

# 14-0319-cv

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**United States Court of Appeals**  
*for the*  
**Second Circuit**

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JUNE SHEW, STEPHANIE CYPHER, PETER OWENS, BRIAN MCCLAIN,  
HILLER SPORTS, LLC, MD SHOOTING SPORTS, LLC, CONNECTICUT  
CITIZENS' DEFENSE LEAGUE, COALITION OF CONNECTICUT  
SPORTSMEN, RABBI MITCHELL ROCKLIN, STEPHEN HOLLY,

*Plaintiffs-Appellants,*

— v. —

DANNEL P. MALLOY, in his official capacity as Governor of the State of  
Connecticut, KEVIN T. KANE, in his official capacity as Chief State's Attorney  
of the State of Connecticut, REUBEN F. BRADFORD, in his official capacity as  
Commissioner of the Connecticut Department of Emergency Services and Public

*(For Continuation of Caption See Inside Cover)*

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT

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**JOINT APPENDIX**  
**Volume 8 of 10 (Pages A-1977 to A-2274)**

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## **EXHIBIT 47**

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**Violence Policy Center**



1730 Rhode Island Avenue, NW 202.822.8200 voice  
 Suite 1014 202.822.8205 fax  
 Washington, DC 20036 www.vpc.org web

**Mass Shootings in the United States Involving  
 High-Capacity Ammunition Magazines**



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

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

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

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

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

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



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## **EXHIBIT 48**



## ANALYSIS OF RECENT MASS SHOOTINGS

Mayors Against Illegal Guns conducted a comprehensive analysis of every mass shooting between January 2009 and January 2013 that was identifiable through FBI data and media reports. This report describes the **56 mass shootings—more than one per month—that occurred in 30 states<sup>1</sup>** in the four-year period. Each description includes the location of the shooting, number of people killed and/or injured, and information on the shooter, guns, ammunition, and gun purchase where available.

For purposes of tracking crime data, the FBI defines “mass shooting” as any incident where at least four people were murdered with a gun.<sup>2</sup> Mayors Against Illegal Guns identified these shootings by reviewing mass shootings in the FBI’s Supplementary Homicide Reports from 2009-2011, the most recent data available, and by searching the media for further details about those incidents as well as for mass shootings that occurred in 2012.

This survey adopts strict, straightforward criteria for including shooting incidents, making it a representative sample of shootings in which at least four people were murdered with a gun.<sup>3</sup> The findings reveal a different portrait of mass shootings in America than conventional wisdom might suggest:

- ❑ **Small share of gun violence:** Mass shootings represent a small share of total U.S. firearm homicides. Less than one percent of gun murder victims recorded by the FBI in 2010 were killed in incidents with four or more victims.
- ❑ **Role of assault weapons and high-capacity magazines:** Assault weapons or high-capacity magazines were used in at least 13 of the incidents (23%). These incidents resulted in an average of 14.8 total people shot — 135% more people shot than in other incidents (6.8) — and 8.0 deaths — 57% more deaths than in other incidents (5.1).
- ❑ **Domestic or family violence:** There was a noteworthy connection between mass shooting incidents and domestic or family violence. In at least 32 of the cases (57%), the shooter killed a current or former spouse or intimate partner or other family member, and at least 8 of those shooters had a prior domestic violence charge.
- ❑ **Mental health:** We did not find evidence that any of the shooters were prohibited from possessing guns by federal law because they had been adjudicated mentally ill or involuntarily committed for treatment. In 4 of the 56 incidents (7%), we found evidence that concerns about the mental health of the shooter had been brought to the attention of a medical practitioner, school official or legal authority prior to the shooting.<sup>4</sup>

<sup>1</sup> AL, AR, AZ, CA, CO, CT, DC, GA, ID, IL, IN, KS, KY, LA, MA, MD, MN, MO, NC, NM, NV, NY, OH, SC, TX, VA, WA, WI, WV, and WY.

<sup>2</sup> A 2005 FBI crime classification report defines a mass murderer as having killed four or more people in a single incident. Available online: <http://1.usa.gov/Vs05uQ>

<sup>3</sup> Availability of FBI data for 2009-11 but not for 2012 resulted in a sample that is more comprehensive in the earlier period and subject to greater reporting bias in the final year. With the assistance of FBI data, Mayors Against Illegal Guns identified an average of 16 mass shootings per year from 2009-11; but exhaustive press searching for 2012 yielded only 8 mass shootings.

<sup>4</sup> In another 4 incidents (7%), the shooter’s mental health problems were known to friends or family but were not reported or known more widely until after the shooting.

- ❑ **Role of prohibited possessors:** Certain categories of people, including felons, certain domestic abusers, and people adjudicated mentally ill are prohibited by federal law from possessing guns.<sup>5</sup> We had sufficient evidence to judge whether the shooter was a prohibited gun possessor in 42 of the 56 incidents (74%). Of those 42 incidents, 15 (36%) involved a prohibited possessor, and 27 (64%) did not.
- ❑ **Gun-free zones:** Thirty-two of the 56 incidents (56%) took place wholly in private residences. Of the 24 incidents in public spaces, at least 11 took place wholly or in part where concealed guns could be lawfully carried. All told, no more than 13 of the shootings (23%) took place entirely in public spaces that were so-called “gun-free zones.”
- ❑ **Suicide:** In 26 of the 56 incidents (46%), the shooter committed suicide during the incident.
- ❑ **Schools:** Three of the 56 shooting incidents (5%) took place in schools, including primary, secondary, and college campuses.
- ❑ **Law enforcement:** In 6 of the 56 shootings (11%), law enforcement or military officers were targeted in the shooting or killed or injured responding to it.
- ❑ **Workplace shootings:** Two of the 56 shootings (4%) occurred at the shooter’s current or former workplace.

### **MASS SHOOTING INCIDENTS, JANUARY 2009-JANUARY 2013, (in reverse chronological order)**

- ❑ **Albuquerque, NM, 1/19/13:** The shooter killed his parents and three siblings in their home. He then loaded a van with guns and ammunition with the intent to kill his girlfriend’s family and die in a shootout at Wal-Mart, according to court documents. Instead, he spent the next day with his girlfriend and her family and went to a church he regularly attended, where he was arrested for murder after speaking with the pastor.
  - **Shooter Name:** Nehemiah Griego, 15
  - **Gun details:** AR-15 assault rifle, .22 rifle, and two shotguns
  - **Ammo details:** Unknown
  - **Gun acquired:** The guns had been legally purchased by his parents.
  - **Prohibiting criteria:** As a juvenile, the shooter was prohibited from purchasing firearms, but it was lawful for him to possess long guns like those used in the incident.
- ❑ **Newtown, CT (Sandy Hook Elementary School), 12/14/12:** The shooter killed his mother in her home and then traveled to a nearby elementary school where he shot twenty-eight people, killing twenty-six of them, including twenty children, before killing himself.
  - **Shooter Name:** Adam Peter Lanza, 20
  - **Gun details:** A Bushmaster .223 assault-style rifle was used in the attack at the elementary school. A 10mm Glock handgun, a 9mm SIG Sauer handgun, and a shotgun were also recovered at the crime scene.

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<sup>5</sup> 18 U.S.C. § 922(a)(6).

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- **Ammo details:** Lanza was carrying multiple high-capacity clips, reportedly enough ammunition to kill nearly every student at school.
  - **Gun acquired:** The guns were legally registered to Lanza's mother, who he shot and killed earlier in the day and with whom he lived.
  - **Prohibiting criteria:** Under Connecticut law, Lanza would have been prohibited from possessing handguns because he had not reached the legal age, 21. However, he would not have been prohibited from possessing a long gun like the Bushmaster rifle used in the shooting. Lanza's mental health was also scrutinized after the shooting, and while his social isolation had been noted, we did not find evidence that concerns had been brought to the attention of a public authority.
- ❑ **Minneapolis, MN, 9/27/12:** The shooter killed six people and injured two at a signage business, from which he was fired earlier in the day, before killing himself.
- **Shooter Name:** Andrew John Engeldinger, 36
  - **Gun details:** Glock 9mm semiautomatic handgun
  - **Ammo details:** Engeldinger fired at least 46 bullets during the shooting. At his home, police recovered packaging for 10,000 rounds of ammunition.
  - **Gun acquired:** Engeldinger purchased the gun used in the shooting one year before at KGS Guns and Ammo in Minneapolis after passing a background check and obtaining a permit-to-purchase. Around the same time, Engeldinger purchased another, similar handgun that police recovered when searching his home.
  - **Prohibiting criteria:** Engeldinger had a concealed carry permit and was not prohibited from possessing a gun. But his family suspected he had paranoid schizophrenia and two years before the shooting they reached out on his behalf to the National Alliance on Mental Illness. Engeldinger did not pursue treatment.
  - **Online connection:** According to Minneapolis Police, Engeldinger may have purchased some or all of his stockpiled ammunition online from out-of-state dealers.
- ❑ **Oak Creek, WI, 8/5/12:** The shooter killed six people at a Sikh temple and injured three others, including a responding police officer, before killing himself.
- **Shooter Name:** Wade Michael Page, 40
  - **Gun details:** 9mm semiautomatic handgun
  - **Ammo details:** Page reportedly bought three 19-round magazines when he purchased the gun.
  - **Gun acquired:** Page acquired the gun at a local gun shop a week before the shooting.
  - **Prohibiting criteria:** Page was involved with the white supremacist movement but he does not appear to have been prohibited from purchasing a gun. Federal officials investigated Page's ties to supremacist groups more than once prior to the shooting, but did not collect enough evidence to open an investigation.
  - **Not a gun-free zone:** Nothing restricted the possession of a firearm on the property. Wisconsin state law permits people to carry their guns in temples and other places of worship unless there is a sign or they have been personally notified that carrying firearms is prohibited by the property owner or occupant. Amardeep Kaleka, whose father founded the temple and was killed during the attack, confirmed that there was no such sign on the property.

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- ❑ **Aurora, Co, 7/20/12:** The shooter killed twelve and wounded fifty-eight in an attack on a suburban movie theater during a midnight screening of *Batman*.
  - **Shooter Name:** James Holmes, 24
  - **Gun details:** Smith & Wesson AR-15 assault-style rifle, Remington 870 12-gauge shotgun, and two Glock .40 caliber handguns.
  - **Ammo details:** Holmes had a 100-round drum magazine for the AR-15 and reportedly only ceased firing with it when it jammed.
  - **Gun acquired:** Holmes acquired the guns at local gun shops.
  - **Prohibiting criteria:** While a student at the University of Colorado, Holmes was treated by the school psychiatrist, who expressed concern about his behavior and referred him to the university Behavioral Evaluation and Threat Assessment (BETA) team. They took no further action and he was never adjudicated mentally ill.
  - **Online connection:** Holmes purchased over 6,000 rounds of ammunition online.
- ❑ **Newton Falls, OH, 7/6/12:** The shooter killed his girlfriend, another couple, and their son in two separate shootings, before being cornered by the police and killing himself.
  - **Shooter Name:** Robert Brazzon, 55
  - **Gun details:** Unknown
  - **Ammo details:** Unknown
  - **Gun acquired:** Unknown
  - **Prohibiting criteria:** Brazzon had previously pled guilty to felony drug trafficking after police seized 47 guns from his home in 1999 (the guns were later returned to Brazzon's brother and son following a court petition). But due to Ohio laws that provide for the restoration of felons' firearm rights, it is unclear whether Brazzon was prohibited from possessing firearms at the time of the shooting.
- ❑ **Seattle, WA, 5/20/12:** The shooter killed five people in a string of neighborhood shootings that began in a coffee shop, and later killed himself.
  - **Shooter Name:** Ian Lee Stawicki, 40
  - **Gun details:** At least one Para-Ordnance .45 caliber handgun – some reports say he carried two.
  - **Ammo details:** Unknown
  - **Gun acquired:** Stawicki legally purchased the weapon used in the shooting in addition to two others.
  - **Prohibiting criteria:** The shooter was a concealed carry permit holder but had a history of mental illness. Before the shooting, Stawicki's family attempted to have his concealed carry permit revoked. Stawicki's family had become concerned that his mental health had worsened. However, his family was rebuffed by authorities, who said they had no legal basis to revoke Stawicki's permit on claims about Stawicki's behavior alone.
- ❑ **Oakland, CA (Oikos University), 4/2/12:** The shooter killed seven people at a Korean Christian college, where he had formerly been a student.
  - **Shooter Name:** One L. Goh, 43
  - **Gun details:** .45 caliber handgun

- **Ammo details:** Goh was armed with four magazines of ammunition, holding 10 rounds each.
  - **Gun acquired:** The gun was purchased legally in California two months before the shooting.
  - **Prohibiting criteria:** None apparent, though Goh was expelled from the school for disciplinary problems.
- ❑ **Norcross, GA, 2/20/12:** The shooter returned to a Korean spa from which he'd been kicked out after an altercation, where he shot and killed two of his sisters and their husbands before committing suicide.
- **Shooter Name:** Jeong Soo Paek, 59
  - **Gun details:** .45 caliber handgun
  - **Ammo details:** Unknown
  - **Gun acquired:** Police reported that he acquired the gun legally.
  - **Prohibiting criteria:** Paek does not appear to have been prohibited, although he had allegedly served two months in jail for assaulting his sister six years earlier.
  - **Not a gun-free zone:** We could find no indication that the property owner forbade possession of a firearm on their property.
- ❑ **Grapevine, TX, 12/25/11:** The shooter killed his estranged wife, two children, and three other family members as they opened their Christmas presents, before killing himself. The shooter's wife had filed for bankruptcy in August 2010 and reportedly separated from him during the proceedings, moving to the apartment complex where the shooting took place.
- **Shooter Name:** Aziz Yazdanpanah, 56
  - **Gun details:** 9mm and .40 caliber handguns
  - **Ammo details:** Unknown
  - **Gun acquired:** The 9mm was purchased in 1996 and registered to the shooter.
  - **Prohibiting criteria:** In 1996, the shooter pled guilty to one count of subscribing to a false income tax return, and was fined \$1000 and placed on three years' probation. But police said the 9mm was legally registered to the shooter and there is no evidence that he was otherwise prohibited from purchasing a gun.
- ❑ **Gargatha, VA, 12/15/11:** The shooter killed two of his children, their mother, and the man she was living with before killing himself. The shooter was reportedly involved in a custody dispute with the woman at the time of her death.
- **Shooter Name:** Esteban Quintero-Gonzales, 37
  - **Gun details:** Unknown
  - **Ammo details:** Unknown
  - **Gun acquired:** Unknown
  - **Prohibiting criteria:** Unknown
- ❑ **Bay City, TX, 11/30/11:** The shooter and his wife argued in their mobile home, and when she exited he shot her three times in the front yard, injuring her, before killing his four children aged 2 to 5 and then killing himself.
- **Shooter Name:** Jose Avila-Alva, 24

- **Gun details:** .22 caliber revolver
  - **Ammo details:** Unknown
  - **Gun acquired:** The handgun was reported stolen in 2010.
  - **Prohibiting criteria:** The shooter was not a legal resident of the U.S., and had been deported to Mexico in 2006 for unlawful entry, which would have prohibited him from purchasing a gun. One week earlier, on November 22, 2011, the shooter's wife filed an assault report against him and was taken to a crisis center by police, but she did not press charges.
- ❑ **Liberty, SC, 10/14/11:** The shooter killed her ex-husband, two sons, and their step-grandmother. When investigators arrived, she told them one of her sons had committed the homicides and then killed himself, but this story was inconsistent with forensic evidence. Nine days after the shooting she was taken into custody and charged with four counts of homicide. She had reportedly taken out a \$700,000 life insurance policy for her family members with herself named as the beneficiary.
- **Shooter Name:** Susan Diane Hendricks, 48
  - **Gun details:** .380 caliber handgun
  - **Ammo details:** Unknown
  - **Gun acquired:** Unknown
  - **Prohibiting criteria:** In April 2006, Susan Hendricks shot and killed Doyle "O'Brian" Teague in her home after he had allegedly entered uninvited and threatened her. No charges were filed against Hendricks at the time, and the case was never closed. There is no evidence that she was prohibited from possessing a gun in 2011.
- ❑ **Seal Beach, CA, 10/12/11:** The shooter injured one and killed eight at a hair salon, including his ex-wife, before being taken into police custody.
- **Shooter Name:** Scott Evans Dekraai, 41
  - **Gun details:** Dekraai carried 3 handguns – a 9 mm Springfield, a Heckler & Koch .45, and a Smith & Wesson .44 Magnum – and used at least two in the shooting.
  - **Ammo details:** News articles say Dekraai was carrying "extra ammunition" when the shooting began.
  - **Gun acquired:** All three guns were purchased legally and registered in accordance with California law.
  - **Prohibiting criteria:** Dekraai was subject to a restraining order that specifically prohibited him from possessing guns, but the order expired in 2008. Dekraai had been diagnosed with Post Traumatic Stress Disorder, and during a custody suit his ex-wife had filed court papers claiming that he was mentally unstable and had threatened to kill himself or someone else at least once.
- ❑ **Laurel, IN, 9/26/11:** The shooter killed a man, the man's estranged wife, their two children, and a neighbor. The male victim reportedly had sold the addictive pain-reliever Oxycontin to the shooter, and on the day of the murders they had argued over the price.
- **Shooter Name:** David E. Ison, 46
  - **Gun details:** A .380 caliber handgun was used in the slayings. Another stolen .380 handgun and an AK-47 were recovered during the investigation.



- **Ammo details:** Unknown
  - **Gun acquired:** Unknown
  - **Prohibiting criteria:** The shooter had a lengthy criminal record, including a conviction for armed robbery, which would have prohibited him from possessing a gun, and at the time of the murders was on probation for 10 counts of burglary.
- ❑ **Carson City, NV (IHOP Shooting), 9/6/2011:** The shooter killed four people at an IHOP restaurant, including three National Guard members, before killing himself.
- **Shooter Name:** Eduardo Sencion, 32
  - **Gun details:** A Norinco Mak 90 assault rifle that had been illegally modified into a fully automatic machine gun. A Romarm/Cugir AK-47 type assault rifle and a Glock 26 semiautomatic handgun were also recovered.
  - **Ammo details:** Police recovered 450 rounds of AK-47 ammunition from Sencion's van and "box upon box" of additional ammunition at his home.
  - **Gun acquired:** Five years earlier, the gun had been sold by a private party in California to an unknown buyer.
  - **Prohibiting criteria:** Sencion was taken into protective custody during a mental health commitment in April 2000 but no court order was involved and it remains unclear if a record of the incident was reported to the NICS database.
  - **Not a gun-free zone:** IHOP allows individual franchises to determine their own firearm policies, and this franchise allows concealed carrying of firearms on the premises.
- ❑ **Monongalia County, WV, 9/6/2011:** The shooter killed five people and injured one before fleeing from the police and then killing himself.
- **Shooter Name:** Shayne Riggleman, 22
  - **Gun details:** A .30-.30 rifle was used. A second rifle and a .22 caliber pistol were also recovered.
  - **Ammo details:** Unknown
  - **Gun acquired:** Unknown
  - **Prohibiting criteria:** In 2008, Riggleman was sentenced to 14 months in prison for armed robbery, an offense that would prohibit him from possessing firearms, though it is possible his rights were restored under West Virginia law.
- ❑ **Wheatland, WY, 7/30/11:** The shooter killed his three sons and his brother and shot and injured his wife before surrendering to police. His wife later reported he had become upset because he wanted to keep the curtains of their home drawn to prevent the neighbors from looking inside.
- **Shooter Name:** Everett E. Conant III
  - **Gun details:** Two semiautomatic handguns were used in the shooting. A shotgun and a rifle were also recovered.
  - **Ammo details:** Police testified that about 50 rounds were fired during the incident.
  - **Gun acquired:** Unknown
  - **Prohibiting criteria:** The police reported that the shooter did not have a criminal record. There is no evidence to indicate he was prohibited from possessing a gun.



- ❑ **Grand Prairie, TX, 6/25/11:** The shooter killed his wife and four of her family members at his daughter's birthday party before killing himself.
  - **Shooter Name:** Tan Do, 35
  - **Gun details:** Reported to be a handgun
  - **Ammo details:** Unknown
  - **Gun acquired:** Unknown
  - **Prohibiting criteria:** Tan Do had a history of domestic violence. His wife had obtained a protective order against him but had withdrawn it earlier that year against the advice of a prosecutor.
  
- ❑ **Medford, NY, 6/9/11:** The shooter killed four people at a pharmacy, Haven Drugs, and stole thousands of hydrocodone pills before fleeing in a vehicle. During the trial he acknowledged that he and his wife were addicted to prescription medication.
  - **Shooter Name:** David Laffer
  - **Gun details:** A .45 caliber handgun was used in the shooting. Several other legally registered guns were also recovered from the shooter's home.
  - **Ammo details:** Unknown
  - **Gun acquired:** Unknown
  - **Prohibiting criteria:** The gun was legally registered to the shooter, and there is no evidence he was prohibited from possessing a gun. But five months before the shooting, Suffolk County Detective Kenneth Ripp investigated an identity theft claim made by the shooter's mother, who said the shooter had stolen her debit card. After questioning the shooter and his mother, Ripp advised the Suffolk County Pistol License Bureau that the shooter was dangerous and that his guns should be confiscated. Despite Ripp's report, the guns were not removed.
  - **Gun-free zone:** We could find no evidence that Haven Drugs posted a sign or had a policy prohibiting the carrying of firearms. Current employees declined to comment.
  
- ❑ **Yuma, AZ, 6/2/11:** In a series of separate shootings over a five-hour period, a gunman shot and killed his ex-wife, three of her friends, and her attorney, before killing himself.
  - **Shooter Name:** Carey H. Dyess, 73
  - **Gun details:** Handgun
  - **Ammo details:** Unknown
  - **Gun acquired:** Unknown
  - **Prohibiting criteria:** Dyess's ex-wife alleged there had been domestic abuse and a judge had issued an order of protection against him in 2006, but there is no evidence that he was prohibited from possessing firearms at the time of the shooting.
  
- ❑ **Ammon, ID, 5/11/11:** The shooter killed his two infant children, their mother, and her sister before setting fire to the house and shooting himself. He had separated from the victim several months before the incident, and in the week before the shooting he had sent her harassing text messages.
  - **Shooter Name:** Gaylin Leirmoe
  - **Gun details:** .45 caliber handgun
  - **Ammo details:** Eight shots were fired during the shooting.

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- **Gun acquired:** Unknown
  - **Prohibiting criteria:** In October 2009, the shooter was charged with misdemeanor battery for domestic violence with no traumatic injury after hitting his girlfriend — the woman he would ultimately kill — at her birthday celebration. The charges were later dismissed. There is no evidence that he was prohibited from possessing a gun.
- ❑ **Oak Harbor, Ohio, 4/16/11:** The shooter killed his wife and three children, age 1 to 4, before killing himself.
- **Shooter Name:** Alan Atwater
  - **Gun details:** .22 caliber rifle, shotgun
  - **Ammo details:** Unknown
  - **Gun acquired:** Unknown
  - **Prohibiting criteria:** The shooter and his wife separately reported to friends that in the past he had held her against a wall and choked her. But there is no evidence he was prohibited from possessing a gun.
- ❑ **Willowbrook, CA, 2/1/11:** Two brothers, their uncle, and their cousin were shot and killed by an unknown assailant on the patio of their home.
- **Shooter Name:** Unknown
  - **Gun details:** Unknown
  - **Ammo details:** Witnesses reported that the shooting was loud and continuous. Police believe a semiautomatic weapon was used.
  - **Gun acquired:** Unknown
  - Prohibiting criteria:** Unknown
- ❑ **Tucson, AZ, 1/8/11:** The shooter attacked a constituent event hosted by Congresswoman Gabrielle Giffords, killing six and wounding fourteen, including Giffords, before he was subdued.
- **Shooter Name:** Jared Loughner, 22
  - **Gun details:** 9mm Glock 19 semiautomatic handgun
  - **Ammo details:** 33-round magazine
  - **Gun acquired:** Loughner passed a background check and purchased the Glock handgun at Sportsman's Warehouse in Tucson two months before the attack. Loughner also purchased a Harrington & Richardson shotgun in 2009; this gun was not used in the attack.
  - **Prohibiting criteria:** Loughner had a history of mental illness and drug use. He was rejected from Army enlistment in 2008 after failing a drug test and admitting to drug use on his U.S. Army medical history application form, which should have prohibited Loughner from buying a gun for at least one year. However, Loughner successfully purchased a Harrington & Richardson shotgun in 2009, within a year of his Army rejection. Loughner's purchase of the Glock 19 handgun in 2010 violated the plain intent of federal law, which prohibits someone considered an/to be "unlawful user of or addicted to any controlled substance" from purchasing a gun, but the purchase was still allowed under current enforcement practices. Loughner was also suspended from Pima

Community College in 2010 for erratic behavior, and exhibited other signs of mental instability in posts to websites.

- **Not a gun-free zone:** It was lawful to carry a firearm in the area of the shooting. An armed bystander, Joe Zamudio, mistook someone else as the shooter and prepared to fire on him before he was stopped by other bystanders.
- ❑ **Boston, MA, 09/28/10:** The shooter killed four and wounded one during a drug-related robbery.
- **Shooter Name:** Edward Washington, 33, and Dwayne Moore, 35, were both charged in the killings. Washington was acquitted. In Moore's first trial, the jury deadlocked 11-1 in favor of his guilt, but he was later convicted in a retrial.
  - **Gun details:** .40 caliber Iberia handgun and 9mm Cobray semiautomatic. The Cobray has not been recovered, but the weapon was identified based on recovered bullets and shell casings.
  - **Ammo details:** 14 rounds fired
  - **Gun acquired:** Unknown
  - **Prohibiting criteria:** Unknown
  - **Not a Gun-free zone:** Any person holding the appropriate license could lawfully carry a firearm in this area. As of 2012 there were an estimated 250,000 concealed weapons permit holders in Massachusetts, and neither state or local law prohibits them from carrying in the city of Boston.
- ❑ **Jackson, KY, 9/10/10:** The shooter, reportedly enraged at how his wife prepared his eggs, fatally shot her, his stepdaughter, and three neighbors. He killed himself when the police arrived.
- **Shooter Name:** Stanley Neace, 47
  - **Gun details:** Shotgun
  - **Ammo details:** Unknown
  - **Gun acquired:** Unknown
  - **Prohibiting criteria:** Unknown
- ❑ **Chicago, IL, 9/2/10:** The shooter murdered four individuals execution-style in a garage on South Kildare Avenue. Officials believe he was part of a drug-trafficking crew that had been involved in at least 10 other killings.
- **Shooter Name:** Raul Segura-Rodriguez, 36
  - **Gun details:** Unknown
  - **Ammo details:** Unknown
  - **Gun acquired:** Unknown
  - **Prohibiting criteria:** Unknown
- ❑ **Lake Havasu City, AZ, 8/29/10:** The shooter killed his ex-girlfriend, her boyfriend, and three others while they were celebrating her boyfriend's birthday and took his own life later that night.
- **Shooter Name:** Brian Diez, 26
  - **Gun details:** Unknown

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- **Ammo details:** Unknown
  - **Gun acquired:** Unknown
  - **Prohibiting criteria:** The gunman's girlfriend had taken out a restraining order against him earlier that year, which would likely prohibit him from purchasing or possessing a gun.
- ❑ **Buffalo, NY, 8/14/10:** The shooter opened fire on a group of people outside a bar, killing four and wounding four others.
- **Shooter Name:** Riccardo McCray, 24
  - **Gun details:** Unknown
  - **Ammo details:** Unknown
  - **Gun acquired:** Unknown
  - **Prohibiting criteria:** McCray had been arrested earlier that year on felony drug charges and the previous year for having a loaded rifle in his car. If he was found guilty of either crime, he would have been prohibited from possessing firearms.
  - **Not a gun-free zone:** We could find no indication that it was unlawful to carry a firearm in the area. There are an estimated 100,000 concealed weapon permit holders in New York and other than limiting a person's ability to carry when he is under the influence of drugs or alcohol, Buffalo does not add any additional requirements to state law.
- ❑ **Lanham, MD, 8/6/10:** The shooter killed two children, their mother, and their paternal aunt in the home where they resided. Police said the shooter was involved in drug trafficking and the victims owed him money.
- **Shooter Name:** Darrell Lynn Bellard
  - **Gun details:** Unknown
  - **Ammo details:** Unknown
  - **Gun acquired:** Unknown
  - **Prohibiting criteria:** The shooter did not have a criminal record in Maryland, according to online court documents, and there is no evidence that he as was prohibited from possessing a gun.
- ❑ **Manchester, CT, 8/3/10:** The shooter killed eight coworkers at a beer distributor and wounded two others before killing himself.
- **Shooter Name:** Omar Thornton, 34
  - **Gun details:** Two Ruger SR9 9mm handguns
  - **Ammo details:** The shooter allegedly carried two extra magazines and two extra boxes of ammunition with him to the attack.
  - **Gun acquired:** Unknown
  - **Prohibiting criteria:** There is no indication that he was prohibited from possessing firearms and the guns he used were registered to him.
- ❑ **Chicago, IL, 4/14/10:** The shooter who had converted to Islam in prison killed his family for not going along with his conversion, fatally shooting his mother, pregnant wife, infant son, and two nieces, and injuring one other.
- **Shooter Name:** James A. Larry, 33

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- **Gun details:** Shotgun
  - **Ammo details:** Unknown
  - **Gun acquired:** Unknown
  - **Prohibiting criteria:** Larry was almost certainly prohibited from purchasing a gun, having recently served a prison term for a weapons charge. He had also recently pled no contest to misdemeanor battery against his wife.
- ❑ **Los Angeles, CA, 4/3/10:** The shooter killed four and injured two at a San Fernando Valley restaurant after a dispute with other patrons. He was indicted in a separate investigation for engaging in the business of dealing firearms without a license and possession of a firearm with an obliterated serial number, having sold firearms to an informant working for federal agents the previous year.
- **Shooter name:** Nerses Arthur Galstyan, 28
  - **Gun details:** Unspecified handgun
  - **Ammo details:** Unknown
  - **Gun acquired:** Unknown
  - **Prohibiting criteria:** Unknown
- ❑ **New Orleans, LA, 3/26/10:** The shooter killed his ex-girlfriend, her sister, and two children.
- **Shooter Name:** Damian Jordan, 22
  - **Gun details:** Handgun
  - **Ammo details:** Unknown
  - **Gun acquired:** Unknown
  - **Prohibiting criteria:** Jordan was likely prohibited from possessing a gun due to a lengthy history of domestic abuse, though he had repeatedly pled down the crimes to simple battery.
- ❑ **Washington, DC, 03/30/10:** Three gunmen killed four and wounded five in retaliation for another murder.
- **Shooter Name:** Nathaniel D. Simms, 26; Orlando Carter, 20, and unnamed 14-year-old juvenile.
  - **Gun details:** An AK-47 assault rifle and 9mm and .45-caliber handguns
  - **Ammo details:** Unknown
  - **Gun acquired:** Unknown
  - **Prohibiting criteria:** The adults were reported to have lengthy criminal histories, which prohibited them from purchasing guns, and the 14-year-old was too young to purchase or own a gun.
- ❑ **Appomattox, VA, 1/19/10:** The shooter killed eight family-members and acquaintances and fired at responding police officers – even forcing a helicopter to make an emergency landing – before surrendering. He wore a bulletproof vest during the attack.
- **Shooter Name:** Christopher Speight, 39
  - **Gun details:** High-powered rifle
  - **Ammo details:** Unknown
  - **Gun acquired:** Unknown

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- **Prohibiting criteria:** The shooter was a concealed carry permit holder and was not prohibited from possessing a gun.
- ❑ **Bellville, TX, 1/16/10:** The shooter, angered after a household argument, fatally shot his mother, stepfather, sister, brother and niece.
  - **Shooter Name:** Maron Thomas, 20
  - **Gun details:** Handgun and shotgun
  - **Ammo details:** Unknown
  - **Gun acquired:** Unknown
  - **Prohibiting criteria:** Unknown
- ❑ **Lakewood, WA, 11/29/09:** The shooter killed four police officers in a Tacoma Coffee shop, eluding police for two days before being killed as he fled.
  - **Shooter Name:** Maurice Clemmons, 37
  - **Gun details:** When he was killed, he was in possession of the handgun of one of the officers he had killed.
  - **Ammo details:** Unknown
  - **Gun acquired:** Unknown
  - **Prohibiting criteria:** The shooter was prohibited from purchasing a firearm, having been charged with at least 13 felonies across two states. He had posted bail for raping a child just six days before the attack.
  - **Not a gun-free zone:** The police officers were armed at the time of the shooting.
- ❑ **Osage, KS, 11/28/09:** The shooter killed his estranged wife, her grandmother, and his two daughters in their home.
  - **Shooter Name:** James Kahler, 46
  - **Gun details:** Assault rifle
  - **Ammo details:** Unknown
  - **Gun acquired:** Unknown
  - **Prohibiting criteria:** Kahler was charged with a misdemeanor domestic violence assault in March 2009. If convicted, he would have been prohibited from purchasing a firearm.
- ❑ **Pearcy, AR, 11/12/09:** Three shooters killed five people in their mobile homes and stole wheel rims, televisions, a handgun, and a vehicle. One of the shooters injured a police officer while he was being apprehended several days later.
  - **Shooter Name:** Samuel Conway, Marvin Lamar Stringer, and Jeremy Pickney
  - **Gun details:** .22 and .25 caliber handguns
  - **Ammo details:** Unknown
  - **Gun acquired:** Unknown
  - **Prohibiting criteria:** There is no evidence that the shooters were prohibited from possessing guns.
- ❑ **Fort Hood, TX, 11/5/09:** The shooter killed thirteen and wounded thirty soldiers during an attack at the Fort Hood army base.
  - **Shooter Name:** Nidal Malik Hasan, 39

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- **Gun details:** A FN Five-seven handgun was used in the attack. A Smith and Wesson .357 revolver also recovered.
  - **Ammo details:** Hasan fired at least 220 rounds of ammunition and had 200 rounds in his pocket when he was detained.
  - **Gun acquired:** Purchased legally at a local gun shop, Guns Galore.
  - **Prohibiting criteria:** The shooter had links with terrorist organizations, but being placed on a terror watch list does not prohibit purchase or possession of firearms under current law.
- ❑ **Mount Airy, NC, 11/01/09:** The shooter killed four people outside a television store before eventually surrendering to the police.
- **Shooter Name:** Marcos Chavez Gonzalez, 29
  - **Gun details:** Assault rifle.
  - **Ammo details:** Unknown
  - **Gun acquired:** Unknown
  - **Prohibiting criteria:** The shooter was a prohibited purchaser, having been convicted of kidnapping a minor in 2002.
  - **Not a gun-free zone:** It was lawful to carry a firearm in the area of the shooting.
- ❑ **Lawrenceville, GA, 08/27/09:** The shooter killed his girlfriend, his daughter, and two others in a domestic dispute.
- **Shooter Name:** Richard Ringold, 44
  - **Gun details:** Unknown
  - **Ammo details:** Unknown
  - **Gun acquired:** Unknown
  - **Prohibiting criteria:** Unknown
- ❑ **Kansas City, KS, 6/22/09:** The shooter killed a woman with whom he had been romantically linked and three others at the house where she was staying. He had argued with the woman and followed her to the house.
- **Shooter Name:** Adrian Burks
  - **Gun details:** Unknown
  - **Ammo details:** Unknown
  - **Gun acquired:** Unknown
  - **Prohibiting criteria:** The shooter was prohibited from possessing firearms. He had served 10 years in Kansas prisons for robbery, aggravated assault, and burglary. He also fatally shot a man in March 2009, but he was not charged in the incident, which his cousin later described as “self defense.” In April 2009, he was charged with battery and a criminal threat against the sister of the man he killed and was ordered not to possess firearms.
- ❑ **Middletown, MD, 04/19/09:** The shooter killed his wife and three children in their home before committing suicide.
- **Shooter Name:** Christopher Alan Wood, 34
  - **Gun details:** .25-caliber handgun



- **Ammo details:** Unknown
  - **Gun acquired:** Unknown
  - **Prohibiting criteria:** Unknown
- ❑ **Graham, WA, 4/4/2009:** After a dispute with his wife in which she told him she was ending their relationship, the shooter returned home and killed his five children. Police believe he then made an unsuccessful attempt to find his wife again and then killed himself in his car.
- **Shooter name:** James Harrison
  - **Gun details:** Unspecified rifle
  - **Ammo details:** Unknown
  - **Gun acquired:** Unknown
  - **Prohibiting criteria:** There is no evidence Harrison was prohibited from possessing a gun. Since 2001 the state had received five complaints about the shooter, including one for abuse in 2007 that stemmed from a slapping incident with one of his children. None of the complaints resulted in a domestic violence conviction. After the shooting, his wife said that she and her children had sustained years of abuse.
- ❑ **Binghamton, NY, 4/3/09:** The shooter killed fourteen and wounded four at the American Civic Association where he had been taking English classes before killing himself. He wore a bulletproof vest during the attack.
- **Shooter Name:** Jiverly A. Wong, 42
  - **Gun details:** 9mm and .45 caliber Beretta handguns.
  - **Ammo details:** Allegedly fired 98 rounds during the attack. At least one magazine with a 30-round capacity was recovered at the scene.
  - **Gun acquired:** The guns were registered to his New York State pistol license.
  - **Prohibiting criteria:** Wong was not prohibited from possessing a gun, and had a New York State concealed carry permit. People who knew Wong said he exhibited no outward signs of mental instability, although a letter he wrote that was delivered to a newspaper after the shooting indicated he was paranoid and suffering from mental illness.
- ❑ **Carthage, NC, 3/29/09:** The shooter opened fire at a nursing home where his estranged wife worked, killing eight and injuring three before he was shot and arrested by a police officer.
- **Shooter Name:** Robert Stewart, 45
  - **Gun details:** .357 Magnum handgun and Winchester 1300 shotgun
  - **Ammo details:** Unknown
  - **Gun acquired:** The guns were acquired legally from a local sporting good store.
  - **Prohibiting criteria:** There is no indication the Stewart was prohibited from possessing a gun.
- ❑ **Santa Clara, CA, 3/29/09:** The gunman killed five family members and wounded two in an apparent murder-suicide.
- **Shooter Name:** Devan Kalathat, 45
  - **Gun details:** Two .45 caliber pistols
  - **Ammo details:** Unknown
  - **Gun acquired:** Purchased legally weeks before the incident.



