

NOT YET SCHEDULED FOR ORAL ARGUMENT

No. 10-7036

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

DICK ANTHONY HELLER, et al., Plaintiffs-Appellants,

v.

DISTRICT OF COLUMBIA, et al., Defendants-Appellees.

**ON APPEAL FROM A JUDGMENT OF THE
UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA**

APPELLEES' STATUTORY ADDENDUM

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Brady Center



To Prevent Gun Violence

Testimony of Brian J. Siebel
Senior Attorney
Brady Center to Prevent Gun Violence
Before the Council of the District of Columbia
October 1, 2008

Thank you, Chairman Mendelson and other members of the Council, for inviting the Brady Center to Prevent Gun Violence to speak at this important committee hearing.

The Brady Center to Prevent Gun Violence and the Brady Campaign to Prevent Gun Violence are the nation's largest organizations working for sensible gun policies. The Legal Action Project of the Brady Center represents victims of gun violence and defends gun laws in the courts.

In addition to the other measures being suggested here today, which we support, the Brady Center and Brady Campaign strongly urge the Council to pass an assault weapons ban, a ban on .50 caliber sniper rifles, and retain its recently-passed ban on high-capacity ammunition magazines, as part of its process of strengthening the District's gun laws in light of the *Heller* decision.

The Need for An Assault Weapons Ban

Assault weapons had been banned for more than 30 years under the broader D.C. ban on all semiautomatic weapons. However, now that that ban has been repealed, an assault weapon ban is needed to protect the people of the District, visitors, and law enforcement from these particularly dangerous weapons. An assault weapons ban would continue to allow law-abiding citizens to have common pistols in their homes for self-defense, and would remain in compliance with the *Heller* decision. We believe it is imperative for the Council, now that it has legalized common semiautomatic pistols, to restore a ban on military-style assault weapons.

Assault Weapons Are "Mass Produced Mayhem"

Assault weapons are semiautomatic versions of fully automatic guns designed for military use. Even semiautomatic assault weapons 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.

The Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") has described assault weapons in stark terms.

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.¹

Assault weapons have distinct features that separate them from sporting firearms.² While 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 generally 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.

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."³ 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."⁴

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.⁵ Or that the Columbine high school shooters who killed 12 students and a teacher included a TEC-9 assault weapon in their arsenal. 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.⁶ 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.⁷ The list goes on.

¹ ATF, *Assault Weapons Profile* 19 (1994) (emphasis added).

² *Id.* at 20.

³ DEP'T OF TREASURY, *Study on the Sporting Suitability of Modified Semiautomatic Assault Rifles* 38 (1998).

⁴ ATF, *Assault Weapons Profile*, *supra* note 1, at 19-20.

⁵ *Ferri Used Guns That California Ban Does Not Forbid*, SAN FRANCISCO EXAMINER, July 4, 1993.

⁶ *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.

⁷ *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.

Assault Weapons Threaten Law Enforcement

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

assault 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.⁸

Assault weapons have even been used in a brazen attack at D.C. Police Headquarters. On November 22, 1994, a man armed with a MAC-11 assault pistol walked into Metropolitan Police headquarters and shot and killed Sergeant Henry Daly and FBI Agents Mike Miller and Martha Martinez. The shooter seriously wounded FBI Agent John Kuchta and shot at couches, walls, computers, and desks before shooting and killing himself with Agent Martinez's gun.⁹

In addition, numerous law enforcement officers have been killed with high-firepower assault weapons. Here are a few recent examples:

- **Philadelphia, PA. 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 suspects were arrested and charged with murder.¹⁰
- **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-grade 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.¹¹

⁸ Christopher S. Koper, *Updated Assessment of the Federal Assault Weapons Ban: Impacts on Gun Markets and Gun Violence, 1994-2003*, U. Penn. Jerry Lee Center of Criminology 87 (June 2004).

⁹ Brian Reilly, *Cop killers' guns similar; handgun converted to fiercer weapon*, THE WASHINGTON TIMES, May 1, 1995.

¹⁰ 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; Sergeant Stephen Liczbinski, www.odmp.org, available at: <http://www.odmp.org/officer/19359-sergeant-stephen-liczbinski> (last visited Sept. 30, 2008).

¹¹ David Ovalle et. al., *The murder and the manhunt started in a South Miami-Dade townhouse; zigzagged...*, MIAMI HERALD, Sept. 15, 2007.

- **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.¹²

The threat posed to law enforcement is one reason why major law enforcement organizations are united in supporting bans on assault weapons.

Assault Weapons Threaten Civilians

Assault weapons have also been used to massacre and terrorize civilians. Who can forget the nightmare we lived through in the District of Columbia and surrounding communities during the attacks committed by the D.C. snipers. Their weapon of choice? A Bushmaster XM-15 assault rifle.

There have been hundreds of other shootings committed with semiautomatic assault weapons. Here, we list just a few recent examples:

- **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, including two teenage sisters, in Colorado Springs. He died after being shot by a security guard and then shooting himself.¹³
- **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.¹⁴
- **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.¹⁵
- **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

¹² Ian Urbina, *Fatal police station attack shocks tranquil community*, NEW YORK TIMES, May 10, 2006; *Officer Killed*, BOSTON GLOBE, May 18, 2006.

¹³ 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.

¹⁴ *The American Way*, REGISTER-GUARD, Dec. 17, 2007.

¹⁵ 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.

was in grave condition. The gunman fled the scene but was pursued and shot by police when he exited his car and shot toward officers.¹⁶

- **Akron, Ohio. February 24, 2005.** A man shot and killed his girlfriend and her seven-year old son using an AR-15 assault weapon, 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 weapon. Police subsequently seized 21 weapons kept by the suspect, including an Uzi and an AK-47.¹⁷

Assault Weapons Threaten Homeland Security

These weapons pose particular and severe risks for homeland security here in the Nation's Capital. The extraordinary firepower of these weapons could wreak havoc at any number of high-profile sites or events that occur in Washington, or victimize any number of high-profile targets, from government officials to foreign dignitaries.

And make no mistake: these weapons have great appeal for terrorists. 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.

The *Chicago Tribune* has reported that, found among the mounds of rubble 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."¹⁸ Tellingly, the manual singles out the United States for its easy availability of firearms and stipulates that al-Qaeda members living in the United States "obtain an assault weapon legally, preferably AK-47 or variations."

Terrorists have used assault weapons in numerous attacks. I am going to mention just one that is close to home.

- **Langley, Virginia, January 25, 1993.** Pakistani national Mir Aimal Kasi killed two CIA employees and wounded three 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.¹⁹ After fleeing the country, he was arrested in Pakistan in 1997.²⁰

¹⁶ 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.

¹⁷ 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.

¹⁸ Paul Salopek, *A Chilling Look into Terror's Lair*, CHICAGO TRIBUNE, Nov. 18, 2001.

¹⁹ *CIA Killings Prompt Scrutiny on 2 Fronts; Fairfax Loophole Expedited Gun Purchase*, WASHINGTON POST, Feb. 11, 1993.

²⁰ Robert O'Harrow, Jr., *Kansi's Shadowy Stay in U.S. Leaves a Hazy Portrait*, WASHINGTON POST, Mar. 3, 1993.

.50 Caliber Sniper Rifles Pose Serious Dangers

Fifty caliber sniper rifles also pose an extraordinary risk in the District. In 1987, Barrett Firearms Manufacturing Inc., patented its self-described “armor-penetrating” .50 caliber BMG sniper rifle.²¹ Capable of destroying armored personnel carriers, aircraft and bulk fuel and ammunition sites, the .50 caliber sniper rifle is now proliferating in the civilian market.²² Accurate at up to 2,000 yards, it can inflict effective damage to targets over four miles away.²³ With more power on impact than any other semi-automatic rifle legally available on the civilian market,²⁴ the .50 caliber represents a serious threat to local law enforcement and national security. A 2004 report on airport security at Los Angeles International Airport warned that terrorists could use .50-caliber sniper rifles to target parked and taxiing airplanes “firing over 50 shots in five minutes.”²⁵ The Council should take action to prohibit the possession of these weapons in civilian hands.

High-Capacity Magazines Increase Firepower

The threat posed by military-style assault weapons is increased significantly if they can be equipped with high-capacity ammunition magazines, defined as those accepting more than ten rounds. The 1994-2004 federal ban on assault weapons also banned these magazines. By permitting a shooter to fire more than ten rounds without reloading, they greatly increase the firepower of mass shooters. For example, the shooter at Virginia Tech equipped himself with numerous high-capacity magazines of up to 30 rounds, which enabled him to get off nearly 200 rounds in his attack. In self-defense situations, too much firepower is a hazard, because the 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.

Assault Weapons Bans Already In Place

Six states currently ban assault weapons. 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. We strongly support that legislation as a model for the District of Columbia.

²¹ Carolyn Marshall, *California Bans Large Caliber Guns, and the Battle is on*, NEW YORK TIMES, Jan. 4, 2005.

²² See, Government Accounting Office for U.S. House of Representatives, Committee on Government Reform, *Long Range 50 Caliber Sniper Weapons* 4 (May 3, 1999).

²³ *Id.*

²⁴ *Id.* at 3.

²⁵ Donald Stevens, *Near Term Options for Improving Security at Los Angeles International Airport*, RAND (2004).

In addition, from 1994-2004, there was a federal ban on assault weapons. Plus, as mentioned above, ATF currently bans assault weapons from being imported into this country because they are not weapons suitable for sporting purposes.

Banning Assault Weapons and Sniper Rifles Is Consistent with *Heller*

A ban on assault weapons and .50 caliber sniper rifles would be constitutional and consistent with the Supreme Court's decision in *District of Columbia v. Heller*. In *D.C. v. Heller*, the Supreme Court narrowly defined the Second Amendment as protecting the right of law-abiding citizens to keep and use guns in the home for self-defense. At the same time, the Court indicated that the right to keep and bear arms is limited in a number of ways. The Court made clear that the Second Amendment does not entitle citizens to any and all guns. Certainly, military-style assault weapons and .50 caliber sniper rifles are not a part of this right. The Court held 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."²⁶

Assault weapons and .50 caliber sniper rifles 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. 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 and .50 caliber sniper rifles are not "in common use." As semiautomatic versions of machine guns developed for use during the World Wars of the 20th Century, assault weapons are a relatively recent invention. Plus, ATF has twice concluded, after thorough analyses in 1989 and 1998, that assault weapons have no sporting purpose. And the Barrett .50 caliber sniper rifles was patented a mere twenty-one years ago, and was made for military, not civilian use.

Finally, assault weapon bans have been challenged in court, but have never been struck down as unconstitutional under the Second Amendment or under right to bear arms provisions in state constitutions.²⁷

Conclusion

Outside of the military or law enforcement, assault weapons and .50 caliber sniper rifles have no place in civilized society. We would urge the D.C. Council to adopt a ban on these weapons. Thank you.

²⁶ *District of Columbia v. Heller*, 128 S.Ct. 2783 (2008).

²⁷ 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).

EXHIBIT 54

FM 3-22.9

RIFLE MARKSMANSHIP M16-/M4-SERIES WEAPONS



August 2008

DISTRIBUTION RESTRICTION: Approved for public release; distribution is unlimited.

**HEADQUARTERS
DEPARTMENT OF THE ARMY**

Preface

This manual provides guidance for planning and executing training on the 5.56-millimeter M16-series rifle (M16A1/A2/A3/A4) and M4 carbine. It is a guide for commanders, leaders, and instructors to develop training programs, plans, and lessons that meet the objectives or intent of the United States Army rifle marksmanship program and FM 7-0.

This manual is organized to lead the trainer through the material needed to conduct training during initial entry training (IET) and unit sustainment training. Preliminary subjects include discussion on the weapon's capabilities, mechanical training, and the fundamentals and principles of rifle marksmanship. Live-fire applications are scheduled after the Soldier has demonstrated preliminary skills.

This manual was revised to include references to new materiel and systems. This revision includes—

- The new Army total marksmanship training strategy, to include specific strategies for the United States Army Reserve (USAR) and the Army National Guard (ARNG).
- Information about the advanced combat optical gunsight (ACOG), the AN/PEQ-15 advanced target pointer/illuminator aiming light (ATPIAL), various thermal sights, and the MK 262 round.
- Information about the alternate qualification record fire courses (known distance [KD] record fire, 25-meter scaled target alternate course, 15-meter scaled target alternate course).
- Information about the rapid magazine change and barricade transition fire for short-range marksmanship (SRM).
- Changes to all of the scorecards.
- Updated terminology.

*This publication prescribes DA Form 3595-R (Record Fire Scorecard), DA Form 3601-R (Single Target—Field Firing Scorecard), DA Form 5239-R (100-, 200-, and 300-Meter Downrange Feedback Scorecard), DA Form 5241-R (Single and Multiple Targets—Field Firing Scorecard), DA Form 5789-R (Record Firing Scorecard—Known-Distance Course), DA Form 5790-R (Record Firing Scorecard—Scaled Target Alternate Course), DA Form 7489-R (Record Night Fire Scorecard), DA Form 7649-R (Squad Designated Marksman—Record Fire I and II Scorecard), DA Form 7650-R (Squad Designated Marksman—Position Evaluation), and DA Form 7682-R (Combat Field Fire Scorecard).

This publication applies to the Active Army, the Army National Guard (ARNG)/National Guard of the United States (ARNGUS), and the US Army Reserve (USAR).

Terms that have joint or Army definitions are identified in both the glossary and the text. Terms for which FM 3-22.9 is the proponent FM are indicated with an asterisk in the glossary.

Uniforms depicted in this manual were drawn without camouflage for clarity of the illustration. Unless this publication states otherwise, masculine nouns and pronouns refer to both men and women.

The proponent for this publication is the US Army Training and Doctrine Command. The preparing agency is the Maneuver Center of Excellence (MCoE). You may send comments and recommendations by any means (US mail, e-mail, fax, or telephone) as long as you use DA Form 2028 (Recommended Changes to Publications and Blank Forms) or follow its format. Point of contact information is as follows:

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FIRING FROM WINDOWS

7-11. When firing from windows, Soldiers should stay in the shadows and make sure that the weapon's muzzle does not protrude out of the opening (Figure 7-7).



Figure 7-7. Firing from a window.

SECTION II. COMBAT FIRE TECHNIQUES

Combat is the ultimate test of a Soldier's ability to apply the fundamentals of marksmanship and firing skills. Soldiers must apply the marksmanship skills mastered during training, practice, and record fire exercises to many combat situations (for example, attack, assault, ambush, or UO). Although these situations present problems, basic techniques and fundamentals require only two modifications: changes to the rate of fire and alterations in weapon/target alignment.

NOTE: The necessary changes are significant and must be thoroughly taught and practiced before performing LFXs.

RAPID SEMIAUTOMATIC FIRE

7-12. The most important firing technique during fast-moving, modern combat is rapid semiautomatic fire. It is the most accurate technique of placing a large volume of fire on poorly defined targets or target areas, such as short exposure, multiple, or moving targets. To apply rapid semiautomatic fire, the Soldier intentionally fires a quick series of shots into the target area to ensure a high probability of a hit.

NOTE: Increased speed and volume should be sought only after the Soldier has demonstrated expertise and accuracy during slow semiautomatic fire.

EFFECTIVENESS AND CONTROL OF RAPID SEMIAUTOMATIC FIRE

7-13. With proper training, Soldiers can select the appropriate mode of fire: semiautomatic fire, rapid semiautomatic fire, or automatic/burst fire.

NOTE: Leaders must ensure that Soldiers apply proper fire discipline at all times. Even in training, unaimed fire must never be tolerated, especially unaimed automatic fire.

7-14. While Soldiers sacrifice some degree of accuracy to deliver a greater volume of fire, it is surprising how devastatingly accurate rapid semiautomatic fire can be. At ranges beyond 25 meters, rapid semiautomatic fire is superior to automatic fire in all measures: shots per target, trigger pulls per hit, and time to hit. Proper training and repeated practice increases the degree of accuracy.

7-15. Rapid application of the four fundamentals will result in a well-aimed shot every one or two seconds. This technique of fire allows a unit to place the most effective volume of fire in a target area while conserving ammunition. It is the most accurate means of delivering suppressive fire.

MODIFICATIONS FOR RAPID SEMIAUTOMATIC FIRE

7-16. Trainers must consider the impact of the increased rate of fire on the Soldier's ability to properly apply the fundamentals of marksmanship and other combat firing skills, such as immediate action procedures.

Marksmanship Fundamentals

7-17. The following paragraphs describe the modifications necessary for Soldiers to apply the four fundamentals when firing in the rapid semiautomatic fire mode.

Steady Position

7-18. Consider the following modifications to achieve a steady position:

- Make sure that the weapon is well-supported to improve accuracy and reduce recovery time between shots.
- Grip the handgrip tightly to reduce recovery time and rapidly shift or distribute fire to subsequent targets.
- When possible, pivot the weapon where the nonfiring hand meets the support.
- Avoid changing the position of the nonfiring hand on the support; it is awkward and time-consuming when rapidly firing a series of shots.

Aiming

7-19. Consider the following recommendations to properly aim the weapon:

- Do not change sighting and stock weld during rapid semiautomatic fire. Keep the cheek on the stock for every shot, align the firing eye with the rear aperture, and focus on the front sightpost.
- When using slow semiautomatic fire, seek a stable sight picture.
- In the fast-moving situations that require rapid semiautomatic fire, accept target movement and unsteady sight picture, and keep firing into the target area until the target is down or there is no chance of a hit.
- Aim every shot.

Breath Control

7-20. Breath control must be modified because the Soldier does not have time to take a complete breath between shots. Consider the following modifications to achieve proper breath control:

- Hold your breath at some point in the firing process.
- Take shallow breaths between shots.

Chapter 7

Trigger Squeeze

7-21. To maintain the desired rate of fire, the Soldier has a brief period of time to squeeze the trigger. The firer must cause the weapon to fire in about half of a second or less and still not anticipate the precise moment of firing. Consider the following modifications to achieve proper trigger squeeze:

- Apply initial trigger pressure as soon as a target is identified and while the front sightpost is being brought to the desired point of aim.
- When the front sightpost reaches the point of aim, apply final pressure to cause the weapon to fire almost at once. Apply this additional pressure, also known as final trigger squeeze, without disturbing the lay of the weapon.
- Increase the firing rate by firing, releasing enough trigger pressure to reset the sear, and then immediately firing the next shot. This technique is called rapid trigger squeeze. It eliminates the time used in fully releasing pressure on the trigger and allows the firer to rapidly deliver subsequent rounds.

NOTE: Training and practice sessions are required for Soldiers to become proficient in the technique of rapid trigger squeeze.

7-22. Repeated dry-fire training using simulators, such as the EST 2000 and LMTS, and live-fire practice ensure that the Soldier can squeeze the trigger and maintain a rapid rate of fire consistently and accurately.

Immediate Action Procedures

7-23. To maintain an increased rate of suppressive fire, Soldiers must apply immediate action quickly. Repeated dry-fire practice using blanks or dummy rounds, followed by live-fire training and evaluation, ensures that Soldiers can rapidly apply immediate action procedures while other Soldiers initiate fire.

RAPID SEMIAUTOMATIC FIRE TRAINING

NOTE: Soldiers should be well-trained in all aspects of slow semiautomatic firing before attempting any rapid semiautomatic fire training. Those who display a lack of knowledge of fundamental marksmanship skills should not advance to rapid semiautomatic fire training until these skills are learned and mastered.

7-24. Initial training should focus on the modifications to the fundamentals and other basic combat skills necessary during rapid semiautomatic firing.

NOTE: See Table 7-1 for the current training program.

Table 7-1. Rapid semiautomatic fire training program.

RAPID SEMIAUTOMATIC FIRE TRAINING PROGRAM	
Instructional Intent	
<ul style="list-style-type: none"> Soldiers learn to engage targets using rapid semiautomatic fire and practice rapid magazine changes. 	
Special Instructions	
Ensure that— <ul style="list-style-type: none"> The M16A2/A3/A4 rifle's or M4 carbine's rear sight is set on the 0-2 aperture. The M16A1's rear sight is set on the unmarked aperture. Soldiers use a 25-meter alternate course C qualification target. Each Soldier is given four 5-round magazines of 5.56-millimeter ball ammunition. Soldiers use rapid semiautomatic fire to engage targets. Each Soldier fires one round at each of the 10 silhouettes on the alternate course C qualification target. Each Soldier does a rapid magazine change after each magazine is fired. The first iteration of 10 rounds is fired within a time limit of 40 seconds. The second iteration of 10 rounds is fired within a time limit of 30 seconds. Each target is inspected, and the results are posted after each iteration. 	
Observables	
<ul style="list-style-type: none"> Coaches continuously analyze the firer's application of the fundamentals. Each Soldier obtains 14 hits out of 20 silhouette target exposures. 	

Conduct

7-25. Each Soldier receives four 5-round magazines of 5.56-millimeter ball ammunition. Using rapid semiautomatic fire, the Soldier fires one round at each of the 10 silhouettes on the alternate course C qualification target. Soldiers fire two iterations, performing a rapid magazine change after each magazine is fired. The targets are inspected, and the results are posted after each iteration. Each Soldier must obtain 14 hits out of 20 silhouette target exposures.

7-26. Table 7-2 depicts the two iterations and provides related information, such as time constraints, number of rounds that must be fired, type of target that must be used, and the distance away from the firer that the target must be placed.

Table 7-2. Rapid semiautomatic fire training and related information.

ITERATION	TIME CONSTRAINTS	NUMBER OF ROUNDS	TYPE OF TARGET	DISTANCE (m)
1	40 sec	10	25-m alternate course C qualification target	25
2	30 sec	10	25-m alternate course C qualification target	25

Dry-Fire Exercises

7-27. Repeated dry-fire exercises are the most efficient means to ensure that Soldiers can apply modifications to the fundamentals. Multiple dry-fire exercises are needed, emphasizing a rapid shift in position and point of aim, followed by breath control and fast trigger squeeze.

-
- NOTES:**
- Blanks or dummy rounds may be used to train rapid magazine changes and immediate action procedures.
 - The Soldier should display knowledge and skill during dry-fire exercises before attempting LFXs.
-

Chapter 7

Live-Fire Exercises

7-28. There are two types of LFXs:

- Individual.
- Collective.

Individual

7-29. To conduct an individual LFX—

- Ensure that the emphasis is on each Soldier maintaining a heavy volume of accurate fire.
- Keep weapon downtime (during immediate action and rapid magazine changes) to a minimum.
- Begin by firing at shorter ranges, progressing to longer ranges as Soldiers display increased proficiency.
- Shorten exposure or engagement times and increase the number of rounds to simulate the need for a heavy volume of fire.
- Provide downrange feedback to determine the accuracy of fire.

Collective

7-30. Rapid semiautomatic fire should be the primary means of delivering fire during a collective LFX. To conduct a collective LFX, ensure that the emphasis is on performing staggered rapid magazine changes, maintaining a continuous volume of fire, and conserving ammunition.

AUTOMATIC OR BURST FIRE

NOTE: Automatic or burst fire should be trained only after the Soldier has demonstrated expertise during slow and rapid semiautomatic fire.

7-31. When applying automatic or burst fire, Soldiers deliver the maximum number of rounds (one to three rounds per second) into a designated target area while rapidly applying the four fundamentals. This specialized technique of delivering suppressive fire may not apply to most combat engagements.

NOTE: The M16A1/A3 rifle and M4A1 carbine have fully automatic settings. The M16A2/A4 rifle and M4 carbine use a three-round burst capability.

EFFECTIVENESS AND CONTROL OF AUTOMATIC OR BURST FIRE

7-32. Automatic or burst fire is inherently less accurate than semiautomatic fire. The first fully automatic shot fired may be on target, but recoil and a high cyclic rate of fire often combine to place subsequent rounds far from the desired point of impact. Even controlled (three-round burst) automatic or burst fire may place only one round on the target. Because of these inaccuracies, it is difficult to evaluate the effectiveness of automatic or burst fire, and even more difficult to establish absolute guidelines for its use.

FACTORS FOR USE OF SEMIAUTOMATIC VERSUS AUTOMATIC OR BURST FIRE

7-33. Trainers must ensure that Soldiers understand the capabilities and limitations of automatic or burst fire. They must know when it should and should not be used.

Semiautomatic Fire

7-34. M16 rifles and M4 carbines should normally be employed in the semiautomatic fire mode.

7-35. Depending on the tactical situation, Soldiers should employ the semiautomatic fire mode in the following conditions:

- Ammunition is in short supply, or resupply may be difficult.
- Single targets are being engaged.
- Widely spaced multiple targets are being engaged.
- The target is located more than 50 meters away.
- The effect of bullets on the target cannot be observed.
- Artificial support is not available.
- Targets may be effectively engaged using semiautomatic fire.

Automatic or Burst Fire

7-36. In some combat situations, the use of automatic or burst fire can improve survivability and enhance mission accomplishment. Clearing buildings, final assaults, FPF, and ambushes may require limited use of automatic or burst fire.

7-37. Depending on the tactical situation, Soldiers should employ automatic or burst fire in the following conditions:

- Ammunition is readily available, and there are no problems with resupply.
- Closely spaced multiple targets are located 50 meters away or less.
- Maximum fire is immediately required at an area target.
- Tracers or some other means can be used to observe the effect of bullets on the target.
- Leaders can maintain adequate control over weapons firing in the automatic fire mode.
- Good artificial support is available.
- The initial sound of gunfire disperses closely spaced enemy targets.

MODIFICATIONS FOR AUTOMATIC OR BURST FIRE

7-38. Automatic or burst fire is inherently less accurate than semiautomatic fire. Trainers must consider the impact of recoil and the high cyclic rate of fire on the Soldier's ability to properly apply the fundamentals of marksmanship and other combat firing skills, such as immediate action procedures and rapid magazine changes.

Marksmanship Fundamentals

7-39. The following paragraphs describe the modifications necessary for Soldiers to apply the four fundamentals when firing in the automatic fire mode.

Steady Position

7-40. Consider the following modifications to achieve a steady position:

- Make sure that the weapon is well-supported.
- Grip the weapon a little more firmly and pull it into the shoulder a little tighter than when in the semiautomatic fire mode.

NOTE: This support and increased grip help offset the progressive displacement of weapon/target alignment caused by recoil.

- To provide maximum stability, assume the modified supported prone firing position (Figure 7-4).

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NOTE: If the weapon is equipped with the ARS, use the vertical pistol grip to further increase control of the weapon.

Aiming

7-41. Consider the following recommendations to properly aim the weapon:

- Do not change sighting and stock weld during automatic or burst fire. Keep the cheek on the stock for every shot, align the firing eye with the rear aperture, and focus on the front sightpost.
- Although recoil may disrupt this process, try to apply the aiming techniques throughout recoil.

Breath Control

7-42. Breath control must be modified because the Soldier does not have time to take a complete breath between shots. Consider the following modifications to achieve proper breath control:

- Hold your breath at some point in the firing process.
- Take shallow breaths between shots.

Trigger Squeeze

7-43. Training and repeated dry-fire practice aid the Soldier in applying proper trigger squeeze during automatic firing. LFXs enable him to improve this skill.

M16A2/3/4 Rifles and M4 Carbines

7-44. Until the weapon fires, trigger squeeze is applied in the normal manner. To use the burst fire mode—

- (1) Hold the trigger to the rear until three rounds are fired.
- (2) Release pressure on the trigger until it resets.
- (3) Reapply pressure for the next three-round burst.

-
- NOTES:**
1. Do not slap or jerk the trigger. Squeeze it, and then quickly release pressure.
 2. Depending on the position of the burst can when the selector is moved to the burst fire mode, the weapon may fire one, two, or three rounds when the trigger is held to the rear for the first time. If the weapon fires only one or two rounds, quickly release pressure on the trigger and squeeze again, holding it to the rear until a three-round burst is completed.
-

M16A1 Rifles

7-45. Until the weapon fires, trigger squeeze is applied in the normal manner. Because three-round bursts are the most effective rate of fire, pressure on the trigger should be released as quickly as possible. To use the burst fire mode, keep the index finger on the trigger, but quickly release pressure to prevent an excessive number of rounds from being fired in one burst. With much dry-fire practice, the Soldier can become proficient at delivering three-round bursts with the squeeze/release technique.

Immediate Action

7-46. To maintain an increased rate of suppressive fire, Soldiers must apply immediate action quickly. Repeated dry-fire practice using blanks or dummy rounds, followed by live-fire training and evaluation, ensures that Soldiers can rapidly apply immediate action procedures.

Rapid Magazine Changes

7-47. Rapid magazine changes are vital in maintaining automatic or burst fire. Rapid magazine changes must be correctly taught and practiced during dry-fire and live-fire exercises until the Soldier becomes proficient.

AUTOMATIC OR BURST FIRE TRAINING

NOTE: Soldiers should be well-trained in all aspects of slow semiautomatic firing before attempting any automatic training. Those who display a lack of knowledge of fundamental skills should not advance to automatic or burst fire training until these skills are learned.

7-48. Initial training should focus on the modifications to the fundamentals and other basic combat skills necessary during automatic firing.

7-49. Unit training is vital to properly applying this technique. Soldiers must be taught the advantages and disadvantages of automatic and burst firing so they know when it should be used. Without this knowledge, Soldiers tend to switch to the automatic or burst fire mode in life-threatening situations.

NOTE: See Table 7-3 for the current training program.

Table 7-3. Automatic or burst fire training program.

AUTOMATIC OR BURST FIRE TRAINING PROGRAM
Instructional Intent
<ul style="list-style-type: none"> Soldiers learn the advantages and disadvantages of automatic or burst fire.
Special Instructions
<p>Ensure that—</p> <ul style="list-style-type: none"> The M16A2/A3/A4 rifle's or M4 carbine's rear sight is set on the 0-2 aperture. The M16A1's rear sight is set on the unmarked aperture. Soldiers use a 25-meter alternate course C qualification target. Each Soldier is in a proper modified automatic/burst firing position. Each Soldier is given two 15-round magazines of 5.56-millimeter ball ammunition. Each Soldier fires one 3-round burst at each of the 10 silhouettes on the alternate course C qualification target. Each Soldier does a rapid magazine change after each magazine is emptied.
Observables
<ul style="list-style-type: none"> Each Soldier obtains five target hits. Soldiers demonstrate control of the weapon in the automatic/burst fire mode.

Conduct

7-50. Each Soldier receives two 15-round magazines of 5.56-millimeter ball ammunition. Each Soldier fires one 3-round burst at each of the 10 silhouettes on the alternate course C qualification target, performing a rapid magazine change after each magazine is emptied. Each Soldier must obtain five target hits.

7-51. Table 7-4 depicts automatic or burst fire training and provides related information, such as number of rounds that must be fired, type of target that must be used, and the distance away from the firer that the target must be placed.

Table 7-4. Automatic or burst fire training and related information.

FIRING POSITION	NUMBER OF ROUNDS	TYPE OF TARGET	DISTANCE (m)
Modified automatic/burst firing position	30, one 3-round burst at each of the 10 silhouettes	Alternate course C qualification target	25

Chapter 7

Dry-Fire and Live-Fire Exercises

7-52. Repeated dry-fire exercises are the most efficient means to ensure that Soldiers can apply modifications to the fundamentals. Multiple dry-fire exercises are needed, emphasizing a stable position and point of aim, followed by breath control and appropriate trigger squeeze.

-
- NOTES:**
1. Blanks or dummy rounds may be used to train trigger squeeze, rapid magazine changes, and immediate action procedures.
 2. The Soldier should display knowledge and skill during dry-fire exercises before attempting LFXs.
-

SUPPRESSIVE FIRE

7-53. Suppressive fire is precisely aimed at a definite point or area target. Some situations may require a Soldier to place suppressive fire into a wide area (for example, wood line, hedgerow, or small building) while, at other times, the target may be a smaller area (for example, a bunker or window). Suppressive fire is used to control the enemy and the area he occupies. It is employed to kill the enemy or to prevent him from observing the battlefield, effectively using his weapons, or moving.

EFFECTIVENESS AND CONTROL OF SUPPRESSIVE FIRE

7-54. Many Soldiers have difficulty delivering effective suppressive fire when they cannot see a definite target, only likely locations or general areas where the enemy is known to exist. Even though definite targets cannot be seen, most suppressive fire should be well-aimed.

7-55. When controlling suppressive fires, two factors must be considered:

- Point of aim.
- Rate of fire.

Point of Aim

7-56. Suppressive fire should be well-aimed, sustained, semiautomatic fire. Although lacking a definite target, the Soldier must be taught to control and accurately deliver fire within the limits of the suppressed area. As when engaging a point target, the weapon sights are used, with the front sightpost placed so each shot impacts within the desired area.

Rate of Fire

7-57. During most phases of live-fire training (for example, grouping, zeroing, qualifying), shots are delivered using slow semiautomatic fire (one round every 3 to 10 seconds). During training, this allows a slow and precise application of the fundamentals. Successful suppressive fire requires a faster, but sustained, rate of fire. Soldiers may need to fire full automatic or bursts (13 rounds per second) for a few seconds to gain initial fire superiority. Rapid semiautomatic fire (one round every one or two seconds) allows the firer to sustain a large volume of accurate fire while conserving ammunition.

MODIFICATIONS FOR SUPPRESSIVE FIRE

7-58. The tactical situation dictates the most useful rate of fire, but the following must be considered:

- Marksmanship fundamentals.
- Rapid magazine changes.
- Ammunition conservation.

Marksmanship Fundamentals

7-59. As the stress of combat increases, some Soldiers may fail to apply the fundamentals of marksmanship. This factor contributes to reduced accuracy and effectiveness. While some modifications are appropriate, the basic fundamentals should be applied and emphasized—regardless of the rate of fire or combat stress. Strategies to enhance marksmanship skills under combat stress include shooting in the prone position, as opposed to standing.

7-60. Factors that contribute to combat stress are:

- Environmental.
- Operational.

Environmental

7-61. Environmental stressors have been shown to degrade marksmanship accuracy up to 20 percent. Such stressors include—

- Heat.
- Altitude.

Operational

7-62. Operational stressors have been shown to degrade marksmanship accuracy from 17 percent to 136 percent. Such stressors include—

- MOPP gear.
- Tasks that require carrying rucksacks, litter patients, and other equipment on the body.
- Sleep deprivation.

Rapid Magazine Changes

7-63. One of the keys to sustained suppressive fire is reloading the weapon rapidly. Rapid magazine changes must be correctly taught and practiced during dry-fire and live-fire exercises until the Soldier becomes proficient. Small-unit training exercises must be conducted so Soldiers who provide suppressive fire practice staggered magazine changes.

Ammunition Conservation

7-64. Automatic or burst fire should be used sparingly and only to gain initial fire superiority. Depending on the tactical situation, the rate of fire should be adjusted so that a minimum number of rounds are expended. Accurate fire conserves ammunition, while preventing the enemy from placing effective fire on friendly positions.

SUPPRESSIVE FIRE TRAINING

NOTE: See Table 7-5 for the current training program.

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Table 7-5. Suppressive fire training program.

SUPPRESSIVE FIRE TRAINING PROGRAM	
Instructional Intent	
<ul style="list-style-type: none"> Soldier learns to suppress targets using suppressive fire. 	
Special Instructions	
Ensure that— <ul style="list-style-type: none"> The M16A2/A3/A4 rifle's or M4 carbine's rear sight is set on the 0-2 aperture. The M16A1's rear sight is set on the unmarked aperture. Soldiers use a 25-meter scaled landscape target. Each Soldier is given two 9-round magazines and one 12-round magazine of 5.56-millimeter ball ammunition. Each Soldier is in a proper supported firing position. Each Soldier fires 9 rounds at the open window area of the target using rapid semiautomatic fire with the first 9-round magazine. Each Soldier fires 12 rounds at the fence or hedgerow area of the target using rapid semiautomatic fire with the 12-round magazine. Each Soldier fires three 3-round bursts at the tank turret area of the target using the automatic/burst fire mode with the second 9-round magazine. 	
Observables	
<ul style="list-style-type: none"> Each Soldier achieves 5 hits inside the open window area within 18 seconds. Each Soldier achieves 10 hits inside the dotted lines surrounding the fence or hedgerow area within 24 seconds. Each Soldier achieves 3 hits inside the tank turret area within 24 seconds. 	

7-65. Figure 7-8 shows a landscape target suitable for suppressive fire training. When this type of target is used, trainers must develop a firing program to include areas of engagement and designated target areas. At 25 meters, this target provides the firer with an area to suppress without definite targets to engage.

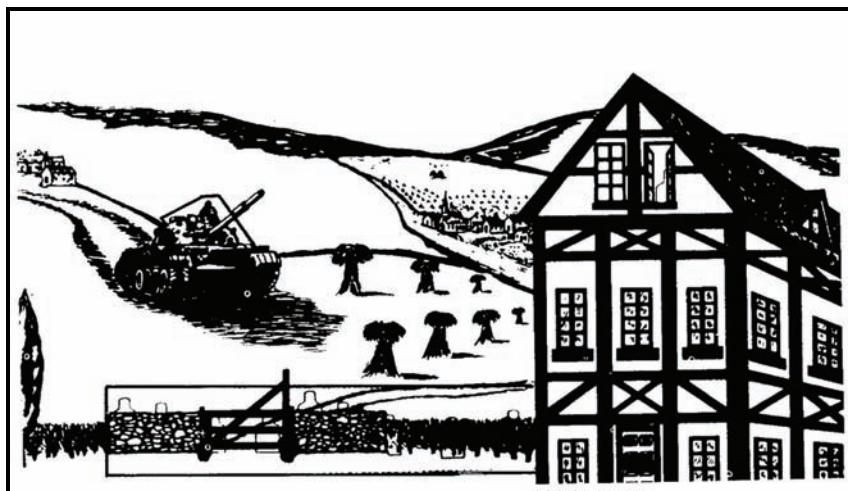


Figure 7-8. Landscape target.

Conduct

7-66. Each Soldier receives two 9-round magazines and one 12-round magazine of 5.56-millimeter ball ammunition. The Soldier engages three areas of a 25-meter scaled landscaped target: the open window area, the fence or hedgerow area, and the tank turret area. Each Soldier achieves 5 hits inside of the open window area, 10 hits inside of the dotted lines surrounding the fence or hedgerow area, and 3 hits inside of the tank turret area.

7-67. Table 7-6 depicts suppressive fire training and provides related information, such as number of rounds that must be fired, type of target that must be used, and the distance away from the firer that the target must be placed.

Table 7-6. Suppressive fire training and related information.