- **Prohibiting criteria:** There is no indication that Kalathat was prohibited from possessing a gun.
- ❑ **East Oakland, CA, 3/21/09:** The shooter used a semiautomatic handgun to kill two police officers after they stopped his car and then fled on foot to an apartment where he killed two SWAT officers with an assault weapon and injured a third before being killed by police.
  - **Shooter Name:** Lovelle Mixon
  - **Gun details:** 9mm semiautomatic handgun and SKS assault-style rifle
  - **Ammo details:** Police said the assault weapon had a high-capacity magazine.
  - **Gun acquired:** The shooter took part in a home invasion robbery in Modesto, CA, on February 21 2009 in which a rifle was reported stolen. Police did not comment on whether the stolen rifle was the one used in the shooting.
  - **Prohibiting criteria:** The shooter had a lengthy criminal history, including a conviction for armed battery, which would have prohibited him from possessing a gun, and he was on parole for assault with a deadly weapon at the time of the shootings.
  - **Gun-free zone:** Two of the victims were shot on a public roadway — the 7400 block of Macarthur Boulevard in East Oakland — where no state law would have prohibited a citizen with the appropriate permit to carry a gun. All of the police officers killed in the incident were armed.
- ❑ **Raytown, MO, 3/16/09:** The gunman shot and stabbed his former girlfriend, her boyfriend, and her two nephews, killing all four.
  - **Shooter Name:** Gevante Anderson, 26
  - **Gun details:** Unknown
  - **Ammo details:** Unknown
  - **Gun acquired:** Unknown
  - **Prohibiting criteria:** Unknown
- ❑ **Catawba, NC, 3/12/09:** The gunman shot and stabbed a woman and her three children in their home. He later killed himself and his girlfriend after a police chase in Utah.
  - **Shooter Name:** Chiew Chan Saevang, 38
  - **Gun details:** Unknown
  - **Ammo details:** Unknown
  - **Gun acquired:** Unknown
  - **Prohibiting criteria:** Unknown
- ❑ **Geneva County, AL, 3/10/09:** The shooter killed ten, including four members of his family, before killing himself.
  - **Shooter Name:** Michael Kenneth McLendon, 28
  - **Gun details:** Bushmaster AR-15, SKS rifle, shotgun, and .38 pistol
  - **Ammo details:** Police recovered additional ammunition from his vehicle after the shooting.
  - **Gun acquired:** Unknown
  - **Prohibiting criteria:** The shooter had no criminal record and there is no indication he was prohibited from possessing a gun.

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- **Not a gun-free zone:** It was lawful to carry a firearm in the public intersection and gas station where two of the individuals were shot.
- ❑ **Cleveland, OH, 3/05/09:** The shooter killed his new wife and four of her relatives before committing suicide.
  - **Shooter Name:** Davon Crawford, 33
  - **Gun details:** At least one semiautomatic handgun.
  - **Ammo details:** Unknown
  - **Gun acquired:** Unknown
  - **Prohibiting criteria:** Crawford was likely prohibited from possessing a gun. He was convicted of manslaughter in 1995 and pled guilty to felonious assault with a firearm in 2005, though Ohio enables felons to restore their gun rights so it is possible he was no longer prohibited.
- ❑ **Wilmington, CA, 1/27/09:** The shooter killed his wife and their five children before killing himself.
  - **Shooter Name:** Ervin Lupoe, 40
  - **Gun details:** Unknown
  - **Ammo details:** Unknown
  - **Gun acquired:** Unknown
  - **Prohibiting criteria:** The shooter did not have a criminal record and there is no indication he was prohibited from possessing a gun.

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## **EXHIBIT 49**

Legislative Leaders Say Bipartisan Agreement Could Yield Nation's Strongest Gun-Contr... Page 1 of 5

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# Legislative Leaders Say Bipartisan Agreement Could Yield Nation's Strongest Gun-Control Bill



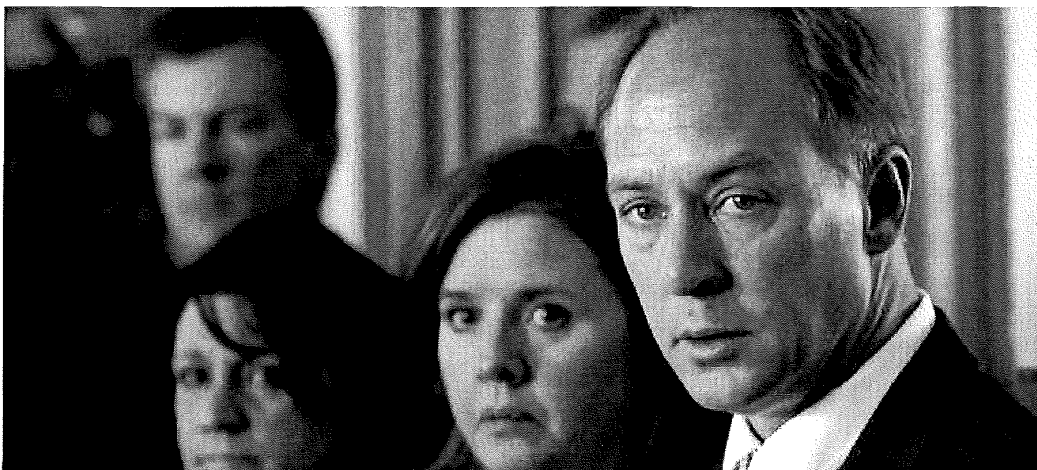
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Legislative Leaders Say Bipartisan Agreement Could Yield Nation's Strongest Gun Contr... Page 2 of 5



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1/10

By JON LENDER and JENNY WILSON,

[jlender@courant.com](mailto:jlender@courant.com)

The Hartford Courant

9:51 p.m. EDT, April 1, 2013

HARTFORD —

With the nation watching, Newtown parents still grieving and gun owners objecting, legislative leaders Monday said they had met the solemn challenge presented by the Sandy Hook school massacre with a bipartisan agreement for the nation's strongest gun control bill.

Easy passage of the legislative response to the Dec. 14 killings is expected in House and Senate votes scheduled for Wednesday, leaders of both the Democratic majority and Republican minority said after completing weeks of negotiations on the bill.

"There were some who said the 'Connecticut effect' would wear off — that it would wear off in Connecticut and it would wear off across the country," Senate President Pro Tempore Donald Williams, D-Brooklyn, said at an evening press conference in the Capitol flanked by five other legislative leaders.

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"What they didn't know was that Democrats and **Republicans** would come together and work to put together the strongest and most comprehensive bill in the United States to fight gun violence, to strengthen the security at our schools, and to provide the mental health services that are necessary," he said.

"Knowing that that tragedy happened in Connecticut, it was up to Connecticut to show the way," said House Minority Leader Larry Cafero, R-Norwalk. "And I'm very proud to say today the package that we are introducing ... has accomplished that goal."

The bipartisan deal would strengthen the state's existing ban on semiautomatic assault rifles to include weapons such as the Bushmaster AR-15 used by **Adam Lanza** to kill 20 first-graders and six women at **Sandy Hook Elementary School** in Newtown. Current law defines an assault rifle as having two military-style characteristics on a list of several, such as a pistol grip and a flash suppressor. The new bill would require only one such characteristic. It also lists more than 160 firearms by name as assault weapons.

People could keep the banned rifles that they already own if they submit to new registration procedures. But future sales of the rifles would be prohibited. An existing owner could bequeath an assault rifle to a family member, but could sell it only to a licensed firearms dealer who would have to sell it outside Connecticut.

### Magazines Disputed

The bill stepped back from an outright ban on large-capacity magazines containing more than 10 cartridges, such as the 30-round magazines that Lanza used. Instead, it would allow owners of large-capacity magazines to keep them if they make an official declaration by Jan. 1 of how many they own and submit to restrictions on their use. The magazines could only be loaded with 10 or fewer rounds, except in their owners' homes or at a shooting range, where they can be fully loaded.

Buying, selling, importing or transferring high-capacity magazines would be a Class D felony, punishable by up to five years in prison and a \$5,000 fine.

Parents of Sandy Hook victims said Monday that they wanted those high-capacity magazines taken away from owners, not "grandfathered in" under the new bill. They called for an up or down vote on that issue.

But Williams and the other leaders who negotiated the agreement said they don't support such a vote because they want to stick to what has been negotiated.

"We learned, the way that no other parents should learn, that the most dangerous, dangerous part of an assault weapon is the magazine," Nicole Hockley, whose son Dylan, 6, was killed Dec. 14, said at a press conference with other parents at the Capitol Monday morning.

"The horrible, brutal truth is that 154 bullets were fired in four minutes, killing our children, our daughters, our wives. The shooter carried 10, 30-round large-capacity magazines," Hockley said. "We have learned that in the time it took him to reload in one of the classrooms, 11 children were able to escape. We ask ourselves every day — every minute — if those magazines had held 10 rounds, forcing the shooter to reload at least six more times, would our children be alive today?"



**Pictures: Connecticut Passes Sweeping Gun Control Bill**

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Lanza killed himself as police arrived at the school. He killed his mother at their Newtown home before driving to the school.

Neil Heslin, whose son, Jesse Lewis, 6, was killed, said Monday night: "I think it's useless to register the magazines. How are you going to register them? I think it's stupid. There's no way to register them, there's no serial numbers. ... It's just another law or regulation that's not going to be enforceable." But he said the bill contains other "steps in the right direction."

Democratic Gov. **Dannel P. Malloy** supported the parents early in the day, saying he agreed with them that "simply banning [the magazines'] sale moving forward would not be an effective solution."

Monday night, when asked if Malloy would sign the negotiated bill into law or if he would veto it, the governor's communications director, Andrew Doba, said he had no additional comment.

Williams said at the press conference that it is leaders' hope and expectation that Malloy will sign the bill.

Meanwhile, the executive director of Connecticut Against Gun Violence, a group that has been allied with many of the Newtown parents and residents of that area, expressed support for the compromise bill.

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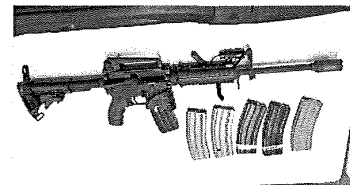
## Sandy Hook Shooter's Pause May Have Aided Students' Escape

Detectives reviewing Lanza's psychiatric records

December 23, 2012 | By EDMUND H. MAHONY, DAVE ALTIMARI and JON LENDER, daltimar@courant.com, The Hartford Courant

As many as a half-dozen first graders may have survived Adam Lanza's deadly shooting spree at Sandy Hook Elementary School because he stopped firing briefly, perhaps either to reload his rifle or because it jammed, according to law enforcement officials familiar with the events.

A source said that the Bushmaster rifle that Lanza used in the shootings is at the state police forensic laboratory undergoing several tests, including tests to determine whether it was jammed.



A Bushmaster semi-automatic rifle, similar to the type used by Adam Lanza... (MICHELLE MCLOUGHLIN, REUTERS)

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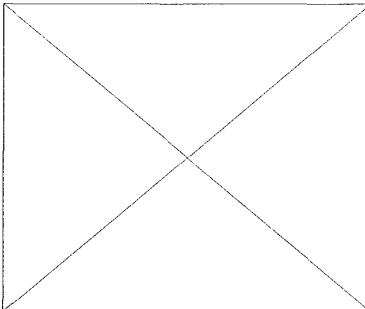
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The children escaped from the first-grade classroom of teacher Victoria Soto, one of the six educators Lanza killed in Newtown after shooting his way through a glass door with the .223-caliber semiautomatic rifle on the morning of Dec. 14.

On Friday, detectives obtained and began examining records related to psychiatric care Lanza had received in an attempt to determine a motive. Several friends of his mother have said that he suffered from Asperger's syndrome but authorities have not confirmed that or indicated it had anything to do with the shootings.

Lanza killed 27 people — 20 children, four teachers, the school principal, a school psychologist and his mother, Nancy — before shooting himself in the head as police began arriving at the school.

The arriving officers encountered a shocking scene in Soto's classroom. Lanza had shot her, as well as special education teacher Anne Marie Murphy and six of Soto's 6- and 7-year old students. Seven of Soto's students were found huddled and unharmed in a classroom closet, apparently hidden by Soto when she heard shooting. The other students fled the classroom.

Based on initial statements from surviving children and the fact that unfired bullets from Lanza's rifle were found on the ground, detectives suspect that some students were able to run to safety when Lanza stopped firing, probably for a short period of time, the officials said.

It is possible that Lanza, who reloaded the rifle frequently, mishandled or dropped a magazine and unfired bullets fell to the floor, they said.

But it also is possible, they said, that the mechanism that fed bullets into the rifle jammed, causing Lanza to remove the magazine and clear the weapon. Unfired bullets could have fallen to the classroom floor during that process as well, law enforcement officials said.

The six children who escaped Lanza's rampage ran to a home a short distance from the school. Upon reaching the home, one of the boys told the owner that "we obeyed the rules, we stayed on the sidewalk," one of the officials said.

The authorities have learned generally from the children who ran away that something may have happened to Lanza's rifle that caused him to stop firing. The substance of the statements, which are not entirely consistent, is that a piece of the weapon, probably a magazine holding live bullets, was dropped or fell to the classroom floor.

Investigators have decided not to formally interview the children, based on advice from Yale child psychologists. Given the chaotic nature of the scene, it is also possible that some children escaped while Lanza was shooting others in the room.



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Sandy Hook Shooter's Pause May Have Aided Students' Escape - Hartford Courant Page 2 of 2

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State police are expected to wrap up work at the school and release the school as a crime scene in the next few days. They still are trying to determine how many shots Lanza fired.

Lanza killed himself in Soto's classroom with one of the two pistols he carried into the building. He killed himself as police entered the building.

Police found a loaded 20-round shotgun in the trunk of the car similar to what is known as a "street sweeper." Police believe that Lanza didn't bring it into the school because he couldn't carry all of the weapons and ammunition. Lanza, who was about 6 feet tall, weighed barely 110 pounds, law enforcement sources said.

The few people who knew Lanza have portrayed him in the days since the mass shootings as an awkward, emotionally isolated, withdrawn young man. He attended public schools in Newtown, but at times was home-schooled by his mother, who was said by authorities and others to be the only person with whom he was socially engaged.

Lanza lived with his mother. He had two bedrooms and used one of them to keep computer equipment on which he is said to have enjoyed playing video games involving violent war games.

Before the shootings at the elementary school, Lanza shot his mother four times with a .22-caliber rifle as she lay in bed. He left the rifle at the house. All the guns were properly registered to Nancy Lanza.

Adam Lanza also broke apart his computer equipment in a way that has prevented authorities from retrieving data that could reveal with whom he may have corresponded or played video games.

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# Newtown families want strict ban on large ammo magazines

By [Mark Pazniokas \(http://www.ctmirror.org/source/mark-pazniokas\)](http://www.ctmirror.org/source/mark-pazniokas)

Monday, April 1, 2013

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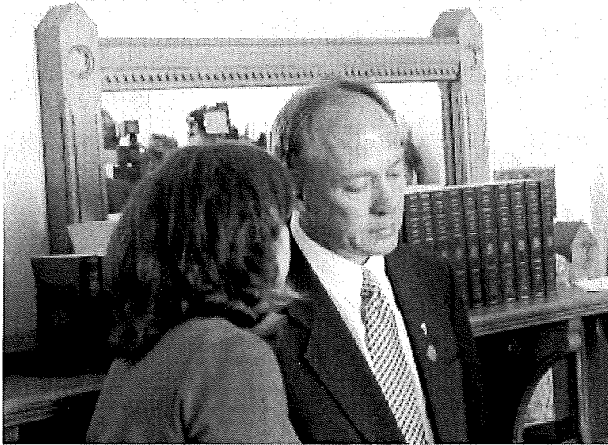
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The families of the Sandy Hook school massacre victims delivered a precise, unequivocal and timely message to legislators Monday: The current bipartisan proposal by the legislature's leaders to ban the sale, but not the possession, of high-capacity ammunition magazines is inadequate.

In a letter delivered to leaders, the families of 11 of the 26 victims said they think that 11 children escaped while Adam Lanza was inserting a fresh 30-round magazine in his Bushmaster rifle, making an emotional case for banning magazines capable of holding more than 10 rounds.

"We ask ourselves every day, every minute: If those magazines had held 10 rounds, forcing the shooter to reload at least six more times, would our children be alive today?" said Nicole Hockley, whose son, Dylan, was one of 20 children killed. "So please hear us. Have the courage to stand up for what you know is right."



Jackie and Mark Barden

The families came to the State Capitol just 90 minutes before legislators were to begin closed-door caucuses about gun-control legislation that is likely to come to a vote as soon as Wednesday after weeks of negotiations.

A sticking point has been a provision banning ammunition magazines capable of holding more than 10 rounds: Would only future sales be prohibited? Or would the possession of magazines legally purchased become illegal, as was the case under a 1994 federal law that expired in 2004?

Legislative leaders presented a version to their caucuses Monday in which only sales would be banned, provoking opposition by some members of the Democratic majorities in the House and Senate. New York, New Jersey and Massachusetts all ban possession of large-capacity magazines.

Gov. Dannel P. Malloy and Connecticut Against Gun Violence, a gun-control group whose membership has swelled since the Dec. 14 attack on the school in Newtown, have strenuously argued for a ban on possession, not merely the sale.

But the news conference Monday marked the first time that Newtown families involved with Sandy Hook Promise have focused so precisely on one aspect of the sweeping gun-violence legislation under consideration. A grandfather provision allowing the continued possession of large magazines would negate the value of a ban, the parents said.

"It's a big loophole," said Mark Barden, whose son Daniel was killed at Sandy Hook.

Hours later, as they were about to meet with Malloy, family members declined to say if they would ask the governor to veto a bill that fell short of their standard.

Malloy quickly issued a statement reiterating his position that a ban on the sale, but not the possession, would be meaningless, since the magazines have no serial numbers and are untraceable.

"This morning, we heard from victims' families on that very point. They've asked for an up-or-down vote on that provision and, whether it's in the larger bill or as an amendment, the families, and every resident of our state, deserve a vote," Malloy said.



The families held their news conference in the office of Senate Minority Leader John McKinney, R-Fairfield, who represents Newtown.

"We know this is an issue that has bipartisan support, including from Senate Minority Leader John McKinney," Malloy said. "We cannot lose sight of our ultimate goal -- improving public safety for all of our residents, including our children."

Sen. Beth Bye, D-West Hartford, whose friends, Jimmy Greene and Nelba Marquez-Greene, lost their daughter, Ana, at Sandy Hook, said it was clear that many of the families have focused on the magazines as a key to blunting the lethality of semiautomatic weapons in mass shootings.

"We learned the way no other parent should learn the most dangerous part of an assault weapon is the magazine," Hockley said.

assault weapons in 1993, restricting some weapons by name and others by so-called military characteristics, such as a collapsible stock, a pistol grip, flash suppressor or bayonet lug.

Many of the banned weapons were redesigned to comply with the law. Police say the Bushmaster XM15 used by Lanza was legally purchased by his mother.

The legislature also is expected to tighten a ban on the retail sale of military-style weapons, including the Bushmaster XM15, a variation on the best-selling AR-15. A rifle with any one listed military characteristic, not the two currently allowed, would come under the retail ban.

Authorities confirmed last week that Lanza had fired 154 rounds from his Bushmaster in less than five minutes, killing 20 first-grade students and six educators.

He carried 10 30-round magazines when he entered Sandy Hook Elementary School with the rifle and two semiautomatic handguns. He killed himself with a Glock handgun as police arrived.

Investigators found three full magazines on his body and 15 rounds in his rifle. He had discarded six magazines, three of which were empty. Three others had 10, 11 and 13 rounds.

Authorities have not publicly confirmed that Lanza was reloading when 11 students were able to flee the first-grade classroom of teacher Victoria Soto, who was killed. But Barden said the parents have no doubt that was the case.

"How can we not remove large capacity magazines from Connecticut if we know that it might save even one more children or teacher or parent?" said Bill Sherlach, reading the letter aloud.

His wife, Mary, was the school psychologist.

The letter was signed by 24 relatives of nine children and two adults killed at Sandy Hook.

"We are left to wonder," Sherlach said, reading a line likely to find its way into the legislative debate. "What if the Sandy Hook shooter had been forced to reload not six times, but 15 times? Would more children -- would our children -- be alive today?"

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## NEWTOWN SCHOOL SHOOTING

27 KILLED, INCLUDING 20 CHILDREN, IN THE SECOND DEADLIEST SCHOOL SHOOTING IN

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### Newtown Families Open Up About Day of Shooting and the Aftermath

More than a dozen parents who lost their children in the mass shooting at Sandy Hook Elementary School in December spoke candidly about their grief and hopes for the future on "60 Minutes"

By Emily Feldman | Tuesday, Apr 9, 2013 | Updated 8:22 AM EDT

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More than a dozen Newtown parents directly and tragically linked to the mass shooting at Sandy Hook Elementary, candidly recalled the December day that changed their lives in an emotional "60 Minutes" segment that aired Sunday night.

They spoke of frantic phone calls and fraying nerves as the day wore on and parents



AP

Jimmy Greene and Nelba Marquez-Greene, parents of Sandy Hook School shooting victim Ana, spoke candidly on "60 Minutes" Sunday about losing their daughter. They were among more than a dozen other victims' family members who appeared on the program.

gathered at the local firehouse had still not located their children.

"There were people everywhere ... and you really had to push to get through," said Nicole Hockley, the mother of one of the first-graders in Victoria Soto's class, killed in the attack. "We were all just jostling because we were trying to find our kids."

The interview aired on the eve of a big lobbying day for gun control supporters, which brought President Barack Obama to the University of Hartford and will send 11 relatives of Sandy Hook victims, including Hockley, to Washington where they will push for federal gun control legislation. In the "60 Minutes" segment, parents and relatives made an emotional plea

## PHOTOS AND VIDEOS



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victims' relatives to the studio, the focus, more than anything, remained fixed on the memory of their children and loved ones, and their experiences on and since Dec. 14.

Hockley remembered the relief of finding her son Jake, suddenly shattered by the uncomfortable reminder that her other son Dylan, who had not yet been found, may not have survived.

"A woman asked me, 'what classroom was your other child in?' And I said, Miss Soto's. And she said, 'I heard she got shot.' And I got really angry at her and I remember very clearly saying, 'don't you dare say that to me if you don't know it's true.'" Hockley said. Teacher Victoria Soto did in fact die in the attack.

"I just pushed by her but I couldn't find Dylan's classroom or anyone from his class anywhere," said Hockley.

It was Gov. Dannel Malloy who finally, hours after the last shots were fired, broke the news to parents gathered in a back room at the firehouse.

for more stringent background checks and limits to the size of ammunition magazines.

"You can have a million bullets but if you have to put them in one at a time, the ability to do any kind of real damage is significantly reduced," said Bill Sherlock, the husband of Sandy Hook school psychologist Mary Sherlock, who died confronting shooter Adam Lanza. "It's simple arithmetic. If you have to change magazines 15 times instead of five times you have three more instances where something could jam," something could go wrong and potential victims can escape as 11 students did during a lull in Lanza's shooting rampage, he added.

While the gun control debate was certainly the backdrop of the interview and what called the

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"[He] had the duty to stand in front of the room and tell us that if we were in that room then our child or adult wasn't coming back to us," Hockley recalled.

Jimmy Greene, the father of Ana Marquez-Greene, who also died in the shooting, spoke about finding his other child, who also attended Sandy Hook, safe and terrified.

"I saw my son's teacher in a living room area ... Isaiah popped up and I just went and grabbed him and held him and he was crying, 'Daddy, you know, there were so many gunshots. I saw this and I saw that,'" Greene recalled. "So I just took my son in my arms—he's a big kid, but I took him like he was two years old again and held him on my shoulder and was just running and running from room to room trying to locate Ana's class."

His wife, Nelba Marquez-Greene, who is also among the group flying to Washington Monday evening, was driving to Sandy Hook when she learned that their son was okay.

"I was texting [Jimmy] every ten or fifteen seconds," she said. "Ana, question mark. And then Ana, exclamation point. Because we had Isaiah. I didn't understand why we didn't have Ana."

When she arrived at the school and later the firehouse and was eventually told to head into a back room, she didn't want to go.

"I knew what the back room meant. In my heart, as a mother, I knew what the back room meant."

Some of the most touching testimony regarded how the parents are coping with the absence of the quirky kids who were at the center of their lives.

Francine Wheeler said she dreams of her son Benjamin all the time. "And we talk," she said. "And he and I talk when I take my walks. And I just feel him. If I ask him to be present he is. And I know he'll always be there."

Jackie Barden said she feels distance growing between her and her son Daniel, who died in the shooting. "Sometimes it's too painful to think about him. And then I feel guilty because I need to think about him and keep him alive, but it's so hard because we miss him so much."

Nicole Hockley said that she keeps Dylan's cremated remains next to his photo in her bedroom. "Every morning I kiss him good morning and say hi. And he's the last thing I kiss before I go to bed at night. And every night I beg for him to come to me in my dreams so I can see him again. And during the day, I just focus on what I can do to honor him and make change."

Hockley and 10 other members of the Sandy Hook Promise, a non-profit pushing for federal gun control legislation, will fly aboard Air Force 1 with the president to Washington Monday night, where they will spend the week lobbying Congress for change. They represent nine victims killed in the Sandy Hook shooting.



Giffords Tucson Shooting: Arizona Heroes Subdued Alleged Gunman <http://abcnews.go.com/US/heroes-rep-gabrielle-giffords-shooting-tuc...>

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## **Heroes of Tucson Shooting: 'Something Had to Be Done'**

By JESSICA HOPPER, KEVIN DOLAK and LAUREN SHER

Jan. 10, 2011—

[abcnews.go.com](http://abcnews.go.com)

### **Retired Army Colonel Helped Subdue Gunman, Bullet Grazed the Back of His Head**

A 74-year-old retired Army colonel decided to tackle the Tucson gunman after watching him .

"Something had to be done," Bill Badger said today on " ."

Badger wasn't the only one who risked his life to stop the carnage. One man clobbered on the back of the head with a folding chair. A 61-year-old woman wrestled a fresh magazine away from Loughner as he tried to reload.

Others jumped on him and held him down, ripping the gun from his hands.

Six people were killed in Saturday's shooting rampage at the Tucson, Ariz., grocery store, and Rep. was left fighting for her life.

Badger was waiting in line to meet Giffords at the "Congress on Your Corner" event when he heard gun shots.

"I turned and dropped to the ground, and I felt a sting in the back of the head, and that's where he shot me, in the back of the head. I knew I'd been hit," Badger said.

Badger, who was treated for the injury at the University Medical Center and released, is among those who've been hailed as heroes for subduing and stopping further carnage after a shooting that left .

"[Loughner] was standing right in front of me. He took about a half a step to my left and some individual there took one of the folding chairs ... and hit him on the back of the head, and I was able to grab him," Badger said.

Together, Badger and another man pushed the suspected shooter to the ground.

### **Woman Stopped Tucson Shooter From Reloading**

Patricia Maisch, 61, was in the back of the line, waiting to greet and take a photo with Giffords. When she heard gun shots, she hit the ground.

"I'm waiting to be shot because the lady next to me had been shot," Maisch said. "At the same time, someone says, 'Get the magazine.'"

Loughner allegedly used a legally purchased Glock 19-9 mm gun with an extended magazine to carry out the shootings.

Maisch grabbed the second magazine that Loughner was attempting to load into the gun.

Badger then helped tackle Loughner. Badger and Roger Salzgeber, who was reportedly standing with his wife, third in line to meet with Giffords, sat on the gunman while Maisch held his ankles down.

Giffords Tucson Shooting: Arizona Heroes Subdued Alleged Gunman <http://abcnews.go.com/US/heroes-ten-gabrielle-giffords-shooting-tuc...>

"When we pushed him to the ground, there was no struggle and no fight," Badger said. "I had this guy by the throat ... in a chokehold."

Salzgeber isn't ready to comment on his role in stopping the gunman, saying that he's still "dealing with it all."

Joseph Zamudio was at a nearby Walgreens when he heard the ring of gunshots.

"I heard the gunshots and came running," Zamudio said on "GMA."

Zamudio helped restrain Loughner by hanging onto his legs.

Another individual grabbed the gun from Loughner, Badger said.

### **911 Call Detail Tucson Rampage**

As Badger was tackling the man spraying bullets at innocent bystanders, Badger's wife was frantically calling 911, seeking information about her husband.

"My husband just called me and told me he was shot. He was going to the Gabrielle Gifford event, and I don't know where he is," Badger told 911. "He called me and then the phone went dead."