FIRING POSITION	TYPE OF TARGET	AREA OF TARGET ENGAGED	NUMBER OF ROUNDS	TYPE OF FIRE	TIME CONSTRAINTS
Supported firing position	25-m scaled landscape target	Open window	9	Rapid semiautomatic	18 sec
		Fence or hedgerow	12	Rapid semiautomatic	24 sec
		Tank turret	9, in three 3-round bursts	Automatic/burst	24 sec

QUICK FIRE

7-68. The two main techniques of directing fire with a rifle or carbine are—

- Aim using the sights.
- Use weapon alignment, instinct, bullet strike, or tracers to direct the fire.

7-69. The preferred technique is to use the sights, but sometimes quick reflex action is required. Quick fire, also known as instinctive firing or quick kill, is a technique used to deliver fast, effective fire on surprise personnel targets 25 meters away or less.

EFFECTIVENESS AND CONTROL OF QUICK FIRE

7-70. Quick fire techniques are appropriate when Soldiers are presented with close, suddenly appearing, surprise enemy targets; or when close engagement is imminent.

NOTE: Fire may be delivered in the SEMIAUTO or AUTOMATIC/BURST fire mode. For example, a point man in a patrol may carry the weapon on AUTOMATIC/BURST. This may also be required when clearing a room or bunker. Initial training should be in the SAFE mode.

7-71. Two techniques of delivering quick fire are:

- Aimed.
- Pointed.

7-72. The difference in the speed of delivery of these two techniques is small. Pointed quick fire can be used to fire a shot about one-tenth of a second faster than aimed quick fire. The difference in accuracy, however, is more pronounced:

- A Soldier well-trained in pointed quick fire can hit an E-type silhouette target at 15 meters, although the shot may strike anywhere on the target.
- A Soldier well-trained in aimed quick fire can hit an E-type silhouette target at 25 meters, with the shot or burst striking 5 inches from the center of mass.

7-73. This variance of target hit for this type of engagement reinforces the need for well-aimed shots.

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7-74. Pointed and aimed quick fire should be used only when a target cannot be engaged fast enough using the sights in a normal manner. These techniques should be limited to targets appearing at 25 meters or less. Modern short-range combat (SRC) techniques emphasize carrying the weapon with the buttstock high so that the weapon sights can be brought into display as quickly as firing a hasty unaimed shot. In extremely dangerous moments, special reaction teams (SRTs) commonly advance with weapons shouldered, aiming as they advance.

Aimed

7-75. When using this technique, a Soldier can accurately engage a target at 25 meters or less in one second or less.

7-76. To use aimed quick fire (Figure 7-9)—

- (1) Bring the weapon to the shoulder.
- (2) With the firing eye, look through or just over the rear sight aperture.
- (3) Use the front sightpost to aim at the target.
- (4) Quickly fire a single shot.



Figure 7-9. Aimed quick fire.

Pointed

7-77. When using this technique, a Soldier can engage a target at 15 meters or less in less than one second.

7-78. To use pointed quick fire (Figure 7-10)—

- (1) Keep the weapon at your side.
- (2) Keeps both eyes open, and use instinct and peripheral vision to line up the weapon with the target.
- (3) Quickly fire a single shot or burst.



Figure 7-10. Pointed quick fire.

Chapter 7

FACTORS FOR USE OF CONTROLLED PAIRS VERSUS BURST FIRE

7-79. Tactical considerations dictate whether controlled pairs or burst fire is most effective in a given situation.

MODIFICATIONS FOR QUICK FIRE

7-80. Trainers must consider the impact of the increased rate of fire on the Soldier's ability to properly apply the fundamentals of marksmanship and other combat firing skills.

Marksmanship Fundamentals

7-81. Quick fire techniques require major modifications to the four fundamentals of marksmanship. Initial training in these differences, followed by repeated dry-fire exercises, will be necessary to prepare the Soldier for live-fire.

Steady Position

7-82. The quickness of shot delivery prevents the Soldier from assuming a stable firing position. Consider the following modifications:

- Fire from the present position when the target appears.
- If moving, stop.
- Do not make adjustments for stability and support before the round is fired.

Aimed

7-83. Consider the following modifications:

- (1) Pull the weapon's buttstock into the pocket of the shoulder as the cheek comes in contact with the stock.
- (2) Firmly grip the weapon with both hands, applying rearward pressure.
- (3) Place the firing eye so that it looks through or just over the rear sight aperture.
- (4) Place the sight on the target.

Pointed

7-84. Consider the following modifications:

- Pull the weapon into the side.
- Firmly grip the weapon with both hands, applying rearward pressure.

Aiming

7-85. This fundamental must be highly modified because the Soldier may not have time to look through the rear sight, find the front sight, and align it with the target.

NOTE: When using either aiming technique, bullets may tend to impact above the desired location. Repeated live-fire practice is necessary to determine the best point of aim or the best focus. Such practice should begin with the Soldier using a center of mass aim.

Aimed

7-86. Consider the following modified procedure:

- (1) Initially focus on the target.
- (2) Place the firing eye so that it looks at the target through or just over the rear sight aperture.
- (3) Using peripheral vision, locate the front sightpost and bring it to the center of the target.

NOTE: Focus remains on the front sightpost throughout the aiming process.

- (4) When the front sightpost is in focus, fire a controlled pair.

Pointed

7-87. Consider the following modifications:

- Place the focus on or slightly below the center of the target as you align the weapon with it, and fire the weapon.
- Use your instinctive pointing ability and peripheral vision to aid in proper alignment.

Breath Control

7-88. This fundamental has little application to the first shot of quick fire. The round must be fired before a conscious decision can be made about breathing. If subsequent shots are necessary, breathing must not interfere with the necessity of firing quickly. When possible, use short, shallow breaths.

Trigger Squeeze

7-89. Consider the following modifications:

- (1) Apply initial pressure as weapon alignment is moved toward the target.
- (2) Exert trigger squeeze so when weapon/target alignment is achieved, the rounds are fired at once.

7-90. Perfecting rapid trigger squeeze requires much training and practice.

QUICK FIRE TRAINING

NOTE: Only Soldiers in basic training will conduct quick fire training. SRM will be conducted at the unit level. See Section VI of this chapter for more information about SRM training.

7-91. The key to the successful employment of both quick fire techniques is practice. Both pointed and aimed quick fire must be repeatedly practiced during dry-fire training. LFXs provide further skill enhancement and illustrate the difference in accuracy between the two techniques.

NOTE: See Table 7-7 for the current training program.

Chapter 7

Table 7-7. Quick fire training program.

QUICK FIRE TRAINING PROGRAM	
Instructional Intent	
<ul style="list-style-type: none"> Soldiers learn how to engage targets using the quick fire techniques. 	
Special Instructions	
Ensure that— <ul style="list-style-type: none"> The M16A2/A3/A4 rifle's or M4 carbine's rear sight is set on the 0-2 aperture. The M16A1's rear sight is set on the unmarked aperture. Each Soldier is given two 10-round magazines. Each Soldier engages 10 target exposures of 2 seconds each at 15 meters using the first 10-round magazine. Each Soldier moves to the 25-meter line and engages 10 target exposures of 2 seconds each at 25 meters using the second 10-round magazine. 	
Observables	
<ul style="list-style-type: none"> Each Soldier achieves 7 hits out of 10 target exposures at 15 meters. Each Soldier achieves 5 hits out of 10 target exposures at 25 meters. 	

Conduct

7-92. Each Soldier receives two 10-round magazines. Each Soldier must achieve 7 target hits out of 10 target exposures at 15 meters and 5 target hits out of 10 target exposures at 25 meters.

7-93. Table 7-8 depicts quick fire training and provides related information, such as the number of target exposures, distance from the firer, number of rounds that must be fired, and time constraints.

Table 7-8. Quick fire training and related information.

NUMBER OF TARGET EXPOSURES	DISTANCE	NUMBER OF ROUNDS	TIME CONSTRAINTS
10	15	10	2 sec per target exposure
10	15	10	2 sec per target exposure

SECTION III. CHEMICAL, BIOLOGICAL, RADIOLOGICAL, AND NUCLEAR FIRING

All Soldiers must effectively fire their weapons to accomplish combat missions in a CBRN environment. With proper training and practice, Soldiers gain confidence in their ability to effectively hit targets in full MOPP equipment. MOPP firing proficiency must be part of every unit's training program.

MISSION-ORIENTED PROTECTIVE POSTURE EQUIPMENT FIRE

7-94. Firing weapons is only part of overall CBRN training. Soldiers must be familiar with CBRN equipment, its use, and proper wear before they progress to learning the techniques of MOPP firing.

MODIFICATIONS FOR MISSION-ORIENTED PROTECTIVE POSTURE FIRE TRAINING

7-95. Trainers must consider the impact of MOPP equipment (for example, hood or mask, gloves, overgarments) on the Soldier's ability to properly apply the fundamentals of marksmanship and combat firing skills.

TRIGGER MANIPULATION

7-188. SRC engagements are usually quick, violent, and deadly. Due to the reduced reaction time, imperfect sight picture, and requirement to effectively place rounds into targets, Soldiers must fire multiple rounds during each engagement in order to survive. Multiple shots may be fired either through the use of a controlled pair or automatic weapon fire.

Controlled Pair

7-189. A controlled pair is two rounds fired in rapid succession. Controlled pairs should be fired at single targets until they go down. When multiple targets are present the Soldier must fire a controlled pair at each target, and then reengage any targets left standing. To fire a controlled pair—

- (1) Fire the first round, and allow the weapon to move in its natural arc without fighting the recoil.
- (2) Rapidly bring the weapon back on target, and fire a second round.

7-190. Soldiers must practice firing the controlled pair until it becomes instinctive.

Automatic Fire

7-191. While rapid, aimed, semiautomatic fire is the most accurate method of engaging targets during SRC and controlled three-round bursts are better than automatic fire, automatic weapon fire may be necessary to maximize violence of action or gain fire superiority when gaining a foothold in a room, building, or trench. When properly trained, Soldiers should be able to fire six rounds (two three-round bursts) in the same time it takes to fire a controlled pair. With practice, the accuracy of engaging targets can be equal to that of semiautomatic fire at 10 meters.

NOTE: The key to burst or automatic firing is to squeeze the trigger, not jerk it.

7-192. For the majority of Soldiers, fully automatic fire is rarely effective and can lead to unnecessary noncombatant casualties or fratricide. Not only is fully automatic fire inaccurate and difficult to control, but it also rapidly empties ammunition magazines. A Soldier who finds himself out of ammunition with an armed, uninjured enemy Soldier during SRC will become a casualty unless a fellow Soldier intervenes.

Failure Drill

7-193. To make sure that a target is completely neutralized, Soldiers should be trained to execute the failure drill. The firer will fire a controlled pair into the lethal zone, followed by a third round placed into the incapacitation zone. This type of target engagement is particularly useful when engaging targets wearing body armor.

PRELIMINARY SHORT-RANGE MARKSMANSHIP INSTRUCTION

7-194. As with all other forms of marksmanship training, preliminary SRM instruction must be conducted to establish a firm foundation. Soldiers must be taught, and must understand, the fundamentals of SRM. Blank-fire drills are conducted to ensure a thorough understanding of the fundamentals, as well as to provide the trainers with valuable feedback about each Soldier's level of proficiency.

NOTE: To maximize safety during training and in combat situations, it is important to emphasize muzzle awareness and selector switch manipulation during preliminary SRM instruction. The risk of fratricide or noncombatant casualties is greatest during SRC.

7-195. Table 7-17 outlines the tasks that preliminary SRM instruction should include (at a minimum).

EXHIBIT 55



Violence Policy Center

Firearm Justifiable Homicides and Non-Fatal Self-Defense Gun Use

An Analysis of Federal Bureau of Investigation and
National Crime Victimization Survey Data

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 study was funded with the support of the David Bohnett Foundation, The Herb Block Foundation, and The Joyce Foundation. This study was authored by VPC Senior Policy Analyst Marty Langley and VPC Executive Director Josh Sugarmann. Past studies released by the VPC include:

Lost Youth: A County-by-County Analysis of 2011 California Homicide Victims Ages 10 to 24 (March 2013) ♦ *States With Higher Gun Ownership and Weak Gun Laws Lead Nation in Gun Death* (February 2013, annual study) ♦ *Black Homicide Victimization in the United States: An Analysis of 2010 Homicide Data* (January 2013, annual study) ♦ *When Men Murder Women: An Analysis of 2010 Homicide Data* (September 2012, annual study) ♦ *Understanding the Smith & Wesson M&P15 Semiautomatic Assault Rifle Used in the Aurora, Colorado Mass Murder* (July 2012) ♦ *Gun Deaths Outpace Motor Vehicle Deaths in 10 States in 2009* (May 2012) ♦ *Bullet Buttons: The Gun Industry's Attack on California's Assault Weapons Ban* (May 2012) ♦ *American Roulette: Murder-Suicide in the United States* (May 2012, Third Edition) ♦ *"Never Walk Alone"—How Concealed Carry Laws Boost Gun Industry Sales* (April 2012) ♦ *More Guns, More Shootings* (January 2012) ♦ *The Militarization of the U.S. Civilian Firearms Market* (June 2011) ♦ *A Shrinking Minority: The Continuing Decline of Gun Ownership in America* (April 2011) ♦ *Blood Money: How the Gun Industry Bankrolls the NRA* (April 2011) ♦ *Accessories to Murder* (January 2011) ♦ *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) ♦ *Youth Gang Violence and Guns: Data Collection in California* (February 2009) ♦ *"Big Boomers"—Rifle Power Designed Into Handguns* (December 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) ♦ *The U.S. Gun Industry and Others Unknown—Evidence Debunking the Gun Industry's Claim that Osama bin Laden Got His 50 Caliber Sniper Rifles from the U.S. Afghan-Aid Program* (February 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)

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Introduction

Guns are rarely used to kill criminals or stop crimes.

In 2010, across the nation there were only 230 justifiable homicides¹ involving a private citizen using a firearm reported to the Federal Bureau of Investigation's Uniform Crime Reporting (UCR) Program as detailed in its Supplementary Homicide Report (SHR).² That same year, there were 8,275 criminal gun homicides tallied in the SHR. *In 2010, for every justifiable homicide in the United States involving a gun, guns were used in 36 criminal homicides.*³ And this ratio, of course, does not take into account the thousands of lives ended in gun suicides (19,392) or unintentional shootings (606) that year.⁴

This report analyzes, on both the national and state levels, the use of firearms in justifiable homicides. It also details, using the best data available on the national level, the *total* number of times guns are used for self-defense by the victims of both attempted and completed violent crimes and property crimes—whether or not the use of the gun by the victim resulted in a fatality.

Key findings of this report, as detailed in its accompanying tables, include the following.

¹ The Federal Bureau of Investigation (FBI) defines “justifiable homicide” as the killing of a felon, during the commission of a felony, by a private citizen.

² The Federal Bureau of Investigation's Uniform Crime Reporting (UCR) Program collects basic information on serious crimes from participating police agencies and records supplementary information about the circumstances of homicides in its unpublished Supplementary Homicide Report (SHR). The SHR contains more detailed information not available through published UCR data or elsewhere including: the age, sex, and race of victims and offenders; the types of weapons used; the relationship of victims to offenders; and, the circumstances of the homicides. Detailed information (such as weapon used, relationship between the victim and offender, etc) in the SHR is available *only* for the first victim and/or offender in any justifiable homicide or homicide incident. From 2006 to 2010, 97.8 percent of justifiable homicide incidents (1,008 out of 1,031) had just one victim. Recognizing how the data is presented in the SHR and the fact that virtually all justifiable incidents had just one victim, throughout this report justifiable homicide incidents will be referred to as justifiable homicides.

³ Number of reported justifiable homicides and homicides taken from Federal Bureau of Investigation (FBI) Uniform Crime Reporting (UCR) Program Supplementary Homicide Report (SHR) as tabulated by the Violence Policy Center. It is important to note that the coding contained in the SHR data used in this report comes from law enforcement reporting at the local level. The level of information submitted to the SHR system may vary from agency to agency. While this study utilizes the best and most recent data available, it is limited by the degree of detail in the information submitted.

⁴ Source: Federal Centers for Disease Control and Prevention WISQARS database.

Justifiable Homicides with a Gun Compared to Criminal Gun Homicides

- In 2010, there were only 230 justifiable homicides involving a gun. For the five-year period 2006 through 2010, there were only 1,031 justifiable homicides involving a gun. [For additional information see *Table One: Firearm Justifiable Homicides by State, 2006–2010.*]
- In 2010, 15 states⁵ reported no justifiable homicides (Alabama, Connecticut, Hawaii, Idaho, Illinois, Iowa, Montana, New Hampshire, New York, North Carolina, North Dakota, Vermont, West Virginia, Wisconsin, and Wyoming). [For additional information see *Table One: Firearm Justifiable Homicides by State, 2006–2010.*]
- In 2010 for every justifiable homicide in the United States involving a gun, guns were used in 36 criminal homicides. For the five-year period 2006 through 2010, for every justifiable homicide in the United States involving a gun, guns were used in 44 criminal homicides. [For additional information see *Table Two: Circumstances for Homicides by Firearm, 2006–2010.*]

Relationship of Person Killed to Shooter in Justifiable Homicides

- In 2010, 35.7 percent (82 of 230) of persons killed in a firearm justifiable homicide were known⁶ to the shooter, 56.5 percent (130) were strangers, and in 7.8 percent (18) the relationship was unknown. For the five-year period 2006 through 2010, 31.4 percent (324 of 1,031) of persons killed in a firearm justifiable homicide were known to the shooter, 57.0 percent (588) were strangers, and in 11.5 percent (119) the relationship was unknown. [For additional information see *Table Three: Relationship of Person Killed to Shooter in Justifiable Homicides by Firearm, 2006–2010.*]

⁵ In 2010, as in years past, the state of Florida did not submit any data to the FBI Supplementary Homicide Report. Data from Florida was not requested individually because the difference in collection techniques would create a bias in the study results. In addition, according to the FBI, limited SHR data was received from Illinois for 2010. For the five-year period 2006 through 2010, the District of Columbia submitted SHR data only in 2009, during which there were no justifiable homicides in the District.

⁶ Relationship categories in which the justifiable homicide victim was known to the shooter are acquaintance, boyfriend, brother, common-law husband, employee, ex-husband, ex-wife, father, friend, girlfriend, husband, in-law, neighbor, other family, other known, son, stepfather, stepson, and wife.

Sex of Shooter in Justifiable Homicides by Firearm

- In 2010, of the 230 firearm justifiable homicides, 89.1 percent (205) were committed by men, 10.4 percent (24) were committed by women, and in one case (0.4 percent) the gender of the shooter was unknown. For the five-year period 2006 through 2010, of the 1,031 firearm justifiable homicides, 91.3 percent (941) were committed by men, 7.3 percent (75) were committed by women, and in 15 cases (1.5 percent) the gender of the shooter was unknown. [For additional information see *Table Four: Sex of Shooter in Justifiable Homicides by Firearm, 2006–2010.*]

Sex of Shooters and Persons Killed, Justifiable Homicides by Firearm

- In 2010, of the 230 firearm justifiable homicides, 98.3 percent (226) of the persons shot and killed were men and 1.7 percent (four) were women. For the five-year period 2006 through 2010, of the 1,031 firearm justifiable homicides, 98.5 percent (1,016) of the persons shot and killed were men and 1.5 percent (15) were women. [For additional information see *Table Five: Sex of Person Killed in Justifiable Homicides by Firearm, 2006–2010.*]
- In 2010, 98.5 percent (202) of the persons killed by a male with a gun in a justifiable homicide were male and 1.5 percent (three) were female. For the five-year period 2006 through 2010, 98.7 percent (929) of the persons killed by a male with a gun in a justifiable homicide were male and 1.3 percent (12) were female. [For additional information see *Table Six: Sex of Shooter and Person Killed, Justifiable Homicides by Firearm, 2006–2010.*]
- In 2010, 95.8 percent (23) of the persons killed by a female with a gun in a justifiable homicide incident were male and 4.2 percent (one) were female. For the five-year period 2006 through 2010, 96.0 percent (72) of the persons killed by a female with a gun in a justifiable homicide incident were male and 4.0 percent (three) were female. [For additional information see *Table Six: Sex of Shooter and Person Killed, Justifiable Homicides by Firearm, 2006–2010.*]

Race of Shooter in Justifiable Homicides by Firearm

- In 2010, 52.6 percent (121) of the shooters who committed justifiable homicides were white, 44.3 percent (102) were black, 2.2 percent (five) were Asian, none were American Indian, and 0.9 percent (two) were of unknown race.⁷ For the five-year period 2006 through 2010, 53.1 percent (547) of the shooters who committed justifiable homicides were white, 40.8 percent (421) were black, 3.3 percent (34) were Asian, 0.4 percent (four) were American Indian, and 2.4 percent (25) were of unknown race. [For additional information see *Table Seven: Race of Shooter in Justifiable Homicides by Firearm, 2006–2010*.]