Badger's 911 call was one of several that even left operators losing their composure.

"Oh my God," exclaimed a 911 operator who got the first report of the carnage.

Badger was among those struggling, according to Maisch. When she noticed the blood coming from the back of his head, she asked Zimude to hold down the shooter while she went to get paper towels and made a compress.

Maisch was thankful for the heroic actions of Badger and others at the scene.

"He saved my life," she told "GMA."

"Those two gentlemen saved my life."

Pima County Sheriff Clarence Dupnik lauded the actions of Maisch and others that he said likely saved dozens of lives.

"We could have had 31 more people shot," Dupnik said.

One of Congresswoman Giffords' interns, 20-year-old Daniel Hernandez, has been credited with helping keep Giffords alive after she was shot in the head.

"When I heard gunshots, my first instinct was to head toward the congresswoman to make sure that she was okay," Hernandez told Amanpour. "Once I saw that she was down and there were more than one victim, I went ahead and started doing the limited triage that I could with what I had."

Hernandez held Giffords, applying pressure to her wound. He used smocks from the grocery store as a bandage.

Giffords Tucson Shooting: Arizona Heroes Subdued Alleged Gunman <http://abcnews.go.com/US/heroes-rep-gabrielle-giffords-shooting-tuc...>

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"The congresswoman was alert. She was able to hold my hand when I asked her if she could hear me," Hernandez said. "I wasn't able to get any words from her. She may have been trying, but because of the way that I was having to hold her it was a lot easier to just 'if you can hear me Gabby just grab my hand to let me know that you're okay.'"

Giffords remains in critical condition in a medically induced coma with part of her skull removed to ease pressure on her brain.

Loughner has been charged with multiple counts of murder and attempted murder. He will make his first court appearance later today.

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Texas Capitol Gunman Was Reloading When Troopers Tackled Him <http://gray.printthis.clickability.com/pt/cpt/expire-?title=Texas+Capi...>



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## Texas Capitol Gunman Was Reloading When Troopers Tackled Him

AUSTIN (January 22, 2010)--A man who fired several shots Thursday outside the Texas Capitol was trying to reload his weapon when Department of Public Safety troopers confronted him and tackled him to the ground, according to court records.

Fausto Cardenas remained in Travis County's jail Friday, charged with deadly conduct.

His bond was set at \$250,000.

An arrest affidavit filed Friday describes the shooting incident, which happened on the south steps of the Capitol.



State Trooper Husain Roussel spotted Cardenas outside the Capitol after hearing shots ring out, the affidavit said.

He saw Cardenas "reloading a magazine" and noticed a pistol in his waistband and empty shell casings where Cardenas was standing, the affidavit said.

State troopers tackled Cardenas, 24, and arrested him.

No one was injured in the shooting, which briefly shut down the Capitol.

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<http://abcnews.go.com/US/story?id=5463260&page=1#.UXFZ3EpzpDg>

## Church Gunman Brought 76 Shells and Expected to Use Them

By MARK MOONEY  
July 28, 2008—

abcnews.go.com

### Church Shooter Expected to Kill Until He Was Killed

The gunman who yesterday shot up a Tennessee church that embraced gays and other liberal causes left behind a long letter fuming that he couldn't find a job and expressing a profound "hatred for the liberal movement," police said today.

Jim D. Adkisson, 58, ranted that "liberals and gays" taking jobs had prevented him from finding work. He wrote that he expected to keep shooting parishioners until the police showed up and killed him, Knoxville, Tenn., Police Chief Sterling Owen told a news conference.

Owen said police recovered 76 shotgun shells after Adkisson allegedly opened fired in the sanctuary of the Tennessee Valley Unitarian Universalist Church. Three shells had been fired before church members tackled Adkisson, but two people were killed and five more wounded by the blasts before he was wrestled to the floor.

The angry gunman invaded the Knoxville church on Sunday and began blasting away as more than 200 parishioners were packed inside to watch a children's performance of the musical "Annie."

Adkisson was tackled by church members when he paused to reload while terrified church members ducked beneath pews or ran screaming from the church.

### Investigating as a 'Hate Crime'

Adkisson, an out-of-work mechanical engineer, left a four-page letter in his car in the church parking lot in which he railed against liberals and the fact that he had been unable to get a job since 2006. Owen said Adkisson was also angry that his food stamps were about to be reduced or eliminated.

"It appears what brought him to this horrible event was his lack of being able to obtain a job, frustration over that and his hatred for the liberal movement," Owen said.

The chief later added, "He did express that frustration that the liberal movement was getting more jobs and he was being kept out of the loop because of his age" and because he wasn't liberal.

"It appears he did choose that church intentionally," Owen said, possibly after it had received some publicity for its advocacy of liberal causes. "We're certainly investigating it as a hate crime."

Owen said Adkisson had been preparing for his assault on the church "for a week or so."

But his anger had apparently been boiling over for a while. "I'm sure this is something that has been building for a long time," Owen said.

### Held on Murder Charges

Parishioner Barbara Kemper told the Associated Press that Adkisson said some "hateful things" before he started shooting, but Owen would only say that the gunman spouted something that "wasn't very complimentary." Despite the presence of the children, Owen said, "There was an indication he was not targeting the children." No children were injured in the barrage.

Because many parents in the church was believed to be filming the show, police are looking for video evidence of the rampage.

Owen said he believed that Adkisson was a former member of the Army's 101st Airborne Division and that he

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<http://abcnews.go.com/US/story?id=5463260&page=1#.UXFZ3EpzpDg>

purchased the shotgun from a pawn shop. His only previous brushes with the law were a pair of driving under the influence charges.

The alleged gunman told police that "he had no next of kin and no family," Owen said.

Adkisson has been charged with first-degree murder and was being held on \$1 million bail under "close observation," Knox County Sheriff's Office spokeswoman Martha Dolley said.

### **Hero Loses Life**

The Tennessee Valley Unitarian Universalist Church promotes progressive social work, including advocacy of women and gay rights. The Knoxville congregation also has provided sanctuary for political refugees, fed the homeless and founded a chapter of the American Civil Liberties Union, according to its Web site.

Karen Massey, a neighbor to Adkisson, told the Knoxville News Sentinel about a lengthy conversation she had with Adkisson a few years ago in which she told him her daughter had just graduated from a Bible college. She said she was surprised by his reaction when she told him she was a Christian.

"He almost turned angry," she told the newspaper. "He seemed to get angry at that. He said that everything in the Bible contradicts itself if you read it." She also said Adkisson spoke frequently about his parents, who "made him go to church all his life. ... He acted like he was forced to do that."

The shooting instantly created heroes inside the crowded church.

Greg McKendry, 60, died as he attempted to block the gunfire. Kemper described the burly McKendry as "a refrigerator with a head." She said McKendry "stood in the front of the gunman and took the blast to protect the rest of us."

Church members said one of the people who tackled the gunman was John Bohstedt, who played "Daddy Warbucks" in the performance.

A second victim was identified as Linda Kraeger, 61. She died at a hospital hours later. Five of the wounded remained hospitalized.

The Associated Press and Reuters contributed to this report

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SHOOTINGS IN A SCHOOLHOUSE: THE HERO; Wounded Teen-ager Is Called a Hero <http://www.nytimes.com/1998/05/23/us/shootings-in-a-schoolhouse-t...>

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**The New York Times****Education****SHOOTINGS IN A SCHOOLHOUSE: THE HERO; Wounded Teen-Ager Is Called a Hero**By JERE LONGMAN  
Published: May 23, 1998

On Thursday, his 17th birthday, Jacob Ryker was sitting with friends in the school cafeteria, waiting for classes to begin, when a boy in a trench coat walked in and began shooting.

The first shots were mistaken for firecrackers, a prank someone must have been pulling because of student election day at Thurston High School. But Jacob's girlfriend, Jennifer Alldredge, was shot in the upper body. Jacob yelled, "Gun!" and stood up, but a bullet from a .22-caliber semiautomatic rifle pierced his right lung, sending him tumbling backward over a cafeteria bench.

"He knew he had to tackle the guy or other people would be killed," said Jacob's mother, Linda Ryker, who is a school bus driver. "He told me, 'He had been shooting people, and I wasn't going to let him shoot again.'"

Students and law enforcement officials say Jacob performed a heroic act, getting to his feet even though he had been wounded, subduing the gunman -- identified by the police as 15-year-old Kipland P. Kinkel -- and containing an attack that could have been much worse. Two students were killed and 23 were injured in the shooting.

"They started with 300 or 400 kids in that cafeteria," said Mark Clark, a local minister and volunteer with the Springfield Fire Department who had rushed to Thurston High. "It was jam-packed, and if the boy had continued shooting, there is no way those kids could have gotten out of there fast enough. He could have killed or hurt double or triple the number that he did."

At 6-foot-4 and 185 pounds, with close-cropped hair and a rawboned build, Jacob Ryker, a junior, had joined the wrestling team this year. Gary Bowden, who coaches wrestling and teaches social studies at Thurston High, said that Jacob never backed down from a challenge.

"This was perfectly consistent with his character, thinking about other people instead of himself," Mr. Bowden said. "He was angry that his girlfriend got shot. It was just like Jake to go after him. He wouldn't have been afraid."

The gunman walked up to a student who was lying on the floor, placed the rifle to her head and attempted to fire three times, but nothing happened, said Joshua Ryker, Jacob's 14-year-old brother.

As the gunman began to reload and other panicked students dived for cover, Jacob untangled his foot from the bench and charged 10 to 15 feet toward the boy with the rifle. Jacob knocked the gunman to the floor, his brother and other students said.

"I saw him run up and jump on the guy, and the gun fell from his hands," said Dee Strother, 18, a Thurston senior. "Jake started pounding him."

The Ryker brothers, like many others in rural Oregon, are familiar with guns. They often go hunting and target shooting with their father, Robert, a Navy diver, and their uncle, Jake Meyer.

"He heard a click, and he knew the rifle was out of ammo," Robert Ryker said, "and he knew it was time to get the gun away."

Jacob struggled with the gunman, who pulled out a 9-millimeter handgun, Mr. Ryker said. Jacob grabbed at the gun as it was pointed toward his face and it discharged, striking the knuckle on his left index finger, his father said.

Several other boys then joined in to subdue the gunman, including Joshua; two brothers, 18-year-old Doug Ure and 15-year-old David Ure, and another student, Adam Walberger. The other boys were not injured.

As the boys waited for teachers and the police to arrive, Joshua said, the gunman said to them, "Just shoot me, shoot me now."

Jacob was listed in serious condition at Sacred Heart Medical Center in nearby Eugene.

Joshua's father, a National Rifle Association member, said that Jacob had a .30-06 and Joshua had a .22-caliber rifle but that his boys were not allowed to fire their weapons unless an adult was present.

"I'm proud of my sons and the other boys," Mr. Ryker said. "I don't know about this hero business. All the boys did what they had to do to survive. They all did the right thing. When they had a chance to jump in, they did."

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DEATH ON THE L.I.R.R.: The Rampage; Gunman in a Train Aisle P <http://www.nytimes.com/1993/12/09/nyregion/death-on-the-lirr-the-...>  
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The New York Times

## Archives

### DEATH ON THE L.I.R.R.: The Rampage; Gunman in a Train Aisle Passes Out Death

By FRANCIS X. CLINES  
Published: December 09, 1993

When the gunman emptied his first clip into passengers at the rear of the car and stopped to reload, Kevin Zaleskie, crouching in panic a few seats farther along, realized he had one small chance to flee before aim was taken at him as the stalker worked the aisle, shooting to the right, then to the left, as methodical as if he were taking tickets.

"I got up to run, but the aisle was jammed with someone," Mr. Zaleskie, a financial analyst for I.B.M., said today, recalling what he thought would be the violent ending of his life amid the most banal routine of commuting home. "I didn't think I was going to get out. I was very panicky. I ducked back down in the seat. The guy was moving in my direction, shooting again." A Ticket and a Gun

The rampage by the gunman aboard the 5:33 evening commuter train from Pennsylvania Station had moved Mr. Zaleskie and 80 other passengers in the third car from the easiest of lulling habits to an instantaneous scramble of terror and fear.

A man intent on murder who carefully paid for his ticket back in New York City was firing methodically with a 9-millimeter pistol, a hallmark of modern America's pathology of violence and fear. In three minutes of gunfire, he reduced the defenseless commuters in the third car to casualties on a one-sided battlefield.

As the gunman was finally brought to ground, tackled by one brave passenger and pinned by two others as he sought to reload his pistol for a third 15-shot rampage, David Farrell joined a reinforcement group that came from hiding to grab his legs and arms. "We held on and the gunman said, 'Oh God, what did I do? What did I do? I deserve whatever I get.' "

One of the men who subdued him could be heard commanding again and again from within the bloody scrimmage: "Stay where you are. Shut up. Shut up. Shut up."

Passengers farther away in the train would not discover the carnage until well after the gunman was subdued and the first of his 25 victims limped or were carried onto the Long Island Rail Road platform. One passenger, William A. Warshowsky, had scrambled for his life from the gunman's approach, leaped with a crowd into the darkness from the stopped train and ran all the way home, finally checking his body for wounds and celebrating his survival intact.

Another passenger, Margaret Richards, was amazed even beyond the bloodied windows and three victims she saw slumped tightly together with head wounds, when she saw the gunman handcuffed later in a patrol car. "He was very calm. No emotions showing. Everything fine, you know, 'dum-de-dum,' " she related, songlike. "And then someone came over from all the blood of the train and lost it and began shouting, 'How can he be sitting there so calm after everything he did?' "

In the moment after the gunman had been subdued, Mr. Zaleskie had turned in his mind from the next likely victim to someone of immeasurable good fortune. In a minute, he was taking off his necktie and began making a tourniquet for a woman bleeding nearby, delivered from the terrifying stalker.

"The guy kept coming down the aisle with the gun," Mr. Zaleskie related of the height of the carnage. "And I just put my briefcase in front of my face and hunched down with two other people in the seat," he said, describing something close to fearful resignation. "He walked past, still shooting. And I didn't feel any bullets," the passenger continued in a very tight, very grateful monotone of recollection and survival.

At this point, more than a score of passengers were already cast about the car, wounded and bleeding, and the gunman tended his pistol, the second 15-shot clip exhausted.

"So he's reloading again and he was certainly going to keep shooting," Mr. Zaleskie recalled. "But someone yells, 'Grab him!' "

That was when one passenger tackled the gunman in the center of the car before he could get off another round and two more men piled onto him. The killer was pinned in a seat in the blood- and gore-smeared third car of the train, which had come to a stop at the Merillon Avenue station, panic spreading in all directions.

"A horror," said Mr. Zaleskie of the scene inside the car, suddenly quiet after the outrageous siege. "An absolute horror, and lying around in the aisles and in the seats, you see these people you never quite got to know across years of commuting," he said, his tone tinged with wonder. "Faces you recognize each day, but don't really know. And this horror has happened to them."

At the front of the car, Mr. Warshowsky had got up to wait by the door as the train approached the station when he heard the pop of the 9-millimeter gunfire and mistook it for something harmless, caps or fireworks. "A woman yelled, 'He's got a gun! He's shooting people!' " the passenger recalled, saying he was instantly moving in an adrenal blur, jumping down into a seat to hide as the bullets sprayed about the car.

"I heard 15 shots," said the 26-year-old purchasing department worker at The New York Times. "The gunman was pressing the trigger every half second or so. Going side to side shooting people. Not rapid fire, but pressing the trigger steadily -- pop, pop, pop. When he stopped to reload I made a run for the next car. We were trampling each other. I thought the guy was right at my back," said the New York City native, in his second year of suburban life.

In the next car, the second in the 12-car train, some passengers, unaware of the killing going on next door, seemed annoyed at the unruly



DEATH ON THE L.I.R.R.: The Rampage: Gunman in a Train Aisle P <http://www.nytimes.com/1993/12/09/nyregion/death-on-the-lirr-the-...>

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influx. "Be calm," one shouted at Mr. Warshowsky, who joined a crowd that manually forced open a door as the train pulled into the station. He burst forth to freedom.

The gunman had moved backward down the aisle, suddenly, briefly, facing each victim as or after he fired. The gunman was identified by the police today as Colin Ferguson, a 35-year-old native of the island of Jamaica who authorities said was a rage-filled individual from a furnished room in Brooklyn.

Police officials reported that the suspect was carrying scraps of angry notes cast in racist tones but directed across a spectrum of institutions and ethnic groups, including whites, Asians and black officials police said he characterized in his angry jottings as corrupt and racist. None of his victims was black, and police officials, who described his siege as methodical and inclusive, were unable to say whether there were other black passengers aboard the train.

"This was the work of a deranged, maniacal person who for a variety of reasons decided to explode," said Chief Joseph Flynn of the Long Island Rail Road police.

When Mr. Warshowsky began fleeing, he saw a conductor peer into the bloody third car from the second, spot the gunman and make an about-face. The railroad defended the crew's performance, saying the engineer, informed of the shooting, thought it best not to open the doors immediately because two of the cars were not at the platform. A conductor finally managed to climb from a train window and open some doors from outside so the panicky throng could flee.

As the gunman had moved in vicious pathology down the aisle, one passenger heard a man suddenly shout, "I have seven kids. Please don't kill me." His fate was unknown.

Police detectives said it appeared that the gunman had been planning his foray for more than a week. In the aftermath, it was his relentlessness that was most often recalled with lingering fear.

In the fourth car, Lorraine Oltadel's first notion of something going wrong aboard the 5:33 was the sudden shout, "He is coming with a gun!"

She did not immediately comprehend the warning but looked into the third car and saw the full threat, gun in hand, leveling passengers. "There he was. He was coming."

Then came a pause free of gunfire. A man shouted, "I think he has run out of bullets." But then, Ms. Oltadel recalled, someone screamed anew in the train: "He's coming again."

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## Report Details Police Killer's Abusive Relationship

Investigators Release 500-page Document Of Probe Into Death Of Newington Officer

June 11, 2005 | By MARYELLEN FILLO, Courant Staff Writer

NEWINGTON — When Mary Fletcher confronted Bruce Carrier yet again about his excessive drinking last year, her volatile live-in boyfriend responded the way he usually did when they argued: He hit her.

But this time he choked her until she was unconscious. And when she regained consciousness, he dragged her by the hair to a bedroom and tried to force her to put on a pair of handcuffs. When she refused, he hit her again. He placed one of her hands in the handcuffs, grabbed her by the hair and dragged her to the basement, where he handcuffed her to a column.

"What am I gonna do with you?" he asked, sitting in front of her on an overturned bucket.

Carrier left Fletcher there, handcuffed and suffering from a concussion, the rest of the night.

According to a 500-page state police report, that was one of a series of frightening incidents between the couple that finally prompted Fletcher, who never reported the incidents to local police, to take steps in late December 2004 to get Carrier removed from her Mountain View Drive home.

But it wasn't soon enough. Eight days after she had begun gathering the paperwork to apply for a restraining order against Carrier, he killed Newington Master Police Officer Peter Lavery after firing off a burst from an automatic weapon.

The report, released this week, is a detailed account of the investigation into the shooting and string of events on Dec. 30 and 31, 2004, that began with a domestic complaint when Fletcher's worried daughter, Ryan, called police, and ended with Lavery's killing and Carrier's apparent suicide.

Based on testimony from neighbors, and friends, the report also paints a grim picture of an abusive relationship between a controlling Carrier and a dependent and increasingly terrified Mary Fletcher.

At least six of Fletcher's neighbors who were interviewed as part of the report told police they regularly heard the two arguing. Several said they were afraid of Carrier, 45, calling him "scary," "an alcoholic" and "unstable," and fearful of the rifles he had in the backyard.

At least one neighbor said Fletcher, 46, had privately shared her growing fear of Carrier, who was characterized as a "control freak" and "an extremist."

In one interview with police, Fletcher said that she had been trying to get him to move out but that he had threatened to mess up the house or burn it down if she dared try. In the weeks before Lavery's death, Fletcher had asked her daughter to call daily "to make sure [Fletcher] was alive."

The couple met in the mid-1990s and began dating in 1998 or 1999. Initially, the relationship seemed like a good one and the two moved in together in New Britain. However, Carrier's weapons and assault arrest in 1999 and subsequent employment problems triggered a deepening depression and increased drinking.

Carrier was arrested in 1999 after he sprayed Mace in the face of Ryan Fletcher -- a teenager at the time -- and Mary Fletcher after Mary hid one of his handguns because she didn't want them in her apartment.

When police responded to that domestic complaint, they found numerous rifles, handguns, a Tec-9 semiautomatic assault weapon with a silencer, boxes containing hundreds of bullets, explosive fireworks and 56 ammunition-feeding magazines. As

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a result of his conviction on weapons, assault and reckless endangerment charges, Carrier was forced to resign from his state Department of Correction job.

Index by Keyword | Index by Date | Terms of Service | Privacy Policy | About Us | The couple still didn't seem to be working out" Fletcher told investigators, but soon reunited. Carrier moved in a month after Fletcher moved to Newington in 2000. She told police that at the time, "the relationship was great, as long as Carrier wasn't drinking."

Carrier, who was now working a variety of carpentry, construction and other odd jobs, was arrested again on charges of motor vehicle and probation violations that resulted in jail stints in 2002 and 2003.

Fletcher told authorities that the two would have arguments that would become physical. In 2003, Fletcher tried charging Carrier \$600 for rent in hopes the high payment would prompt him to move out. He paid the money and told Fletcher he would never leave.

Fletcher and family members told police that Carrier made Fletcher totally dependent on him. Carrier "created an environment in which Fletcher needed to ask him for assistance in performing the most menial of tasks," the report said.

As an example, Carrier would lock up all of his tool chests in the basement, so if she needed a screwdriver, she was forced to ask him for one, allowing him to dictate the situation and determine if he would help her or not.

Friends said Fletcher would sometimes exacerbate arguments. In one case, she teased Carrier about losing his driver's license after he was arrested in 2004 on a charge of driving while intoxicated.

Carrier's cousin, Alan, said Fletcher told him she was afraid of Carrier. Yet another acquaintance characterized Fletcher as a "narcissistic-type person" who would agitate Carrier.

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## Hartford Distributors Killer Talked Of Shooting Co-Workers Night Before Rampage

May 12, 2011 | By JESSE LEAVENWORTH, DAVE ALTIMARI and DAVID OWENS, jleavenworth@courant.com, The Hartford Courant

MANCHESTER — On the night of Aug. 2, 2010, Omar Thornton showed his uncle a Ruger 9mm handgun with two magazines that each held 17 rounds.

Consumed by a belief that his co-workers at Hartford Distributors were racist, and facing an ominous meeting the next day with company managers who caught him stealing, Thornton told Wilbert Holliday "something to the effect of — 'that's 34 bullets ... those guys at work' — before trailing off and changing the topic," according to Holliday's statement to police.

The next morning, Thornton arrived at the Chapel Road beer distributorship wearing a black ROCKY t-shirt, black shorts and a fingerless black glove on his right hand. Inside the red lunch pail that he carried was the gun he had showed his uncle the night before, a second 9mm pistol, a spare clip and two boxes of Remington ammunition.

In three minutes on that bright summer morning, Thornton executed eight men, shooting them all from behind and laughing at one point as he chased down a wounded victim.

New details about the gun enthusiast and troubled "momma's boy" emerged Thursday as Manchester police released the massive file of their investigation into the worst workplace mass murder in state history.

The documents show that Hartford Distributors Inc. was not the overtly racist place that Thornton claimed in his last recorded words before shooting and killing himself as police closed in. But the investigation does show that Thornton, who was black, convinced himself that he was a target of his mostly white co-workers.

Mark Bellavista, a co-worker, told police that "Omar would jokingly ask me if I knew any good white men," according to a summary of the investigation. "I would tell Omar to look around — there is a lot of good white men around here. Omar would then say you got to kill them before they go bad."

The only substantial sign of any racism at the beer distributorship, a sign that Thornton might have seen, was graffiti in a bathroom stall of President Barack Obama with a noose around his neck, police said. When company managers learned of the graffiti, it was quickly removed.

At a press conference Thursday at Manchester police headquarters, Police Chief Marc Montminy said the investigation showed that Thornton had a poor work ethic and did not understand the union work rules that governed Teamsters at Hartford Distributors.

"Omar did not seem to understand the concept of seniority," Montminy said. "Everyone is done based on the union contract. He was the junior driver. Omar saw that as racism. Others in the building believed it was a contractual obligation."

Christopher Roos, principal officer of the Teamsters' local that represents Hartford Distributors employees, said it was important for the family members of those who died to have confirmed what they knew all along — that their loved ones were not racist.

"This was an individual who had issues since he was a child," Roos said of Thornton. "He couldn't face that he got caught stealing. It was just a cowardly act."

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Thornton emerges from the investigation as irresponsible and incompetent. The high school dropout had been fired five times before starting at Hartford Distributors in 2008. Managers of those companies portrayed Thornton as a baby who was constantly on the phone with his mother and relied on her to fight his battles. He also was a thief, according to a Canterbury trucking company that fired Thornton for pocketing \$245 that he was supposed to use to fuel a truck, according to the investigation.

At Hartford Distributors, Thornton's work ethic remained poor. His nickname was "Slowmar." A black co-worker, Patrick Stephens, told police, "I would describe Omar as being a lazy guy, who you would see falling asleep while working."

But it was Thornton's thievery, not laziness or incompetence, that led to the slaughter. Hartford Distributors managers suspected that the 34-year-old, who made \$48,000 in 2009 and was on track to make double that in 2010 after moving from a warehouse position to a driving job, was stealing beer off his truck. The company wanted to fire Thornton, but union officials told the company that it didn't have the proof. So the company hired a private investigator to tail Thornton and get proof.

Thornton was called into work early on Aug. 3. Company managers confronted Thornton with video showing him loading kegs and cases of beer into the trunk of an Enfield couple's car. Company Vice President Steve Hollander told police that Thornton sat calmly during the meeting with "a very angelic, innocent look on his face."

Thornton said nothing other than to comment on the high quality of the video. He conferred briefly with his union representative, Bryan Cirigliano, then signed a one-line letter of resignation. The company agreed not to say he was fired and was not going to contest an unemployment claim.

Thornton then began to carry out his vendetta.

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## March 7, 1998: Worker Kills 4 Bosses, Self At Lottery Site

March 07, 1998 | By JOHN SPRINGER, The Hartford Courant

NEWINGTON — A silent and seething employee went on a bloody rampage at Connecticut Lottery Corp. headquarters Friday, killing four senior lottery officials before committing suicide as police closed in.

Lottery President Otho Brown, 54, and former New Britain Mayor Linda A. Blogoslawski Mlynarczyk, 38, were among the victims of what is believed to be the state's deadliest workplace slaughter.

Also killed were Frederick Rubelmann III of Southington, 40, vice president of lottery operations and administration; and Michael Logan, 33, of Colchester, the agency's information systems director.

The killer used a handgun and a knife. Police identified him as Matthew E. Beck, 35, a state lottery accountant involved in a seven-month dispute with the agency over job duties and pay.

Co-workers said Beck, dressed in jeans and a polo shirt, appeared tormented by something when he showed up for work Friday morning at Connecticut Lottery headquarters at 85 Alumni Road. He sat at his desk refusing to speak to co-workers or to remove his tan leather jacket.

Finally, he stood up from his chair and walked past at least a dozen offices toward the administration suite. It was there, police and eyewitnesses said, that Beck began his killing spree.

"It all happened in only a matter of minutes," said state Public Safety Commissioner John Connelly.

Amid the hysterical screams of co-workers who ran in blind terror at the sound of gunfire, witnesses said, Beck showed no emotion as he systematically sought out and killed superiors who had been involved in a union grievance he filed last year.

Police said Logan was the first to die, stabbed in the chest and stomach with a military-style knife. Officials were uncertain Friday whether he was also shot.

Beck then shot and killed Mlynarczyk, the lottery's chief financial officer, with a semiautomatic handgun for which he had a permit.

"We heard, 'pop, pop, pop.' I just thought something dropped. People started yelling to get out of the building," said Marion Tercyak, a state lottery accountant who worked in the same suite of offices with Beck. "Security and Olt [Brown] were yelling for people to keep running, to run into the woods."

After Logan and Mlynarczyk were killed, chaos broke out among some of the more than 100 state workers assigned to lottery headquarters. Unsure of what was happening, employees flooded out of the building and tried to find cover behind cars, trees and bushes. Beck shot Rubelmann inside the building as he tried to direct workers to safety, police and witnesses said.

Outside in the parking lot, Brown was screaming for workers to run into the woods behind the building. From about 50 yards away, workers watched helplessly as Beck chased Brown into an overflow parking lot that was empty of cars.

Barbara Doody, who is also an accountant, said she thought Brown was trying to lead Beck away from the frightened employees.



Brown stumbled and fell to the gravel lot, enabling Beck to catch up to him. Witnesses said Brown pleaded for his life as Beck stared down at him dispassionately.

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was a senior manager at the time. "I don't know if Matthew don't!" Doody said. "Then Otho puts his arm up in the air. That's when Beck walks right up to him and pulls the trigger. There was no expression on Matthew's face. Nothing."

As police arrived moments later and drew their weapons, Beck put his pistol to his head and pulled the trigger. Beck was airlifted to Hartford Hospital, where he was pronounced dead shortly after arrival.

At an afternoon news conference that attracted more than 100 print and broadcast reporters and photographers to Newington Town Hall, Connelly, the state public safety commissioner, said that Beck suffered from job-related stress and had returned to work Feb. 25 after a four-month medical leave. The leave of absence appeared to be directly related to an unresolved grievance Beck filed in August in which he complained he was forced to perform duties not in his job description, Connelly said.

Beck was performing a computer-related job in Logan's division but was still being paid as an accountant, a position that generally is paid about \$2 an hour less than the computer job, according to state records. Beck earned \$45,400 a year.

Connelly said state police believe that their investigation will show that Beck was deeply resentful about the way his grievance was handled and the way he perceived he was being treated. The victims did not appear to be targeted randomly and were all involved in the grievance process.

Gov. John G. Rowland raced to the scene after aides interrupted a morning meeting to tell him about the shooting. Rowland, who appointed Brown and Mlynarczyk, ordered state flags lowered until sundown Monday. Friday's lottery drawings were postponed.

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## **EXHIBIT 51**

despp: Danbury State's Attorney Releases Information on Sandy Hook Shooting

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#### DANBURY STATE'S ATTORNEY RELEASES ADDITIONAL INFORMATION ON DECEMBER 14, 2012, INCIDENT AT SANDY HOOK ELEMENTARY SCHOOL

Stephen J. Sedensky III, State's Attorney for the Judicial District of Danbury, today released the following statement concerning the December 14, 2012, tragedy at the Sandy Hook Elementary School in Newtown, Connecticut:

On the morning of December 14, 2012, Adam Lanza, the shooter, age 20, of 36 Yogananda St., Newtown, shot his mother, Nancy Lanza, age 52, in her bed with a .22 caliber rifle. There was no indication of a struggle.

Later the shooter went to Sandy Hook Elementary school where he shot his way into the building and killed 20 children and 6 adults with a Bushmaster .223 caliber model XM15 rifle. The Bushmaster was loaded with a 30-round capacity magazine. Fourteen rounds were in the magazine when the Bushmaster was recovered by police. There was one round in the chamber.

The shooter took his own life with a single shot from a Glock 10 mm handgun. He also had a loaded 9mm Sig Sauer P226 handgun on his person. Recovered from the person of the shooter, in addition to more ammunition for the handguns, were three, 30-round magazines for the Bushmaster, each containing 30 rounds. Located in the area of the shootings were six additional 30-round magazines containing 0, 0, 0, 10, 11, and 13 live rounds respectively. One-hundred-and-fifty-four spent .223 casings were recovered from the scene.

It is currently estimated that the time from when the shooter shot his way into the school until he took his own life was less than five minutes.

The police found a loaded 12-gauge shotgun in the passenger compartment of the car the shooter drove to the school. The shotgun was moved by police from the passenger compartment of the car to the trunk for safekeeping.

The guns used in the shootings were apparently all purchased by the shooter's mother. There is currently no indication that the shooter attempted to purchase the guns and was denied. The gun locker at 36 Yogananda St. was open when the police arrived. It was unlocked and there was no indication that it had been broken into.

Under Connecticut General Statutes Section 51-276 the State's Attorney for the Judicial District of Danbury is in charge of the investigation. I asked the Connecticut State Police to conduct the criminal investigation. We are being assisted by numerous other state and federal agencies.

Five search warrants were obtained on December 14, 15, and 16, 2012, for the car the shooter drove and his home at 36 Yogananda St. I sought and obtained sealing orders for these five warrants and the returns. The orders were issued by the Honorable John F. Blawie for 90 days. The orders expired March 27, 2013.

Today those warrants and their returns are being released subject to redactions that I requested of the court yesterday. This is an ongoing and active criminal investigation which is most effectively done confidentially. Indeed the rules of Professional Responsibility as they apply to prosecutors require that I take steps to not make extra judicial statements that I know or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter. The rule also applies to investigators working under my authority. As this criminal investigation is ongoing, active and no definitive conclusions have been reached by myself, the release of any information could potentially jeopardize a future prosecution if evidence were developed to support one. It is not unusual to develop a viable prosecution late in an investigation when one was not contemplated earlier.

The family and friends of the victims, the community and the general public have a right to expect that

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any decision to prosecute or not prosecute will be made only after all of the available evidence has been examined and considered and all leads suggested by the evidence have been adequately pursued. The Connecticut State Police, the Newtown Police Department and other state and federal law enforcement agencies are not only continuing to investigate, but are still in the process of compiling reports, statements from witnesses, and documenting, examining and testing physical and digital evidence that has been obtained. This process is very arduous and must be done carefully, accurately, and confidentially.

At the same time, the investigators and myself are aware of the work some members of the public, the Governor and the General Assembly are trying to do. It is with that work in mind and our obligations to the investigation that the above statement regarding some facts of the case are described and only limited redactions to the search warrants and returns were requested. Additionally, recognizing the importance of the work of the Governor and the General Assembly, the Division of Criminal Justice through the Office of the State's Attorney and the Office of the Chief State's Attorney communicated with representatives of the Governor and the legislature to hear concerns regarding facts of the incident within the context of the ongoing criminal investigation.

Recently, information purporting to relate to this investigation was published in the media attributed to a presentation at a law enforcement conference. To prevent such disclosure in the future, I have instructed that any and all such presentations involving evidence in the criminal investigation be ceased while the investigation is pending and my report is still outstanding.

In not seeking to continue the complete sealing of all the search warrants and in providing the information above, this State's Attorney, as well as the Connecticut State Police investigators, were mindful of the work our elected leaders are undertaking. After consultation with the investigators, it was decided that much of the information in the search warrants would not sought to be sealed and that the release of the above basic crime scene information would not jeopardize the active and continuing criminal investigation into this unprecedented tragedy.

The released search warrants were obtained on December 14, 15, 16, 2012, within a short time of the shootings. Subsequent investigation revealed that shootings took place in two of the classrooms, not three, and that the shooter was not wearing a bullet-proof vest; nor was he a teenager. Paragraph 5 of the December 16, 2012, warrant contains excess verbiage that was the result of incorporating information from prior search warrants. Finally, page numbers on returns do not necessarily follow the page listed before them as the returns are prepared after the warrant has been executed. The officer filling out the return may have used different equipment for the form which may result in discrepancies in the page numbering for the returns.

As mentioned, this is an active, ongoing investigation. No conclusions have been reached and no final determinations have been made. The estimation of completion in the summer remains. After the investigation is complete, I will prepare a report regarding the matter which will include an evaluation of the crimes committed and whether or not there will be any prosecutions as a result. Myself and the investigators ask that the investigative process be respected.

Our sympathy for this tragedy continues to go out to the victims' families, friends and the Newtown community. We continue to be grateful to those working with us on the investigation, the Newtown Police Department, the Office of the Chief Medical Examiner, the United States Attorney's Office, the Federal Bureau of Investigation, the United States Marshal's Service, the Bureau of Alcohol, Tobacco, Firearms and Explosives and all of the other local, state and federal agencies that have been working with the Connecticut State Police and the State's Attorney's Office involved in this investigation.

-end-

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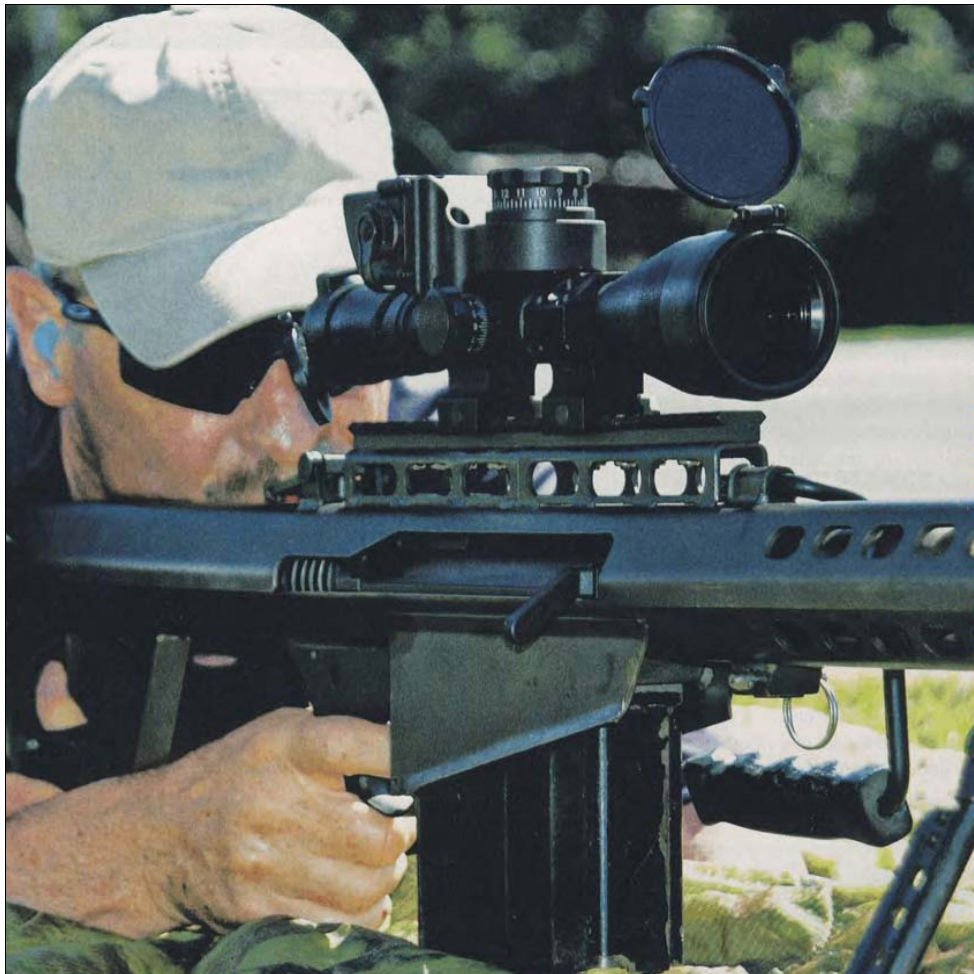


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## **EXHIBIT 52**

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# The Militarization of the U.S. Civilian Firearms Market



Violence Policy Center  
June 2011

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**The Violence Policy Center** (VPC) is a national non-profit educational organization that conducts research and public education on violence in America and provides information and analysis to policymakers, journalists, advocates, and the general public. This report was authored by VPC Senior Policy Analyst Tom Diaz. The study was funded in part with the support of the David Bohnett Foundation and The Joyce Foundation. Past studies released by the VPC include:

- *A Shrinking Minority: The Continuing Decline of Gun Ownership in America* (April 2011)
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*This report is published in PDF format and is designed to be printed out in color as a single-sided document.*



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Firearms accessories manufacturer TangoDown claims on its website that it "...exists for one reason. To design, develop and manufacture the highest quality products for the warriors of the United States Armed Forces." However, many of its products—like the poster reproduced above—and its advertising are aimed at the militarized civilian market.

[www.tangodown.com/td\\_pages/p\\_about.html](http://www.tangodown.com/td_pages/p_about.html)



Sgt. Brandon Paudert (left) and Officer Bill Evans (right) of the West Memphis (Arkansas) Police Department were shot to death May 20, 2010, following a traffic stop. The shooter, 16-year-old Joseph Kane, was armed with an AK-47 semiautomatic assault rifle. Kane and his father, Jerry, were killed in a gunfight with police in a nearby Walmart parking lot. The Kanes were reportedly members of the anti-government Sovereign Citizens Movement.

"Brandon and Bill had no chance against an AK-47," [West Memphis Police Chief Bob] Paudert said. "They were completely outgunned. We are dealing with people who rant and rave about killing. They want government officials dead. We had a 16-year-old better armed than the police."

"West Memphis police chief says officers' pistols were no match for heavily armed teenager," *The Commercial Appeal* (Memphis, TN), May 25, 2010

"Sovereign Citizens Movement members leave two police officers dead in shootout," *NBC News Transcripts*, July 5, 2010

### Key Findings

***The civilian firearms industry in the United States has been in decline for several decades.*** Although the industry has enjoyed periods of temporary resurgence, usually primed by “fear marketing”—encouraging people to buy guns by stoking fear of crime, terrorism, violent immigrants, or government control, for example—the long-term trend for the manufacturers of guns for civilians has been one of steady decline.

***Selling militarized firearms to civilians—i.e., weapons in the military inventory or weapons based on military designs—has been at the point of the industry’s civilian design and marketing strategy since the 1980s.*** Today, militarized weapons—semiautomatic assault rifles, 50 caliber anti-armor sniper rifles, and armor-piercing handguns—define the U.S. civilian gun market and are far and away the “weapons of choice” of the traffickers supplying violent drug organizations in Mexico.

***The flood of militarized weapons exemplifies the firearms industry’s strategy of marketing enhanced lethality, or killing power, to stimulate sales.*** The resulting widespread increase in killing power is reflected in the toll of gun death and injury in the United States—a relentless count that every year takes 10 times the number of lives as the terrorist attacks of September 11, 2001.<sup>1</sup>

***Militarization has baleful consequences beyond the “routine” toll of murders, suicides, and unintentional deaths.*** Military-style weapons are a favored tool of organized criminals such as gangs and drug traffickers, and violent extremists. Semiautomatic assault weapons—especially inexpensive AK-47 type imports—are increasingly used in attacks against law enforcement officers in the United States.

***The pernicious effects of the militarized U.S. civilian gun market extend well beyond the borders of the United States.*** Lax regulation and easy access to these relatively inexpensive military-style weapons has resulted in their being smuggled on a large scale from the U.S. to criminals throughout the Western Hemisphere—including Mexico, Canada, Central America, the Caribbean, and parts of South America—as well as to points as far away as Afghanistan, the Balkans, and Africa.

This study surveys the rise of the militarized civilian gun market, examines its impact on public health, safety, and crime in the United States and the world, and refutes the gun lobby’s recent attempt to “rebrand” semiautomatic assault weapons as “modern sporting rifles.”

### **"Militarization" — What is It?**

The verb "militarize" means "to give a military character to" something.<sup>2</sup> The gun industry has given a "military character" to guns in the U.S. civilian market by —

- **Selling on the civilian market guns that are identical to guns used by the armed forces of the United States and other countries.** These firearms include such sophisticated weapons as the Barrett 50 caliber anti-armor sniper rifle and the FN Herstal Five-seveN 5.7mm pistol.



The Barrett Firearms 50 caliber anti-armor sniper rifle used in combat (above) is sold without meaningful regulation in the U.S. civilian gun market.



**BUY ANY FN FIVE-SEVEN AND YOUR FIRST 200 SHOTS ARE FREE!**

Purchase any new FN Five-seveN pistol before March 31, 2008 and receive 200 rounds of FN 5.7x28mm SS197SR ammunition (a \$90.00 value) **ABSOLUTELY FREE!**

Visit [www.fnhusa.com](http://www.fnhusa.com) for complete details on this limited time offer!

FN M240 7.62x51MM NATO MEDIUM MACHINE GUN

**BUILT FOR THEM.**

The FN Five-seveN USG pistol offers carbine ballistic performance in a handgun. Today FN provides 70% of the small arms used by U.S. Military Forces around the globe. FN is the name you can trust. **JUST LIKE THEY DO.**

REAL WORLD PRODUCTS. REAL WORLD PERFORMANCE.<sup>™</sup>  
**FNH USA**  
[WWW.FNHUSA.COM](http://WWW.FNHUSA.COM)

**BUILT FOR YOU.**

THE FN FIVE-SEVEN USG IS AVAILABLE IN 5.7X28MM  
- FN Five-seveN USG AUTOLOADING HANDGUN SHOWN -

Every FN Five-seveN features:

- Hammer-forged chrome-lined barrel
- Polymer frame and slide cover
- Integrated accessory rail
- Ambidextrous safety levers
- Three 20-round polymer magazines and a hard case  
(limited-capacity magazines supplied where required by law.)

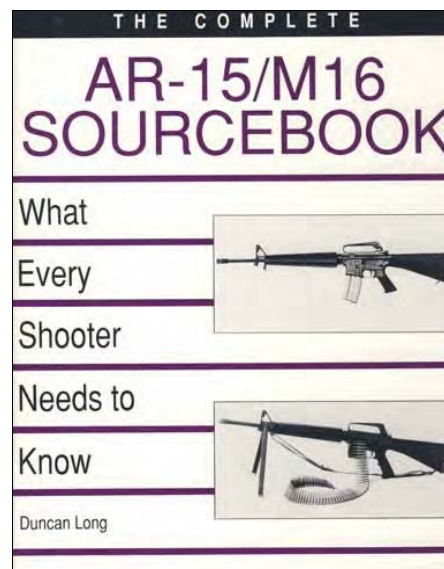
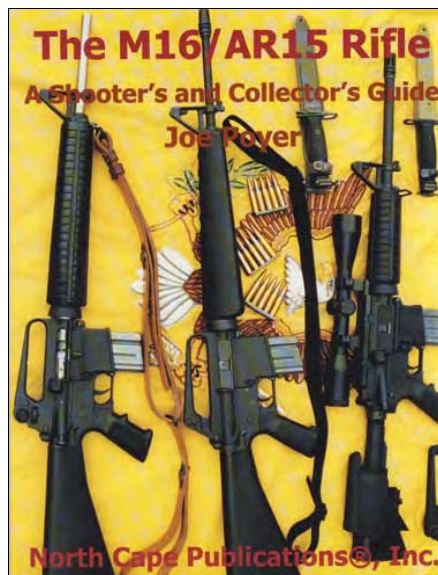
FNH USA • P.O. BOX 697 • McLEAN, VA 22101 USA • (703) 288-1292 © FNH USA, LLC, a subsidiary of FN Herstal, S.A. 2007

This ad from *Guns & Ammo* (March 2008) explicitly plays on the military's use of FN's Five-seveN 5.7mm armor-piercing handgun.



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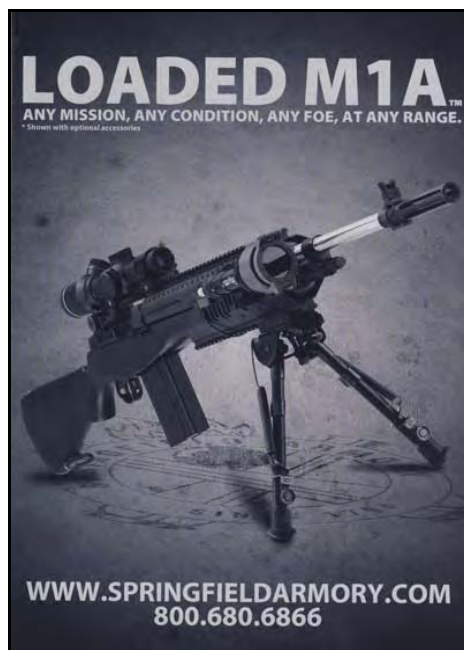
- **Designing and manufacturing, or importing, civilian variants of military firearms that would otherwise be illegal to sell on the civilian market.** These are principally semiautomatic versions of military assault weapons. (Military assault rifles are capable of fully automatic fire. They are thus barred, as “machine guns,” from sale to civilians in the United States.) They include many variants of the AR-15 (the civilian version of the U.S. military M-16 assault rifle) and numerous semiautomatic versions of the Kalashnikov assault rifle, popularly known as the AK-47.



The covers of these books, the left published in 2000, the right in 1992, graphically illustrate the equivalence gun enthusiasts see between the military M-16 and the civilian AR-15.



- **Heavily promoting military-style products through images, slogans, print, video, and other electronic media that link the features, capabilities, and uses of military weapons with firearms available on the civilian market.** In addition to this direct product promotion, the industry relies heavily on suggestive “patriotic” and “heroic” imagery—both historic and contemporary—to identify ownership of military-style weapons with grand themes of “patriotism” and “homeland defense.”



These ads from the NRA's *American Rifleman* magazine (May 2010) are typical of how the gun industry implicitly evokes militaristic themes in its marketing.

In short, the gun industry designs, manufactures, imports, and sells firearms in the civilian market that are to all intents and purposes the same as military arms. It then bombards its target market with the message that civilian consumers—just like real soldiers—can easily and legally own the firepower of militarized weapons.



Colt's Manufacturing's 2010 catalog (cover at top) *American Legends* touches all the bases. Internal pages, clockwise from upper left, glorify: Teddy Roosevelt and his Rough Riders; World War I hero Sgt. Alvin York; Colt's CEO Marine Lt. Gen. William M. Keys; and, U.S. Navy deserter and 1930s bank robber John Dillinger. The brochure's mawkish tone is typical of gun industry advertising and gun lobby propaganda.

### Why Has the Gun Industry Militarized Its Market?

In spite of the gauzy imagery of its advertising, the gun industry's militarization is simply a business strategy aimed at survival: boosting sales and improving the bottom line. The hard commercial fact is that military-style weapons sell in an increasingly narrowly focused civilian gun market. True sporting guns do not.

Here, for example, is an informed industry assessment of the importance of assault (often euphemistically called "tactical") weapons to the gun industry from October 2008:

If there is an area of good news, it's still the tactical segment. In the past week, storefront owners and catalog retailers are unequivocally saying that, with the exception of the tactical categories—from AR-style rifles to the polymer pistols increasingly found in the holsters of law enforcement across the country, sales are slow.<sup>3</sup>

Here is another from an article titled, "Industry Hanging Onto [sic] A Single Category"—

The net of all the numbers is that if you're a company with a strong line of high-capacity pistols and AR-style rifles, you're doing land office business. If you're heavily dependent on hunting, you are hurting.<sup>4</sup>

***Gun Industry Problem: Long-Term Decline.*** The civilian firearms industry in the United States has been in decline for several decades. Although it has from time to time enjoyed brief peaks in sales, it has been essentially stagnant. For example, demand for firearms apparently increased beginning in 2008 because of fears that "high unemployment would lead to an increase in crime" and the Obama administration would "clamp down" on gun ownership by regulating assault weapons. But demand fell back as these fears waned.<sup>5</sup> A writer for the online industry publication *Shooting Wire* noted in September 2009:

...research tells me what everyone already knows: gun sales are slowing again. It seems the "Barack Boom" has started to go bust. No real reason, other than maybe the fact that everyone already has all the AR-style rifles they can shoot, store or afford, but there is an undeniable slowdown....<sup>6</sup>

In spite of such occasional anomalies, fundamental long-term trends have worked against the gun industry. The nation's largest firearms manufacturer, Freedom Group, Inc., included the following candid disclosure in a document filed recently with the U.S. Securities and Exchange Commission (SEC):

We believe that a number of trends that currently exist may affect the hunting and shooting sports market:

- the development of rural property in many locations has curtailed or eliminated access to private and public lands previously available for hunting;
- environmental issues, such as concern about lead in the environment; and
- decreases in consumer confidence and levels of consumer discretionary spending.

These trends may have a material adverse effect on our business by impairing industry sales of firearms, ammunition and other shooting-related products.<sup>7</sup>

Other trends include aging consumers—the percent of the U.S. population aged 65 and older has grown from 4.1 percent in 1900 to 12.4 percent in 2000.<sup>8</sup> Gun owners are older and young people are less likely to buy firearms. The *Christian Science Monitor* reported in 2002 that some in the gun industry itself explained that the “fact that the average age of gun owners continues to increase is...more than a statistical quirk tied to aging baby boomers. Rather it’s a sign that younger generations see guns differently.”<sup>9</sup> The growing proportion of immigrants in U.S. society also has an impact: “America’s increasing immigrant population has less of a tradition with firearms....”<sup>10</sup>



Electronic entertainment like Nintendo’s Super Mario series of video games threatens the gun industry’s crucial “youth market.”

Recent studies have shown that alternative recreation has drastically affected so-called “nature recreation”—camping, hunting, fishing, and park visitation—by all Americans. According to these studies, “Most reliable long-term per capita visitation measures of nature recreation peaked between 1981 and 1991. They’ve declined about 1.2 percent per year since then, and have declined a total of between 18 percent and 25 percent.”<sup>11</sup> The authors state the cause is “a social change of values characterized by our increasing pursuit of electronic media entertainment.”<sup>12</sup> According to the Entertainment Software Association, U.S. sales of computer and video games grew from \$2.6 billion in 1996 to “well over \$7.0 billion” in 2007.<sup>13</sup>

As a result, the gun industry has failed to keep up with population growth. Between 1980 and 2000 the U.S. population grew from 226,545,805 to 281,421,906—a 24 percent increase.<sup>14</sup> Over the same period, total domestic small arms production fell from 5,645,117 to 3,763,345—a 33 percent decrease.<sup>15</sup> As America has gotten bigger, the gun industry has gotten smaller.

***Gun Industry Solution: Generating Demand with New and More Lethal Designs.*** In order to entice new gun owners into its shrinking pool of customers—and to motivate gun owners already in the pool to buy more guns—the gun industry seeks to create innovative products that offer new features and appeal to consumer trends. The industry *itself* deliberately creates these consumer trends.

An example lies in the phenomena of: (1) the gun lobby’s nationwide campaign, led by the National Rifle Association (NRA), to change state laws to allow the concealed carry of firearms; and, (2) the gun industry’s parallel aggressive marketing of concealable, high-powered handguns. In a 1996 interview with *The Wall Street Journal*, the NRA’s then-chief lobbyist, Tanya Metaksa, claimed credit for generating new gun sales with the concealed carry campaign: “The gun industry should send me a basket of fruit—our efforts have created a new market.”<sup>16</sup>



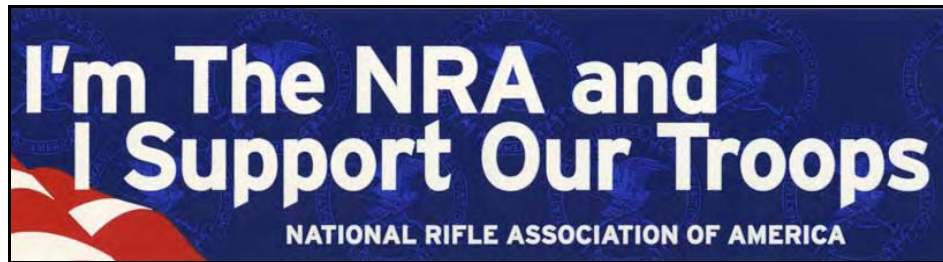
Colt’s Manufacturing evokes the militaristic image of Air Force General Curtis LeMay—“Father of the Strategic Air Command”—to promote its 01970 CY “carry model” semiautomatic pistol.

*Colt American Legends catalog*  
(2010)

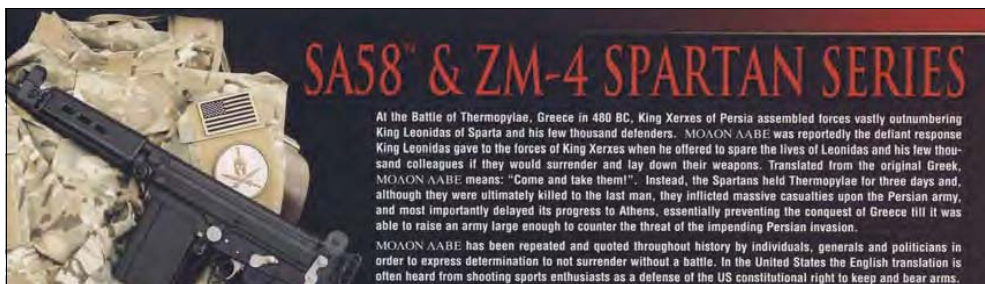


A Freedom Group filing with the SEC contains a more recent description of the process: "We have also shifted our business from a manufacturing-based 'push system' to a customer-focused 'pull system,' *driven by our Chief Sales and Marketing Officers.*" [emphasis added]<sup>17</sup> Translated into plain English from the language of financial filings, this admission means that the conglomerate's marketing technique is to *generate* demand ("pull").

The constant generation of "pull" in niche markets is vital to the industry's survival. If a manufacturer's new product generates sufficient "pull," or product demand, imitation by other manufacturers and proliferation of the design follows swiftly.



NRA bumper sticker typical of gun lobby's pseudo-patriotic propaganda.



DSA, Inc. promoted its "Spartan Series" semiautomatic assault rifles with the Greek phrase "*Molon Labe*" ("Come and take them") supposedly uttered by Spartan warriors in 480 BC at the Battle of Thermopylae. "In the United States the English translation is often heard from shooting sports enthusiasts as a defense of the U.S. constitutional right to keep and bear arms," the company's brochure states.



***Appealing to the Soldier Within.*** A marketing technique central to the gun industry's militarization campaign is appealing to the soldier within potential buyers who are drawn for emotional—or more sinister practical—reasons to military weaponry.



FN Herstal USA's 2010 catalog touts the SCAR 16S, "the semi-auto only version of the U.S. Special Operations Command's newest service rifle."

Here, for example, is an industry newsletter's description of the appeal of an assault rifle recently introduced by FN Herstal—the FNAR—by reference to a well-known military weapon, the Browning Automatic Rifle (BAR):

Even as many in the firearms business worry about the potential for another assault on assault rifles...there's yet another entry into the black rifle marketplace.

FNH USA has announced the availability of their new FNAR 7.62x51mm semiautomatic rifle. If [sic] looks something like a tuner-version of the venerable BAR, but there's probably some reason for that resemblance. FNH, after all, owns Browning—and the Browning Automatic Rifle carries a lot of mystique with law enforcement and military folks.<sup>18</sup>



"Descending from the legendary Browning Automatic Rifle (BAR), the FNAR puts autoloading speed and bolt-action accuracy into one powerful package."

FNUSA description of its FNAR civilian semiautomatic assault rifle,  
[www.fnhusa.com/le/products/firearms/group.asp?gid=FNG022&cid=FNC01](http://www.fnhusa.com/le/products/firearms/group.asp?gid=FNG022&cid=FNC01)



The BAR was a favorite of U.S. Marines in World War II—and of a notorious 1930s outlaw, serial cop-killer Clyde Barrow.

The gun industry's embrace of militarization can be seen in the chart below. Eleven of the top 15 gunmakers manufacture some type of assault weapon.

<b>Eleven of the Top 15 Gun Manufacturers Market Assault Weapons<sup>19</sup></b>			
<b>Rank</b>	<b>Manufacturer</b>	<b>Assault Weapons?</b>	<b>Make or Type</b>
1	Sturm, Ruger	Yes	Mini-14 and SR-556 assault rifles
2	Smith & Wesson	Yes	M&P 15 assault rifle
3	Remington	Yes	R-15 assault rifle
4	Maverick/Mossberg	Yes	Tactical .22 assault rifle and assorted assault shotguns
5	Marlin	No	
6	Sig Sauer	Yes	Assorted assault rifles
7	Kel-Tec	Yes	Assorted assault rifles
8	Savage	Yes	110 BA assault rifle
9	H&R 1871	No	
10	Beemiller	Yes	Hi-Point Carbine assault rifle
11	Henry Repeating Arms	No	
12	DPMS	Yes	Assorted assault rifles
13	Beretta, USA	Yes	Storm assault rifles
14	Bushmaster	Yes	Assorted assault weapons
15	Glock	No	

### How Has the Gun Industry Militarized Its Market?

The gun industry has militarized the civilian market with three major types of firearms: high-capacity handguns, assault rifles and pistols, and sniper rifles.

#### High-Capacity Handguns

Handguns are a basic weapon of the U.S. military. Until 1911, the U.S. armed forces historically favored revolvers. In that year the U.S. Army adopted a semiautomatic pistol for the first time, the iconic Colt M1911 in .45ACP (designated the M1911A1 after modifications were made in 1926).<sup>20</sup>



Colt Model 1911A1

The Colt pistol remained the military's standard sidearm until 1989. Although various models of the Colt pistol were offered in the civilian market, American consumers favored revolvers, which continued to dominate the market until 1989.

In that year, Beretta, U.S.A. Corporation—a subsidiary of an Italian gun manufacturer—won final approval of a contract to replace the venerable M1911A1 with its 9mm semiautomatic pistol. In short order, the U.S. civilian handgun market was revolutionized and militarized, in large part because of a deliberate, well-documented marketing strategy by Beretta's management.

***Handgun Militarization—High-Capacity Semiautomatic Pistols.*** Beretta's pistol, designated the M-9, entered service in 1990 as the military's primary sidearm.<sup>21</sup> But

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Beretta's top executive told the *Baltimore Sun* in 1993 that the military contract was simply "part of a carefully planned strategy dating back to 1980"—

The plan was to win the military contract and use it to make Beretta a household name in the United States in hopes of tapping into the larger law-enforcement and commercial markets. That's why, [Robert] Bonaventure [head of Beretta U.S.A. Corp.] said, the company has been selling pistols to the military for about \$225 each—close to production cost....The biggest market—about twice the size of the police and military business combined—is the commercial market....<sup>22</sup>



Beretta's top U.S. executive told the *Baltimore Sun* in 1993 that the company's strategy was to use the cachet of military sales to reach the larger civilian handgun market. The Beretta M9 also became a favorite of street gangs and drug dealers.

Beretta advertisement from October 1985 issue of *Guns & Ammo* exemplifies the Italian arms maker's use of military cachet in civilian gun market.

**Beretta 92 F. The Ultimate 9mm Sidearm is now the Official Sidearm of the U.S. Military.**

When the U.S. Government went looking for a new standard issue sidearm, it tested the best pistols in the world. But the Beretta 92 F 9mm Parabellum thoroughly outclassed the competition in every government performance trial. In accuracy. Safety. Reliability. Firepower. In grip, feel, lightness and pointability. The Military was convinced. Now America's fighting men will carry the finest 9mm sidearm in the world. Consistently superior quality and service have also convinced law enforcement agencies like the Connecticut and Wyoming State Police and the Texas Rangers to switch to Beretta. You'll be convinced, too. Look at its outstanding features: Check out the 92 F and the 92 SB Compact along with the complete line of quality Beretta sporting and competition firearms at your gun dealer's today. Or send \$2.00 to Beretta USA for a copy of our catalog. Beretta U.S.A. Corp., 17601 Indian Head Highway, Accokeek, Md. 20607 (301) 263-2191

Austrian entrepreneur Gaston Glock had a similar objective when he founded his handgun manufacturing company, won an Austrian army competition in 1982, opened a U.S. subsidiary, and then went after the American law enforcement market. "In marketing terms, we assumed that, by pursuing the law enforcement market, we would then receive the benefits of 'after sales' in the commercial market," Glock told *Advertising Age* in 1995.<sup>23</sup>

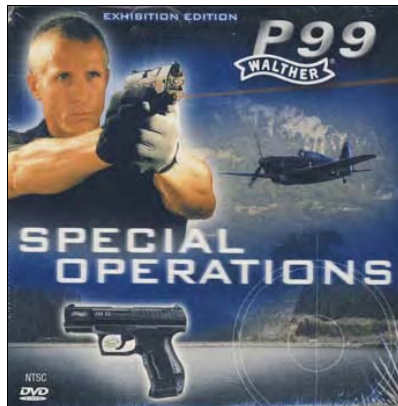


Austrian gun manufacturer Glock promotes its firearms by constantly linking them to law enforcement use, a form of domestic militarism.

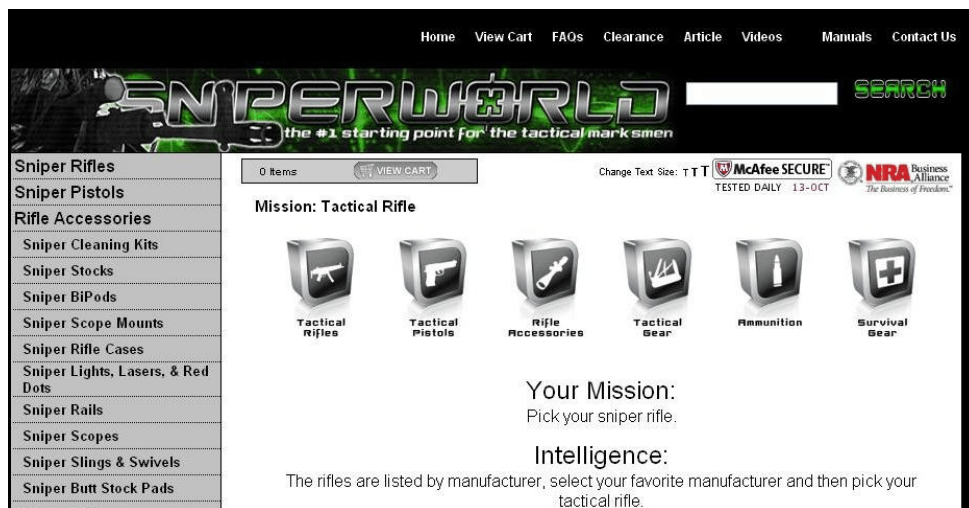
Boosted by these companies' sophisticated marketing strategies, and an adulatory gun press, high-capacity 9mm semiautomatic pistols reinvigorated the industry in the 1980s. Known as "Wonder Nines," 9mm semiautomatic pistols drove the formerly dominant revolvers out of the handgun market and created a lucrative boom for the industry. The military-style semiautomatic pistols proliferated.

The switch from revolvers to high-capacity pistols dramatically enhanced handgun lethality. As *Jane's Infantry Weapons* observed in the early 1980s, revolvers are "bulky," "generally limited to six rounds," take a "long time to reload," and produce low muzzle velocity. Pistols "can be made flat and unobtrusive," "take up to 13 rounds or more," feature a "simple to replace magazine," and high muzzle velocity.<sup>24</sup>





Gun industry promotional materials, like this DVD distributed at an NRA convention by German gun-maker Carl Walther, frequently emphasize such militaristic terms as "mission," "special operations," and "tactical."



Sniperworld (above) sells military-style firearms through the Internet. Here it assigns customers the "mission" of picking their sniper rifle. The dealer displays its membership in the NRA Business Alliance: "The Business of Freedom."