Race of Persons Killed in Justifiable Homicides by Firearm

- In 2010, 39.1 percent (90) of persons killed with a gun in a justifiable homicide were white, 60.0 percent (138) were black, none were Asian, 0.4 percent (one) was American Indian, and 0.4 percent (one) were of unknown race. For the five-year period 2006 through 2010, 39.6 percent (408) of persons killed with a gun in a justifiable homicide were white, 58.2 percent (600) were black, 0.4 percent (four) were Asian, 1.1 percent (11) were American Indian, and 0.8 percent (eight) were of unknown race. [For additional information see *Table Eight: Race of Persons Killed in Justifiable Homicides by Firearm, 2006–2010*.]
- In 2010, 67.8 percent (82) of the persons killed with a gun in a justifiable homicide by a white shooter were white, 30.6 percent (37) were black, none were Asian, 0.8 percent (one) were American Indian, and 0.8 percent (one) were of unknown race. For the five-year period 2006 through 2010, 65.1 percent (356) of the persons killed by white shooters were white, 32.7 percent (179) were black, 0.2 percent (one) were Asian, 1.1 percent (six) were American Indian, and 0.9 percent (five) were of unknown race. [For additional information see *Table Nine: Race of Shooter and Person Killed, Justifiable Homicides by Firearm, 2006–2010*.]

⁷

Detailed information (such as race of offender and victim) in the FBI's Supplementary Homicide Report is only available for the first victim and/or offender in the incident. Hispanic ethnicity could not be determined because of the inadequacy of data collection and reporting.

- In 2010, 4.9 percent (five) of the persons killed with a gun in a justifiable homicide by a black shooter were white, 95.1 percent (97) were black, none were Asian, none were American Indian, and none were of unknown race. For the five-year period 2006 through 2010, 7.6 percent (32) of the persons killed by black shooters were white, 92.2 percent (388) were black, none were Asian, 0.2 percent (one) were American Indian, and none were of unknown race. [For additional information see *Table Nine: Race of Shooter and Person Killed, Justifiable Homicides by Firearm, 2006–2010.*]

Types of Firearms Used in Justifiable Homicides

- In 2010, firearms were used in 83.0 percent of justifiable homicides (230 of 277). Of these: 72.2 percent (166) were handguns; 12.2 percent (28) were shotguns; 3.5 percent (eight) were rifles; and, 12.2 percent (28) were firearm, type not stated. For the five-year period 2006 through 2010, firearms were used in 81.3 percent of justifiable homicide incidents (1,031 of 1,268). Of these: 77.7 percent (801) were handguns; 9.1 percent (94) were shotguns; 4.5 percent (46) were rifles; 8.5 percent (88) were firearm, type not stated; and, 0.2 percent (two) were “other gun.” [For additional information see *Table Ten: Weapon Used in Justifiable Homicides, 2006–2010* and *Table Eleven: Type of Firearms Used in Justifiable Homicides, 2006–2010.*]

Number of Persons Shot and Killed in Justifiable Homicides by Firearm

- In 2010, of the 230 justifiable homicides involving a firearm: 98.3 percent (226) involved a single person killed in the justifiable homicide; 0.9 percent (two) involved two persons killed in the justifiable homicide; and, 0.9 percent (two) involved three persons killed in the justifiable homicide. For the five-year period 2006 through 2010, of the 1,031 justifiable homicides involving a firearm: 97.8 percent (1,008) involved a single person killed in the justifiable homicide; 1.8 percent (19) involved two persons killed in the justifiable homicide; 0.3 percent (three) involved three persons killed in the justifiable homicide; and, 0.1 percent (one) involved five persons killed in the justifiable homicide.

How Often are Guns Used in Self-Defense Whether or Not a Criminal is Killed?

While it is clear that guns are rarely used to justifiably kill criminals, an obvious question remains: How often are guns used in self-defense whether or not a criminal is killed?

Pro-gun advocates—from individual gun owners to organizations like the National Rifle Association—frequently claim that guns are used up to 2.5 million times each year in self-defense in the United States.⁸ According to the 2004 book *Private Guns, Public Health* by Dr. David Hemenway, Professor of Health Policy at the Harvard School of Public Health and director of the Harvard Injury Control Research Center:

Much discussion about the protective benefits of guns has focused on the incidence of self-defense gun use. Proponents of such putative benefits often claim that 2.5 million Americans use guns in self-defense against criminal attackers each year. This estimate is not plausible and has been nominated as the “most outrageous number mentioned in a policy discussion by an elected official.”

In his book, Hemenway dissects the 2.5 million number from a variety of angles and, by extension, the NRA’s own non-lethal self-defense claims for firearms. He concludes, “It is clear that the claim of 2.5 million annual self-defense gun uses is a vast overestimate” and asks, “But what can account for it?” As he details in his book, the main culprit is the “telescoping and...false positive problem” that derives from the very limited number of respondents claiming a self-defense gun use, “a matter of misclassification that is well known to medical epidemiologists.”⁹

⁸ See, for example: “The Armed Citizen” (“Studies indicate that firearms are used more than 2 million times a year for personal protection....”), *America’s 1st Freedom*, National Rifle Association, March 2013; “Bob Costas interrupts football game to bash American gun owners” (“According to criminologist Gary Kleck, 2.5 million Americans use firearms to defend their lives and the lives of their loved ones each year”), Chris W. Cox, NRA-ILA Executive Director (<http://www.nraila.org/about-nra-ila/from-the-director.aspx>, downloaded April 8, 2013); and, “Chris Cox’s NRA Armed Citizen: True Stories of Your Right to Self Defense in Action,” (“While the anti-gun media doesn’t want to report the truth about Americans using guns for self-defense as often as 2.5 million times a year, you can read breaking stories of everyday citizens fending off violent criminals in CHRIS COX’S ARMED CITIZEN”), *Armed Citizen E-Newsletter* (<https://www.nra.org/armedcitizen/>, downloaded April 8, 2013). The 2.5 million estimate is the result of a telephone survey conducted by Florida State University criminologist Dr. Gary Kleck, see Hemenway, David, “The Myth of Millions of Annual Self-Defense Gun Uses: A Case Study of Survey Overestimates of Rare Events,” *Chance* (American Statistical Association), Volume 10, No. 3, 1997.

⁹ For a more detailed discussion, please see Hemenway, David, *Private Guns, Public Health*, (The University of Michigan Press, 2004), pp. 66-69 and pp. 238-243.

**New Estimates on Self-Defense Uses of Firearms from the Bureau of Justice Statistics’
National Crime Victimization Survey**

Hemenway notes, and numerous others agree, that the most accurate survey of self-defense gun use is the National Crime Victimization Survey (NCVS) conducted by the Bureau of Justice Statistics. The survey has been ongoing since 1973.¹⁰

Violent Crime

According to the NCVS, looking at the total number of self-protective behaviors undertaken by victims of both attempted and completed violent crime for the *five-year period 2007 through 2011*, in only 0.8 percent of these instances had the intended victim in resistance to a criminal “threatened or attacked with a firearm.”¹¹ As detailed in the chart on the next page, for the *five-year period 2007 through 2011*, the NCVS estimates that there were 29,618,300 victims of attempted or completed violent crime. During this same *five-year period*, only 235,700 of the self-protective behaviors involved a firearm. Of this number, it is not known what type of firearm was used or whether it was fired or not. The number may also include off-duty law enforcement officers who use their firearms in self-defense.

¹⁰ According to the website of the Bureau of Justice Statistics, the National Crime Victimization Survey (NCVS) “is the Nation's primary source of information on criminal victimization. Each year, data are obtained from a nationally representative sample of about 40,000 households comprising nearly 75,000 persons on the frequency, characteristics and consequences of criminal victimization in the United States. Each household is interviewed twice during the year. The survey enables BJS to estimate the likelihood of victimization by rape, sexual assault, robbery, assault, theft, household burglary, and motor vehicle theft for the population as a whole as well as for segments of the population such as women, the elderly, members of various racial groups, city dwellers, or other groups. The NCVS provides the largest national forum for victims to describe the impact of crime and characteristics of violent offenders,” (see <http://www.bjs.gov/index.cfm?ty=dcdetail&iid=245>).

¹¹ For “violent crime” the NCVS measures rape/sexual assault, robbery, and aggravated and simple assault (see Bureau of Justice Statistics, “Violent Crime,” <http://bjs.gov/index.cfm?ty=tp&tid=31#summary>).

Self-Protective Behaviors by Type of Crime, 2007–2011				
	Violent Crime 2007–2011		Property Crime 2007–2011	
	Total	Percent	Total	Percent
Total Number of Crimes	29,618,300	100	84,495,500	100
Self-Protective Behavior				
Offered no resistance	12,987,300	43.8	10,162,000	12.0
Threatened or attacked with a firearm	235,700	0.8	103,000	0.1
Threatened or attacked with other weapon	391,100	1.3	38,200	–
Threatened or attacked without a weapon	6,552,900	22.1	421,300	0.5
Nonconfrontational tactics–yelled, ran, or argued	7,768,700	26.2	1,187,100	1.4
Other reaction	1,641,300	5.5	223,400	0.3
Unknown reaction	41,300	0.1	12,200*	–
Property crime–victim not present	~	~	72,348,200	85.6
– Less than 0.1 percent	~ Not applicable			
* Interpret with caution. Estimate based on 10 or fewer sample cases, or coefficient of variation is greater than 50 percent.				
Source: SPECIAL TABULATION, Bureau of Justice Statistics, National Crime Victimization Survey, 2007-2011				

Property Crime

According to the NCVS, looking at the total number of self-protective behaviors undertaken by victims of attempted or completed property crime for the *five-year period 2007 through 2011*, in only 0.1 percent of these instances had the intended victim in resistance to a criminal “threatened or attacked with a firearm.”¹² As detailed in the table on the previous page, for the *five-year period 2007 through 2011*, the NCVS estimates that there were 84,495,500 victims of attempted or completed property crime. During this same *five-year period*, only 103,000 of the self-protective behaviors involved a firearm. Of this number, it is not known what type of firearm was used, whether it was fired or not, or whether the use of a gun would even be a legal response to the property crime. And as before, the number may also include off-duty law enforcement officers. In comparison, new data from the Department of Justice shows that an average of 232,400 guns were stolen *each year* from U.S. households from 2005 to 2010.¹³

Comparing NCVS Data to Claims that Guns are Used in Self-Defense 2.5 Million Times a Year

Using the NCVS numbers, for the *five-year period 2007 through 2011*, the total number of self-protective behaviors involving a firearm by victims of attempted or completed violent crimes or property crimes totaled only 338,700. In comparison, the gun lobby claims that during the same *five-year period* guns were used 12.5 million times in self-defense (applying to the five-year period the gun lobby’s oft-repeated claim, noted earlier, that firearms are used in self-defense 2.5 million times a year).

¹² For “property crime” the NCVS measures household burglary, motor vehicle theft, as well as property theft. Since the survey information is obtained from a sample of households, it does not include property crimes affecting businesses or other commercial establishments. If such crimes are reported to law enforcement, they are included in the FBI’s Uniform Crime Reporting Program. The NCVS includes property crimes affecting victims and household members which were reported and not reported to the police. (See Bureau of Justice Statistics, “Property Crime,” <http://bjs.gov/index.cfm?ty=tp&tid=32>).

¹³ “Firearms Stolen during Household Burglaries and Other Property Crimes 2005–2010,” U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, November 2012.

Conclusion

The reality of self-defense gun use bears no resemblance to the exaggerated claims of the gun lobby and gun industry. The number of justifiable homicides that occur in our nation each year pale in comparison to criminal homicides, let alone gun suicides and fatal unintentional shootings. And contrary to the common stereotype promulgated by the gun lobby,¹⁴ those killed in justifiable homicide incidents don't always fit the expected profile of an attack by a stranger: in 35.7 percent of the justifiable homicides that occurred in 2010 the persons shot were known to the shooter.

The devastation guns inflict on our nation each and every year is clear: nearly 32,000 dead, more than 73,000 wounded, and an untold number of lives and communities shattered. Unexamined claims of the efficacy and frequency of the self-defense use of firearms are the default rationale offered by the gun lobby and gun industry for this unceasing, bloody toll. The idea that firearms are frequently used in self-defense is the primary argument that the gun lobby and firearms industry use to expand the carrying of firearms into an ever-increasing number of public spaces and even to prevent the regulation of military-style semiautomatic assault weapons and high-capacity ammunition magazines. Yet this argument is hollow and the assertions false. When analyzing the most reliable data available, what is most striking is that in a nation of more than 300 million guns, how *rarely* firearms are used in self-defense.¹⁵

¹⁴ For an example of the images used by the NRA, see those accompanying "Chris Cox's NRA Armed Citizen: True Stories of Your Right to Self Defense in Action," *Armed Citizen E-Newsletter* (<https://www.nra.org/armedcitizen/>, downloaded April 8, 2013).

¹⁵ It is estimated that the total number of firearms available to civilians in the United States is 310 million: 114 million handguns, 110 million rifles, and 86 million shotguns. Krouse, William J., *Gun Control Legislation*, Congressional Research Service, November 14, 2012, p. 8.

Table One: Firearm Justifiable Homicides by State, 2006–2010

State	Number of Justifiable Homicides					
	2006	2007	2008	2009	2010	Total
Alabama	1	2	3	0	0	6
Alaska	2	1	0	4	2	9
Arizona	10	10	17	13	16	66
Arkansas	1	1	2	0	3	7
California	24	24	17	20	23	108
Colorado	3	3	4	4	5	19
Connecticut	0	1	0	0	0	1
Delaware	0	0	0	1	1	2
Florida	N/A	N/A	N/A	N/A	N/A	N/A
Georgia	10	8	18	11	19	66
Hawaii	0	1	0	0	0	1
Idaho	0	1	0	0	0	1
Illinois	1	2	0	2	0	5
Indiana	7	5	3	2	12	29
Iowa	0	0	0	0	0	0
Kansas	1	1	1	1	3	7
Kentucky	1	3	5	9	4	22
Louisiana	10	12	7	9	10	48

State	Number of Justifiable Homicides					
	2006	2007	2008	2009	2010	Total
Maine	0	2	0	0	1	3
Maryland	6	1	2	1	6	16
Massachusetts	0	0	0	0	2	2
Michigan	5	5	4	16	13	43
Minnesota	0	0	3	1	2	6
Mississippi	0	0	1	2	1	4
Missouri	4	6	12	3	5	30
Montana	0	0	0	0	0	0
Nebraska	0	0	0	2	1	3
Nevada	3	5	4	5	3	20
New Hampshire	0	0	0	0	0	0
New Jersey	2	0	2	0	2	6
New Mexico	4	1	1	3	2	11
New York	5	0	0	0	0	5
North Carolina	7	2	2	6	0	17
North Dakota	0	0	0	0	0	0
Ohio	7	6	1	2	2	18
Oklahoma	7	10	6	4	5	32
Oregon	7	0	0	3	4	14
Pennsylvania	5	11	11	11	8	46

State	Number of Justifiable Homicides					
	2006	2007	2008	2009	2010	Total
Rhode Island	0	0	0	0	1	1
South Carolina	5	5	9	6	7	32
South Dakota	0	0	0	0	1	1
Tennessee	10	18	19	10	14	71
Texas	30	38	41	44	44	197
Utah	0	0	0	0	1	1
Vermont	0	0	0	0	0	0
Virginia	4	5	6	9	5	29
Washington	3	3	0	3	2	11
West Virginia	0	0	0	0	0	0
Wisconsin	2	3	4	6	0	15
Wyoming	0	0	0	0	0	0
Total	187	196	205	213	230	1,031

Table Two: Circumstances for Homicides by Firearm, 2006–2010**Page 14**

Circumstance	Number of Homicides											
	2006		2007		2008		2009		2010		Total	
Criminal Homicide	9,707	98.1%	9,610	98.0%	9,039	97.8%	8,697	97.6%	8,275	97.3%	45,328	97.8%
Justifiable Homicide	187	1.9%	196	2.0%	205	2.2%	213	2.4%	230	2.7%	1,031	2.2%
Ratio of Criminal Homicide to Justifiable Homicide	52-1		49-1		44-1		41-1		36-1		44-1	
Total	9,894		9,806		9,244		8,910		8,505		46,359	

Table Three: Relationship of Person Killed to Shooter in Justifiable Homicides by Firearm, 2006–2010

Relationship	Number of Justifiable Homicides											
	2006		2007		2008		2009		2010		Total	
Acquaintance	34	18.2%	34	17.3%	32	15.6%	36	16.9%	51	22.2%	187	18.1%
Boyfriend	0	0.0%	2	1.0%	2	1.0%	1	0.5%	2	0.9%	7	0.7%
Brother	0	0.0%	1	0.5%	2	1.0%	0	0.0%	0	0.0%	3	0.3%
Common-Law Husband	1	0.5%	0	0.0%	0	0.0%	0	0.0%	0	0.0%	1	0.1%
Employee	0	0.0%	1	0.5%	0	0.0%	0	0.0%	0	0.0%	1	0.1%
Ex-Husband	0	0.0%	1	0.5%	1	0.5%	3	1.4%	3	1.3%	8	0.8%
Ex-Wife	0	0.0%	0	0.0%	0	0.0%	0	0.0%	1	0.4%	1	0.1%
Father	0	0.0%	0	0.0%	2	1.0%	2	0.9%	2	0.9%	6	0.6%
Friend	4	2.1%	0	0.0%	4	2.0%	0	0.0%	1	0.4%	9	0.9%
Girlfriend	0	0.0%	1	0.5%	1	0.5%	0	0.0%	1	0.4%	3	0.3%
Husband	3	1.6%	2	1.0%	0	0.0%	1	0.5%	1	0.4%	7	0.7%
In-Law	0	0.0%	1	0.5%	0	0.0%	0	0.0%	1	0.4%	2	0.2%
Neighbor	3	1.6%	3	1.5%	3	1.5%	4	1.9%	3	1.3%	16	1.6%
Other Family	0	0.0%	6	3.1%	1	0.5%	4	1.9%	0	0.0%	11	1.1%
Other Known	11	5.9%	7	3.6%	9	4.4%	9	4.2%	7	3.0%	43	4.2%
Son	0	0.0%	1	0.5%	1	0.5%	1	0.5%	4	1.7%	7	0.7%
Stepfather	0	0.0%	0	0.0%	1	0.5%	0	0.0%	2	0.9%	3	0.3%
Stepson	0	0.0%	0	0.0%	2	1.0%	0	0.0%	3	1.3%	5	0.5%
Stranger	105	56.1%	106	54.1%	124	60.5%	123	57.7%	130	56.5%	588	57.0%
Wife	1	0.5%	1	0.5%	1	0.5%	1	0.5%	0	0.0%	4	0.4%
Unknown Relationship	25	13.4%	29	14.8%	19	9.3%	28	13.1%	18	7.8%	119	11.5%
Total	187		196		205		213		230		1,031	