***Handgun Militarization—High-Capacity “Anti-Terrorist” Vest-Busting Pistols.*** In the scramble for market, the gun industry has introduced a plethora of high-capacity, high-caliber semiautomatic pistol designs since the mid-1980s. But no product better captures the gun industry’s relentless militarization than the Belgian company FN Herstal’s introduction into the civilian market of a pistol and cartridge specifically designed to defeat body armor—the FN Model Five-seveN.

FN Herstal originally created the 5.7X28mm cartridge as the ammunition for a new submachine gun, the P90. The gun and round combination was developed in response to NATO’s request for design of a weapon that would be effective against body armor—ubiquitous on the modern battlefield. (The P90 is the prime example of a new generation of “high-tech” assault rifles, and a civilian version, the PS90, has become popular in the United States.) In short order, the company also designed a handgun that would chamber the innovative armor-piercing submachine round.

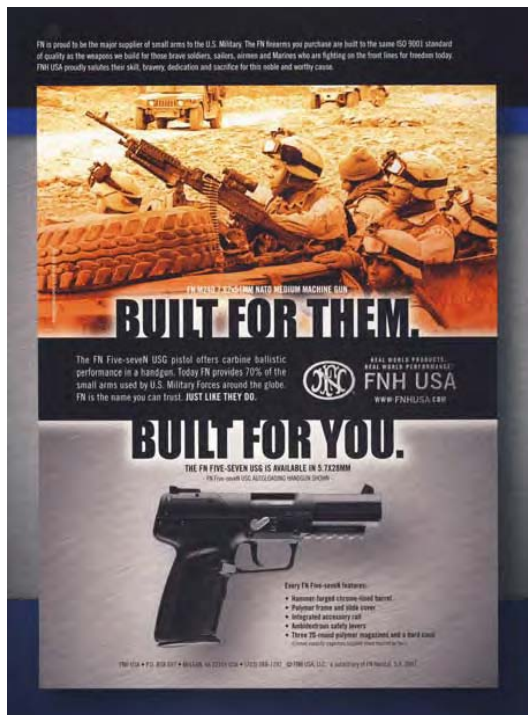


“Just like the Five-seveN handgun, the P90 submachine gun was developed around the 5.7x28mm ammunition to meet the Armies [sic] requirement in terms of efficiency.”

FN Herstal website

FN clearly understood that it was releasing a lethal genie. A spokesman for the company told the *Sunday Times* in 1996 that the pistol was “too potent” for normal police duties and was designed for anti-terrorist and hostage rescue operations.<sup>25</sup> The NRA’s *American Rifleman* claimed in 1999 that: “Law enforcement and military markets are the target groups of FN’s new FivesevenN pistol,” and told its readers, “Don’t expect to see this cartridge sold over the counter in the United States. In this incarnation, it is strictly a law enforcement or military round.”<sup>26</sup> In 2000, *American Handgunner* magazine assured the public, “For reasons that will become obvious, neither the gun nor the ammunition will ever be sold to civilians or even to individual officers.”<sup>27</sup>

In fact, this handgun, described as being for anti-terrorist and hostage rescue operations with its law enforcement and military round were, and are, freely sold to civilians. FN was simply hyping its new product with widespread publicity in the gun press about “restricted” sales to military and police, and then—having whetted the gun buying public’s appetite—moved into the much bigger and more profitable civilian market. The Model Five-sevenN is one of the leading firearms smuggled to Mexico from the U.S. civilian gun market.



FN has heavily promoted its armor-piercing handgun in the U.S. civilian market. FN emphasizes its military cachet: “Today FN provides 70% of the small arms used by U.S. Military Forces around the globe. FN is the name you can trust. JUST LIKE THEY DO.” [Capitals in original.]

FNH USA 2008 catalog

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U.S. Army Major Nidal Malik Hasan, right, used an FN Five-seveN 5.7mm semiautomatic pistol at Ft. Hood, Texas, on November 5, 2009. The major allegedly shot to death 13 people and wounded 32 others. He awaits trial in an Army court martial.



Although aimed at women, this ad's text promotes FN's military connection: "Built for America's Forces. Built for You."

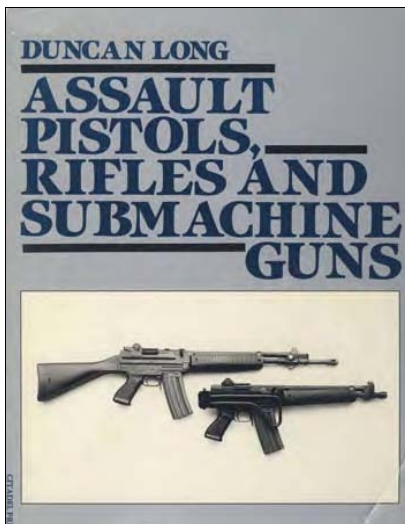
## Assault Rifles and Assault Pistols

In the mid-1980s, the industry found another niche market—semiautomatic assault weapons.

Semiautomatic assault weapons are civilian versions of automatic military assault rifles (like the AK-47, the M-16, and FN's high-tech P-90) and automatic military assault pistols (like the UZI).<sup>28</sup>

The military weapons “look” the same as the civilian weapons because they are functionally virtually identical. They differ only in one feature: military assault rifles are “machine guns.” A machine gun fires continuously as long as its trigger is held back—until it runs out of ammunition. Civilian assault rifles are *semi*-automatic weapons. The trigger of a semiautomatic weapon must be pulled back separately for each round fired.

Because federal law has banned the sale of new machine guns to civilians since 1986,<sup>29</sup> and heavily regulates sales to civilians of pre-1986 machine guns, there is virtually no civilian market for military assault weapons. The gun industry introduced semiautomatic versions of these deadly military assault weapons in order to create and exploit civilian markets.



The next problem arises if you make a semiauto-only model of one of these selective-fire rifles. According to the purists, an assault rifle has to be selective fire. Yet, if you think about it, it's a little hard to accept the idea that firearms with extended magazines, pistol grip stock, etc., cease to be assault rifles by changing a bit of metal.

In his 1986 book pro-gun author Duncan Long dismissed in the quote above the suggestion that the semiautomatic civilian assault rifles were different in any substantial way from their military counterparts. The gun lobby has spent three decades trying to “rebrand” civilian assault rifles as mere sporting guns.



The world's armies developed assault weapons to meet specific combat needs. All assault weapons—military and civilian alike—incorporate specific features that were designed for laying down a high volume of fire over a wide killing zone. This is sometimes known as “hosing down” an area. Civilian assault weapons feature the specific military design features that make spray-firing easy and distinguish assault weapons from traditional sporting firearms.

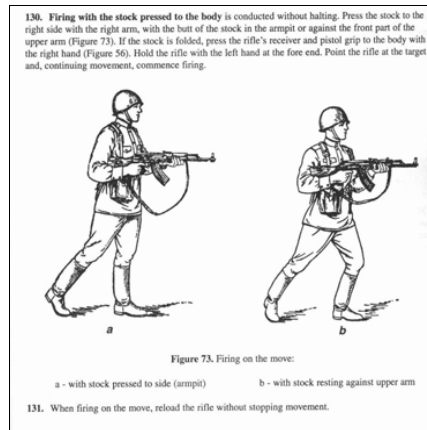
The most important of these design features are—

- High-capacity detachable ammunition magazines that hold as many as 75 rounds of ammunition.
- A rear pistol grip (handle), including so-called “thumbhole stocks” and magazines that function like pistol grips.
- A forward grip or barrel shroud. Forward grips (located under the barrel or the forward stock) give a shooter greater control over a weapon during firing.

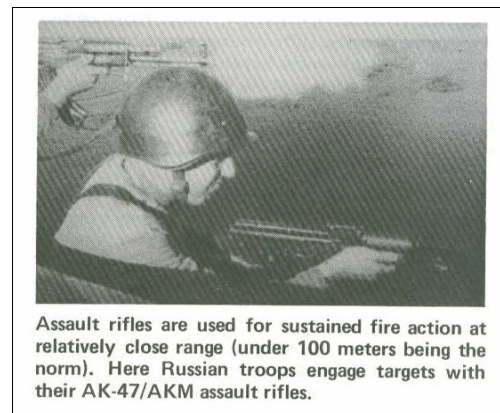
A gun industry observer summed up the design in September 2009:

From the minute you get your first modern, AR-style rifle, the first thing that you notice is the fact that it truly is one of the most ergonomic long guns you'll ever put to your shoulder. Makes sense, it was designed to take young men, many of whom had never fired a gun of any sort before, and quickly make them capable of running the rifle—effectively—in the most extreme duress, armed combat.<sup>30</sup>





AK manual, gun magazine, and rifle book illustrate assault rifle "hosing down" technique.



**Imports—AK-47 Variants.** The Soviet Army's premier assault rifle, the AK-47, went into service in 1947. The AK-47 has been made in many variants since then. It is said to be the most widely-distributed rifle in the world.

China was directly responsible for the AK boom in the United States. The country exported few guns to the United States until 1987, when Chinese rifle imports—mostly semiautomatic versions of the AK-47—surged. The flood of Chinese rifles reached 64 percent of all rifles imported into the United States in 1993.<sup>31</sup>

The executive branch has clear, existing authority under the Gun Control Act of 1968 to completely prohibit the import of any "non-sporting" firearm, such as these military-derived weapons.<sup>32</sup> In 1989, the George H.W. Bush administration blocked the importation of foreign-made semiautomatic assault rifles such as the AK variants. After the gun industry devised ways to skate around this ban with minor design changes, the Clinton administration acted again to cut off the flood of so-called "rule beaters."

The George W. Bush administration, however, completely and surreptitiously abrogated the first Bush and Clinton import rules. The Obama administration has done nothing to reinstate the earlier tough rules. Accordingly, Eastern European gun manufacturers have taken the place of the Chinese gun makers. They are supplying millions of AK-47-type weapons to the U.S. civilian market through licensed importers.

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7.62x39mm semi-auto with American made receiver, barrel, polymer pistol grip, forend and stock. Has bayonet lug, slant cut muzzle brake and high capacity mag... 15-1396 \$429.95  
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**Romanian AK-47 WASR10**  
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**Romanian AK-47 WASR10/63SFP**  
7.62x39mm semi-auto with Tapco polymer side-folding stock, black synthetic forend and pistol grip, slant cut muzzle brake, sling, bayonet lug, bayonet, high capacity mag... 15-1811 \$389.95  
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7.62x39mm semi-auto with Tapco AR style collapsible stock, black synthetic pistol grip, slant cut muzzle brake, bayonet, bayonet lug, high capacity mag... 15-1217 \$389.95 **Two or more** each \$379.95



**Romanian AK-47 WASR10CG**  
7.62x39mm semi-auto with Tapco AR style collapsible stock, Tapco Gaili style forend, black synthetic pistol grip, slant cut muzzle brake, bayonet, bayonet lug and high capacity mag... 15-1244 \$419.95  
**Two or more** each \$409.95



**Romanian AK-47 1975 Bullpup**  
7.62x39mm semi-auto with black polymer stock, new US made receiver and high capacity mag... 15-1465 \$499.95



**Yugoslavian AK-47 M70AB21**  
7.62x39 semi-auto, underfolding stock, parkerized finish, black polymer forend, slant cut muzzle brake, high capacity mag... 15-1662 \$489.95



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84 GUNS & AMMO/DECEMBER 1985

*Guns & Ammo* ad for AK-type rifles from China in December 1985 (lower right). Since George W. Bush's administration opened the assault rifle floodgates again, AK-type rifles have poured in from Eastern Europe, as evidenced by the May 20, 2010, ad for J&G Sales from *Shotgun News*, which is typical of fare in the popular publication.

***Domestic Production—AR-15 Variants of the M-16.*** After studying over three million casualty reports from World Wars I and II, and data from the Korean War, the U.S. Army concluded, “Marksmanship was not as important as volume.” Accordingly, it decided in the 1960s to replace its M-14 battle rifle with the M-16 assault rifle.<sup>33</sup>

The gun industry quickly churned out civilian versions of the M-16, labeling the semiautomatic model the “AR-15” (the same designation as the prototype military assault rifle). “With the number of companies making those particular black rifles today, it's tough to keep up them [sic],” a gun industry insider wrote in 2009.<sup>34</sup>



The gun industry created a vast market for AR-15 civilian versions of the U.S. military's M-16 assault rifle.

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Manufacturers have recently introduced assault rifles in 22 caliber, considerably cheaper than the .223 ammunition of the usual AR-15 semiautomatic assault rifle. The lighter weapons also provide an entry model for later transition to higher-caliber rifles. For example, in August 2009 Smith & Wesson began shipments of its M&P15-22 semiautomatic assault rifle. Here is how one gun writer enthused about the new model:

...the M&P15-22 might be the first .22 LR AR platform that actually is appropriate for consumers, law enforcement and military use that can be used to teach AR operations and basic marksmanship skills and know there will be no modifications necessary to transition to the myriad of other AR calibers available.<sup>35</sup>



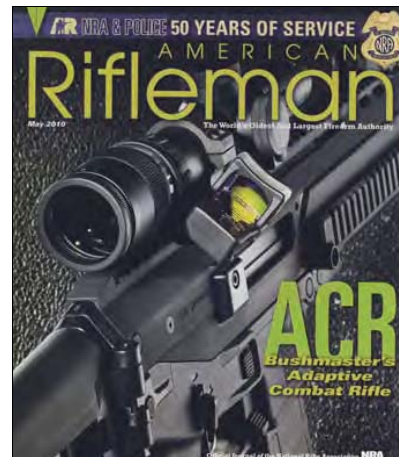
The industry has lately pushed 22 caliber semiautomatic assault rifles.



***The 1994 Assault Weapons “Ban” and the Rise of Bushmaster.*** In 1994, Congress passed a ban on the production of certain semiautomatic assault weapons as well as new high-capacity ammunition magazines that held more than 10 rounds. The law banned specific assault weapons by name and also classified as assault weapons semiautomatic firearms that could accept a detachable ammunition magazine and had two additional assault weapon design characteristics.<sup>36</sup>

Because the law listed merely cosmetic features (like bayonet mounts) and did not address the fundamental design of assault weapons, it was ineffective. The gun industry quickly made slight design changes in “post-ban” guns to evade the law, a tactic gunmakers dubbed “sporterization.” One of the most aggressive of the manufacturers of “post-ban” ARs was Bushmaster Firearms. A Bushmaster XM15 M4 A3 assault rifle was used by the Washington, D.C.-area snipers to kill 10 and injure three in October 2002. A poster child for the industry’s success at evading the ban, the snipers’ Bushmaster was marketed as a “Post-Ban Carbine.”

The 1994 law expired (“sunset”) on September 13, 2004.



The Washington, D.C.-area “Beltway Snipers” used the Bushmaster semiautomatic assault rifle being shown at left above. Among Bushmaster’s latest AR-type assault rifles is the “Adaptive Combat Rifle” featured on the cover of the NRA’s May 2010 *American Rifleman*.

**Assault Pistols—UZI, Ingram, Intratec, and More.** A particularly deadly variant in the gun industry's marketing program has been the sale of civilian assault pistols, which are for the most part simply semiautomatic versions of submachine guns. Firearms expert Duncan Long explained the marketing basis of this trend in his book *The Terrifying Three: Uzi, Ingram, and Intratec Weapons Families*:

As the militaries of the world increasingly rely on assault rifles to fill the submachine gun role, making money on a new submachine gun design becomes harder and harder....Citizens purchasing firearms for everything from plinking to self-defense have provided a lucrative market, especially in the United States. Those weapons produced for the civilian market are generally semiauto versions of the automatic weapons, often modified slightly to conform to U.S. firearms laws.<sup>37</sup>

A more recent development has been the introduction of AK-47 type pistols, which combine all the deadly design characteristics of the military-style assault rifle with the greater concealability of the handgun.

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**Romanian AK Draco Pistol**  
7.62x39 caliber handgun.  
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[25-1676xq]

Price: \$349.95

quantity	price
2+	\$329
5+	\$319

Quantity:  Add To Cart

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These are Romanian AK Draco handguns in 7.62x39 caliber, new receiver, barrel has integral front sight & gas tube, muzzle-nut, wood fore stock, plastic pistol grip, and one magazine. Any standard AK double stack mag or drum. This is a handgun below for shipping details. This firearm was assembled by J&G Sales International and may contain both new US made parts and used surplus parts. May or may not include cleaning rod.

Gun dealers offer AK-47 type semiautomatic assault pistols, like the Draco above, through the Internet.



## The Assault Weapons Hype Market

**The 1980s Explosion.** Assault weapons quickly became hot items on the civilian market in the 1980s for a variety of reasons. For manufacturers, assault weapons helped counter the mid-1980s decline in handgun sales. Criminals—especially drug traffickers—were drawn to assault weapons' massive firepower, useful for fighting police and especially competing traffickers. Survivalists—who envisioned themselves fending off a horde of desperate neighbors from within their bomb shelters—loved the combat features of high ammunition capacity and anti-personnel striking power of assault weapons. Right-wing paramilitary extremists, in their ongoing battle against the "Zionist Occupational Government," made these easily purchased firearms their gun of choice. And for gun enthusiast fans of popular entertainment—*Rambo* and *Miami Vice*—semiautomatic assault weapons offered the look and feel of the "real thing."

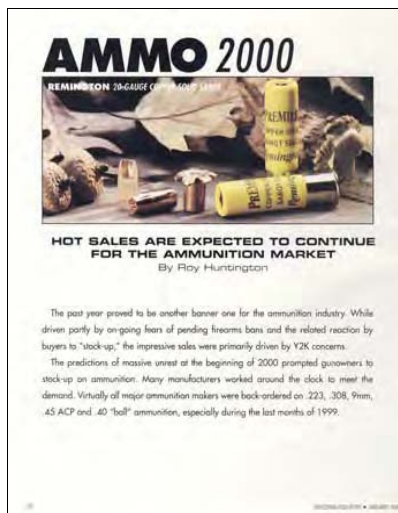


German manufacturer Heckler & Koch pushed the civilian version of its military assault rifle in a series of ads—like these from *Guns & Ammo* magazine—in the mid-1980s stressing "survivalist" themes.

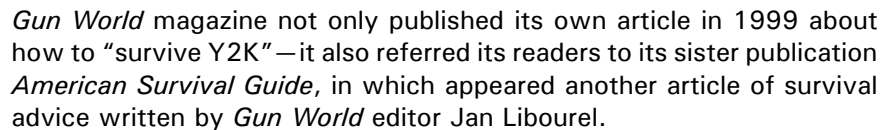
**The Y2K Exploitation.** The gun industry has ever since poured its efforts into new assault weapons designs and into their heavy marketing. One example of the industry's cynicism was its deliberate exploitation of widespread fears of a "breakdown" in public order at the turn of the millennium ("Y2K").<sup>38</sup>

In the January 1999 issue of *Shooting Sports Retailer*, editor Bob Rogers predicted, "Amidst social turmoil and disintegrating economic underpinnings, you will sell more guns in 1999 than you've ever sold in your life."<sup>39</sup> *Shooting Industry's* Russ Thurman asked readers, "Are you cashing in on the new millennium?"<sup>40</sup>

The prime danger, the gun industry luridly suggested, was that of rampaging humans: "... since the Have Nots won't hesitate to break in and take from the Haves, plan on close contact. And plan on being outnumbered. High-capacity rifles, pistols and shotguns are obvious choices."<sup>41</sup> But domestic pets could also become a threat to life in the gun industry's bizarre world: "One might also need to quickly stop a dog or dogs who through starvation revert to wild beasts. Dogs take a lot of killing, so a powerful round and good shot placement will be necessary should this distasteful task arise."<sup>42</sup>



Premier gun industry magazine *Shooting Industry* advised dealers in September 1999 (left) that "...taking advantage of the Y2K 'scare' is smart business...." In January 2000 the magazine reported that "...predictions of massive unrest...prompted gunowners to stock-up [sic] on ammunition."



Typical Y2K gun ads from 1999 are shown above.



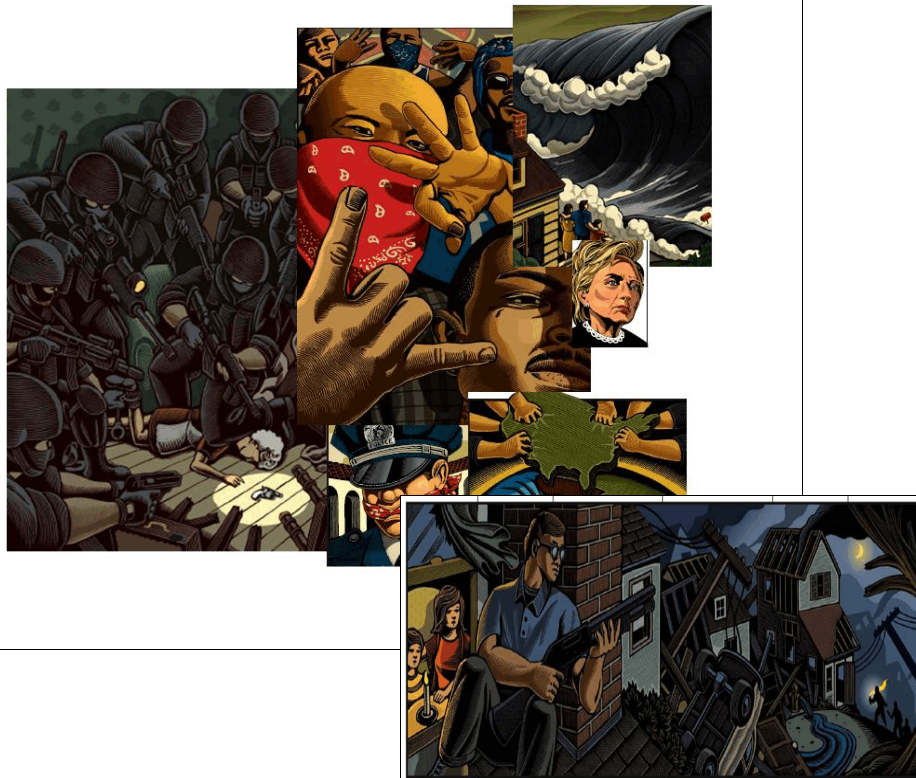
**Continuing Incitement.** The gun industry, the NRA, and the gun press have exploited every real and imagined public fear since the 1980s—including the terror attacks of September 2001, Hurricane Katrina, “spillover” of border violence, and concerns about violent “illegal” immigrants. The industry’s propaganda added fuel to the militia movement in the 1990s. Lethal confrontations occurred between federal law enforcement and civilians heavily armed with military-style weapons at Waco, Texas, and Ruby Ridge, Idaho. Barack Obama’s election, and fears that he would push an anti-gun agenda, ignited growth in the “militia” movement and a disturbing trend of open display of assault weapons near Presidential speaking engagements.<sup>43</sup>



The ad for a Benelli shotgun on the left, from the NRA’s 2010 annual meeting brochure, ostensibly speaks to a “revolution” in shotgun design. The ad for the “tactical” shotgun on the right, from the September 2010 *Guns & Ammo* magazine, links “homeland security” to “Iraq, Afghanistan, Your Livingroom.”



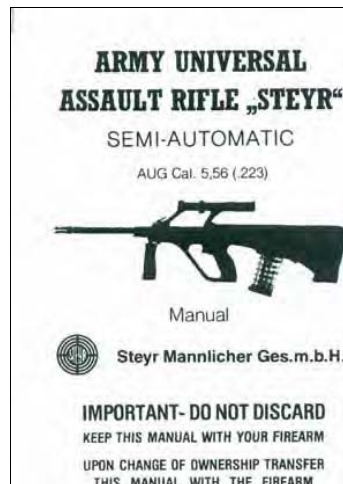
The NRA pamphlet "Freedom in Peril" warns, "Second Amendment freedom today stands naked...." Laced with ugly stereotypes of the gun lobby's political enemies—a classic technique for dehumanizing "the other"—it suggests "towering waves" of danger from ethnic and racial gangs. "Sometimes," the brochure suggestively states, "any hope of prevailing rests in the hearts and hands of a very urgent few...."



***The National Shooting Sports Foundation's Rebranding Campaign.*** In November 2009, the National Shooting Sports Foundation (NSSF) announced that—"due to gun owners' concerns over President-elect Obama and possible legislation regulating the Second Amendment rights of Americans"—it had placed on its website a "media resource...to help clear up much of the confusion and misinformation about so-called 'assault weapons.'"44

This was the opening salvo in the industry's meretricious campaign to "rebrand" semiautomatic assault weapons as "modern sporting rifles."<sup>45</sup> The point of the campaign—inspired by the pummeling the industry gets for selling killing machines—is apparently that semiautomatic assault rifles are really just another sporting gun, no different from an older generation of bolt-action and low-capacity rifles.

Unfortunately for the NSSF and the industry, the widely-reported affection for semiautomatic assault rifles by extremists, drug lords, and common criminals gives the lie to this insidious "rebranding" campaign. Even worse, some within the gun industry's own ranks apparently never got the NSSF rebranding memo. They continue to call semiautomatic assault rifles what they are—*assault* rifles—and even write lurid prose promoting the worst features of these guns.



Manufacturers and fan magazines alike called semiautomatic assault weapons "assault weapons" before their deadly killing power became a matter of public debate.

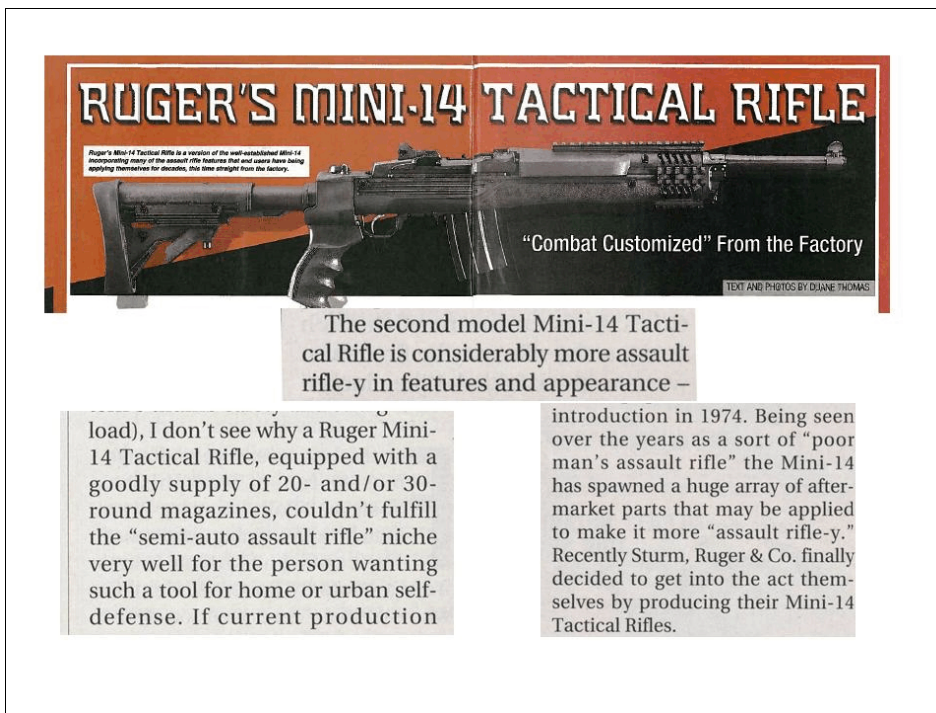




For recent example, the August 2010 edition of *Gun World* magazine headlines “Ruger’s Mini-14 Tactical Rifle” as “‘Combat Customized’ From the Factory.”<sup>46</sup> Among other outbursts of naked candor in the enthusiastic article are the following gems—

- Ruger’s Mini-14 Tactical Rifle is a version of the well-established Mini-14 incorporating many of the assault rifle features that end users have been [sic] applying themselves for decades, this time straight from the factory.
- **Being seen over the years as a sort of “poor man’s assault rifle” the Mini-14 has spawned a huge array of after-market parts that may be applied to make it more “assault rifle-y.”** Recently Sturm, Ruger & Co. finally decided to get into the act themselves by producing their Mini-14 Tactical Rifles. [Bold added]

This spasm of candor is typical of the “wink and nod” game that the gun industry plays when it talks to itself and to its hard-core consumers: call them what you will—“black rifles,” “tactical rifles,” or “modern sporting rifles”—semiautomatic assault weapons are plain and simply military-style assault weapons.



## 50 Caliber Anti-Armor Sniper Rifles

The 50 caliber anti-armor sniper rifle is a case of militarization in which precisely the same weapon is sold on the civilian market as that sold to the world's armed services.

This lucrative weapon was invented in the early 1980s by a Tennessee commercial photographer, Ronnie G. Barrett, who derived the sniper rifle from the Browning 50 caliber machine gun.<sup>47</sup>

Barrett's 1987 patent called his new invention an "anti-armor gun." He described the rifle in his patent claim as a "shoulder-fireable, armor-penetrating gun." Barrett related the novelty of his anti-armor gun as follows:

The recoil and weight of the Browning M-2 heavy-barrel machine gun (50 cal.), belt-fed, make it unsuitable for firing from the shoulder. The bolt-fed sniper rifle of smaller weight and caliber will not penetrate armored targets. The bolts of guns of a caliber that will penetrate armored targets are often broken by recoil because of excessive strain on the lock lugs. Thus, there is a need for a light-weight, shoulder-fireable, armor-penetrating gun that can stand up to heavy duty use. After extended investigation I have come up with just such a gun.

Barrett Firearms Manufacturing, Inc. is today the leading supplier of 50 caliber anti-armor sniper rifles to U.S. military forces and many other armies of the world.



Advertising note "From the Desk of Ronnie Barrett," inventor of the 50 caliber anti-armor sniper rifle, boasts that "...each Barrett model of large-caliber rifle is in service with a government somewhere around the globe." In his pitch to "Fellow Fun Enthusiasts," Barrett urges them to "[c]onsider this when you are comparing our rifles to any other competitor."

Barrett has also aggressively marketed its anti-armor rifles to civilian buyers in the United States. After Barrett effectively created a new civilian market for his anti-armor rifles, lower-priced competition sprang up from dozens of new manufacturers cashing in on the booming niche. These rifles have become one of the hottest items sold in the civilian market.

In spite of their battlefield pedigree, 50 caliber anti-armor rifles are no more regulated under federal law than a 22 caliber target rifle, and are less regulated than handguns. Under federal law, anyone at least 18 years of age who is not in a category as to whom transfers or possession of firearms is prohibited—such as convicted felons—can legally buy any .50BMG anti-armor sniper rifle sold in America. But it is against the law for a federally licensed dealer to sell a handgun to anyone less than 21 years of age. Unlike other weapons of war—such as 50 caliber fully automatic machine guns—50 caliber anti-armor rifles are exempt from the stringent provisions of the federal National Firearms Act, which requires a photo, fingerprints, local law enforcement approval, record of the transfer, and registration of the weapon with a \$200 fee.



The gun industry has saturated the American civilian “gun culture” with 50 caliber anti-armor sniper rifles, like this AR-50.

### ***Taxpayers Subsidize the Gun Industry***

In spite of “anti-government” and insurrectionist rhetoric from the National Rifle Association and its ilk, the gun industry and the gun lobby aggressively milk the federal government for taxpayer subsidies. For example, the U.S. Fish & Wildlife Service regularly subsidizes gun industry marketing research in the guise of “conservation” grants, as described in this 2009 industry article:

The Task Force 20/20 group, industry leaders from the hunting and shooting sports, is continuing to work toward its goal of increasing participation in hunting and the shooting sports by 20 percent over the next five years....Task Force 20/20 began in 2008 during the NSSF Summit whose primary focus was discussing research from a three-year study titled *The Future of Hunting and the Shooting Sports—Research-based Recruitment and Retention Strategies*. The report condenses the findings of one of the largest and most comprehensive studies ever conducted on factors related to the hunting and shooting sports industry. Funding for the research came from the U.S. Fish & Wildlife Service in the form of a multi-state conservation grant.<sup>48</sup>

**The Future of Hunting and the Shooting Sports**  
Research-based Recruitment and Retention Strategies

**Background:**  
In June the National Shooting Sports Foundation hosted the 2008 Shooting Sports Summit in Colorado Springs. The Summit gathered leaders from throughout the shooting, hunting and outdoor industry as well as key leaders from fish and wildlife agencies and conservation organizations to address key challenges that face the future of the shooting sports.

At the core of the Summit was a three-year research project titled, “*The Future of Hunting and the Shooting Sports - Research-based Recruitment and Retention Strategies*.” **The report condenses the findings of one of the largest and most comprehensive studies ever conducted on the factors related to our industry.** Funding for the research came from the U.S. Fish & Wildlife Service in the form of a multi-state conservation grant. NSSF commissioned the firm of Responsive Management to conduct the research for the report.

The Summit closed out with attendees committed to taking action on key efforts to reach new hunters and shooters to ensure that our shooting traditions will be a lasting heritage passed on to future generations. To guide the successful implementation of this research the NSSF has developed *Task Force 20/20<sup>SM</sup>*.

**TASK FORCE 20/20**

Mfr. & Distrib. ... Agencies ... Hunting Groups ... Shooting Groups ... Media ... Retailers

**Member Organizations:**



The U.S. armed forces also subsidize industry activity, largely through the ploy of “marksmanship” programs, as this article from an industry newsletter attests:

Every summer, prior to the National Rifle and Pistol Trophy Matches at Camp Perry, Ohio, Soldiers from the U.S. Army Marksmanship Unit take time out of their own training and preparation to pass their knowledge and superb shooting skills on to the next generation of American shooters at the Small Arms Firing School....

“It’s such a great thing,” said Jim Davis, Hamilton, Ind. “This is the best place in the country, maybe the world, to learn about shooting and everything that goes with it.”

Davis took his son and three other children from the Dekalb County 4-H club to the rifle class, stressing to them how valuable the instruction that they are receiving is to them now and down the road.

“I still remember when I came to this school as a teenager,” he said. “I tell my kid that this is something that you’ll always remember.”<sup>49</sup>

The Army Marksmanship Unit also hosts an annual event for “civilians playing army in combat situations.”<sup>50</sup>

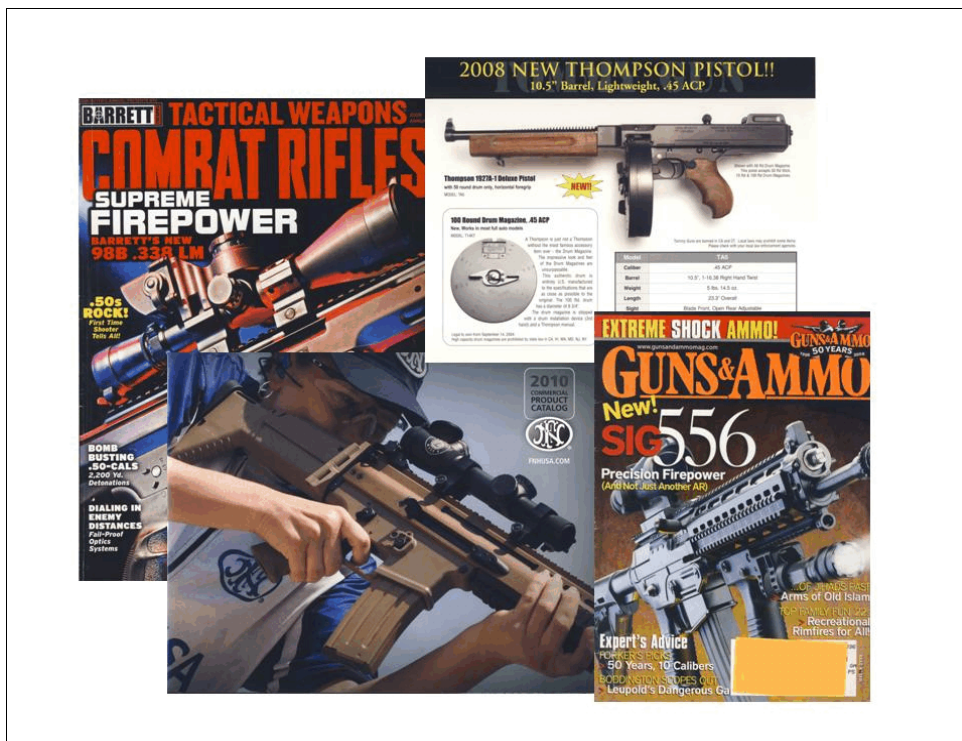
The shooting sport of 3-gun competition, with pistol, rifle, and tactical shotgun is rooted somewhere in the idea of adults playing army. It is simulated combat. And Three Gun can get even more interesting when the Army issues an invitation to bring your guns and join up for three days of competition, with the Army Marksmanship Unit hosting their 3-gun challenge.<sup>51</sup>

The bottom line—ultimately the only thing that matters to the gun industry—is that taxpayers are paying for the means by which a dying industry hangs on by funding market research in the guise of “conservation grants” and introducing new generations of children to the “sport” of shooting military-style weapons in the drag of military marksmanship programs.

***The Result: Militarized Firearms Define the U.S. Civilian Firearms Market***

Military-style weapons today define the U.S. civilian gun market. As *Shooting Wire* summarized the gun industry's situation in December 2008:

The net of all the numbers is that if you're a company with a strong line of high-capacity pistols and AR-style rifles, you're doing land office business. If you're heavily dependent on hunting, you are hurting.<sup>52</sup>



Military-style "combat rifles" and lethal firepower dominate U.S. civilian firearms market production and marketing.



### ***The Consequences of Militarization***

The widespread availability of militarized firearms—including especially high-capacity semiautomatic pistols and assault weapons—has substantially raised the level of lethality of armed encounters in the United States. Criminal street gangs, drug traffickers, and militant extremists are all drawn to the military-style firepower of these weapons.

Two trends are remarkable.

***Increasing Attacks on Law Enforcement with Assault Weapons.*** A recent Violence Policy Center study of reported incidents showed that more than one out of four assault weapons incidents involve police. Moreover, the number of assault weapons incidents involving police grew significantly between the two periods studied (March 1, 2005 to February 28, 2006 and March 1, 2006 to February 28, 2007).<sup>53</sup>

A typical more recent incident is that of Richard Poplawski, who is accused of shooting to death Pittsburgh, Pennsylvania, police officers Paul J. Sciallo II, Stephen J. Mayhle, and Eric G. Kelly on April 4, 2009. Among the guns Poplawski fired at police was an AK-47 semiautomatic assault rifle.<sup>54</sup>



Richard Poplawski and the three police officers who died on April 4, 2009.

***Trafficking of Military-Style Weapons from the United States.*** According to both United States and Mexican officials, large numbers of military-style firearms from the U.S. civilian gun market fuel criminal violence in Mexico. Congressional hearings and public policy reports have made clear that the U.S. gun industry is instrumental in making readily available to illegal gun traffickers the types and numbers of weapons that facilitate drug lords' confrontations with the Mexican government and its people. U.S. and Mexican officials report that, based on firearms tracing data from the federal Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), the cartels obtain up to 90 percent of their firearms from the United States.<sup>55</sup>



Military-style firearms smuggled from the United States fuel violence among Mexican drug cartels and criminal confrontations with the Mexican government. Weapons of choice include 50 caliber anti-armor sniper rifles, assault rifles, and cop-killing FN Five-seveN anti-armor handguns.

### **What Can Be Done?**

More than anything else, the news media, public interest groups, and especially policymakers must come to grips with a deadly reality. That reality is that the gun industry is not today—if it ever was—a “sporting” industry. It is a highly militarized and increasingly cynical industry that has cast all restraint aside to generate profit from military-style firearms.

Like an injured predator, the industry is particularly dangerous as it sinks further into its inevitable decline. The gun industry’s desperate “marketing” campaigns underwrite mass shootings in the United States, increasingly lethal confrontations with law enforcement, and armed violence abroad.

Most insidiously, the gun lobby’s exploitation of fear—racial, ethnic, and political—encourages resort to armed violence among the most impressionable and ill-equipped to function in a complex society.

This is truly an era in which to do nothing is to invite unthinkable violence.

### Endnotes

1. Although counts have varied slightly as forensic evidence became available and was more thoroughly examined, the total number of people killed in all of the terrorist attacks on September 11, 2001, is about 2,975. *Associated Press*, "Official 9/11 Death Toll Climbs By One," July 10, 2008, [www.cbsnews.com/stories/2008/07/10/national/main4250100.shtml](http://www.cbsnews.com/stories/2008/07/10/national/main4250100.shtml). By comparison, there were a total of 31,224 firearm deaths in the United States in 2007, the latest year for which data are available. Centers for Disease Control and Prevention, "2007, United States Firearm Deaths and Rates per 100,000."
2. See [www.merriam-webster.com/dictionary/militarization](http://www.merriam-webster.com/dictionary/militarization).
3. "New Products, New Political Twists," *Shooting Wire*, October 15, 2008, [www.shootingwire.com/archived/2008-10-15\\_sw.html](http://www.shootingwire.com/archived/2008-10-15_sw.html).
4. "Industry Hanging Onto A Single Category," *Shooting Wire*, December 17, 2008, [www.shootingwire.com/archived/2008-12-17\\_sw.html](http://www.shootingwire.com/archived/2008-12-17_sw.html).
5. "Gun Sales Go Soft As Economy Improves, Fears Subside," *Daily Finance*, April 14, 2010, [www.dailyfinance.com/story/company-news/gun-sales-go-soft-as-economy-improves-fears-subside/19437972/#](http://www.dailyfinance.com/story/company-news/gun-sales-go-soft-as-economy-improves-fears-subside/19437972/#).
6. "All Quiet—But Why?," September 14, 2009, [www.shootingwire.com/archived/2009-09-14\\_sw.html](http://www.shootingwire.com/archived/2009-09-14_sw.html).
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## **EXHIBIT 53**

**NOT YET SCHEDULED FOR ORAL ARGUMENT**

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No. 10-7036

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

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

v.

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

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

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**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.**<sup>1</sup>

Assault weapons have distinct features that separate them from sporting firearms.<sup>2</sup> 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."<sup>3</sup> 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."<sup>4</sup>

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.<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup> The list goes on.

<sup>1</sup> ATF, *Assault Weapons Profile* 19 (1994) (emphasis added).

<sup>2</sup> *Id.* at 20.

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

<sup>4</sup> ATF, *Assault Weapons Profile*, *supra* note 1, at 19-20.

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

<sup>6</sup> *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.

<sup>7</sup> *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.<sup>8</sup>

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.<sup>9</sup>

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.<sup>10</sup>
- **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.<sup>11</sup>

<sup>8</sup> 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).

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

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

<sup>11</sup> 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.<sup>12</sup>

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.<sup>13</sup>
- **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.<sup>14</sup>
- **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.<sup>15</sup>
- **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

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

<sup>13</sup> 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.

<sup>14</sup> *The American Way*, REGISTER-GUARD, Dec. 17, 2007.

<sup>15</sup> 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.<sup>16</sup>

- **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.<sup>17</sup>

#### 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."<sup>18</sup> 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.<sup>19</sup> After fleeing the country, he was arrested in Pakistan in 1997.<sup>20</sup>

<sup>16</sup> 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.

<sup>17</sup> 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.

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

<sup>19</sup> *CIA Killings Prompt Scrutiny on 2 Fronts: Fairfax Loophole Expedited Gun Purchase*, WASHINGTON POST, Feb. 11, 1993.

<sup>20</sup> 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.<sup>21</sup> 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.<sup>22</sup> Accurate at up to 2,000 yards, it can inflict effective damage to targets over four miles away.<sup>23</sup> With more power on impact than any other semi-automatic rifle legally available on the civilian market,<sup>24</sup> 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.”<sup>25</sup> 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.

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

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

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 3.

<sup>25</sup> 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."<sup>26</sup>

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 20<sup>th</sup> 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.<sup>27</sup>

### **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.

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

<sup>27</sup> 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).



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## **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.

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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.

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

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**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.

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

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***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.

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**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.

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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.

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***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.

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

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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***

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**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.

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

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

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Table 7-1. Rapid semiautomatic fire training program.

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

**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.

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- 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.
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**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**

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

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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.

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**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.

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***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.

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

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- 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.

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***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.

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- 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.
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**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.**

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

**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.**

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

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**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.

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- 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.
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**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***

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

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**

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***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.

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**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.

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**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.

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

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- (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**

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**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.

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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.

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

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**Chapter 7****Table 7-7. Quick fire training program.**

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

**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.**

<b>NUMBER OF TARGET EXPOSURES</b>	<b>DISTANCE</b>	<b>NUMBER OF ROUNDS</b>	<b>TIME CONSTRAINTS</b>
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.

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

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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.

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**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.

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

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## **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 Sugarman. 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 homicides<sup>1</sup> 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).<sup>2</sup> 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.*<sup>3</sup> 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.<sup>4</sup>

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.

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<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> 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.

<sup>4</sup> 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 states<sup>5</sup> 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 known<sup>6</sup> 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*.]

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<sup>5</sup> 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.

<sup>6</sup> 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.<sup>7</sup> 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*.]

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<sup>7</sup> 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.<sup>8</sup> 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.”<sup>9</sup>

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<sup>8</sup> See, for example: “The Armed Citizen” (“Studies indicate that firearms are used more than 2 million times a year for personal protection....”), *America’s 1<sup>st</sup> 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.nra-ila.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.

<sup>9</sup> 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.<sup>10</sup>

**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.”<sup>11</sup> 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.

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<sup>10</sup> 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>).

<sup>11</sup> 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.”<sup>12</sup> 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.<sup>13</sup>

### 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).

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<sup>12</sup> 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>).

<sup>13</sup> “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,<sup>14</sup> 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.<sup>15</sup>

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<sup>14</sup> 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).

<sup>15</sup> 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

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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



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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
<b>Total</b>	<b>187</b>	<b>196</b>	<b>205</b>	<b>213</b>	<b>230</b>	<b>1,031</b>

**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%
Justifiable Homicide	187	1.9%	196	2.0%	205	2.2%	213	2.4%	230	2.7%
Ratio of Criminal Homicide to Justifiable Homicide	52-1		49-1		44-1		41-1		36-1	
<b>Total</b>	<b>9,894</b>		<b>9,806</b>		<b>9,244</b>		<b>8,910</b>		<b>8,505</b>	
										<b>45,328</b>
										<b>1,031</b>
										<b>44-1</b>
										<b>46,359</b>
										<b>97.8%</b>
										<b>2.2%</b>

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

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

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

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

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

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	
White	75	40.1%	74	37.8%	82	40.0%	87	40.8%
Black	106	56.7%	119	60.7%	115	56.1%	122	57.3%
Asian	1	0.5%	0	0.0%	2	1.0%	1	0.5%
American Indian	4	2.1%	1	0.5%	3	1.5%	2	0.9%
Unknown	1	0.5%	2	1.0%	3	1.5%	1	0.5%
<b>Total</b>	<b>187</b>		<b>196</b>		<b>205</b>		<b>213</b>	
							<b>230</b>	
								<b>408</b>
								<b>39.6%</b>
								<b>600</b>
								<b>58.2%</b>
								<b>4</b>
								<b>0.4%</b>
								<b>11</b>
								<b>1.1%</b>
								<b>8</b>
								<b>0.8%</b>
								<b>1,031</b>

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**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

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	

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## **EXHIBIT 56**

## APPENDIX C

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").<sup>1</sup> 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

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<sup>1</sup> 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

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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.<sup>2</sup> 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

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<sup>2</sup> 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

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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

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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, 624 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.<sup>3</sup> 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.

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<sup>3</sup> 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. 658 (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

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## **EXHIBIT 57**



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## Stories of Self Defense



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

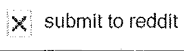
March 12 2012

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:

Handgun Accuracy Secrets:

[www.InstantAccuracy.org](http://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.

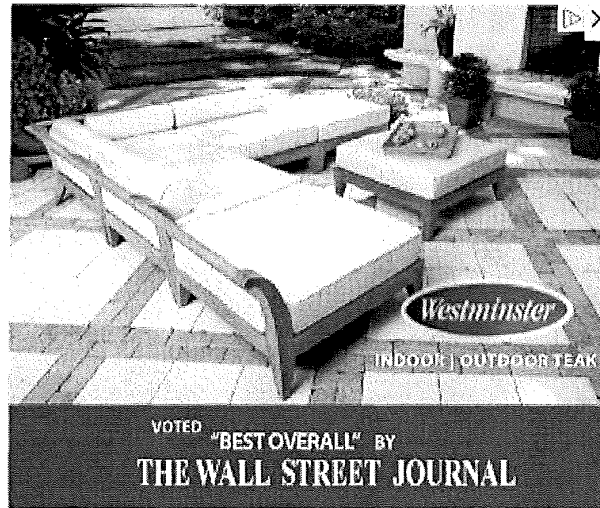
### Author

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., ¼ second increments). Most commonly, criminals acted in a shark-like fashion, slowly circling and alerting their intended victims. The defender(s) then had time to access even weapons that were stored in other rooms and bring them to bear.

The most common responses of criminals upon being shot were to flee immediately or expire. With few exceptions, criminals ceased their advances immediately upon being shot. Even small caliber handguns displayed a significant degree of instant lethality (30 per cent immediate one shot kills) when employed at close range. Many criminal actors vocally expressed their fear of being shot when the defender displayed a weapon. Upon the criminals' flight, the "victims" frequently chased and captured or shot the criminals and held them for the authorities.

## Conclusions

- 1) Even small caliber weapons are adequate to solve the vast majority of incidents requiring armed self-defense.
- 2) Mindset of the potential victim was far more important than the type of weapon used. All the victims were willing to fight their opponents in order to survive. Although not common, in some cases bridge weapons, such as pens, were used to gain time to access the firearm.
- 3) Frequently, the defenders were aware that something was amiss before the action started and then placed themselves in position to access their weapons. Awareness of the surroundings appears to be a key element of successful defense.
- 4) The defenders had some measure of familiarity with their firearms. Although perhaps not trained in the formal sense, they appear to be able to access a firearm and immediately put it into action. At least one defender learned from a previous experience and made the firearm more accessible for subsequent use.
- 5) Training or practice with a firearm should include a substantial amount of accessing the firearm from off body locations, such as drawers, underneath counters, etc.
- 6) This analysis does not present a view of the totality of armed self-defense in that non-positive outcomes were not available for inclusion in the database. The analysis may, however, be useful in helping to describe a methodology for successful armed self-defense. This methodology might be described as:
  1. be aware,
  2. be willing to fight,
  3. have a weapon accessible,
  4. be familiar enough with the weapon to employ it without fumbling,
  5. when ready, communicate, both verbally and non-verbally, to the attacker that resistance will be given, and
  6. if the attacker does not withdraw, counterattack without hesitation.

## Location of Incident

Location	%
Home	52%
Business	32%
Public	9%
In/around Vehicle	7%

## Shots Fired

Type of Location   No   Yes

Business	33% 72%
Home	25% 75%
Public	29% 71%
In/around Vehicle	35% 65%
Total	28% 72%

**Number of Shots Fired**

Average	2.2
Median	2
Mode	1
Max	20

**Gun Type**

Handgun	78%
Long Gun	13%
Unknown	8%

**Body Carry**

Type of Location	No	Yes
Business	69%	31%
Home	94%	6%
Public	49%	51%
In/around Vehicle	65%	35%
Total	80%	20%

**Multiple Assailants**

Type of Location	No	Yes
Business	76%	24%
Home	72%	28%
Public	62%	38%

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Retail Business	52%	48%
In/around Vehicle	49%	51%
Total	80%	20%

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## **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:



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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.<sup>1</sup> 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.<sup>2</sup>

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”).<sup>3</sup>

7. According to DCJS data for New York State (excluding New York City)<sup>4</sup> 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.

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<sup>1</sup> Amended Complaint, dated April 11, 2013, ¶¶93-97.

<sup>2</sup> 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](http://www2.fbi.gov/ucr/cius2009/offenses/violent_crime/robbery.html)

<sup>3</sup> 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.

<sup>4</sup> “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.<sup>5</sup>
- 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.<sup>6</sup>)

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.<sup>7</sup>

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

<sup>6</sup> Declaration of Gary Kleck, dated April 15, 2013, p. 3.

<sup>7</sup> 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.<sup>8</sup>

***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.<sup>9</sup>

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

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<sup>8</sup> 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.

<sup>9</sup> Claude Werner, “The Armed Citizen – A Five Year Analysis.”

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

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.

---

<sup>10</sup> 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.

<b>Rounds Fired in Self-Defense</b> <b>Based on NRA-ILA Armed Citizen Stories</b> <b>June 2010 - May 2013</b>		
	<b>Rounds Fired by Individual in Self-Defense</b>	
	<b>Overall</b>	<b>Incidents In Home</b>
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%
<b>Notes and Sources:</b>		
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.<sup>11</sup> 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.<sup>12</sup> 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).<sup>13</sup> 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.<sup>14</sup>

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<sup>11</sup> 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>

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

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

<sup>14</sup> 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.<sup>15</sup>

**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.<sup>16</sup> 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.<sup>17</sup> 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).

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<sup>15</sup> 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.

<sup>16</sup> Declaration of Gary Kleck, dated April 15, 2013, p. 5.

<sup>17</sup> 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).<sup>18</sup>

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



Dated: New York, New York  
June 21, 2013

Lucy P. Allen

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<sup>18</sup> 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 <sup>1</sup>		Fatalities <sup>2</sup>		Injuries <sup>2</sup>		Shots Fired	Obtained Legally?	Offenders' Number of Guns
				MJ/NE	CC	MJ/NE	CC	MJ/NE	CC			
1 Santa Monica <sup>3</sup>	Santa Monica, California	6/7/2013	NE	Yes	-	5	-	4	-	70	No	2
2 Upstate New York <sup>4</sup>	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
235 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 <sup>1</sup>		Fatalities <sup>2</sup>		Injuries <sup>2</sup>		Shots Fired	Obtained Legally?	Offenders' Number of Guns
				MJ/NE	CC	MJ/NE	CC	MJ/NE	CC			
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:												
Large-Capacity Magazine Average:												
Non Large-Capacity Magazine Average:												

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

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

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)."  
<sup>1</sup> Large-capacity magazines are those with a capacity to hold more than 10 rounds of ammunition.  
<sup>2</sup> Offender included in counts of fatalities and injuries.  
<sup>3</sup> 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.  
<sup>4</sup> 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.

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## **EXHIBIT 59**

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**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK**

-----X	
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; Batavia Marine &	:
Sporting Supply, LLC; William Nojay; Thomas Galvin;	:
and Roger Horvath,	:
Plaintiffs,	:
	:
-against-	:
	:
	:
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; Lawrence Friedman, District	:
Attorney for Genesee County; and Gerald J. Gill, Chief of	:
Police for the Town of Lancaster, New York,	:
Defendants.	:
-----X	

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

**DECLARATION of FRANKLIN E. ZIMRING**

Franklin E. Zimring, under penalty of perjury and in accordance with 28 U.S.C. § 1746, states and declares as follows:

1. I am the William G. Simon Professor of Law, Wolfen Distinguished Scholar and Chair of the Criminal Justice Research Program at the Boalt Hall School of Law, University of California, Berkeley.

2. I have studied the relationship between firearms and violence, strategies of firearms control, and patterns of gun commerce and civilian gun usage since 1967. I have served as director of research of the task force on firearms of the National Commission on the Causes and Prevention of Violence and as a firearms and federal



criminal law expert for the National Commission on Reform of Federal Criminal Laws. I have published several empirical studies of firearms and violence and on gun control, and I have co-authored three books with firearms issues at their center. I was elected a Fellow of the American Academy of Arts and Sciences in 1990. (My curriculum vitae is annexed hereto as Exhibit A.)

3. I have previously served as an expert witness in litigation on two topics central to my fields of research and expertise: (1) the relationship between firearms and violence and (2) the design and evaluation of firearms control. Most recently, I submitted an expert declaration with respect to these areas in *Kachalsky v. County of Westchester*, which the Second Circuit relied upon, in part, in reaching its decision. This declaration is on both topics.

4. I submit this declaration in support of the State Defendants' Motion to Dismiss and for Summary Judgment and in Opposition to the Plaintiffs' Motion for a Preliminary Injunction.

5. This declaration will address empirical evidence on some of the special and unique dangers posed by assault weapons and large capacity magazines ("LCMs"); the historical record and evidence supporting regulations like the Secure Ammunition and Firearms Enforcement Act, 2013 N.Y. Laws, ch. 1 ("SAFE Act") which ban, or otherwise highly regulate such inherently dangerous weapons; and my expert opinion on how the portions of the SAFE Act challenged here are a particular type of regulation intended to address particular aspect of gun violence, specifically the single offender mass shooting episodes.

## HISTORICAL PRECEDENT

6. As the Supreme Court recognized in *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008), the Second Amendment has never conferred an unlimited right to keep and bear arms. The right to bear arms does not convey either a right to carry concealed weapons or other behavior that puts public safety at risk.<sup>1</sup> As noted by other courts, the Second Amendment provides no protection for dangerous or unusual weapons. See, e.g., *Heller*, 554 U.S. at 627; *Heller v. District of Columbia*, 670 F.3d 1244, 1262 (D.C. Cir. 2011) ("*Heller II*"). Nor does it provide an entitlement to military weapons. *Heller*, 554 U.S. at 624-25, 627-28.

7. Like other rights inherited from England, the right to bear arms was subject to well-recognized exceptions. *Robertson v. Baldwin*, 165 U.S. 275, 281 (1897). In fact, "...when the fledgling republic adopted the Second Amendment, an expectation of sensible gun safety regulation was woven into the tapestry of the guarantee". *Nat'l Rifle Ass 'n of Am., Inc. v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 700 F.3d 185, 200 (5th Cir. 2012). Throughout the history of the United States, local and state governments, as well as the federal government, have banned the possession and/or sale of unusually dangerous weapons.

8. "The earliest and most numerous state and local laws relate to the carrying or use of firearms. In the 1600s, Massachusetts prohibited the carrying of defensive firearms in public places." George Newton and Franklin E. Zimring, Firearms and

Violence in American Life, staff report submitted to the National Commission on Causes and Prevention of Violence, Washington D.C., Government Printing Office, 8 (1969).

<sup>1</sup> See *Kachalsky v. County of Westchester*, 701 F.3d 81, 88 (2d Cir. 2012).

9. Gun safety regulations were commonplace in colonial America, and included laws regulating the storage of gun powder; laws keeping track of who in the community had guns; laws administering gun use; laws prohibiting firearms on certain occasions and in certain places; and laws disarming certain groups and restricting sales. *See*, Saul Cornell & Nathan DeNino, "A Well Regulated Right: The Early American Origins of Gun Control", 73 Fordham L. Rev. 487, 502-13 (2004); Saul Cornell, A Well-Regulated Militia: The Founding Fathers and the Origins of Gun Control in America, 140 (2006). States and localities have long regulated or prohibited possession of weapons that were deemed to pose a particular threat to public safety. For example, restrictions on the concealed carrying of handguns have long been understood to be lawful. *See Kachalsky v. County of Westchester*, 701 F.3d at 90, 100 (Recognizing "more robust" regulation under Second Amendment than other enumerated rights and history of extensive regulation, including prohibition, of carrying concealable weapons because of the dangers they pose).

10. One federal law that focused on prohibition of dangerous types of firearms was the National Firearms Act of 1934. 48 Stat. 1236 (26 U.S.C. §§ 5801-5826). The law imposed a \$200 tax (equivalent in the consumer price index to more than \$3,400 in 2013) on guns with particularly dangerous features, such as fully automated firing, short or shortened barrels, and silencers.

11. Two sections of the Gun Control Act of 1968, 18 U.S.C. § 922 *et seq.*, extended the list of restricted weapons to "destructive devices" which included military weapons listed and to imported handguns characterized as "Saturday night specials."



Neither the National Firearms Act nor the Gun Control Act only restricted guns that were "highly unusual in society at large." Rather, the National Firearms Act prohibited citizens from reducing the barrel length of any rifles and shotguns when rifles and shotguns were 74% of the guns manufactured in the first half of the 20th century. (Newton and Zimring, 1969 at p. 172). So the National Firearms Act restricted a citizen's right to modify most privately owned guns. Similarly, the Gun Control Act banned imported Saturday night special handguns despite the fact that they were said to number in the millions.

12. Federal and state laws restricting weapons characterized as "assault weapons" followed in the 1980s and 1990s as a response to new types of weapons being manufactured and marketed and, in particular, in response to a small but highly threatening set of shooting episodes where a single attacker invaded public spaces and inflicted fatal and serious injuries on large numbers of victims.

13. In 2000, New York became one of a number of states to adopt legislation restricting assault weapons. The targets of such laws were semi-automatic weapons with detachable magazines and military features, weapons that can fire a large number of rounds quickly, and large capacity ammunition magazines.<sup>2</sup>

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<sup>2</sup> Assault weapons ban similar to New York's SAFE Act have been enacted in many other states and municipalities, as recognized by Justice Breyer in his dissent in *Heller*:

In addition, at least six States and Puerto Rico impose general bans on certain types of weapons, in particular assault weapons or semiautomatic weapons. See Cal. Penal Code Ann. § 12280(b) (West Supp. 2008); Conn. Gen. Stat. § 53-202c (2007); Haw. Rev. Stat. § 134-8 (1993); Md. Crim. Law Code Ann. § 4-303(a) (Lexis 2002); Mass. Gen. Laws, ch. 140, § 131M (West 2006); N. Y. Penal Law Ann. § 265.02(7) (West Supp. 2008); 25 P.R. Laws Ann. § 456m (Supp. 2006); see also 18 U.S.C. § 922(o) (federal machinegun ban). And at least 14 municipalities do the

14. In 2013, New York passed the SAFE Act, which amended its 2000 assault weapon legislation. One motivation was mass shootings, particularly the Sandy Hook school shootings in Newtown, Connecticut, in which twenty first graders were murdered and the shooting of two first responders in Webster, New York, in December, 2012. Assault weapons and large capacity magazines play a particularly large and disproportionate role in such shootings. Therefore, the SAFE Act enhanced New York's existing ban on assault weapons to more completely capture the weapons deemed particularly dangerous by the legislature, by banning semi-automatic weapons with one rather than two military characteristics. The SAFE Act additionally amended New York's existing ban on LCMs or most storage magazines that contain ten or more rounds, and firearms with more than seven live rounds, to, among other things, reduce the potential number of victims in these single shooter attacks.

15. The SAFE Act includes an "assault weapon ban," a government regulation of guns in which the manner of firearms use is addressed, prohibiting particular

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same. See Albany, N. Y., Municipal Code § 193-16(A) (2005); Aurora, Ill., Ordinance § 29-49(a) (2007); Buffalo, N. Y., City Code § 180-1(F) (2000); Chicago, Ill., Municipal Code §§ 8-24-025(a), 8-20-030(h); Cincinnati, Ohio, Municipal Code § 708-37(a) (Supp. 2008); Cleveland, Ohio, Ordinance § 628.03(a) (2007); Columbus, Ohio, City Code § 2323.31 (2008); Denver, Colo., Revised Municipal Code § 38-130(e) (2008); Morton Grove, Ill., Village Code § 6-2-3(B) (2007); N.Y. CityAdmin. Code § 10-303.1 (1996 and Supp. 2007); Oak Park, Ill., Village Code § 27-2-1 (2007); Rochester, N. Y., Code § 47-5(1) (2008), online at <http://www.ci.rochester.ny.us/index.cfm?id=112>; South Bend, Ind., Ordinance §§ 13-97(b), 13-98 (2008) online at <http://library2municode.cumm/default/DocView13974/i/2>; Toledo, Ohio, Municipal Code § 549.23(a). These bans, too, suggest that there may be no substitute to an outright prohibition in cases where a governmental body has deemed a particular type of weapon especially dangerous.

*Heller*, 554 U.S. at 713 (Breyer, J., dissenting).

kinds of firearms from civilian ownership because features of the weapon create particular dangers. Instead of trying to restrict weapons from high-risk users (the function of licensing and background screening laws) or regulating the times and places where firearms can be used, which concerns are addressed in other provisions of New York's gun laws, the assault weapon ban forbids the common ownership of guns manufactured or converted in ways that the legislature believes to be particularly dangerous. These three common types of regulation, or regulatory approaches, are each aimed, in different ways, at limiting the effects of gun violence. Table 1 provides a basic profile of gun control strategies and examples of laws that conform to each category.

Table 1.

Dangerous Users	Dangerous Uses	Dangerous Guns
Licensing, Registration, Prohibition on Ownership of Felons, Minors, those with Disqualifying Mental Conditions, etc.	Restrictions on Carrying, Prohibition of Possession in Restricted Places	National Firearms Act of 1934; "Destructive Devices" in the Gun Control Act of 1968; Saturday Night Special Restrictions in the Gun Control Act of 1968; "Assault Weapon" Regulations in Federal and State Laws



16. The SAFE Act limits on magazine capacity also further the State's interest in public safety in mass shootings. Most notably, large-capacity magazines have a significant impact where a single shooter wishes to kill many people. Firing quickly and shooting often is the central element in such an assault, and there is often no other limit on the destructive objectives of the single attacker than the ammunition capacity of the weapon. Thus, New York restricted round capacity for the same reason that such weapons dominate single-shooter mass killings—the mechanical features of such weapons fit with the perverse objectives of the mass killer.

17. In 2012 alone, there were at least seven single-offender mass shooting episodes where more than four persons were killed by a single offender in a public place: Newton, Connecticut on December 14; Minneapolis, Minnesota on September 27; Oak Creek Wisconsin on August 5; Aurora, Colorado on July 20; Seattle, Washington on May 30; Oakland, California on April 2; and Norcross, Georgia on February 22<sup>5</sup>. In six of these seven instances, weapon capacity was reported and the guns used violated either the capacity restrictions or seven-round load limits of the New York law. Thus, in every 2012 case where information was available, the weapons used would have been prohibited by the SAFE Act, as reported in Table 2.

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<sup>5</sup> See [www.motherjones.com/politics/2013/02/assault-weapons-high-capacity-magazinesmass-shootings-feinstein](http://www.motherjones.com/politics/2013/02/assault-weapons-high-capacity-magazinesmass-shootings-feinstein)



**Table 2. Single Shooter Mass Killings in the United States during 2012.**

Place and Date	Death Toll	Status of Magazine under New York Law
Newton, CT 12-14-12	27	Illegal magazine
Minneapolis, MN 09-27-12	7	Illegal magazine
Oak Creek, WI 08-05-12	7	Illegal magazine
Aurora, CO 07-20-12	12	Illegal magazine
Seattle, WA 05-30-12	5	No information available on two firearms used
Oakland, CA 04-02-12	7	Illegal magazine
Norcross, GA 02-22-12	5	Illegal; more than seven rounds in magazine

Source: *Mother Jones* for incident reports and magazine capacity; Captain Bryan Harr, Norcross Police Department for Norcross gun data (telephone conversation with Professor Zimring on May 20, 2013).