Table Four: Sex of Shooter in Justifiable Homicides by Firearm, 2006–2010**Page 16**

Sex of Shooter	Number of Justifiable Homicides											
	2006		2007		2008		2009		2010		Total	
Male	166	88.8%	179	91.3%	192	93.7%	199	93.4%	205	89.1%	941	91.3%
Female	15	8.0%	12	6.1%	11	5.4%	13	6.1%	24	10.4%	75	7.3%
Unknown	6	3.2%	5	2.6%	2	1.0%	1	0.5%	1	0.4%	15	1.5%
Total	187		196		205		213		230		1,031	

Table Five: Sex of Person Killed in Justifiable Homicides by Firearm, 2006–2010

Sex of Person Killed	Number of Justifiable Homicides											
	2006		2007		2008		2009		2010		Total	
Male	184	98.4%	192	98.0%	202	98.5%	212	99.5%	226	98.3%	1,016	98.5%
Female	3	1.6%	4	2.0%	3	1.5%	1	0.5%	4	1.7%	15	1.5%
Total	187		196		205		213		230		1,031	

Table Six: Sex of Shooter and Person Killed, Justifiable Homicides by Firearm, 2006–2010

Sex of Shooter	Sex of Person Killed	Number of Justifiable Homicides											
		2006		2007		2008		2009		2010		Total	
Male	Male	163	98.2%	176	98.3%	190	99.0%	198	99.5%	202	98.5%	929	98.7%
	Female	3	1.8%	3	1.7%	2	1.0%	1	0.5%	3	1.5%	12	1.3%
Female	Male	15	100.0%	11	91.7%	10	90.9%	13	100.0%	23	95.8%	72	96.0%
	Female	0	0.0%	1	8.3%	1	9.1%	0	0.0%	1	4.2%	3	4.0%
Total		181		191		203		212		229		1,016	

Table Seven: Race of Shooter in Justifiable Homicides by Firearm, 2006–2010**Page 17**

Race of Shooter	Number of Justifiable Homicides											
	2006		2007		2008		2009		2010		Total	
White	103	55.1%	97	49.5%	114	55.6%	112	52.6%	121	52.6%	547	53.1%
Black	71	38.0%	83	42.3%	74	36.1%	91	42.7%	102	44.3%	421	40.8%
Asian	4	2.1%	8	4.1%	11	5.4%	6	2.8%	5	2.2%	34	3.3%
American Indian	1	0.5%	1	0.5%	1	0.5%	1	0.5%	0	0.0%	4	0.4%
Unknown	8	4.3%	7	3.6%	5	2.4%	3	1.4%	2	0.9%	25	2.4%
Total	187		196		205		213		230		1,031	

Table Eight: Race of Persons Killed in Justifiable Homicides by Firearm, 2006–2010

Race of Person Killed	Number of Justifiable Homicides											
	2006		2007		2008		2009		2010		Total	
White	75	40.1%	74	37.8%	82	40.0%	87	40.8%	90	39.1%	408	39.6%
Black	106	56.7%	119	60.7%	115	56.1%	122	57.3%	138	60.0%	600	58.2%
Asian	1	0.5%	0	0.0%	2	1.0%	1	0.5%	0	0.0%	4	0.4%
American Indian	4	2.1%	1	0.5%	3	1.5%	2	0.9%	1	0.4%	11	1.1%
Unknown	1	0.5%	2	1.0%	3	1.5%	1	0.5%	1	0.4%	8	0.8%
Total	187		196		205		213		230		1,031	

Table Nine: Race of Shooter and Person Killed, Justifiable Homicides by Firearm, 2006–2010

Race of Shooter	Race of Person Killed	Number of Justifiable Homicides											
		2006		2007		2008		2009		2010		Total	
White	White	62	60.2%	64	66.0%	71	62.3%	77	68.8%	82	67.8%	356	65.1%
	Black	39	37.9%	31	32.0%	38	33.3%	34	30.4%	37	30.6%	179	32.7%
	Asian	0	0.0%	0	0.0%	1	0.9%	0	0.0%	0	0.0%	1	0.2%
	American Indian	1	1.0%	0	0.0%	3	2.6%	1	0.9%	1	0.8%	6	1.1%
	Unknown	1	1.0%	2	2.1%	1	0.9%	0	0.0%	1	0.8%	5	0.9%
Black	White	9	12.7%	5	6.0%	5	6.8%	8	8.8%	5	4.9%	32	7.6%
	Black	61	85.9%	78	94.0%	69	93.2%	83	91.2%	97	95.1%	388	92.2%
	Asian	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%
	American Indian	1	1.4%	0	0.0%	0	0.0%	0	0.0%	0	0.0%	1	0.2%
	Unknown	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Asian	White	1	25.0%	2	25.0%	5	45.5%	0	0.0%	1	20.0%	9	26.5%
	Black	2	50.0%	6	75.0%	5	45.5%	4	66.7%	4	80.0%	21	61.8%
	Asian	1	25.0%	0	0.0%	1	9.1%	1	16.7%	0	0.0%	3	8.8%
	American Indian	0	0.0%	0	0.0%	0	0.0%	1	16.7%	0	0.0%	1	2.9%
	Unknown	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%
American Indian	White	0	0.0%	0	0.0%	1	100.0%	1	100.0%	0	0.0%	2	50.0%
	Black	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%
	Asian	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%
	American Indian	1	100.0%	1	100.0%	0	0.0%	0	0.0%	0	0.0%	2	50.0%
	Unknown	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Total		179		189		200		210		228		1,006	

Table Ten: Weapon Used in Justifiable Homicides, 2006–2010**Page 19**

Weapon	Number of Justifiable Homicides											
	2006		2007		2008		2009		2010		Total	
Firearm	187	80.3%	196	78.1%	205	83.0%	213	81.9%	230	83.0%	1,031	81.3%
Knife or cutting instrument	31	13.3%	37	14.7%	30	12.1%	29	11.2%	32	11.6%	159	12.5%
Blunt object	3	1.3%	0	0.0%	0	0.0%	3	1.2%	4	1.4%	10	0.8%
Bodily force	3	1.3%	10	4.0%	3	1.2%	8	3.1%	4	1.4%	28	2.2%
Strangulation	1	0.4%	0	0.0%	0	0.0%	0	0.0%	0	0.00%	1	0.1%
Asphyxiation	0	0.0%	0	0.0%	1	0.4%	1	0.4%	0	0.00%	2	0.2%
Unknown	8	3.4%	8	3.2%	8	3.2%	6	2.3%	7	2.5%	37	2.9%
Total	233		251		247		260		277		1,268	

Table Eleven: Type of Firearms Used in Justifiable Homicides, 2006–2010

Weapon	Number of Justifiable Homicides											
	2006		2007		2008		2009		2010		Total	
Firearm, type not stated	11	5.9%	9	4.6%	19	9.3%	21	9.9%	28	12.2%	88	8.5%
Handgun	152	81.3%	158	80.6%	162	79.0%	163	76.5%	166	72.2%	801	77.7%
Rifle	10	5.3%	8	4.1%	11	5.4%	9	4.2%	8	3.5%	46	4.5%
Shotgun	14	7.5%	20	10.2%	13	6.3%	19	8.9%	28	12.2%	94	9.1%
Other Gun	0	0.0%	1	0.5%	0	0.0%	1	0.5%	0	0.0%	2	0.2%
Total	187		196		205		213		230		1,031	

EXHIBIT 56

APPENDIX C

JUN 30 2 15 PM '94

CV 93-0063723 : SUPERIOR COURT
 :
 DeFOREST H. BENJAMIN, JR., : JUDICIAL DISTRICT OF
 ET AL. : LITCHFIELD
 :
 V. : AT LITCHFIELD
 :
 JOHN M. BAILEY, ET AL. : JUNE 30, 1994

MEMORANDUM OF DECISION

The issue before the court is the constitutionality of 1993 Connecticut Public Act No. 93-306, Connecticut's "Assault Weapon Law." On June 8, 1993, after lengthy debate, the Connecticut legislature enacted P.A. 93-306 ("the Act").¹ The Act became effective on October 1, 1993 and prohibits the sale, transfer, and possession of certain firearms and firearms parts collectively described as "assault weapons."

Any person who lawfully possesses an "assault weapon" prior to October 1, 1993 can keep the weapon by obtaining a certificate of possession from the department of public safety. P.A. 93-306, §4(a). A person who violates the possession element of the Act, except for a first time offender who presents proof that he lawfully possessed the weapon before October 31, 1993, is guilty

¹ Lieutenant Governor Eunice S. Groark provided the tiebreaking vote after an 18-18 vote in the Senate.

of a Class D felony and shall be sentenced to a term of imprisonment of which one year may not be suspended or reduced. P.A. 93-306, §3(a). A person who violates the sale or transfer element of the Act is guilty of a class C felony and shall be sentenced to a term of imprisonment of which two years may not be suspended or reduced. P.A. 93-306 §2(a)(1). The Act further provides that a person who commits any class A, B, or C felony while armed with or threatening the use of an "assault weapon", shall be imprisoned for a term of eight years, which shall not be suspended or reduced. P.A. 93-306, §8. The Act specifies limited exceptions for certain individuals, such as police officers and members of the armed forces. P.A. 93-306, §3(b).

Sec. 1(a)(1) of the Act defines an "assault weapon."

It states:

As used in this act, "assault weapon" means: (1) Any selective-fire firearm capable of fully automatic, semiautomatic or burst fire at the option of the user or any of the following specified semiautomatic firearms: Algimec Agmi; Armalite AR-180; Australian Automatic Arms SAP Pistol; Auto-Ordnance Thompson type; Avtomat Kalashnikov AK-47 type; Barrett Light Fifty model 82A1; Beretta AR-70; Bushmaster Auto Rifle and Auto Pistol; Calico models M-900, M-950 and 100-P; Chartered Industries of Singapore SR-88; Colt AR-15 and Sporter; Daewoo K-1, K-2, Max-1 and Max-2; Encom MK-IV, MP-9 and MP-45; Fabrique Nationale FN/FAL, FN/LAR, or FN/FNC; FAMAS MAS 223; Feather

AT-9 and Mini-AT; Federal XC-900 and XC-450; Franchi SPAS-12 and LAW-12; Galil AR and ARM; Goncz High-Tech Carbine and High-Tech Long Pistol; Heckler & Koch HK-91, HK-93, HK-94 and SP-89; Holmes MP-83; MAC-10, MAC-11 and MAC-11 Carbine type; Intratec TEC-9 and Scorpion; Iver Johnson Enforcer model 3000; Ruger Mini-14/5F folding stock model only; Scarab Skorpion; SIG 57 AMT and 500 series; Spectre Auto Carbine and Auto Pistol; Springfield Armory BM59, SAR-48 and G-3; Sterling MK-6 and MK-7; Steyr AUG; Street Sweeper and Striker 12 revolving cylinder shotguns; USAS-12; UZI Carbine, Mini-Carbine and Pistol; Weaver Arms Nighthawk; Wilkinson "Linda" Pistol.

P.A 93-306 §1(a)(1).

The plaintiffs in the present action are Deforest Benjamin, a gun dealer and gunsmith in the town of Cornwall; Robert Suprenant, a citizen of Colebrook who wishes to purchase a Colt Sporter; Bertcelis Morales, a resident of Bridgeport and an owner of an Intratec TEC DC-9; Michelle and Bradford Palmer, residents of Manchester who allege that Michelle is the owner of a single Colt Sporter and pursuant to the Act, she can not shoot with her father; Bruce Kaufman, a resident of Windsor and the owner of a Colt AR-15; Frank D'Andrea, a firearms dealer in Stratford; and Navegar Inc., d/b/a Intratec, a Florida corporation which manufacturers the Intratec TEC-9 and Scorpion.

The defendants are John M. Bailey, the Chief State's Attorney of Connecticut; Frank Maco, the State's Attorney

for the Judicial District of Litchfield; and Nicholas Cioffi, the Commissioner of Public Safety for the State of Connecticut.

On October 12, 1993, the plaintiffs filed their initial complaint. Thereafter, the plaintiffs filed an amended complaint, and, eventually filed an amendment to their amended complaint. In their amended complaint, which contains five counts, the plaintiffs seek a declaratory judgment that the Act is void under the Connecticut Constitution. The plaintiffs also seek to enjoin the enforcement of the Act pending the resolution of the case.

The plaintiffs allege in counts one and two that the Act violates their constitutional rights to equal protection and due process under the Connecticut Constitution. Count three states that the Act is void for vagueness. In count four, the plaintiffs allege that the Act is unconstitutional because it attaints specific manufacturers who make particular weapons while not similarly affecting other manufacturers who make "similar, identical, or functionally identical" weapons. Count five states that the Act infringes on the plaintiffs' right to bear arms under Article First, §15

of the Connecticut Constitution.

I.

FACTS

The court conducted an evidentiary hearing on divers days between January 20, 1994 and February 1, 1994. Thereafter, post-trial briefs were filed, and both counsel have made subsequent submissions with respect to recently decided case law, affecting the issues presented herein. Final argument was heard on March 2, 1994.

The following plaintiffs testified. Michelle Palmer, a petite woman, who explained that she preferred to shoot competitively with her father using the Colt Sporter, made no claim in her testimony that she used the firearm in self-defense. Her claimed injury was that she was prevented by this statute from using her firearm of choice, one which was comfortable for a person of her body size, and one with which she could enter specific competitions. The impact of the legislation did not extinguish her right to bear arms, but compromised it to the extent that she claimed injury.

Robert Suprenant testified that he desired to purchase a Colt Sporter. On cross-examination, he was asked if that was the only gun he wanted to buy.

Bruce Kaufman used his Colt AR-15 to scare away an intruder in September of 1982. The intruder was never apprehended. Mr. Kaufman testified that he collected military style weapons, and had a collection valued at over One Hundred Thousand (\$100,000.00) Dollars, which he and his father used in a gun dealing business. Mr. Kaufman's interest in the litigation was clearly as a dealer, and his claim that the AR-15 was necessary for the defense of his mother, his home, and himself, was incidental to his other real pursuit.

DeForest Benjamin makes his living as a gunsmith and dealer. He testified that the Act had adversely affected his business, although there was absolutely no proof of that absent his statement. He testified further that he often reconstructed firearms, and that he was unclear from the statutes, as to which alterations he would now be allowed to make. He testified that he was confused about his ability to use a folding stock on some of the weapons. For a gunsmith, he appeared to be confused over very simple gun parts. His confusion was not credible to the court.

Frank D'Andrea is a gun dealer, and has been so employed for over twenty years. He expressed confusion

over whether he was permitted under the statute to sell certain firearms. He understood that he could not sell the listed firearms, but others were so similar that he felt he might offend the statute if he did engage in a practice of selling those firearms. He indicated that thirty (30%) percent of his stock was in assault weapons. He testified that he did not recall an individual named Rubin Calazzo entering his store and buying several firearms, for cash, for an individual named Danny Melendez, who was later convicted in the Federal District Court for illegal sale of firearms. He testified that he sold ammunition at a discount if purchased in large quantities. He further testified that large capacity magazines were a very saleable commodity for gun dealers. Mr. D'Andrea's interest in this litigation clearly stemmed from his economic interest. The subject firearms, he conceded, could be sold outside the State of Connecticut.

Ms. Morales acquired an Intratec DC-9 from her husband just prior to the passage of the statute under review. She claimed that she possessed the firearm to protect herself, her family, and her home. She claimed that she heard an intruder at her front door in December,

and that she had the gun. She also testified that she did not confront the intruder, or call out that she had a firearm. She testified that she turned on the porch light, and the intruder fled. She testified further that she had only tried shooting the banned weapon twice, at close range, and more importantly, that she had never possessed or fired any other weapon before. The court finds her claim of a possessory interest in this banned weapon unworthy of belief.

Carl Miguel Garcia, president of Navegar, Inc., the manufacturer of the Intratec-9 and DC-9, and Scorpion,, testified that to his knowledge, both New Jersey and California had passed laws banning the sale or transfer of his listed weapons. Mr. Garcia complained that the statute had had a serious economic impact on his business, and that he and his company had received much negative press concerning the listed firearms. He indicated that they functioned in many ways like unlisted pistols and revolvers, and in fact used a generic magazine, similar to those used in Glocks, the firearm of choice of many police departments around the country.

On cross-examination, Mr. Garcia admitted that his revenues had steadily increased over the past three

years, despite the bans in some states. He agreed that the promotional literature contained slogans such as "easily concealed" and "tough as your toughest customer." No police departments utilize these products because they do not contain safeties. He agreed that the listed firearms were designed for maximum firepower, were inexpensive, and capable of rapid fire. Mr. Garcia claimed that the weapon could not be concealed, but upon cross-examination, the Attorney General demonstrated that, with a large magazine, the weapon, could in fact be concealed. Mr. Garcia denied that his listed firearms were the "gun of choice of drug dealers."

Mr. Robert Reese, president of Springfield Armory, Inc., testified that he founded his company after the government arsenal at Springfield, Illinois was shut down in 1969. Mr. Reese acquired much of the machinery from the arsenal. He adopted that name, and testified that he spent five (5) years acquiring the right to use the name for his company. His story of developing his company, and the historical perspective of the World War II Garand was of interest to the court. After World War II, the NATO forces contracted with the Italian company, Baretta, to overhaul the Garand, and it became known as the

Baretta Modification, 1959, or BM-59. In 1979, Mr. Reese negotiated with Baretta to acquire forty tons of surplus parts from which the private Springfield Armory built its BM-59. Mr. Reese and his company developed military weapons for civilian use and collection, and identified Plaintiffs' exhibits 45-58 as by-products of the United States M-1 Garand from the government Springfield Armory. He pointed to the similarities in the Baretta Garand M-1, the BM-59 Italia, to the banned Springfield Armory BM-59.

On cross-examination, he testified that the BM-59 was a readily identifiable firearm, and that it was capable of firing .30 calibre "powerful" cartridges which could pierce five to six walls in a house. The firearm with that calibre cartridge could hit and kill a person distant from the shooter. The firearm was capable of firing four hundred (400) rounds of ammunition per minute, and a "good" shooter, could reload a magazine in ten (10) seconds.

Charles Fagg was qualified as an expert witness for the plaintiffs. In addition to identifying the banned firearms, he led the plaintiffs through a description of similar, and yet not banned firearms, that were distinguishable by brand name and slight design

differences. There seemed to be little controversy in this litigation that there are copies of the banned firearms, either by companies in foreign countries, or in this country, and that the industry markets firearms by changing numerical designation, name, and accessories. Mr. Reese testified that the industry had little control over the changes in designation of firearms, and that those changes appeared for each new marketing cycle. It appears that specific designation even within the industry may be an unattainable goal.