18. In any instance where a single shooter intends to kill as many victims as quickly as possible, a weapon that can keep firing without reloading serves that specific purpose with higher efficiency than multiple weapons or reloading.

19. There are several well-documented instances where a shooter stopped to reload his weapon in order to continue a shooting rampage, where that pause provided the necessary opportunity for bystanders to intervene and bring the mayhem to a halt. There are numerous examples in press coverage: in the mass shooting in January 2011 in Arizona, which killed six (6) and wounded thirteen (13), including Congresswoman Gabrielle Giffords, the shooter was stopped when bystanders intervened, tackled, and disarmed him as he was attempting to reload. In 2008, a shooter entered a Tennessee church, intent on shooting parishioners and expecting to be killed by police, but after he killed two (2) parishioners and wounded five (5),

church members tackled him when he stopped to reload. In January 2010, a man who fired several shots outside of the Texas Capitol in Austin was tackled and stopped by Public Safety officers, before he was able to injure or kill anyone, while he was attempting to reload his weapon. In May 1998, a shooter entered Thurston High School in Springfield, Oregon with two pistols and a semi-automatic rifle hidden under a trench coat. He opened fire killing two (2) students, but while he stopped to reload a wounded student tackled him. Finally in 1993, in the mass shooting on a Long Island Rail Road train, which killed six (6) and injured nineteen (19), train passengers were able to intervene and tackle and restrain the shooter as he stopped to switch magazines. Copies of some press clippings of these events are annexed hereto.

20. The single shooter bound for mass violence may bring extra guns as well, but none of the six 2012 multiple killers where I found data, carried any weapons with fewer than nine bullets loaded. *See* Table 2 and sources. The New York laws passed in 2000 and 2013 make the weapons preferred by persons who desire mass destruction less available to citizens and therefore less likely to be diverted into mass violence.

21. While it is frequently argued that criminals and the murderously insane will still obtain the banned assault weapons and LCMs outside the normal streams of gun ownership and commerce in the United States the historical record shows otherwise: it is the ordinary channels of commerce that were the sources for the guns and ammunition used in most mass shootings.<sup>3</sup>

22. In conclusion, the link between the assault weapons and LCMs banned by the SAFE Act and single offender mass shootings is undeniable. Therefore the

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<sup>3</sup> See [www.motherjones.com/politics/2012/07/massshootings-map](http://www.motherjones.com/politics/2012/07/massshootings-map).

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SAFE Act's limitations on the ownership of the most dangerous firearms, as well as the limitations on magazine capacity, makes the killing of many people quickly by a single shooter as difficult as possible without interfering in self-defense or sport.

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

Dated: Berkeley, California  
June 20, 2013

  
Franklin E. Zimring

**A-2217**

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## **EXHIBIT 60**



**The Gun Debate's New Mythical Number: How Many Defensive Uses Per Year?**

Philip J. Cook; Jens Ludwig; David Hemenway

*Journal of Policy Analysis and Management*, Vol. 16, No. 3, Special Issue: The New Public Management in New Zealand and beyond. (Summer, 1997), pp. 463-469.

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**Insights****Janet Weiss  
Editor**

Candidates for inclusion in the Insights section may be sent directly to the Insights Editor. Her address is: Janet A. Weiss, School of Public Policy, University of Michigan, Ann Arbor, MI 48109-1220.

**THE GUN DEBATE'S NEW MYTHICAL NUMBER: HOW MANY DEFENSIVE USES PER YEAR?****Philip J. Cook, Jens Ludwig, and David Hemenway**

In 1986, Peter Reuter suggested that the Association for Public Policy Analysis and Management (APPAM) consider offering an annual award for the “most outrageous number mentioned in a policy discussion by an elected official or agency head,” with one of the criteria being that the number have “no reasonable basis” (pp. 811–812).

In this article, we discuss the candidacy of one of the more surprising numbers to surface in the course of America’s gun debate: that 2.5 million Americans use a gun defensively against a criminal attacker each year [Kleck and Gertz, 1995]. News items,<sup>1</sup> editorial writers,<sup>2</sup> even the Congressional Research Service [Bea, 1994] have mentioned the 2.5 million defensive gun uses (DGUs) as established fact. This number is considerably higher than our best estimate of the number of crimes committed each year with a firearm (1.3 million) [U.S. Department of Justice, Bureau of Justice Statistics, 1996b], and has been used as an argument against regulations that would restrict widespread firearms ownership. The implicit notion seems to be that if there are more legitimate uses than criminal uses of guns against people, then widespread gun ownership is a net plus for public safety.

<sup>1</sup> One article begins, “That’s right. Owning a gun, presuming you know how to use it, may be good for you” [Harper, 1996]. See also Witkin [1994].

<sup>2</sup> See Kumenta [1995].

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For reasons documented in this article, we believe that the 2.5 million figure is an example of what Max Singer has termed a “mythical number” [Singer, 1971]. Singer notes, “[E]ven responsible officials, responsible newspapers, and responsible research groups pick up and pass on as gospel numbers that have no real basis in fact. . . . [B]ecause an estimate has been used widely by a variety of people who should know what they are talking about, one cannot assume that the estimate is even approximately correct” (p. 9).

Estimates for the number of defensive gun uses are likely to be substantially overstated because of the problem of “false positives” [Hemenway, 1996]. This source of bias is a common problem in survey estimates of rare events, but largely unrecognized or ignored. We recount the evidence which indicates that the 2.5 million DGU estimate is far too high, and suggest that implications for both the policy debate over gun regulation, and for survey research.

#### Survey Results on Self-Defense

What distinguishes this remarkable statistic is the entirely respectable source and estimation method. We usually think of mythical numbers as coming from obviously flawed procedures, generated by advocates seeking attention for the problem of homelessness or heroin addiction or youthful predators or some other cause [Reuter, 1984, 1986].

In contrast, the DGU estimate was calculated by researchers affiliated with a major research university (Professors Gary Kleck and Marc Gertz of Florida State University), using widely accepted methods and published in a topflight, peer-reviewed criminology journal (Northwestern University Law School’s *Journal of Criminal Law and Criminology*). Although many mythical numbers may be debunked by simply probing beneath the press reports to identify the source, such is not the case with the DGU figure.

In particular, Kleck and Gertz conducted a telephone survey of almost 5000 American adults in 1993, with the specific intent of examining the defensive-gun-use issue. On the basis of the survey responses, Kleck and Gertz were able to generate a range of estimates depending on the exact definition and judgments concerning the credibility of responses. Their now-famous estimate of 2.5 million is at the conservative end of this array of possibilities.

Their survey appears to have been conducted according to current standards, and the results have been reproduced in several subsequent surveys.<sup>3</sup> In 1994, for example, the National Institute of Justice sponsored a telephone survey of 2600 American adults examining gun ownership and uses, including defensive gun uses [Cook and Ludwig, 1996]. This National Survey of Private Ownership of Firearms (NSPOF) incorporated a sequence of DGU questions very similar to that used by Kleck and Gertz. Each respondent was asked, “Within the past 12 months, have you yourself *used* a gun, even if it was not fired, to protect yourself or someone else, or for the protection of property at home, work, or elsewhere?” Respondents who reported experiencing a defensive gun use were then asked 30 additional questions concerning their most recent DGU. Two of us (Cook and Ludwig) have analyzed these data, and report on them here.<sup>4</sup>

<sup>3</sup> Three nationally representative random-digit-dial telephone surveys of adults have focused on the issue of self-defensive gun use, asking questions similar to those of Kleck and Gertz. In addition to the survey reported next, there was a survey of 800 gun owners and 400 nonowners in 1994 sponsored by the Centers for Disease Control [Hemenway and Azrael, 1996a] and a survey of 1905 adults in 1996 sponsored by the National Institute of Justice [Hemenway and Azrael, 1996b].

<sup>4</sup> For details concerning survey design and results, see Cook and Ludwig [1997].



When we follow the example of Kleck and Gertz and exclude all respondents whose most recent DGU was part of military or law-enforcement work, who did not report a specific crime or use of the gun as part of the incident, or who did not actually see a perpetrator, we estimate 1.5 million defensive gun users. (Because many of the relevant respondents said that they experienced more than one, we estimate a total of 4.7 million defensive gun uses per annum.) Thus, our estimate, based on the NSPOF, is in the same ballpark as that propounded by Kleck and Gertz. The difference could plausibly be due to sampling error. Kleck and Gertz's DGU estimates do not appear to be artifacts of any particular computational or weighting decisions made in their analysis. If there is a problem here, it is intrinsic to the method.

### Some Troubling Implications

One check on the credibility of these DGU estimates is made possible by the detailed follow-up questions included in both these surveys. In the NSPOF, respondents were asked whether they fired their guns, and if so, whether they managed to hit the mark. The responses to this item from our 19 "genuine" defensive gun users, multiplied by our sampling weights, imply that approximately 132,000 perpetrators were either wounded or killed at the hands of armed civilians in 1994. That number, it turns out, is just about the same as the total of all people who were shot and killed or received treatment for nonfatal gunshot wounds in an emergency room that year—yet we know that almost all of those are there as a result of criminal assault, suicide attempt, or accident.<sup>5</sup> There is no trace in these official statistics of the wounded assailants.

Respondents are also asked to report the circumstances under which they were provoked into using their gun. From the NSPOF, we estimate that 322,000 used a gun to defend against a would-be rapist. But that is more than the total number of rapes and attempted rapes estimated from the best available source, the National Crime Victimization Survey (NCVS)!<sup>6</sup>

Similar puzzles are found in Kleck and Gertz's findings [Hemenway, 1996]. Our closer examination of the DGU reports in the NSPOF suggests that almost half of the incidents appear to contain some internal inconsistency, or otherwise do not make sense. We are persuaded that surveys of this sort generate estimates that grossly exaggerate the true number of DGUs. The most likely explanation provides an important insight about the limitations of the survey method.

### Why Surveys Overestimate Defensive Gun Use

Surveys which include questions about DGUs are trying to estimate a rare event, in which even a small false-positive rate will lead to a relatively large overestimate. Medical epidemiologists have traditionally been much more alert to this problem than have survey researchers. As one of many possible examples, consider the Breast Cancer Screening Project conducted some years ago by the Health Insurance Plan of greater New York [Hennekens and Buring,

<sup>5</sup> About 100,000 people were nonfatally shot and treated in an emergency room or hospital in 1992 [Annest et al., 1995], and an additional 16,000 were shot and killed in criminal homicides [U.S. Department of Justice, Federal Bureau of Investigation, 1995].

<sup>6</sup> The NCVS is a large (48,000 households) survey that has been conducted by the U.S. Census Bureau since 1973. It is by far the most expensive and best-designed survey of its kind.



1987, p. 332]. In a total of almost 65,000 screening examinations (mammography plus physical exam), 1115 women were “positive” and followed up with biopsies. As it turned out, 983 (92 percent) of these positive tests were false, in the sense that they were not confirmed in the follow-up. Yet this result is not an indictment of mammography—indeed, the false-positive rate was only 1.5 percent. But that was sufficient, given the rarity of the true positives (less than 0.3 percent) to ensure that most positive results would be false, and that the estimated prevalence of breast cancer from this initial screen would far exceed the true prevalence.

Of course, in any survey there is a possibility of false negatives as well as false positives. Kleck and Gertz emphasize this possibility, arguing that because many respondents may worry that their defensive actions were somehow illegal, they will not admit to them during the survey interview. Kleck and Gertz argue that this effect should outweigh any other misreporting effects and lead to, if anything, an underestimate of the annual number of defensive uses.

Yet by any measure, including the Kleck–Gertz estimate, defensive gun use is a relatively rare event. If 0.5 percent of adults experience a DGU each year, in a survey of 1000 adults only about five would logically have the opportunity to provide a false negative. On the other hand, for 995 of the 1000 respondents, the only logically possible misclassification error is a false positive—and there are good reasons why some might falsely claim to have used a gun in self-defense. For one, using a gun defensively against a criminal may be a genuinely heroic act, and is often portrayed as such in movies and occasionally so in the nightly news.

Take, for example, the case of Dorothy Newton, who shot two robbers on the street in Richmond after having been wounded herself in a robbery one year earlier. The *Washington Post* reports that, although Newton had mixed feelings about the incident, the reaction of many in Richmond has been decidedly less ambiguous.<sup>7</sup> The *Richmond Times Dispatch* wrote in an editorial: “The thought of cocky young predators scurrying like scalded dogs is one decent people find immensely satisfying.”<sup>8</sup>

The falsehood may stem from real events, given that survey respondents typically wish to present themselves favorably to interviewers [Sudman and Bradburn, 1974]. The falsehood may also stem from confusion on the part of the respondent: memories fade, and they also distort. “Telescoping,” for example, is a common problem in survey research, where respondents who are asked to report about events occurring during the previous year will report an event that in fact happened 13 months or more earlier.<sup>9</sup> Actual experience may be revised in the telling, or may even elide with fiction. Given the prevalence of relevant mental disorders,<sup>10</sup> a nationally representative sample would include a number who were delusional, senile, or intoxicated—people unlikely to be reliable reporters in social science surveys.

<sup>7</sup> See Bowles [1996].

<sup>8</sup> See “Newton’s Law,” *Richmond Times-Dispatch*, June 7, 1996, p. A16.

<sup>9</sup> In the National Crime Victimization Survey, which questions the same households every six months concerning their experience with crime during the previous six months, rates of reported victimization in the first-time panel are typically over 50 percent higher than the bounded rates of subsequent surveys [Cantor, 1989].

<sup>10</sup> Recent estimates from the National Institute for Mental Health suggest that 51.3 million American adults aged 18 and over have “one or more mental or addictive disorders,” which includes 2 million adults with schizophrenic disorders and 4.9 million with what are classified as severe cognitive impairments [Bourndon et al., 1994].



An additional possible source of false DGU reports is strategic responses by gun owners. With around 3 million National Rifle Association (NRA) members [Kleck, 1993, p. 370], it would not be surprising to have as much as 1 percent of respondents who are both aware of the ongoing empirical debate on this topic and feel a vested interest in the perpetuation of high DGU estimates.<sup>11</sup>

#### Is More Better?

About 40 percent of American households currently own a gun, and 14 million people routinely carry one when they go out [Cook and Ludwig, 1997]. Would we be better-off if these figures were, say, 80 percent and 28 million carriers? No doubt that would increase the number of DGUs, however defined or measured. But what would be the net benefit?

The difficulty in answering this question arises in part because of the ambiguous nature of many gun uses that are reported as “defensive” by respondents. Among the incidents in the NSPOF that meet the Kleck and Gertz-type criteria for “genuine” defensive gun uses, in almost one third the most serious crime reported by the respondent is a fight or attack. Assigning fault in a violent encounter can be a daunting problem even to a detective who has a chance to interview everyone involved, let alone a survey interviewer who is asking a few questions of just one of the combatants. In a recent telephone survey of 1905 adults [Hemenway and Azrael, 1996b], 13 respondents reported a defensive gun use against a criminal attacker. In contrast, 38 respondents indicated that a gun had been displayed against them in a hostile manner during an argument or some other circumstance. We suspect that many of the 38 gun users involved in these hostile brandishings would have claimed self-defense if they had been contacted by telephone.

Moreover, it is difficult in many cases to determine whether the gun use leads to an outcome that is better in some sense than what *would have* happened had a gun not been available. For the DGU reports in the NSPOF, a theft or trespass is the most serious crime reported in one out of every five cases. In such instances, is society necessarily made better-off when someone uses a gun rather than dials 911?

In our judgment, the most important effects of more guns would not show up in the DGU statistics at all. Some robbers or burglars, fearing the increased risk of confrontation with an armed victim, might retire (or switch to auto theft), and others might decide to arm themselves more heavily and act more aggressively in committing their crimes. Both of these effects, deterrence and escalation, are plausible, and the net effect is not obvious from armchair theorizing. One empirical study suggested that the murder rate in robbery tends to be higher in cities with many gun owners than in cities with relatively few [Cook, 1979]. In any event, these behavioral considerations, important as they may be, do not figure in the DGU calculus. Taking a broader view, we conclude that more guns may lead to more DGUs, but not necessarily to safer streets and homes.

#### Some Concluding Thoughts

The survey is a well-developed measurement tool which performs satisfactorily for a variety of purposes. But something goes wrong in the effort to use surveys

<sup>11</sup> Thanks to David Kennedy for this observation.



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to estimate defensive gun uses. False positives are always a problem, and if the event is rare enough, then they may swamp the truth. What is to be done?

One possibility has long been incorporated in the National Crime Victimization Survey (NCVS), conducted for the U.S. Department of Justice by the Census Bureau [U.S. Department of Justice, Bureau of Justice Statistics, 1996a]. In this survey the false-positive problem is minimized by the design of the questionnaire. The only respondents who are asked whether they attempted to defend themselves in a crime are those who indicated that they had been the victim of a crime in which they had direct contact with the perpetrator. Limiting the DGU question to this small group changes the false-positive arithmetic dramatically. The resulting estimate for the annual number of DGUs (1992–1994) is about 108,000, a small fraction of the Kleck–Gertz estimate.

Another approach is suggested by ordinary practice in medical screening: When an initial test comes out positive, a follow-up test is usually applied to distinguish “true” from “false” positives. If knowing the true prevalence is sufficiently important, then it is worthwhile devising systems for distinguishing true from false positives after the initial screen.

Determining the social value of reported gun uses will be at least as difficult as overcoming the false-positive problem. More detailed information about the entire sequence of events, including the respondent’s actions prior to using a gun, is necessary. Another interesting exercise would start with a sample of gun uses that are reported to the police, and interview each of the participants. Comparisons between these responses and the results of the police investigation may provide some sense of the ways in which survey reports are “shaded.”

Meanwhile, the myth that there are millions of legitimate DGUs each year influences public opinion and helps fuel the bandwagon to liberalize regulations on gun possession and carrying. With respect to gun regulation, 2.5 million is the wrong answer to the wrong question.

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Gary Kleck; Marc Gertz

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## **EXHIBIT 61**



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**Proposals to Reduce Gun Violence:  
Protecting Our Communities While Respecting the Second Amendment.**

Senate Judiciary Committee  
Subcommittee on the Constitution, Civil Rights and Human Rights

February 12, 2013

Prepared Testimony by Laurence H. Tribe<sup>\*</sup>

Mr. Chairman and members of the Committee:

I am honored and grateful for the invitation to testify before you today. I know I am not alone in wanting us to do all we can, consistent with the Constitution, to reduce the awful specter of rampant gun violence and the far too frequent massacres of our children, our friends, and our fellow citizens.

Like all decent Americans, I felt a pang of unspeakable horror on December 14, when I learned that twenty first-grade children had been brutally slaughtered in their first-grade classroom in Newtown, Connecticut. Those children, and the brave grown-ups who died at Adam Lanza's hands as they tried to save the young lives entrusted to their care, deserve every effort to translate our shared grief into shared national action. That action must not be deterred by the defeatist argument that, because we will never solve this problem in its entirety, we might as well give up. Nor should it be deterred by distorted interpretations of the United States Constitution. As others have often reminded us about that great and enduring document, it is many things to many people, but one thing it is *not* is a suicide pact.

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<sup>\*</sup> Carl M. Loeb University Professor and Professor of Constitutional Law, Harvard Law School. The institutional affiliation is noted for identification purposes only.

While we debate the pending proposals to reduce gun violence through measures focused on gun safety as part of a holistic national response, it's crucial that we not permit any part of our Constitution to become a collateral casualty of our conversation. Proposals to disarm the American people, to leave firearms solely in the hands of the military and the police, have been decisively taken off the table – if they were ever truly *on* the table – by the Supreme Court's Second Amendment decisions in 2008 and 2010. "Slippery slope" arguments predicated on the unsettled state of the law prior to 2008 have been rendered irrelevant. The only proposals under serious consideration in this body are reasonable measures that would fully respect the basic rights of responsible citizens to use ordinary firearms for self-defense and other lawful purposes. They cannot lead to unacceptably extreme measures as long as the Supreme Court sits.

Having examined those proposals, having looked at the steps announced by the President under his power faithfully to execute the laws of the United States, and having studied the decisions of the Supreme Court and lower courts around the country, I am convinced that nothing under discussion in the Senate Judiciary Committee represents a threat to the Constitution or even comes close to violating the Second Amendment or the Constitution's structural limits either on congressional power or on executive authority.

Undoubtedly we should have a national debate about how best to reconcile the Second Amendment rights of every individual with the full range of proposals to reduce gun violence in America. As someone who has studied and taught constitutional law for four decades and argued dozens of cases in the Supreme Court and dozens more in the lower courts, I am obviously interested in engaging those questions. In today's testimony, however, I will focus not on

competing theories of how the Second Amendment ought to have been interpreted but on the law as it stands. I am here not as an academic theorist but as a constitutional lawyer. As a lawyer, I've won some and I've lost some, and I know a losing argument when I see it. And the argument that any of the proposals to reduce gun violence currently being considered here might be struck down as unconstitutional is decidedly a losing argument.

There is plenty of room for policy debate over the best steps to take to reduce gun violence, but we mustn't confuse those policy differences or the ideological and cultural divisions that underlie them with genuine constitutional doubts about whether any of those steps crosses the constitutional line. Everyone in this room knows that anything Congress or the President does in this field will confront opposition. And in a nation as litigious as ours, some of that opposition will no doubt find its way into the courts. But there is no basis to suppose that the courts will or should rebuff any of the steps being debated here today. They should not, and they will not.

What I hope to do this morning, setting all hyperbole aside and approaching the law on the books with a fair-minded eye, is explain why reforms such as those this committee is considering clearly pass constitutional muster.

## I. Introduction:

### Taking the Second Amendment Seriously, But Applying it Cautiously

I begin by reaffirming my agreement with the Supreme Court that the Second Amendment guarantees Americans the right as individuals to possess guns for reasonable self-defense. Some of my friends and colleagues devoted to the cause of responsible firearms regulation evidently wish to relitigate this point. They continue to insist that the best reading of the Second Amendment would secure gun rights only in connection with service in the state militia and not for individual possession and use. For nearly a decade and a half, I have disagreed with them and have defended the individual rights view ultimately taken by the Supreme Court in 2008. In October of 1999, for example, I joined a fellow constitutional law scholar in publishing an op-ed in *The New York Times* arguing that “bearing arms [is] a ‘privilege’ of each citizen.”<sup>1</sup> I continue to defend this position today.

That matters only insofar as it bears on my credibility as a witness in today’s hearing. If I were among those who had *opposed* the individual rights interpretation adopted by the Supreme Court in *Heller*, some might wonder whether my conclusions about the regulations *Heller* permits Congress to adopt reflect wishful thinking rather than a realistic and sympathetic appraisal of what the Court that decided *Heller* would in fact permit. But there is no wishful thinking here. I am being a hard-headed realist in reading the *Heller* decision and extrapolating conclusions from the majority opinion.

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<sup>1</sup> Laurence H. Tribe & Akhil Reed Amar, *Well Regulated Militias and More*, N.Y. TIMES, Oct. 28, 1999, at A25; 1 Laurence H. Tribe, *American Constitutional Law* 900–902 (3d ed. 2000).

Although many in the community advocating gun rights had long assumed that the individual rights interpretation governed the scope of the Second Amendment, it was not until the Supreme Court's 2008 ruling in *District of Columbia v. Heller*<sup>2</sup> that a majority of the Court's Justices agreed. In so doing, the Court recognized that the core individual liberty protected by the amendment affords Americans the right to purchase and store operable firearms for self-defense in the home. Two years later, in *McDonald v. City of Chicago*,<sup>3</sup> the Court extended the *Heller* ruling to cover restrictions imposed by state and local governments, making it unmistakably clear that the right at issue was not and is not simply a right of the state-organized militia against being overrun by federal authority.

Despite this fundamental affirmation, the *Heller* decision is exceedingly narrow in many important respects. As Judge Brett Kavanaugh of the D.C. Circuit Court of Appeals recently put it, "It bears emphasis that *Heller*, while enormously significant jurisprudentially, was not revolutionary in terms of its immediate real-world effects on American gun regulation." "Indeed," he continued, "*Heller* largely preserved the status quo of gun regulation in the United States."<sup>4</sup> To understand what he meant, it helps to look first to the Washington, DC ordinance implicated in the *Heller* case. The District had in place one of the most restrictive firearms regulations in the nation; it essentially outlawed the possession of handguns in the home, where the need for self-defense is, as Justice Scalia wrote, "most acute."<sup>5</sup> For the majority on the Court, a policy like the one the District had adopted, a policy on the outer edge of gun control's reach in the United States, was irreconcilable with the Second Amendment.

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<sup>2</sup> 554 U.S. 570 (2008).

<sup>3</sup> 130 S.Ct. 3020 (2010).

<sup>4</sup> *Heller v. Dist. of Columbia*, 670 F.3d 1244, 1270 (D.C. Cir. 2011) (Kavanaugh, J., dissenting).

<sup>5</sup> *Heller*, 544 U.S. at 628.

The *Heller* decision took great pains to emphasize its relative modesty. It repeated the mantra that the Second Amendment right “is not unlimited”<sup>6</sup> and devoted an entire section to listing types of regulation – for example, limits on gun ownership “by felons and the mentally ill” and, most relevant to today’s hearing, regulation of “dangerous and unusual weapons” – the constitutionality of which the Court had no intention of casting into doubt.<sup>7</sup> The decision paused to note that, by specifically giving a constitutional green light to some regulatory efforts, the Court did not mean to signal that others were constitutionally dubious.<sup>8</sup> Justice Scalia closed his opinion for the Court with an expression of solicitude for the regulatory goals that Washington, DC sought to advance and, more importantly, an invitation to pursue those goals with the “variety of tools” still available to the District and to other states and localities across the country even in *Heller*’s wake.<sup>9</sup>

Since that decision and its extension to state and local laws in 2010, the vast majority of federal and state courts to adjudicate Second Amendment claims have responsibly hewed to the cautious approach espoused by the Supreme Court in *Heller* and *McDonald*. For example, in a ruling highly relevant to the topic of this hearing, the D.C. Circuit recently upheld the constitutionality of Washington D.C.’s assault weapons ban, which included a restriction on

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<sup>6</sup> *Id.* at 595, 626.

<sup>7</sup> *Id.* at 626 – 28.

<sup>8</sup> *Id.* at 627 n. 26. There is no doubt, for instance, that regulatory provisions targeting firearms and ammunitions *manufacturers* in addition to those who transfer, possess, carry, or use the resulting weapons are at least as easy to defend from Second Amendment challenge as are measures that do not take effect until the point of sale.

<sup>9</sup> *Id.* at 636.



high-capacity magazines, as well as gun registration requirements.<sup>10</sup> The majority in the case, following the broad consensus that has emerged among federal and state judges,<sup>11</sup> evaluated the regulations against a standard of heightened judicial scrutiny while preserving both the option to adopt a more skeptical mode of review for restrictions on core self-defense firearm possession and the option to exempt other laws from Second Amendment review entirely when they do not enter the amendment's zone of protected conduct.<sup>12</sup> In another notable decision staking out a similar approach, a panel of the Seventh Circuit Court of Appeals struck down Chicago's firing-range ban given the close nexus between regular firing practice and training and safe, responsible self-defense in the home.<sup>13</sup> And state appellate courts from North Carolina to Wisconsin to California have joined with their federal brethren in upholding state restrictions on firearms ownership under this middle-of-the-road approach that molds the degree of judicial scrutiny to the extent of a law's burden on the core self-defense right secured by the Second Amendment.<sup>14</sup>

The central message of *Heller* and its lower-court progeny is thus to take the application of the Second Amendment seriously but also cautiously. When necessary to vindicate the core right to self-defense respected by *Heller*, neither courts nor lawmakers should be shy about invoking the Second Amendment. But because few public responsibilities are as important to

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<sup>10</sup> *Heller v. Dist. of Columbia*, 670 F.3d 1244 (D.C. Cir. 2011).

<sup>11</sup> *See, e.g.*, *Kachalsky v. County of Westchester*, 701 F.3d 81, 93 – 94 (2d Cir. 2012); *United States v. Booker*, 644 F.3d 12, 25 (1st Cir. 2011) cert. denied, 132 S. Ct. 1538 (U.S. 2012); *United States v. Masciandaro*, 638 F.3d 458, 469-70 (4th Cir. 2011) cert. denied, 132 S. Ct. 756 (U.S. 2011); *United States v. Marzzarella*, 614 F.3d 85, 97 (3d Cir. 2010);

<sup>12</sup> *Heller*, 670 F.3d at 1256 – 58.

<sup>13</sup> The court applied what it called “not quite strict scrutiny” because the law’s burden struck so close to the core Second Amendment right to self-defense in the home. *Ezell v. City of Chicago*, 651 F.3d 684, 708 (7th Cir. 2011).

<sup>14</sup> *See, e.g.*, *Johnston v. State*, 735 S.E.2d 859 (N.C. Ct. App. 2012); *State v. Brown*, 815 N.W.2d 407 (Ct. App. Wisc. 2012); *People v. Ellison*, 196 Cal. App. 4th 1342, 1347 (2011).

good governance as legislating to secure public safety, lawmakers and jurists should not casually give the amendment an expansive scope nor unduly scrutinize reasonable firearm regulations. In the wake of the Newtown massacre and the push to propose sensible new rules about firearms, the Obama administration and many leaders in Congress have conducted themselves precisely along these lines.

## **II. The Second Amendment Propriety of Recent Policy Proposals**

### **Limits on Large-Capacity Magazines**

A core feature of the Assault Weapons Ban of 2013, introduced by Senator Dianne Feinstein, as well as the primary component of a freestanding bill championed by Senator Frank Lautenberg, is a ban on magazines capable of firing more than ten rounds of ammunition without reloading.<sup>15</sup> Before moving into the weeds of the constitutional analysis, it would be useful to contrast such a high-capacity magazine restriction to the law *Heller* struck down. *Heller* axed a local ordinance that adopted about as blunt an approach to restraining gun violence as possible: By its very design, the DC law espoused disagreement with the whole idea of law-abiding gun ownership for self-defense in the home. A limit on large-capacity magazines, by contrast, is a regulation of an entirely different caliber. It does not challenge the fundamental recognition that gun possession for self-defense is a right of every citizen; it merely seeks to reset the parameters of responsible ownership to advance the cause of public safety. It operates with a scalpel rather than an ax. Even Robert Levy, the man who largely funded the challenge to DC's sweeping

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<sup>15</sup> The Assault Weapons Ban of 2013 also prohibits firearms with fixed magazines capable of holding more than ten rounds of ammunition.

handgun ban in *Heller* and served as an attorney on the case, concedes that bans on both high-capacity magazines and assault weapons almost certainly do not infringe the Second Amendment rights he successfully fought to vindicate in court.<sup>16</sup>

By any reasonable reckoning, this crucial measure might not even trigger heightened Second Amendment review at the threshold stage that the *Heller* ruling requires courts to undertake. But even if the high-capacity magazine prohibition does require further analysis, it safely falls within a zone of regulations that do not unconstitutionally abridge Second Amendment rights.

Most constitutional challenges require lawyers and scholars to carry out two stages of analysis. First, we must assess whether a given government policy even *implicates* a given right in the first place. For example, in 1915, the Supreme Court entertained a First Amendment challenge to a filmmaker's punishment under an Ohio censorship law but, in a clear misjudgment the Court would later correct, decided that movies were not even a form of "speech" entitled to First Amendment protection.<sup>17</sup> More recently, in a ruling that may perhaps give pause to members of this committee (despite the distinct protections of the Constitution's Speech and Debate Clause), the Court concluded that votes by legislators are not a form of "speech" over which any public official can claim a personal First Amendment right.<sup>18</sup> Assuming that a law *does* implicate the right in question, the government must then proceed to justify the challenged

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<sup>16</sup> Interview with Robert A. Levy by the Washington Post (Jan. 10, 2013), *transcript available at* [http://articles.washingtonpost.com/2013-01-10/lifestyle/36272630\\_1\\_assault-weapons-high-capacity-magazines-military-style-guns](http://articles.washingtonpost.com/2013-01-10/lifestyle/36272630_1_assault-weapons-high-capacity-magazines-military-style-guns).

<sup>17</sup> *Mut. Film Corp. v. Indus. Comm'n of Ohio*, 236 U.S. 230, 243 (1915).

<sup>18</sup> *Nevada Comm'n on Ethics v. Carrigan*, 131 S. Ct. 2343, 2350 (2011).

law so that the court hearing the challenge may evaluate, roughly speaking, whether the justification is strong enough to permit the law to stand or, alternatively, whether the measure goes too far and thus violates the Constitution.

I begin with this return to fundamentals because it never ceases to surprise me how often those engaged in legal debate talk past one another by conflating these distinct steps. In the Second Amendment context particularly, there is no excuse for making that mistake. For *Heller* itself makes it absolutely plain that not every gun regulation even triggers Second Amendment review. In other words, sometimes governments may enact regulations addressing the manufacture, transfer, possession or use of firearms that categorically fall outside the Second Amendment's scope, freeing governments of any burden even to make detailed defenses of the provisions in question. For example, the *Heller* opinion specifically named "longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings" as illustrative examples of regulations that should not even receive further constitutional review.<sup>19</sup> The importance of this point should not be underemphasized. If too many entirely reasonable firearm regulations, like assault weapon bans and background checks, or rules about trafficking and straw purchases, are subjected to heightened Second Amendment review, it will become difficult if not impossible to separate those regulations categorically from the restrictions that *Heller* specifically approved without subjecting them to any "scrutiny" at all.

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<sup>19</sup> Dist. of Columbia v. Heller, 554 U.S. 570, 626 - 27 (2008).