Mr. Fagg testified that flash suppressors had a legitimate civilian, and non-criminal purpose. Hunting at dawn or dusk made that a desired option for many hunters. He agreed that a flash suppressor also had the ability to mask the position of the shooter, and control recoil to a certain extent upon rapid fire at a target. He conceded that the civilian use of those options was limited, but that those options might well be more important to criminal use. On cross-examination, he was able to testify as to the maximum magazine that the listed firearms could hold, at least in most instances. In testimony that was a bit too coy, he testified that he did not know what an Algimec Agmi, the first on the list

of banned weapons, was. It was clear later that this was an Algimac AGM-1, so the statute contained a mere typographical error.² The little "mystery" that surrounded that particular firearm, which no witness has ever seen, was somewhat unnecessary for a court trial.

Mr. Fagg's testimony was technical and unemotional. He described certain features of firearms for the record. He compared the banned weapons with others not mentioned in the statute, and responded to questions on cross-examination in an equally professional manner. As earlier noted, there seemed to be little contest with respect to his description of the firearms brought into the court room, photographs of which remain as exhibits for review. It is clear that there are many firearms which fit the general designation of "assault weapons", and which are virtually identical to the banned weapons, but which do not appear on the list.

Professor Kleck was called as an expert witness by the plaintiffs. His testimony centered on the self-defense capabilities of semi-automatic weapons. His testimony was biased and did not help the inquiry of the

² The court finds that the legislature should correct this typographical error.

court with respect to the legal claims. His testimony focused on the public debate, which will continue on the airwaves, the town greens, and in the legislatures. This court is not permitted to substitute the judgment of the legislature, only to assess the claims of the parties. The decision of this court, and the decision on the appeal, will only be another step in the public dialogue concerning this issue. The statistics proposed were countered by the defendants, and the court was not swayed by either.

The defendants offered a videotape of various firearms being fired at the State Police range. Automatic fire, selective fire, semiautomatic fire, and bolt action fire were described. (Defendants' Ex. 14) During the testimony of Chief Thomas Sweeney of the Bridgeport Police Department, a video was offered (Defendants' Ex. 3) of street life in Bridgeport on November 27, 1993, at Hallock and Shelton Streets from 11:25 p.m. - 12:13 a.m. on November 28. The Green Top Posse had been raided and within a short time, was rearmed with assault-type weapons. The raid had secured two loaded AK-47s and a Colt Sporter with a flash suppressor, among other firearms. The Chief testified

that "straw purchasers" would acquire the guns legally and then transfer them illegally. The Chief testified further concerning gang hits near a school, on the first day of school, when a new middle school was being opened, when children going to school had to walk past a crime scene. At that crime scene, seventy-six (76) bullet casings were found near the body of Alexander Aponte, a suspected gang member.

Chief Sweeney pointed to the increase in seizure of assault weapons. In 1991, twenty-eight of the weapons seized as a result of police activity were assault weapons, and in 1992, that number increased to 49. While the evidence is clear that assault weapons do not make up the majority of weapon seizures, their numbers are increasing at a steady rate. He also described assaults on police officers, which included the use of an Intratec 22, one an M-11 type, and a crime scene which included Seven Hundred Sixty-two (762) spent rounds of 9 mm ammunition. That police officer was struck with a 9 mm round. Annette Richardson was killed, and it appeared from the investigation that she was not an intended victim. The Chief cited further examples of over penetration in dense population areas, which create a

grave risk to the citizenry. He claimed further that the possession of guns in the home for self-protection gave the homeowner a false sense of security and posed a risk to members of the household.

Col. Leonard Supenski is the Chief of the Technical Bureau of the Baltimore County Police Department. He is a gun owner and has competed with firearms as sport. He conducts training courses for police and citizens interested in self defense. He testified that he is familiar with the term "assault weapon" and opined that these lightweight military-style weapons were changed so that armies could move more effectively. He stated that the Kalishnikov, AK-47, originally made in the U.S.S.R. in 1947 by Kalishnikov, was the precursor of all of the military- style weapons on the list. His opinion was that there was not legitimate civilian use for these weapons, and that in a compressed urbanized society, they constituted a hazard to bystanders.

Col. Supenski testified about the report and recommendations of the Bureau of Alcohol, Tobacco, and Firearms ("BATF") (Defendants' Ex. 12) and provided the information contrary to Professor Kleck's testimony. He felt that the ordinarily intelligent citizen could access

documents necessary to sufficiently warn that citizen of which weapons were banned. He mentioned Shooting Digest and Gun World. The plaintiffs later offered into evidence, the manual published by the State of California to assist citizens in recognizing their banned firearms. (Plaintiffs' Ex. 67).

He testified concerning the BATF's tracing of firearms seized by law enforcement, and indicated that the Intratec Tec 9 was the leading gun seized, and the combination of the Tec 9, the Cobra MAC-11, the AK-47, and the Colt AR-15 comprised thirty-seven (37%) percent of all assault weapons seized. Among characterizations of individuals from whom such weapons were seized were drug dealers, disturbed individuals, street gangs, and hate groups. He reiterated Chief Sweeney that most of these weapons are purchased legally and then come onto a secondary market of unregulated sales by straw purchasers selling to criminals. He insisted that these weapons were a serious risk to police officers and to the public safety.

On cross examination, he conceded that a semi-automatic rifle or handgun could be used defensively. He added that the use would require considerable training.

He conceded some discrepancies from his deposition testimony.

Major John Bardelli of the Connecticut State Police testified concerning the investigation of the murder of Trooper Russell Bagshaw by a burglar using the Wilkinson "Linda", a firearm on the list. He testified that the public safety is affected adversely by the named weapons, in that they pose a danger to police officers. He testified that urban undercover officers are encountering these weapons more and more. The Colt AR-15 is issued to the Connecticut State Police SWAT team, but is not standard issue. There is required special equipment and training for that team.

II.

DECLARATORY JUDGMENT

"The purpose of a declaratory judgment action... is to 'secure an adjudication of rights where there is a substantial question in dispute or a substantial uncertainty of legal relations between the parties.'" (Citation omitted.) Wilson v. Kelley, 224 Conn. 110, 115, 617 A.2d 433 (1992). The declaratory judgment procedure is peculiarly well adapted to the judicial determination

of controversies concerning constitutional rights and, as in this case, the constitutionality of state legislative action. Horton v. Meskill, 172 Conn. 615, 626, 376 A.2d 359 (1977). "The statute authorizing the Superior Court to render declaratory judgments is as broad as it well could be made." Sigal v. Wise, 114 Conn. 297, 301, 158 A. 891 (1932).

The declaratory judgment procedure may be employed in a justiciable controversy where the interests are adverse, where there is an actual bona fide and substantial question or issue in dispute or substantial uncertainty of legal relations which requires settlement, and where all persons having an interest in the subject matter of the complaint are parties to the action or have reasonable notice thereof.

Practice Book §390.

The jurisdiction of the trial court over declaratory judgment actions depends upon compliance with the notice requirement of Practice Book §390. Serrani v. Board of Ethics, 225 Conn. 305, 308, 622 A.2d 1009 (1993). Failure to comply with the notice requirement of Practice Book §390 deprives the trial court of subject matter jurisdiction to render a declaratory judgment. See, e.g. Connecticut Ins. Guaranty Assn. v. Raymark Corporation, 215 Conn. 224, 229, 575 A.2d 693 (1990). Accordingly, the court finds that the plaintiffs have complied with the

procedural requirements of a declaratory judgment action. All persons having an interest in the subject matter of this action are now parties to the action or have reasonable notice thereof.

III.

STANDARD OF REVIEW

"Ordinarily, a trial court's analysis of a constitutional attack on an otherwise validly enacted statute begins with certain underlying principles of statutory construction." State v. Leary, 41 Conn. Sup. 525, 526-27, 590 A.2d 494 (1991, Mottolese, J.) One of the most fundamental of these is "that a strong presumption of constitutionality attaches to acts of a legislature." (Citations omitted.) Peck v. Jacquemin, 196 Conn. 53, 64, 491 A.2d 1043 (1985). To overcome this presumption, the party attacking a validly enacted statute bears the heavy burden of proving its unconstitutionality beyond a reasonable doubt and the court will indulge in every presumption in favor of the statute's constitutionality. State v. Breton, 212 Conn. 258, 269, 652 A.2d 1060 (1989). "In choosing between two constructions of a statute, one valid and one

constitutionally precarious, we will search for an effective and constitutional construction that reasonably accords with the legislature's underlying intent..." (Citations omitted.) Id.

IV.

EQUAL PROTECTION AND THE RIGHT TO BEAR ARMS

(COUNTS 1, 2 & 5)

The plaintiffs rely solely on state constitutional grounds to invalidate the Act. The court is not bound by federal precedents in interpreting our own state constitutional provisions. State v. Geisler, 222 Conn. 672, 684, 610 A.2d 1225 (1992). "It is well established that federal constitutional... law establishes a minimum national standard for the exercise of individual rights and does not inhibit state governments from affording higher levels of protection for such rights..." (Internal quotation marks and citations omitted.) State v. Miller, 227 Conn. 363, 377-87, 630 A.2d 1315 (1993). "[F]ederal decisional law is not a lid on the protections guaranteed under our state constitution." Doe v. Maher, 40 Conn. Sup. 394, 419, 515 A.2d 134 (1986). Nevertheless, in the interpretation of our state constitution, the court is

not precluded from consulting the case law under the federal constitution. Daly v. DelPonte, 225 Conn. 499, 512-13, 524 A.2d 876 (1993).

Article I, §20 of the Connecticut Constitution is the modern equal protection clause. It provides: "No person shall be denied the equal protection of the law nor be subjected to segregation or discrimination in the exercise or enjoyment of his or her civil or political rights because of religion, race, color, ancestry, national origin, sex or physical or mental disability." Conn. Const. Art. I, §20.

The equal protection clause provides for varying levels of judicial review to determine whether a state statute passes constitutional muster. Daly v. DelPonte, supra, 513. Our Supreme Court has held, in accordance with the federal framework of analysis that state action concerning social and economic regulation will survive an equal protection challenge if it satisfies a rational basis test. *Id.* citing Laden v. Warden, 169 Conn. 540, 542-43, 363 A.2d 1063 (1975). If, however, state action invidiously discriminates against a suspect class or affects a fundamental right, the action passes constitutional muster under the state constitution only

if it survives strict scrutiny. See *Id.*, 542.

The plaintiffs allege in count one of their complaint that the Act must be declared unconstitutional because it lacks a rational basis. In count two, the plaintiffs allege that the Act should be "strictly scrutinized." The plaintiffs do not claim that the Act should be subject to a strict scrutiny test because it discriminates against a suspect class. Rather, the plaintiffs allege that the right to bear arms is a fundamental right and therefore legislation which affects that right should be subject to strict scrutiny.

A. The Reasonableness Test

The Connecticut Constitution, Article first, §15 states: "[e]very citizen has a right to bear arms in defense of himself and the state." Conn. Const. Art. I, §15. All constitutional rights, however, are not absolute. For example, Conn. Const. Art. I, §3 guarantees the free exercise and enjoyment of religion. However, it is well recognized that this right is not absolute, religious conduct remains subject to regulation for the protection of society. Cantwell v. State of Connecticut, 310 U.S. 296, 303-04, 60 S.Ct. 900, 84 L.Ed 1213 (1940).

Further, the protection of speech found in the First Amendment and Conn. Const. Art. I §4, while fundamental, is not absolute. The First Amendment does not protect one who yells "fire" in a crowded theater, nor does it protect one who speaks "fighting words." Chaplinsky v. New Hampshire, 315 U.S. 568, 572, 62 S.Ct. 766, 86 L.Ed.2d 1031 (1942).

Another example can be found in Conn. Const. Art. I, § 8 which guarantees, in pertinent part, that in all criminal prosecutions, the accused shall have the right to be heard "... by himself and by counsel..." However, once a defendant is supplied with counsel, the core right is exhausted, and additional protections claimed under the Sixth Amendment can be severely circumscribed. Wheat v. United States, 486 U.S. 153, 159, 108 S.Ct. 1692, 100 L.Ed.2d 140 (1988). As a result, a defendant does not have a constitutional right to counsel of choice where other societal interests are compromised. *Id.*; United States v. Vasquez, 966 F.2d 254, 261 (7th Cir. 1992); Johnson v. Warden, 218 Conn. 773, 790-91, 591 A.2d 399 (1991).

On each occasion that the Connecticut courts have addressed the meaning of the "right to bear arms"

provision, they have indicated that the right is not absolute, but is a limited right, subject to the reasonable exercise of the state's police power. State v. Bailey, 209 Conn. 322, 346, 551 A.2d 1206 (1988); State v. Banta, 15 Conn. App. 161, 184, 544 A.2d 1226 (1988); Rabbitt v. Leonard, 36 Conn. Sup. 108, 116, 413 A.2d 489 (1979); Johnsey v. Board of Firearms Permit Exam, Superior Court, J.D. of New Haven, Docket # 299478 (1991, Schaller, J.) (It was not unreasonable for the Board of Firearm Permit Examiners to conclude that the appellant was an unsuitable person to be granted a pistol permit.).

In Bailey, the court held, inter alia, that the requirement that a person obtain a permit to carry a pistol places a reasonable restriction on a citizen's right to bear arms. The court, in pertinent part, stated, "It is beyond serious dispute that the legislature has the authority to place reasonable restrictions on a citizen's right to bear arms." State v. Bailey, supra, 346.

In Banta, the court denied the defendant's claim that a statute which prohibits a felon from possessing a firearm was unconstitutional under the state constitution. The court stated:

...our limited review of the record in this case convinces us that the defendant's claims are not truly of constitutional dimension. He claims that the state constitutional provision regarding the right to bear arms; Conn. Const., art. I, 15; confers on him an individual constitutional right to possess a pistol. Even if we assume without deciding that there is such an individual constitutional right, similar constitutional provisions in other states have been repeatedly interpreted to be subject to reasonable limitation....The defendant has not established that this prohibition applicable to convicted felons is unreasonable.

(Citations omitted.) State v. Banta, supra, 184.

In Rabbit, the plaintiff complained of the revocation of his pistol permit without prior notice and an opportunity to be heard. The court, Saden, J., stated that a Connecticut citizen has a fundamental right to bear arms in self defense. Rabbit v. Leonard, supra, 112. Nevertheless, the court applied a standard of reasonableness in finding that the state had the right to revoke the plaintiff's pistol permit. *Id.*, 116.

Other jurisdictions with similar constitutional provisions guaranteeing the right to bear arms have consistently held that the right to bear arms is not an unlimited right and is subject to reasonable

regulation.³ See, e.g. People v. Brown, 253 Mich. 537, 235 N.W. 245, 246 (1931); Carfield v. State, 649 P.2d 865, 871-72 (Wyo. 1982); People v. Blue, 190 Colo. 95, 102-03, 544 P.2d 385 (1975); Robertson, et al. v. City of Denver, et al., ____ Colo. ____ (May 2, 1994); State v. Cartwright, 246 Or. 120, 134-36, 418 P.2d 822 (1966); State v. Smith, 132 N.H. 756, 571 A.2d 279, 281 (1990); State v. Kessler, 289 Or. 359, 614 P.2d 94, 99 (1980).

In the recently decided Robertson case, *supra*, the majority refused to categorize the Colorado right to bear arms as fundamental, but remained silent on that issue. They applied the reasonableness standard to the constitutional test of the Denver ordinance banning assault weapons. They cited the body of law that exists in Colorado where courts have applied the reasonableness standard to any statute which invoked the police power as a restriction on the right to bear arms, without a determination as to the nature of that right. Robertson v. City of Denver, *supra*, 13-14. They point out that Connecticut is one of two jurisdictions to refer to the right as fundamental, citing Rabbitt, *supra*. *Id.*, 12.

³ These states have right to bear arms provisions which focus on a citizens right to bear arms for self defense and defense of the state.

That decision of our court was handed down in 1979, and consistently since that time, the Connecticut Supreme Court has applied the reasonableness standard to any legislation that has regulated the right to bear arms.

For all of the foregoing reasons, the court finds that Conn. Const. Art. I §15 explicitly grants citizens of Connecticut a right to bear arms. However, it does not grant an unlimited right to possess assault weapons. Therefore, the proper constitutional test is whether the Act is a reasonable exercise of the state's police power.

Police power generally means the power to govern and belongs to every sovereignty. Snyder v. Newtown, 147 Conn. 374, 389, 161 A.2d 770 (1960). "It is a universally accepted rule of constitutional law that the legislative department in the use of its police power is the judge, within reasonable limits, of what the public welfare requires." (Citations omitted.) Cutlip v. Connecticut Motor Vehicles Commissioner, 168 Conn. 94, 100, 357 A.2d 918 (1975).

The court's function in examining the constitutional aspect of police legislation is to decide whether the purpose of the legislation is a legitimate one and whether the particular enactment is designed to accomplish that purpose in a fair and reasonable way. If an enactment meets this test, it satisfies the constitutional

requirement of due process and equal protection of the laws.... Courts cannot question the wisdom of police legislation and must accord to the legislature a liberal discretion, especially in matters involving potentialities generally recognized as dangerous.

Pierce v. Albanese, 144 Conn. 241, 249, 149 A.2d 606 (1957).

All of the facts that have been received on this record were contained in the public debate in the legislature concerning the appropriateness, as a political matter, of regulating firearms in any way. The legislature focused on the perceived public need to control the use of large capacity, rapid fire automatic, selective fire, and some semiautomatic firearms. The evidence indicates an escalation in that use, and while not the predominant number of firearms seized, the banned weapons have appeared more frequently as a risk factor to police officers on the street, and to innocent victims in densely-populated areas.

The court finds that Public Act 93-306 is a reasonable exercise of the State's police power. The court finds further that the legislature designed the Act to accomplish that purpose in a fair and reasonable manner. Accordingly, it satisfies the constitutional requirement of due process and equal protection.

V.

VOID FOR VAGUENESS (COUNT 3)

In count three of their amended complaint, the plaintiffs assert that the Act is unconstitutionally vague in violation of Article I, §8 and §10 of the Connecticut Constitution. Specifically, the plaintiffs attack Section 1(a)(1) of the Act which defines an "assault weapon".

The void for vagueness doctrine, which is derived from the constitutional guarantee of due process, embodies two central precepts: the right to fair warning of the effect of a governing statute or regulation and the guarantee against standardless law enforcement. State v. Schriver, 207 Conn. 456, 460, 542 A.2d 686 (1988); Smith v. Goguen, 415 U.S. 566, 572-73, 94 S.Ct. 1242, 39 L.Ed. 2d 605 (1974); State Management Assn. of Connecticut Inc. v. O'Neill, 204 Conn. 746, 757, 529 A.2d 1276 (1987).

As a matter of the due process of law required by our federal and state constitutions, "a penal statute must be sufficiently definite to enable a person to know what conduct he must avoid." (Citations omitted.) State v. Proto, 203 Conn. 682, 696, 526 A.2d 1297 (1987).

Legislatures must set reasonably clear guidelines for law enforcement officials and triers of fact in order to prevent "arbitrary and discriminatory enforcement." Smith v. Goguen, supra, 572-73. A statute must afford a person of ordinary intelligence a reasonable opportunity to know what is permitted or prohibited. McKinney v. Coventry, 176 Conn. 613, 618, 410 A.2d 453 (1979). A statute which forbids the doing of an act in terms so vague that men of common intelligence must guess at its meaning and differ as to its application, violates the first essential of due process of law. State v. Cavallo, 200 Conn. 664, 667,, 513 A.2d 646 (1986).

It is not necessary, however, that a statute list the precise conduct prohibited or required. State v. Eason, 192 Conn. 37, 47, 470 A.2d 688 (1984). It is recognized that the law may be general in nature; the constitution requires no more than "a reasonableness of certainty." State v. White, 204 Conn. 410, 415, 528 A.2d 811 (1987). "The test is whether the language conveys sufficiently definite warning as to the proscribed conduct when measured by common understanding and practice." (Citation omitted.) Id., 415-16. "A statute is not void for vagueness unless it clearly and

unequivocally is unconstitutional, making every presumption in favor of its validity." (Citation omitted.) State Management Assn. of Connecticut, Inc. v. O'Neill, supra, 758.

Where a penal statute implicates rights protected by the First Amendment, the statute's constitutionality is tested for vagueness on its face. State v. Pickering, 180 Conn. 54, 58 n.3, 428 A.2d 322 (1980). However, in non-First Amendment contexts, "the constitutionality of a statutory provision being attacked as void for vagueness is determined by the statute's applicability to the particular facts at issue." *Id.*, 57. This case does not involve the alleged infringement of First Amendment freedoms, therefore, the plaintiffs' vagueness challenge must be examined in the light of the facts of this case. Hence, the court is not free to speculate as to whether under hypothetical circumstances, the Act may be vague. Springfield Armory, Inc. v. City of Columbus, 805 F. Supp. 489, 497 (S.D. Ohio 1992).

The plaintiffs contend that the Act is unconstitutionally vague because it fails to define "assault weapon" in terms of any understandable categories except for the selective guns which are

listed. The plaintiffs allege further that the Act neglects to define "type" and "series," words which the Act uses to define assault weapons.

The definition of "assault weapons" in the statute is clear. This court does not find credible, any claim that a person purchasing a firearm would be unaware of its firing capabilities. This court finds that a person of ordinary intelligence is capable of understanding whether his or her firearm is a fully automatic, selective-fire, burst fire, or semi-automatic firearm. The definition of "assault weapon" is not vague.

The plaintiffs cite State v. Defrancesco, 34 Conn. App. 741, __ A.2d __ (1994), in support of their claim that the words "series" and "type" are not terms of art in the firearms industry, or at law, sufficient to allow the public to understand the prohibition in the statute.

Colt, in its promotional catalogue (Plaintiffs' Ex. 2) refers to certain combinations of firearms as a "group". Springfield Armory refers to "series" or "models" for groupings of similar firearms (Plaintiffs' Ex. 3), while Eagle Arms prints an entire catalogue for the EA-15 series.

This marketing literature is found to be readily

available to the general public, to those of ordinary intelligence, who would likely review catalogues prior to making a purchase. Clearly, gun dealers who have such literature and knowledge of the industry, know when a firearm is derived from another, with certain alterations that do not change the essential form of the firearm. Therefore, the court finds that the use of the word "series" in the statute is not vague.

The term "type" appears in none of the marketing or promotional literature that has been made an exhibit for the record. Furthermore, the definition does not appear in Black's Law Dictionary, but only in Webster's. It is not a word that lends itself to statutory construction, absent a review of the legislative history. When the court is unable to find the legislative intent from the language of the statute, the court must look to the legislative history for guidance. see State v. Defrancesco, supra, 750.

The legislative history discloses that the word "type" was used in conjunction with the AK-47 to include all copies of that firearm. Senate Proceedings, PP. 2988 (May 27, 1993, Jepson, S.). However, the legislative history is silent with respect to the use of the word

"type" as it pertains to the Auto Ordnance Thompson type. Despite the legislative history which addresses the use of the word "type" in conjunction with the AK-47, the court finds that the use of the word "type" in this statute is vague. That finding, however, is not dispositive of the constitutionality of the entire statute.

Whenever a portion of a statute appears to be void for vagueness on its face, thereby threatening to produce a chilling effect on the remainder of the statute which might otherwise be valid, Connecticut courts, like the federal courts, have, whenever possible, applied a 'judicial gloss' to the statute to save it from infection and inevitable invalidation.

State v. Leary, 41 Conn. Sup. 525, 526-27, 590 A.2d 494 (1991, Mottolese, J.).

The court must now determine if the statute can be read consistently with its intent, if the vague word is deleted. The invalidity of one provision of the act does not necessarily result in the entire act being invalid.

Kellems v. Brown, 163 Conn. 478, 495-96, 313 A.2d 53 (1972); citing State v. Wheeler, 25 Conn. 290, 299 (1856). The test is whether they are so mutually connected and dependent as to indicate a legislative intent that they should stand or fall together. Kellems v. Brown, supra, citing Branch v. Lewerenz, 75 Conn. 319,

324, 52 A. 558 (1902)). In this case, the court finds no such dependence, and no mutual connection with respect to the list of firearms, and with respect to the AK-47. However, the use of the word "type" following Auto Ordnance Thompson is connected, and that designation is subject to being void for vagueness. Auto Ordnance Corporation makes a variety of pistols and long guns which are not further described in the statute. (Plaintiffs' Ex. 1). Deleting the word "type" from the description does not cure the problem with vagueness for this listing. If the legislature sees fit, it has the option to revise the statute to deal with which of the Auto Ordnance firearms they feel are subject to the statute. At this time, the court has no ability or authority to substitute its judgment. The excision of the word "type" where noted will not defeat the statute, nor prevent its reasonable use as dictated by the legislature. By narrowing the construction of the statute, by deleting the vague term "type" and "Auto Ordnance Thompson type", therein, the statute passes constitutional muster.

VI.

BILL OF ATTAINDER (COUNT 4)

Article First, §13 of the Connecticut Constitution states: "No person shall be attainted of treason or felony by the legislature." Art. I §10 of the United States Constitution provides in pertinent part that "[n]o state shall... pass any Bill of Attainder." These Bill of Attainder provisions prohibit the state or federal legislatures from assuming judicial functions and conducting trials. United States v. Brown, 381 U.S. 437, 462, 85 S.Ct. 1707, 14 L.Ed.2d 484 (1965). The key features of a bill of attainder are that the challenged law "legislatively determines guilt and inflicts punishment upon an identifiable individual without provision of the protections of a judicial trial." Nixon v. Administrator of General Services, 433 U.S. 425, 468, 97 S.Ct. 2777, 2803, 53 L.Ed. 2d 867 (1977); see also State v. Washburn, 34 Conn. App. 557, 563, __ A.2d __ (1994).

A plaintiff challenging a legislative act on the ground that it is an unconstitutional bill of attainder must prove three elements: nonjudicial infliction of punishment; specificity as to the identity of individuals

affected; and lack of a judicial trial. Springfield Armory, Inc. v. City of Columbus, supra, 493; See 16A Am. Jur.2d Constitutional Law § 655 (1979). These elements must be established by the "clearest proof." (Citations omitted.) Id.

The plaintiffs allege that the manufacturers of guns named in the Act have been singled out for adverse treatment and legislatively condemned because of a relationship with an undesirable name. As a result, the plaintiffs claim that any manufacturer who makes and any citizen who owns or possesses a named gun have been attainted.

Specificity alone does not establish that the law is an unconstitutional bill of attainder. Nixon v. Administrator of General Services, supra, 470-72. The court in Nixon concluded that "the Act's specificity, the fact that it refers to [President Nixon] by name, does not automatically offend the Bill of Attainder Clause. Id., 471-72. Similarly, the present Act's specificity in naming weapons made by Colt, Springfield Armory, Heckler and Koch, Intratech, and other gun manufacturers does not render the Act a bill of attainder. Fresno Rifle and Pistol Club Inc. v. Van De Kamp, 965 F.2d 723, 727-28

9th Circuit 1992.)

Furthermore, "[s]imply because a law places burdens on citizens does not make those burdens punishment." (Citation omitted.) State v. Washburn, supra, 563. Three tests have been identified as applicable to the determination whether the burden imposed by the legislature is punishment for bill of attainder purposes: the historical test; the functional test; and the motivational test. Nixon v. Administrator of General Services, supra, 473-84.

A. The Historical Test

The historical test requires the court to examine whether the burden imposed by the legislature falls within the category of punishments traditionally judged to be prohibited by the Bill of Attainder Clause. *Id.*, 473-74. These are: the death sentence; imprisonment; banishment; confiscation of property; and barring individuals or groups from participating in specified employments or vocations. *Id.*

Plaintiffs' witnesses Benjamin, D'Andrea, and Carlos Garcia, the President of Intratech, offered testimony that their businesses have suffered as a result of

passage of the Act. The plaintiffs, however, have not proven that the Act bars them from participating in their specified employments or livelihood. The Act does not prevent plaintiff Intratech from manufacturing or selling firearms in general. Nor does it prevent Intratech from manufacturing the banned "assault weapons" and selling them in places other than Connecticut. Moreover, the Act does not prohibit plaintiffs D'Andrea or Benjamin from selling or working on firearms and parts in the State of Connecticut other than those affected by the Act. For the foregoing reasons, the historical test for punishment has not been satisfied. See Springfield Armory, Inc. v. City of Columbus, *supra*, 494.

B. The Functional Test

The functional test requires the court to analyze whether the challenged law, viewed in terms of the type and severity of burdens imposed, can be said to further nonpunitive purposes. Nixon v. Administrator of General Services, *supra*, 475-76. Where legitimate legislative purposes do not appear, it is reasonable to conclude that punishment was the purpose of the legislation. *Id.*, 476. The plaintiff bears the burden of proving "that the

legislature's action constituted punishment and not merely the legitimate regulation of conduct." Id., n. 40.

The defendants assert that the Act was passed in light of legislative recognition that "assault weapons" are being used in street crime across Connecticut and that the proliferation of these guns is an intolerable threat to public safety. Defendants also argue that the Act will prevent tragedies such as the 1991 killing of State Police Trooper Russell Bagshaw.

The court finds that the Act was designed to serve a nonpunitive purpose, namely the protection of the citizens of Connecticut from the perceived danger posed by certain firearms. As stated previously, this is a reasonable exercise of the state's police power. Furthermore, in relation to the potential harm sought to be averted by the Act, the severity of the burden on the plaintiffs is slight. The functional test for punishment has not been satisfied. See Springfield Armory, Inc. v. City of Columbus, supra, 495.

C. The Motivational Test

The motivational test requires the court to determine whether the legislative history of the Act

evinces an intent to punish. Nixon v. Administrator of General Services, supra, 478. In determining intent the court should also consider whether less burdensome alternatives were available. Id., 482.

The plaintiffs have not offered, nor has the court found, any evidence of a legislative intent to punish the plaintiffs. To the contrary, the motivation of the legislature is clearly focused on public safety. see State v. Washburn, supra, 564. The plaintiffs have failed to establish punishment under the motivational test.

The plaintiffs have failed to prove that the burden imposed by the Act fits within any of the categories of punishment prohibited by the federal or state bill of attainder clause. The Act is not an unconstitutional bill of attainder.

VI.

CONCLUSION

The plaintiffs' action for a declaratory judgment that the Act is void under the Connecticut Constitution, is denied. The court finds all issues in favor of the defendants subject to the narrowing construction of the statute contained herein.

The application for a temporary injunction is denied.


DRANGINIS

EXHIBIT 57



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Analysis of Five Years of Armed Encounters (With Data Tables)

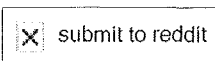
March 12 2012

by Dan Cannon

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Incident at a Glance (Click Links For Similar Stories)

Gun(s) Used:

Unknown

Location:

of Suspects:

Shots Fired:

Suspect Killed:

State:

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www.InstantAccuracy.org

Avoid the 7 Deadly Sins of Handgun Accuracy:



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.

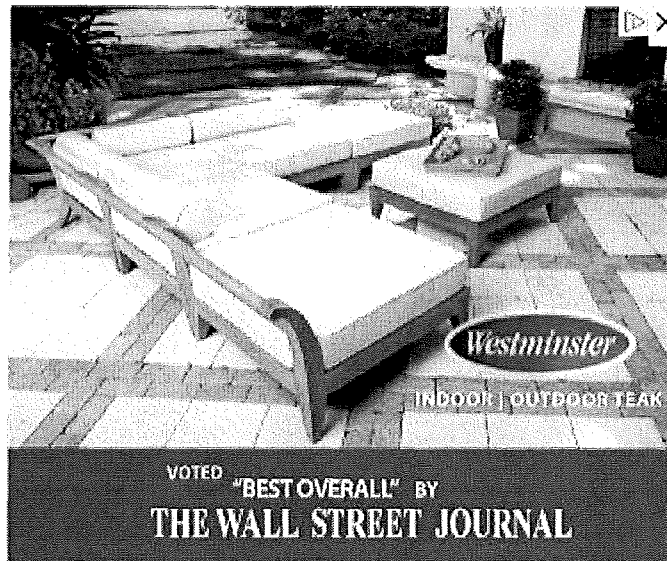
While the source material is somewhat dated there is still a lot of information we can learn from this. One thing to also note is that the stories used for this study were all situations in which a citizen *successfully* defended themselves. This means that the study focuses on and shows what works, not what doesn't work.

Author

Claude Werner

Firearms Safety Training LLC

The Armed Citizen – A Five Year Analysis



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., $\frac{1}{4}$ 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%

EXHIBIT 58

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK**

NEW YORK STATE RIFLE AND PISTOL
ASSOCIATION, INC.; WESTCHESTER
COUNTY FIREARMS OWNERS
ASSOCIATION, INC.; SPORTSMEN'S
ASSOCIATION FOR FIREARMS EDUCATION,
INC.; NEW YORK STATE AMATEUR
TRAPSHOOTING ASSOCIATION, INC.;
BEDELL CUSTOM; BEIKIRCH AMMUNITION
CORPORATION; BLUELINE TACTICAL &
POLICE SUPPLY, LLC; WILLIAM NOJAY,
THOMAS GALVIN; and ROGER HORVATH,

Plaintiffs

v.

ANDREW M. CUOMO, Governor of the State of
New York; ERIC T. SCHNEIDERMAN, Attorney
General of the State of New York; JOSEPH A.
D'AMICO, Superintendent of the New York State
Police; FRANK A. SEDITA, III, District Attorney
for Erie County; and GERALD J. GILL, Chief of
Police for the Town of Lancaster, New York,

Defendants.

**Civil Action Number:
1:13-cv-00291 (WMS)**

DECLARATION OF LUCY P. ALLEN

Lucy P. Allen, under penalty of perjury and in accordance with 28 U.S.C. §1746,
states and declares as follows:

1. I am a Senior Vice President of NERA Economic Consulting (“NERA”), a member of NERA’s Securities and Finance Practice and Chair of NERA’s Mass Torts and Product Liability Practice. NERA provides practical economic advice related to highly complex business and legal issues arising from competition, regulation, public policy, strategy, finance, and litigation. NERA was established in 1961 and now employs approximately 500 people in more than 20 offices worldwide.

2. In my 17 years at NERA, I have been engaged as an economic consultant or expert witness in numerous projects involving economic and statistical analysis. I have been qualified as an expert and testified in court on various economic and statistical issues relating to the flow of guns into the criminal market. I have testified at trials in Federal District Court, before the New York City Council Public Safety Committee, the American Arbitration Association and the Judicial Arbitration Mediation Service, as well as in depositions.

3. I have a B.A. from Stanford University, an M.B.A. from Yale University, and M.A. and M. Phil. degrees in Economics, also from Yale University. Prior to joining NERA, I was an Economist for both President George H. W. Bush’s and President Bill Clinton’s Council of Economic Advisers.

4. This declaration addresses the results of analyses that I and others under my direction at NERA conducted with respect to the following issues: (a) the rate in New York State of home invasions (or robberies in the home) perpetrated by multiple offenders with a firearm; (b) the number of rounds of ammunition fired by individuals using a gun in self-defense; and (c) weapons used in mass shootings.

A. *Rate in New York State of home invasions (or robberies in the home) perpetrated by multiple offenders with a firearm*

5. Plaintiffs cite a scenario of a home invasion perpetrated by multiple offenders with a firearm to demonstrate civilian need of high capacity magazines.¹ Data specific to “home invasions” is scarce; however, robberies in the home (for which consistent data is available) can be used as a proxy for a home invasion.²

6. We analyzed data from New York State’s Division of Criminal Justice Services (“DCJS”) and the Bureau of Justice Statistics’ National Crime Victimization Survey (“NCVS”).³

7. According to DCJS data for New York State (excluding New York City)⁴ in the past five years, an annual average of 3.55 residential robberies are committed with a firearm per 100,000 persons in New York.

¹ Amended Complaint, dated April 11, 2013, ¶¶93-97.

² A robbery is defined by the FBI’s Uniform Crime Reporting Program as “as the taking or attempting to take anything of value from the care, custody, or control of a person or persons by force or threat of force or violence and/or by putting the victim in fear.” Federal Bureau of Investigation:
http://www2.fbi.gov/ucr/cius2009/offenses/violent_crime/robbery.html

³ DCJS is authorized by statute to serve as the central repository of crime and arrest information for New York State. DCJS oversees the Uniform Crime Reporting (“UCR”) Program for New York State and reports crime and arrest data to the FBI. DCJS data is then incorporated into the FBI’s UCR data. NCVS data is a nationwide source of information on criminal victimization. Each year, NCVS data are obtained from a nationally representative sample of about 40,000 households comprising nearly 75,000 persons on the frequency, characteristics and consequences of criminal victimization in the United States.

⁴ “The Uniform Crime Reporting system includes information provided by law enforcement regarding the number of violent crimes reported that involved the use of a firearm. Currently, these figures are only available from the non-New York City region.” *Crime in New York State 2012 Preliminary Data*, Division of Criminal Justice Services, May 2013, p. 4.

8. The DCJS data on robberies does not include the number of offenders per robbery. We found two alternative estimates of the rate of robberies with multiple offenders: 21% from DCJS data based on a subset of New York State robberies and 17.4% based on national data from NCVS.

- The DCJS data on homicides (based on Supplemental Homicide Reports) reports whether a crime was committed by single or multiple offenders, so it is possible to determine a single/multiple offender ratio for robberies that resulted in a homicide. New York State data for the past 5 years indicated that multiple offenders were involved in 21% of the robberies with firearms that resulted in a homicide.⁵
- An alternative estimate for a single/multiple offender ratio can be obtained from the 2008 NCVS. According to NCVS data 17.4% of crimes of violence (including robberies) involved two or more offenders. (Plaintiff's expert Gary Kleck relies upon this 17.4% rate in his declaration.⁶)

9. Applying the 17.4% to 21% rate of multiple offenders to the 3.55 residential robberies committed with a firearm yields an estimated annual rate of 0.62 to 0.75 residential robberies perpetrated by multiple offenders with a firearm per 100,000 persons in New York State. In other words, in New York State in a year, there is less than one residential robbery with multiple offenders using a firearm per 100,000 persons.

10. Data from NCVS indicates that it is rare for a victim to use a firearm in self-defense. In particular, a recent study by the Bureau of Justice Statistics using NCVS data reported that 0.8% of victims in nonfatal violent crimes from 2007 through 2011 used a firearm in self-defense.⁷

⁵ This statistic is based on robberies in which the location is coded as "inside" rather than "outside" in the DCJS data.

⁶ Declaration of Gary Kleck, dated April 15, 2013, p. 3.

⁷ Michael Planty, Ph.D., and Jennifer L. Truman, Ph.D., US Department of Justice - Bureau of Justice Statistics, *Firearm Violence, 1993-2011*, May 2013, p. 12.

11. Applying the 0.8% of victims in nonfatal violent crimes that used a firearm in self-defense to the estimated New York rates above, yields an annual rate of 0.005 to 0.006 per 100,000 people of victims using a firearm in self-defense in a residential robbery by multiple offenders with a firearm – or 1 in about 20 million.⁸

B. Number of rounds fired by individuals in self-defense

12. Data from the NRA Institute for Legislative Action (“NRA-ILA”) indicates that it is rare for a person, when using a firearm in self-defense, to fire more than seven rounds.

13. The NRA-ILA maintains a database of “armed citizen” stories describing private citizens who have successfully defended themselves, or others, using a firearm. A study of all incidents in this database over a 5-year period from 1997 through 2001 found that it is rare for individuals to defend themselves using more than seven rounds. Specifically, this study found that, on average, 2.2 shots were fired by defenders and that in 28% of incidents of armed citizens defending themselves the individuals fired no shots at all.⁹

14. We performed a similar analysis of NRA-ILA stories for the 3-year period June 2010 - May 2013. For each incident, the number of offenders, defenders, and shots fired were tabulated, along with the location, nature and outcome of the crime. The

⁸ We analyzed police blotters for selected New York State municipalities that had extensive online database of crime incidents and found similarly low rates of the occurrence of home invasions perpetrated by multiple offenders with a firearm and no instances of individuals using a firearm in self-defense in these scenarios.

⁹ Claude Werner, “The Armed Citizen – A Five Year Analysis.”

information was gathered for each incident from both the NRA-ILA synopsis and, where available, one additional news story.¹⁰

15. According to this analysis, defenders fired on average 2.1 bullets. In only 1 out of 298 incidents, or less than 1% of incidents, was the defender reported to have fired more than 7 bullets. In 14% of incidents, the defender did not fire any shots, and simply threatened the offender with a gun. For incidents occurring in the home (57% of total), defenders fired an average of 2.1 bullets, and fired no bullets in 13% of incidents in the home, or 7% of all incidents. The table below summarizes some of these findings.

¹⁰ The following incidents were excluded from the analysis: (1) repeat stories (one incident listed multiple times on NRA website), (2) wild animal attacks, and (3) one incident where the supposed victim later pleaded guilty to covering up a murder. When the exact number of shots fired was not specified, we used the average for the most relevant incidents with known number of shots. For example, if the stories indicated that “shots were fired” this would indicate that at least two shots were fired and thus we used the average number of shots fired in all incidents in which two or more shots were fired and the number of shots was specified.

**Rounds Fired in Self-Defense
Based on NRA-ILA Armed Citizen Stories
June 2010 - May 2013**

	<u>Rounds Fired by Individual in Self-Defense</u>	
	<u>Overall</u>	<u>Incidents In Home</u>
Average Shots Fired	2.1	2.1
Median Shots Fired	2.1	2.1
Number of Incidents with No Shots Fired	41.0	22.0
Percent of Incidents with No Shots Fired	13.9%	13.0%
Number of Incidents with >7 Shots Fired	1.0	1.0
Percent of Incidents with >7 Shots Fired	0.3%	0.6%

Notes and Sources:

Data from NRA-ILA Armed Citizen database covering 298 incidents from June 2010 through May 2013. Excludes repeat stories, wild animal attacks, and one incident where the supposed victim later pleaded guilty to covering up a murder. See paragraph 14 above for coding details.

C. *Mass shootings*

1. Use of large-capacity magazines in mass shootings

16. We found two comprehensive sources detailing historical mass shootings: 1) “US Mass Shootings, 1982-2012: Data From Mother Jones’ Investigation” published by Mother Jones and 2) “Mass Shooting Incidents in America (1984-2012)” published by the Citizens Crime Commission of New York City. We updated these data for mass shootings in 2013. See attached Table 1 for a summary of the combined data.

17. The definition of mass shooting and the period covered differed somewhat for each of the sources. Mother Jones covers 62 mass shootings from 1982 to 2012. Mother Jones includes mass shootings in which a shooter killed four or more people in one incident in a public place and excludes crimes involving armed robbery or gang

violence.¹¹ Citizens Crime Commission covers 30 mass shootings from 1984 to 2012. Citizens Crime Commission includes mass shootings in which a shooter killed four or more people and the gun used by the shooter had a magazine with capacity greater than ten.¹² We updated the data for mass shootings in 2013 using the Mother Jones criteria.

18. Based on the combined data, including our 2013 updates, we found that large-capacity magazines (those with a capacity to hold more than 10 rounds of ammunition) are often used in mass shootings. Such large-capacity magazines were used in more than half of the mass shootings since 1982 (at least 34 out of 66 mass shootings).¹³ In the past 12 months, guns with large-capacity magazines were used in at least five of the six mass shootings.

19. The data indicates that it is common for offenders to fire more than seven rounds when using a gun with a large-capacity magazine in mass shootings. In particular, according to data from the Citizens Crime Commission, in mass shootings that involve use of large-capacity magazine guns, the average number of shots fired was 75.¹⁴

¹¹ Two incidents included in the Mother Jones data (Columbine High School and Westside Middle School) involved two shooters. "What Exactly is a Mass Shooting," Mother Jones, August 24, 2012. <http://www.motherjones.com/mojo/2012/08/what-is-a-mass-shooting>

¹² "Mass Shooting Incidents in America (1984-2012)," Citizens Crime Commission of New York City. <http://www.nycrimecommission.org/initiative1-shootings.php>

¹³ For many of the mass shootings, the data does not indicate whether a large-capacity magazine is used.

¹⁴ There were 27 mass shootings in which the magazine capacity and the number of shots fired were known.

2. Casualties in mass shootings with large-capacity magazine guns compared with other mass shootings

20. Based on our analysis of the combined mass shootings data in the past 30 years, casualties were higher in the mass shootings that involved large-capacity magazine guns than in other mass shootings. In particular, we found an average number of fatalities or injuries of 22 per mass shooting with a large-capacity magazine versus 10 for those without.¹⁵

3. Update of Gary Kleck's 20-year-old study on use of multiple firearms in mass shootings

21. Plaintiffs have submitted a declaration from Gary Kleck, which cites statistics from his own study of mass shootings.¹⁶ According to Dr. Kleck's 20-year-old study, based on data from 1984 through 1993, in the majority of mass shootings, shooters used multiple guns, while just 13% of mass shootings involved only one gun.¹⁷ Using the combined mass shootings data that we collected and updated, we found that in the last 20 years, (i.e., since 1993), 42% of mass shootings involved only one gun (22 of 52 mass shootings), and that since 2012, 56% of mass shootings involved a single gun (5 of 9 mass shootings).

¹⁵ A 2013 study by Mayors Against Illegal Guns similarly found that when mass shootings involved assault weapons or high capacity magazine, the number of deaths was higher. The study was based on data from the FBI and media reports covering the period January 2009 through January 2013. The study found that mass shootings where assault weapons or high-capacity magazines were used resulted in an average of 14.8 people shot and 8 deaths versus other mass shootings that resulted in 6.8 people shot and 5.1 deaths. *Analysis of Recent Mass Shootings*, Mayors Against Illegal Guns, February 22, 2013.

¹⁶ Declaration of Gary Kleck, dated April 15, 2013, p. 5.

¹⁷ Gary Kleck, *Targeting Guns* (NY: Aldine de Gruyter, 1997).

4. Percent of mass shooters' guns legally obtained

22. The combined data on mass shootings indicates that the majority of guns used in mass shootings were obtained legally. Shooters in almost 80% of mass shootings in the past 30 years obtained their guns legally (at least 50 of the 66 mass shootings) and 73% of the guns used in these 66 mass shootings were obtained legally (at least 108 of the 148 guns).¹⁸

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

A handwritten signature in cursive script, appearing to read "Lucy P. Allen", followed by a horizontal line.

Dated: New York, New York
June 21, 2013

Lucy P. Allen

¹⁸ Based on data from "US Mass Shootings, 1982-2012: Data from Mother Jones' Investigation" published by Mother Jones.
<http://www.motherjones.com/politics/2012/12/mass-shootings-mother-jones-full-data>

**Table 1: Combined Mass Shootings Data
1982 - June 15, 2013**

Case	Location	Date	Source	Large-Capacity Magazine ¹		Fatalities ²		Injuries ²		Shots Fired	Obtained Legally?	Offenders' Number of Guns
				MJ/NE	CC	MJ/NE	CC	MJ/NE	CC	CC/NE	MJ/NE	MJ/NE
1 Santa Monica ³	Santa Monica, California	6/7/2013	NE	Yes	-	5	-	4	-	70	No	2
2 Upstate New York ⁴	Herkimer, New York	3/13/2013	NE	-	-	4	-	2	-	-	Yes	1
3 Newtown school	Newtown, Connecticut	12/14/2012	MJ/CC	Yes	Yes	28	28	2	-	154	Stolen	4
4 Accent Signage Systems	Minneapolis, Minnesota	9/27/2012	MJ	Yes	-	7	-	1	-	-	Yes	1
5 Sikh temple	Oak Creek, Wisconsin	8/5/2012	MJ/CC	Yes	Yes	7	7	3	3	-	Yes	1
6 Aurora theater	Aurora, Colorado	7/20/2012	MJ/CC	Yes	Yes	12	12	58	58	70	Yes	4
7 Seattle cafe	Seattle, Washington	5/30/2012	MJ	-	-	6	-	1	-	-	Yes	2
8 Oikos University	Oakland, California	4/2/2012	MJ	No	-	7	-	3	-	-	Yes	1
9 Su Jung Health Sauna	Norcross, Georgia	2/22/2012	MJ	-	-	5	-	0	-	-	Yes	1
10 Seal Beach	Seal Beach, California	10/14/2011	MJ	-	-	8	-	1	-	-	Yes	3
11 IHOP	Carson City, Nevada	9/6/2011	MJ/CC	Yes	Yes	5	5	7	7	-	Yes	3
12 Grand Rapids Shooting	Grand Rapids, Michigan	7/7/2011	CC	-	Yes	-	8	-	2	10	No	1
13 Tucson	Tucson, Arizona	1/8/2011	MJ/CC	Yes	Yes	6	6	13	13	33	Yes	1
14 Hartford Beer Distributor	Manchester, Connecticut	8/3/2010	MJ/CC	Yes	Yes	9	9	2	2	11	Yes	2
15 Coffee shop police killings	Parkland, Washington	11/29/2009	MJ	-	-	4	-	1	-	-	Stolen	2
16 Fort Hood	Fort Hood, Texas	11/5/2009	MJ/CC	Yes	Yes	13	13	30	30	214	Yes	1
17 Binghamton	Binghamton, New York	4/3/2009	MJ/CC	Yes	Yes	14	14	4	4	99	Yes	2
18 Carthage nursing home	Carthage, North Carolina	3/29/2009	MJ	No	-	8	-	3	-	-	Yes	2
19 Atlantis Plastics	Henderson, Kentucky	6/25/2008	MJ	-	-	6	-	1	-	-	Yes	1
20 Northern Illinois University	DeKalb, Illinois	2/14/2008	MJ/CC	Yes	Yes	6	6	21	21	54	Yes	4
21 Kirkwood City Council	Kirkwood, Missouri	2/7/2008	MJ	-	-	6	-	2	-	-	Stolen	2
22 Westroads Mall	Omaha, Nebraska	12/5/2007	MJ/CC	Yes	Yes	9	9	4	5	14	Stolen	1
23 Crandon	Crandon, Wisconsin	10/7/2007	MJ	-	-	6	-	1	-	-	Yes	1
24 Virginia Tech	Blacksburg, Virginia	4/16/2007	MJ/CC	Yes	Yes	33	33	23	17	176	Yes	2
25 Trolley Square	Salt Lake City, Utah	2/12/2007	MJ	No	-	6	-	4	-	-	No	2
26 Amish school	Lancaster County, Pennsylvania	10/2/2006	MJ	-	-	6	-	5	-	-	Yes	3
27 Capitol Hill	Seattle, Washington	3/25/2006	MJ	-	-	7	-	2	-	-	Yes	4
28 Goleta postal	Goleta, California	1/30/2006	MJ	Yes	-	8	-	0	-	-	Yes	1
29 Red Lake	Red Lake, Minnesota	3/21/2005	MJ	-	-	10	-	5	-	-	Stolen	3
30 Living Church of God	Brookfield, Wisconsin	3/12/2005	MJ	-	-	7	-	4	-	-	Yes	1
31 Damageplan show	Columbus, Ohio	12/8/2004	MJ	-	-	5	-	7	-	-	Yes	1
32 Hunting Camp	Meteor, Wisconsin	11/21/2004	CC	-	Yes	-	6	-	3	20	-	1
33 Lockheed Martin	Meridian, Mississippi	7/8/2003	MJ	-	-	7	-	8	-	-	Yes	5
34 Navistar	Melrose Park, Illinois	2/5/2001	MJ	-	-	5	-	4	-	-	Yes	4
35 Wakefield	Wakefield, Massachusetts	12/26/2000	MJ/CC	Yes	Yes	7	7	0	0	37	Yes	3

**Table 1: Combined Mass Shootings Data
1982 - June 15, 2013**

Case	Location	Date	Source	Large-Capacity Magazine ¹		Fatalities ²		Injuries ²		Shots Fired	Obtained Legally?	Offenders' Number of Guns
				MJ/NE	CC	MJ/NE	CC	MJ/NE	CC	CC/NE	MJ/NE	MJ/NE
36 Hotel	Tampa, Florida	12/30/1999	MJ	-	-	5	-	3	-	-	Yes	2
37 Xerox	Honolulu, Hawaii	11/2/1999	MJ/CC	Yes	Yes	7	7	0	0	28	Yes	1
38 Wedgwood Baptist Church	Fort Worth, Texas	9/15/1999	MJ/CC	Yes	Yes	8	8	7	7	30	Yes	2
39 Atlanta day trading spree	Atlanta, Georgia	7/29/1999	MJ	-	-	9	-	13	-	-	Yes	4
40 Columbine High School	Littleton, Colorado	4/20/1999	MJ/CC	Yes	Yes	15	15	24	23	188	No	4
41 Thurston High School	Springfield, Oregon	5/21/1998	MJ/CC	Yes	Yes	4	4	25	25	50	No	3
42 Westside Middle School	Jonesboro, Arkansas	3/24/1998	MJ/CC	Yes	Yes	5	5	10	10	26	Stolen	9
43 Connecticut Lottery	Newington, Connecticut	3/6/1998	MJ/CC	Yes	Yes	5	5	1	0	5	Yes	1
44 Caltrans maintenance yard	Orange, California	12/18/1997	MJ/CC	Yes	Yes	5	5	2	2	144	Yes	1
45 R.E. Phelon Company	Aiken, South Carolina	9/15/1997	MJ	-	-	4	-	3	-	-	No	1
46 Fort Lauderdale revenge	Fort Lauderdale, Florida	2/9/1996	MJ	-	-	6	-	1	-	-	Yes	2
47 Walter Rossler Company	Corpus Christi, Texas	4/3/1995	MJ	-	-	6	-	0	-	-	Yes	2
48 Air Force base	Fairchild Air Force Base, Washington	6/20/1994	MJ/CC	Yes	Yes	5	6	23	23	-	Yes	1
49 Chuck E. Cheese	Aurora, Colorado	12/14/1993	MJ	-	-	4	-	1	-	-	-	1
50 Long Island Rail Road	Garden City, New York	12/7/1993	MJ/CC	Yes	Yes	6	6	19	19	30	Yes	1
51 Luigi's	Fayetteville, North Carolina	8/6/1993	MJ	-	-	4	-	8	-	-	Yes	3
52 101 California Street	San Francisco, California	7/1/1993	MJ/CC	Yes	Yes	9	9	6	6	75	No	3
53 Watkins Glen	Watkins Glen, New York	10/15/1992	MJ	-	-	5	-	0	-	-	Yes	1
54 Lindhurst High School	Olivehurst, California	5/1/1992	MJ	-	-	4	-	10	-	-	Yes	2
55 Royal Oak postal	Royal Oak, Michigan	11/14/1991	MJ	-	-	5	-	5	-	-	Yes	1
56 University of Iowa	Iowa City, Iowa	11/1/1991	MJ	No	-	6	-	1	-	-	Yes	1
57 Luby's	Killeen, Texas	10/16/1991	MJ/CC	Yes	Yes	24	24	20	20	100	Yes	2
58 GMAC	Jacksonville, Florida	6/18/1990	MJ/CC	Yes	Yes	10	10	4	4	14	Yes	2
59 Standard Gravure	Louisville, Kentucky	9/14/1989	MJ/CC	Yes	Yes	9	9	12	12	21	Yes	5
60 Stockton schoolyard	Stockton, California	1/17/1989	MJ/CC	Yes	Yes	6	6	29	30	106	Yes	2
61 ESL	Sunnyvale, California	2/16/1988	MJ	-	-	7	-	4	-	-	Yes	7
62 Shopping centers	Palm Bay, Florida	4/23/1987	MJ	Yes	-	6	-	14	-	-	Yes	3
63 United States Postal Service	Edmond, Oklahoma	8/20/1986	MJ	-	-	15	-	6	-	-	Yes	3
64 San Ysidro McDonald's	San Ysidro, California	7/18/1984	MJ/CC	Yes	Yes	22	22	19	19	257	Yes	3
65 Dallas nightclub	Dallas, Texas	6/29/1984	MJ/CC	Yes	Yes	6	6	1	1	-	No	1
66 Welding shop	Miami, Florida	8/20/1982	MJ	No	-	8	-	3	-	-	Yes	1
Average:						8	10	8	13	75		
Large-Capacity Magazine Average:						10	10	12	12	75		
Non Large-Capacity Magazine Average:						6	-	4	-	-		

**Table 1: Combined Mass Shootings Data
1982 - June 15, 2013**

Case	Location	Date	Source	Large-Capacity Magazine ¹		Fatalities ²		Injuries ²		Shots Fired	Obtained Legally?	Offenders' Number of Guns
				MJ/NE	CC	MJ/NE	CC	MJ/NE	CC	CC/NE	MJ/NE	MJ/NE

Notes and Sources:

MJ represents Mother Jones data. CC represents Citizens Crime Commission of New York City data. NE represents NERA data.

"-" means unspecified.

Mother Jones mass shootings data: "US Mass Shootings, 1982, 2012: Data from Mother Jones' Investigation," Mother Jones, December 28, 2012.

Mother Jones high capacity magazine data: "More Than Half of Mass Shooters Used Assault Weapons and High-Capacity Magazines," Mother Jones, February 27, 2013.

Citizens Crime Commission data from: "Citizens Crime Commission of New York City, Mass Shooting Incidents in America (1984-2012).

¹ Large-capacity magazines are those with a capacity to hold more than 10 rounds of ammunition.

² Offender included in counts of fatalities and injuries.

³ Fatalities and injuries from: "Santa Monica Shooting Spree Suspect Identified As Death Toll Climbs," NBC News, June 10, 2013.

Guns used: "Rifle used in Santa Monica College shooting may have been altered," LA Times, June 13, 2013.

Obtained legally: "Details of Firearms used by Santa Monica Mass Shooting Suspect Released," Santa Monica Mirror, June 14, 2013.

Shots fired: "Santa Monica shooter was 'ready for battle'; At least 70 rounds fired at students," The Malibu Times, June 8, 2013.

⁴ Fatalities, injuries, number of guns from: "Upstate Man Who Fatally Shot 4 Dies in Standoff; Motive Remains Unclear," New York Times, March 14, 2013.

Obtained legally: "State Police investigator says gun used in Herkimer County shootings were obtained legally," Your News Now, March 18, 2013.