Beyond the examples appearing in the decision, *Heller* also identifies the three primary factors to consider in judging whether other types of regulation trip the Second Amendment's alarm. First, the Court carefully frames the scope of the Second Amendment to cover *only* firearms "in common use at the time."<sup>20</sup>

Second, *Heller* recognized that "dangerous or unusual" weapons may be and have historically been heavily regulated or banned.<sup>21</sup> It is not inconceivable – indeed, it seems quite likely – that the Court's pause to distinguish unusually dangerous weapons from widely possessed handguns had precisely the 1994 Assault Weapons Ban, which included a prohibition on high-capacity magazines, in mind. At the very least, the *Heller* majority recognized that the government could keep machine guns —"M-16 rifles and the like"—out of the hands of civilians.<sup>22</sup> The Supreme Court thus emphatically rejected the extravagant, or as Justice Scalia characterized it, "startling" notion, still promoted by some, that the Second Amendment could fulfill its original purposes only if citizens were guaranteed a right to arm themselves to the teeth, matching in their private armories essentially the full array of weapons possessed by the United States Military.<sup>23</sup>

Third and finally, the Court emphasized the importance of a nexus to core self-defense needs.<sup>24</sup> The majority in *Heller* had no trouble recognizing that handguns represented the

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<sup>20</sup> *Id.* at 627.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 624.

<sup>24</sup> *Id.* at 599 ("Justice Breyer's assertion that individual self-defense is merely a 'subsidiary interest' of the right to keep and bear arms . . . is profoundly mistaken. He bases that assertion

“quintessential self-defense weapon,” particularly in the home.<sup>25</sup> Moreover, handguns were not categorically more dangerous than other types of firearms. So Washington D.C.’s handgun ban clearly fell within the scope of the Second Amendment.

The clarity of *Heller*’s guidance on how to apply these threshold factors begins to dissipate, however, when they no longer align so strikingly in one direction. To begin with, the Court left “dangerousness” undefined, and what the Court meant by that term is not entirely self-evident. In an obvious sense, *all* firearms are dangerous; that is what makes them effective instruments of self-defense. The *Heller* ruling, therefore, asks us to balance any *exceptional* dangerousness of particular firearm design features against the potential self-defense value of those features. For example, even if home possession of machine guns for self-defense might, on rare occasion, deter criminal trespassers more than home possession of handguns, that benefit is simply not sufficient to overcome the substantial hazards to innocent bystanders and intentional targets, in particular the police. *Heller* obviously does not contemplate asking the government to provide an intricately reasoned justification for banning machine guns; instead, it recognizes – and it surely authorizes Congress, and indeed all of us, to recognize – excessive dangerousness in the inherent design of the weapon<sup>26</sup> so as to cut off Second Amendment review at the threshold.

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solely upon the prologue—but that can only show that self-defense had little to do with the right’s *codification*; it was the *central component* of the right itself.” (emphasis in original)).

<sup>25</sup> *Heller*, 544 U.S. at 629.

<sup>26</sup> Throughout this debate, opponents of restrictions on large-capacity magazines have repeatedly demanded empirical evidence showing a link between magazine capacity and gun violence. Studies in that mold certainly exist, and I discuss them later. *See, e.g.*, text accompanying notes 48 – 50. But at this threshold stage of the Second Amendment inquiry, the *Heller* decision’s meaning of dangerousness cannot be equivalent to an empirically demonstrated effect on public safety. Rather, the standard is one that asks us to examine design features to assess whether the



All things considered, I conclude that reasonably restricting magazine size and availability does not implicate the core Second Amendment right as *Heller* conceived of it. The reason is not the first factor, that of “common use,” because, of course, large-capacity ammunition magazines and the firearms outfitted for them are, by any reasonable measure, in quite common use in the United States. I note here just a few examples. The standard Glock pistol, the firearm that one reporter called “America’s handgun” in a recent book on the subject, comes equipped with a seventeen-round magazine.<sup>27</sup> And America’s most popular rifle, the AR-15 model,<sup>28</sup> typically comes with a thirty-round magazine and can accommodate magazines with even larger capacities.<sup>29</sup>

But to contend that the sizeable market presence of a particular firearm feature is sufficient in itself to trigger full Second Amendment scrutiny is to misrepresent the lesson of *Heller*. The relative dangerousness and self-defense-serving capacity of a firearm or design

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weapon poses an aggravated threat to safety as a common-sense matter. First, if the former were the meaning of dangerousness, the threshold inquiry, which may lead courts to conclude that the Second Amendment does not even apply, would become indistinguishable from the more advanced stage of review, in which courts scrutinize a government’s public safety rationale. Second, making empirical evidence of salutary public-safety impacts a prerequisite to gun regulation would defeat efforts to respond to new technologies and lethal features that pose a substantial threat to public safety. The Second Amendment does not require that Americans afford the gun industry a “wait and see” grace period on the (in)famous theory that even a vicious dog deserves one free bite.

<sup>27</sup> Erin McCarthy, *Why the Glock Became America’s Handgun*, POPULAR MECHANICS (Jan. 12, 2012, 6:30 AM), <http://www.popularmechanics.com/technology/military/weapons/why-the-glock-became-americas-handgun>

<sup>28</sup> Erica Goode, *Rifle Used in Killings, America’s Most Popular, Highlights Regulation Debate*, N.Y. TIMES (Dec. 16, 2012), <http://www.nytimes.com/2012/12/17/us/lanza-used-a-popular-ar-15-style-rifle-in-newtown.html?pagewanted=all>.

<sup>29</sup> Steven Almasy, *Newton Shooter’s Guns: What We Know*, CNN (Dec. 19, 2012, 10:11 AM), <http://www.cnn.com/2012/12/18/us/connecticut-lanza-guns/index.html>.

feature are also crucial considerations. This approach makes complete sense. The common use and possession of a given firearm feature is, at best, just one helpful indicator of whether restricting that feature will stymie or frustrate the exercise of the core Second Amendment protection of lawful self-defense to a constitutionally cognizable degree. For instance, in the case of high-capacity magazines, significant market presence does not necessarily translate into heavy reliance by American gun owners on those magazines for self-defense. Analysis of the modern development of the U.S. gun market demonstrates that the firearms industry, driven by an obvious profit motive, ushered in a revolution in the state of the market during the 1980s. Manufacturers began to roll out increasing numbers of pistols with ever-larger-capacity magazines rather than revolvers, which take just six rounds of ammunition and had traditionally been the most popular firearm for personal self-defense.<sup>30</sup> The frequent purchase of such large-capacity magazines, then, may not be attributable purely or even primarily to actual gun-owner preferences, much less to gun-owner needs. Rather, guns equipped with or ready for large-capacity magazines may simply be the weapons most readily made available on the market. And even if this market presence begins to influence more Americans to purchase firearms with high-capacity magazines because they fear attacks from criminals possessing guns outfitted with the same high-capacity magazines, nothing in *Heller* suggests that it is improper for the government to halt the escalation of this arms race in its tracks. The one-way ratchet of ever more powerful firearms is not a constitutional inevitability. For unlike the doctrine of mutually assured destruction that some say maintained an uneasy peace during the nuclear arms buildup of the

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<sup>30</sup> See DC Reedy & CS Koper, *Impact of handgun types on gun assault outcomes: a comparison of gun assaults involving semiautomatic pistols and revolvers*, 9 INJURY PREVENTION 151, 151 (2002), available at <http://injuryprevention.bmj.com/content/9/2/151.full#aff-1>. VIOLENCE POLICY CENTER, BACKGROUNDER ON GLOCK 19 PISTOL AND AMMUNITION MAGAZINES USED IN ATTACK ON REPRESENTATIVE GABRIELLE GIFFORDS AND OTHERS 1 (2011), available at [www.vpc.org/fact\\_sht/AZbackgrounder.pdf](http://www.vpc.org/fact_sht/AZbackgrounder.pdf).

Cold War, the propagation of increasingly dangerous guns on American streets has already taken an all-too-violent toll. In other words, tempering the trend toward more dangerous weapons actually *vindicates* the core Second Amendment right of self-defense and personal safety that *Heller* recognizes. In this context, as in many others, less is more.

But even looking beyond the market saturation of large-capacity magazines, this feature runs headlong into the other threshold obstacles that *Heller* requires Second Amendment claims to clear. As experts in effective firearms regulation have preached for years and particularly fervently in recent weeks, higher-capacity magazines pose greater dangers to public safety. By permitting shooters using semi-automatic weapons to continue firing more bullets without interruption, these magazines increase the potential lethality of armed killers.<sup>31</sup> Though well-trained gun users can change magazines quickly, this interruption may, as we saw last year in the Arizona shooting of Rep. Gabby Giffords, afford time for heroic men or women to intervene and disarm the shooter.<sup>32</sup> Moreover, this interruption gives our police a chance to return fire.<sup>33</sup> And it may even provide time for reflection and rethinking before murder becomes massacre.

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<sup>31</sup> BRADY CAMPAIGN TO PREVENT GUN VIOLENCE, ASSAULT-STYLE WEAPONS: HIGH-CAPACITY MAGAZINES, <http://www.bradycampaign.org/legislation/msassaultweapons/highcapacity> (last visited Feb. 2, 2013).

<sup>32</sup> Ken Dolak & Justin Wealer, *Woman Wrestled Fresh Ammo Clip From Tucson Shooter as He Tried to Reload*, ABC NEWS (Jan. 9, 2011), <http://abcnews.go.com/Politics/patricia-maisch-describes-stopping-gunman-reloading/story?id=12577933>.

<sup>33</sup> I believe I can speak for many Americans when I thank Baltimore County Police Chief Jim Johnson for the illuminating insights he has publicly offered on the threats of high-capacity weapons not just to public safety in general but also law enforcement officer safety more specifically. See, e.g., John Quinones, *Baltimore Police Chief Wants to Ban High-Capacity Firepower*, ABC NEWS (Dec. 20, 2012), <http://abcnews.go.com/US/baltimore-police-chief-ban-high-capacity-firepower/story?id=18030163>

Against the evident dangerousness of high-capacity magazines as a design feature, we must evaluate the strength and plausibility of asserted self-defense interests. Critics of recent proposals to reestablish a limit on high-capacity magazines have argued that firing more than ten rounds without changing a magazine is necessary for effective self-defense. While I have no doubt that subscription to this perspective among some law-abiding gun owners is sincere, I doubt that it is well-founded. It's rhetorically effective to ask, "How many bullets do *you* want in your magazine when an intruder breaks into your home?" But the answer tells us little that is of relevance to the Second Amendment as *Heller* conceives that provision. I might want a magazine with twice as many bullets as any possible home intruder; I might want a machine gun too. But in the end that can't be the measure of what the Second Amendment says I have a *right* to own and deploy.

Despite the emotional resonance of this kind of appeal, incidents like burglaries and home invasions – even when they lead to the exchange of fire – are unlikely to *require* firing many shots. The NRA publishes a regular column featuring newspaper clippings of gun owners protecting themselves against intruder attacks, and an analysis of these reports over a five-year period demonstrated that in 50% of all cases, two or fewer shots were fired, and the average number of shots fired across the entire data sample was also about two.<sup>34</sup> Of course, this data comes from the episodes the NRA chooses to report, so selection bias is possible, meaning the

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<sup>34</sup> Claude Verner performed the analysis of reporting over the period 1997 to 2001. The findings further show that when many shots were fired, a (presumably frightened) gun owner finished an entire magazine rather than firing the number of shots that necessarily had to be fired in light of the scenario. The analysis can be found reprinted with the author's permission at *Analysis of Five Years of Armed Encounters (With Data Tables)*, GunsSaveLives.net (March 12, 2012), <http://gunssavelives.net/self-defense/analysis-of-five-years-of-armed-encounters-with-data-tables/>.

average number of shots fired per incident could be even lower.<sup>35</sup> Even police officers traditionally found revolvers with six-bullet magazines sufficient for their own safety until more dangerous guns flooded the market.<sup>36</sup> And we should not lose track of the bigger picture: studies show that self-defense in the home with firearms is rare.<sup>37</sup> Additionally, firearms accidents are all too common: between 1965 and 2000, unintentional shootings accounted for the deaths of over 60,000 Americans.<sup>38</sup> Firing more bullets quickly may compound their damage.

Another version of the critics' response is that in scary situations, like home invasions, gun owners may go through bullets too quickly in a fit of nervousness or panic.<sup>39</sup> That may be true, but it also aggravates the downside hazard in cases of error,<sup>40</sup> so it is not at all clear that increased access to large-capacity magazines for shooters subject to fragile nerves represents a

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<sup>35</sup> It seems likely, for example, that merely brandishing a weapon may often lead intruders to flee. A non-exhaustive review of the NRA column reveals several examples of exactly this scenario, giving me the impression that the NRA's reporting is not demonstrably biased toward extreme scenarios or even those in which some shots are fired. See, e.g., Armed Citizen, NRA (March 2012), <http://www.nrapublications.org/index.php/12492/armed-citizen-23/> (“[The resident] met the intruder at her bedroom door, pointed the gun at him and demanded he leave. The trespasser fled without hesitation.”).

<sup>36</sup> See Eugene Volokh, *Implementing the Right to Keep and Bear Arms for Self-Defense: An Analytical Framework and A Research Agenda*, 56 UCLA L. REV. 1443, 1489 (2009).

<sup>37</sup> A study of Atlanta police records, for example, found that victims of burglaries used guns in self-defense just 3% of the time. For a description of the study and a rich discussion of self-defense uses for firearms, see DAVID HEMENWAY, *PRIVATE GUNS, PUBLIC HEALTH* 67 (2004). The study is A.L. Kellermann et al., *Weapon involvement in home invasion crises*, 273 J. OF THE AM. MED. ASSOC. 1759 (1995).

<sup>38</sup> HEMENWAY, *supra* note 38, at 27 – 35.

<sup>39</sup> See, e.g., *Heller v. Dist. of Columbia*, 670 F.3d 1244, 1261 (D.C. Cir. 2011); Emily Miller, *The High Capacity Magazine Myth*, WASHINGTON TIMES (Jan. 27, 2013), <http://www.washingtontimes.com/news/2013/jan/27/the-high-capacity-magazine-myth/>; Jacob Sullum, *The Threat Posed by Gun Magazine Limits*, REASON (Jan. 16, 2013), <http://reason.com/archives/2013/01/16/the-threat-posed-by-gun-magazine-limits>.

<sup>40</sup> *Heller*, 670 F.3d at 1263 - 64 (“[T]he tendency is for defenders to keep firing until all bullets have been expended, which poses grave risks to others in the household, passersby, and bystanders.” (internal quotations omitted)).

net gain for home security or public safety. Finally, some critics of magazine-capacity limits have pointed out that, realistically, many gun owners have not received proper training and for that reason, may fire bullets indiscriminately; a larger magazine – so the thinking presumably goes – will increase the chances that at least one of their wayward shots will hit its mark.<sup>41</sup> As the Supreme Court recognized in *Heller*, however, the Second Amendment protects only the right of “*responsible* citizens to use arms in defense of hearth and home.”<sup>42</sup> In other words, a dangerous firearms feature otherwise outside the Second Amendment’s scope cannot become subject to heightened constitutional scrutiny because of the shortcomings of *irresponsible* gun owners.

To be sure, *some* gun owners may struggle to change magazines quickly not for lack of adequate training but rather by reason of disability or old age.<sup>43</sup> Perhaps a ban on high-capacity magazines without any exception for the disabled or elderly might, for this reason, trigger heightened scrutiny of such a ban as applied specifically to those individuals. But the possibility that a prohibition could raise constitutional questions in some subset of its applications does not mean that the prohibition is constitutionally vulnerable on its face.<sup>44</sup> And it remains the case that

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<sup>41</sup> See, e.g., Stephen Hunder, *Why 33 rounds makes sense in a defensive weapon*, WASHINGTON POST (Feb. 6, 2011),

<http://www.washingtonpost.com/wp-dyn/content/article/2011/02/04/AR2011020407083.html>

<sup>42</sup> *Dist. of Columbia v. Heller*, 554 U.S. 570, 635 (2008) (emphasis added).

<sup>43</sup> Yih Chau-Chang, *High-Capacity Magazines And Their Critical Role In Lawful Self-Defense*, THE EXAMINER (March 10, 2011), <http://www.examiner.com/article/high-capacity-magazines-and-their-critical-role-lawful-self-defense>

<sup>44</sup> The Supreme Court has exhibited an extreme reluctance to strike down laws on their face – meaning in all applications – when only some applications would fall afoul of a constitutional provision (with the exception of the First Amendment, as facially overbroad laws may chill protected free speech). See RICHARD H. FALLON, DANIEL J. MELTZER & DAVID L. SHAPIRO, HART AND WECHSLER’S THE FEDERAL COURTS AND THE FEDERAL SYSTEM 162, 168 (6th ed. 2009).



large-capacity magazines are highly unlikely to be necessary to self-defense in the vast majority of home invasions or burglaries, even those that resort to the exchange of fire. The facial validity of a high-capacity magazine ban is therefore clear.

Despite the considerable market presence of high-capacity magazines, the danger they pose to public safety and the weakness of the self-defense justification for their possession means that two of the three threshold *Heller* factors point strongly against extending Second Amendment protection to high-capacity magazines. The D.C. Circuit Court of Appeals, in a case challenging Washington D.C.'s restriction on magazines with more than ten rounds, recently struggled with this first stage of analysis and determined that the court did not have before it sufficient evidence to decide whether the Second Amendment even *reached* large-capacity magazines.<sup>45</sup> However, the court went on to conclude that, even if it was proper to extend coverage of the amendment to large-capacity magazines, the government's interest in banning them was strong enough to do so without violating Second Amendment rights.<sup>46</sup>

Having now reviewed the best evidence and argumentation advanced by defenders of high-capacity magazine possession, I doubt that the Supreme Court would find it necessary to reach that second stage of review in dealing with a ban on high-capacity magazines and am quite confident that, in any event, the Court would agree with the ultimate conclusion that, even if the amendment applies, a ban on high-capacity magazines withstands Second Amendment scrutiny.

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<sup>45</sup> *Heller*, 670 F.3d at 1261.

<sup>46</sup> *Id.* at 1263 – 64.

In explaining that conclusion, I emphasize that commonly advanced rejections of a legitimate government interest in banning high-capacity magazines are deeply misleading. Many opponents of reasonable firearms regulation insist that we tried banning large-capacity magazines in 1994: the results are in, they say, and we failed. One favorite trope is to cite to a 1997 Department of Justice study, which, according to the recent testimony of Wayne LaPierre, “proved that [the] ban had no impact on lowering crime.”<sup>47</sup> But no one is even *arguing* that a ban on high-capacity magazines (or on assault weapons, for that matter) will necessarily decrease crime rates; highly lethal firearms will still be widely available on the market, and some criminals will use them, just as they do now.

What defenders of a ban on high-capacity magazines *do* argue is that such a ban will help prevent these criminals from killing or maiming as many people when they commit violent crimes. And that argument is solidly grounded. One study, for example, found that between 1984 and 1993, criminals using guns with high-capacity magazines or assault weapons as defined by the 1994 Assault Weapons Ban killed or injured an average of 29 victims, compared to the average 13 victims shot by criminals unequipped with large-capacity magazines.<sup>48</sup> Another study suggests that, since the lapse of the ban in 2004, high-capacity magazines have once again

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<sup>47</sup> See, e.g., *What Should America Do About Gun Violence?: Hearing Before the S. Judiciary Comm.*, 113<sup>th</sup> Cong. (2013) (prepared testimony of Wayne LaPierre, Executive Vice President and Chief Executive Officer of the National Rifle Association).

<sup>48</sup> This study considered all “mass shooting” incidents: those in which six or more were killed or twelve or more were wounded. For an explanation of this study, see Christopher S. Koper, *America’s Experience with the Federal Assault Weapons Ban*, in *REDUCING GUN VIOLENCE IN AMERICA* 167 (Daniel W. Webster & Jon S. Vernick, eds., 2013). The study is Christopher S. Koper & Jeffrey A. Roth, *The Impact of the 1994 Federal Assault Weapon Ban on Gun Violence Outcomes: An Assessment of Multiple Outcome Measures and Some Lessons for Policy Evaluation*, 17 J. OF QUANTITATIVE CRIMINOLOGY 33 (2001).

become common in episodes of violent crime after the beginnings of a decline, which probably took place because the black market for these magazines had begun to dry up.<sup>49</sup>

Even more misleading is the suggestion that in 1997 we could (or even today that we can) draw meaningful conclusions from the absence of unmistakable evidence of a decrease in violence following the 1994 ban. That legislation grandfathered or exempted many thousands of weapons already owned, and those could still be sold or transferred.<sup>50</sup> In other words, the 1994 ban was crafted with long-term effects in mind; to measure its effects notwithstanding its untimely end is to misunderstand fundamentally how the legislation was designed to work. It is therefore all the more telling that supporters of reasonable regulation can cite studies based upon identifiable trends emerging during the latter years of the ban, as well as evidence from both before and after the ban, showing that the legal availability of large-capacity magazines is indeed correlated with increased deaths and injuries caused by gun violence. Considered alongside the dangerousness inherent in a large-capacity magazine as a design feature, this evidence provides the government with a sufficient basis to satisfy the Second Amendment under any plausible understanding of the Supreme Court's jurisprudence surrounding that amendment.

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<sup>49</sup> See David S. Fallis and James V. Grimaldi, *Va. data show drop in criminal firepower during assault gun ban*, WASH. POST (Jan. 23, 2011), <http://www.washingtonpost.com/wp-dyn/content/article/2011/01/22/AR2011012203452.html> (finding that in Richmond, Virginia, the percentage of guns with high-capacity magazines seized from criminals by police fell to a low of 10% by 2004, when the federal assault weapons ban expired, but has since rebounded to 22%).

<sup>50</sup> Koper, REDUCING GUN VIOLENCE IN AMERICA, *supra* note 49, at 165 – 66.

**Assault Weapons Ban**

By many accounts, the most important component of the newly proposed assault weapons ban is its prohibition on high-capacity magazines.<sup>51</sup> But that does not mean that the remaining features of the proposal stand on weaker constitutional ground. Far from it. Application of *Heller*'s three threshold factors – dangerousness, commonness of use, and connection to core self-defense interests – demonstrates that the Second Amendment does not provide legal shelter to the features that trigger a firearm's prohibition under the ban.

Opponents of the legislation as well as some proponents of new firearms regulation have observed that some of the “military characteristics” that can lead to prohibition under the legislation<sup>52</sup> (and, by some accounts, under assault weapons bans in general<sup>53</sup>) are mostly cosmetic traits designed to make a gun *appear* dangerous and are not, in fact, intrinsically hazardous. But Congress would surely be acting within its constitutional authority if it were to reject this characterization as self-serving or otherwise unreliable. For example, the Brady Campaign to Prevent Gun Violence insists that “[p]istol grips . . . help stabilize the weapon during rapid fire and allow the shooter to spray-fire from the hip position [and that] [b]arrel

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<sup>51</sup> Tom Diaz, a researcher for the Violence Policy Center, has repeatedly called on lawmakers to focus their attention on a high-capacity magazine ban. *E.g.*, Tom Diaz, *Ten Ways to Spot a Sell-Out on Gun Control*, FAIRLY CIVIL (Jan. 14, 2013, 2:26 PM),

<http://tomdiazgunsandgangs.com/2013/01/14/ten-ways-to-spot-a-sell-out-on-gun-control/> (“An effective law will focus on one prime feature—the ability to accept a high-capacity magazine.”).

<sup>52</sup> *See, e.g.*, *What Should America Do About Gun Violence?: Hearing Before the S. Judiciary Comm.*, 113<sup>th</sup> Cong. (2013) (statement by Sen. Ted Cruz) (“Now, what the assault weapons ban instead targets are cosmetic features.”).

<sup>53</sup> *See, e.g.*, Nicholas J. Johnson, *Supply Restrictions at the Margins of Heller and the Abortion Analogue: Stenberg Principles, Assault Weapons, and the Attitudinalist Critique*, 60 HASTINGS L.J. 1285, 1295 (2009).

shrouds on assault pistols protect the shooter's hands from the heat generated by firing many rounds in rapid succession.”<sup>54</sup> Moreover, even if the characterization of these features as cosmetic were accurate, it would make little difference as a constitutional matter. In a recent televised interview, Justice Scalia explained the basis in history for exempting certain types of regulations from Second Amendment review. Certain limitations on gun ownership are constitutionally permissible, he contended, “because there were some [regulations] that were acknowledged at the time [of the Founding]. For example, there was a tort called affrighting . . . if you carried around a really horrible weapon just to scare people, like a head ax or something. . . .”<sup>55</sup> What the Justice evidently meant was that regulating weapons because they are chosen specifically for their intimidating appearance is constitutionally unproblematic because the very use of intimidation is unnecessarily disruptive to organized society.<sup>56</sup>

Even more important to the constitutionality of the assault weapons ban is the absence of any connection to the core Second Amendment right to defend oneself with a firearm. At this committee’s hearing on January 30, several witnesses criticized the assault weapons ban on policy grounds, but in my role as a constitutional lawyer listening intently for arguments relevant to the proposal’s Second Amendment propriety, I was struck by the failure of anyone’s

<sup>54</sup> Brady Campaign to Prevent Gun Violence, The Top 10 NRA Myths About Assault Weapons, <http://www.bradycampaign.org/issues/assaultweapons/nramyths/>.

<sup>55</sup> Interview with Justice Antonin Scalia by Chris Wallace, FOX NEWS SUNDAY (July 29, 2012), transcript available at <http://www.foxnews.com/on-air/fox-news-sunday/2012/07/29/justice-antonin-scalia-issues-facing-scotus-and-country#p/v/1760654457001>.

<sup>56</sup> Justice Scalia’s point about the tort of affrighting surfaces in the *Heller* decision itself: the majority opinion cited three illustrative examples of state courts entertaining such actions in the nineteenth century. See *Dist. of Columbia v. Heller*, 554 U.S. 570, 627 (2008) (citing, e.g., *State v. Lanier*, 71 N.C. 288, 289 (1874) (“The elementary writers say that the offence of going armed with dangerous or unusual weapons is a crime against the public peace by terrifying the good people of the land, and this Court has declared the same. . . .”)).

testimony to support these features as essential to self-defense. In fact, I have searched in vain for any reasoned arguments that pistol grips, forward grips, telescoping stocks, grenade or rocket launchers, and barrel shrouds are indispensable or even contribute to self-defense.

Finally, it is relevant to ask how many assault weapons Americans currently own. Data is hard to come by in large part because firearms manufacturers refuse to release data tracking their sales.<sup>57</sup> What we do know is that the number of weapons that would qualify under either the proposed ban's so-called "characteristics test" or its explicit list of banned models is smaller than the number of guns with standard-issue high-capacity magazines.<sup>58</sup> One reporter's painstaking analysis estimated that there are 3.75 million AR-15-style rifles owned in the U.S. today, and AR-15s are the most popular although not the exclusive type of qualifying assault weapon.<sup>59</sup> The NRA's lobbying arm estimates that, depending upon the definition of assault weapon, assault weapons represent 15% of all semi-automatic guns owned in the U.S., which in turn represent about 15% of all firearms owned in the U.S.<sup>60</sup> Given that the Congressional Research Service recently found that, as of 2009, Americans own about 310 million guns,<sup>61</sup> the NRA's estimate would translate into approximately 7 million assault weapons owned today. Although 7 million is hardly a negligible figure, it still corresponds to quite a small portion of the

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<sup>57</sup> Justin Peters, *How Many Assault Weapons Are There in America? How Much Would It Cost the Government To Buy Them Back?*, SLATE (Dec. 20, 2012), [http://www.slate.com/blogs/crime/2012/12/20/assault\\_rifle\\_stats\\_how\\_many\\_assault\\_rifles\\_are\\_there\\_in\\_america.html](http://www.slate.com/blogs/crime/2012/12/20/assault_rifle_stats_how_many_assault_rifles_are_there_in_america.html).

<sup>58</sup> See Koper, REDUCING GUN VIOLENCE IN AMERICA, *supra* note 49, at 161 (explaining that the universe of large-capacity magazine equipped firearms is broader than the universe of weapons satisfying the criteria for categorization as an assault weapon).

<sup>59</sup> Peters, *supra* note 58.

<sup>60</sup> *Top Ten Frequently Asked Questions*, NRA-ILA, <http://www.gunbanfacts.com/FAQ.aspx> (last visited February 2, 2013).

<sup>61</sup> WILLIAM J. KROUSE, CONG. RES. SERV., RL32842, GUN CONTROL LEGISLATION 8 (2012).



overall gun market – hardly enough to justify calling such weapons “common” within the meaning of *Heller*.

But for the purposes of constitutional analysis, debating how to characterize the significance of assault weapons’ market presence would be a waste of time. To make a difference to *Heller*’s threshold inquiry, which must take notice of the complete lack of any connection of assault-weapon features to self-defense as well as these features’ dangerousness in both fact and appearance, the market presence of assault weapons would have to be overwhelmingly large (and even then, I doubt seriously the bottom line would change as a constitutional matter). And overwhelmingly large it assuredly is not.

### **Universal Registration and Background Checks**

All responsible participants in the gun safety debate agree that some groups of people simply should not be allowed to own, keep, or carry guns. Those groups include children, dangerous felons, and those with serious mental illnesses that preclude safe gun ownership. When some observers casually compare the Second Amendment to the First, they forget this essential difference: Although freedom of speech sometimes comes at a price, and although speech can at times pose dangers, our constitutional system addresses those dangers by permitting government to impose carefully crafted limits on speech, not by limiting or licensing eligible speakers. The Constitution’s strategy with respect to guns is entirely different. It addresses the dangers of guns in the wrong hands by permitting government to keep them out of

those hands in the first place, and, of course, by permitting government to regulate where and under what conditions people can bear those weapons in possible confrontation with others.

Accordingly, this Congress might be called upon to consider measures designed to minimize the risk that guns fall into the hands of such prohibited purchasers and owners. Measures dealing with straw purchases and trafficking are obviously important in that effort and are clearly constitutional. Rather than spending the committee's time on those measures, I will focus here on provisions that mandate universal registration requirements or a universal background check, closing the many notorious loopholes that characterize current laws on the subject. There is no serious doubt that requiring universal registration or a universal background check would comply with the Second Amendment.

It is important to recognize, at the outset, that prohibiting particular groups of people from owning or possessing guns is fully compatible with the Second Amendment. In the first place, such prohibitions are consistent with the original and traditional understanding of the Second Amendment. It was widely accepted at the time of the framing that not every person had a right to keep and bear arms; instead, the right was closely tied to the notion of responsible citizenship, and it has long been denied to criminals and others whose possession of guns would pose a severe danger to the public.<sup>62</sup> On this point, precedent aligns closely with history. The Supreme Court said in *District of Columbia v. Heller*: “[N]othing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the

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<sup>62</sup> See *United States v. Rene E.*, 583 F.3d 8, 15–16 (1st Cir. 2009).

mentally ill ...”<sup>63</sup> The Court fortified this conclusion in *McDonald v. City of Chicago*, when it added: “We made it clear in *Heller* that our holding did not cast doubt on such longstanding regulatory measures as ‘prohibitions on the possession of firearms by felons and the mentally ill’ ... We repeat those assurances here.”<sup>64</sup>

Once the constitutionality of prohibiting gun possession by some people is accepted, the constitutionality of a reasonable system of registration or background checks follows automatically. The most powerful argument for this inference is not a technical legal point; it is, instead, common sense. And, although it shouldn’t be necessary to cite authority for the point, it’s worth noting that as eminent an authority as Alexander Hamilton wrote in *The Federalist* that “[t]he rules of legal interpretation are rules of *common sense*,” and that the “true test” of a “just application” of these rules is whether the resulting interpretation is “consistent with reason and common sense.”<sup>65</sup>

Consider, then, whether the Constitution would be “consistent with reason and common sense” if it allowed prohibitions on firearms purchases by felons but disallowed background checks to determine whether a felon was the would-be purchaser of a firearm. As a matter of common sense, we all know that guns do not of their own accord stay out of the hands of prohibited purchasers. Nor are prohibited purchasers likely to confess their legal inability to buy guns when talking to gun dealers. The prohibitions, in short, do not enforce themselves. In order to be effective, in order to be meaningful, in order to be anything more than rules on paper, they

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<sup>63</sup> 554 U.S. 570, 626 (2008).

<sup>64</sup> 130 S. Ct. 3020, 3047 (2010) (plurality opinion).

<sup>65</sup> *The Federalist* No. 83, at 495 (Alexander Hamilton) (Clinton Rossiter ed., 1961).

must be comprehensive and must be carried into operation by the government. It contradicts common sense—it ignores the fact that “the framers of the Constitution were not mere visionaries, toying with speculations or theories, but practical men”<sup>66</sup>—to say on the one hand that prohibiting felons from owning guns is constitutional, but to insist on the other hand that the background checks that seek to make those prohibitions effective are unconstitutional.

The Supreme Court’s decisions in *District of Columbia v. Heller* and *McDonald v. City of Chicago* confirm the constitutionality of reasonable background check requirements. *Heller* expressly affirms that the Court was not calling into doubt “laws imposing conditions and qualifications on the commercial sale of arms.”<sup>67</sup> The *McDonald* Court “repeat[ed] those assurances,” observing that its holding “does not imperil every law regulating firearms.”<sup>68</sup> The universal registration requirement or background check is simply a “condition[]” on the transfer of arms; it is therefore expressly within the zone of permissible regulation identified by *Heller* and *McDonald*.

Analogous Supreme Court doctrine points in the same direction. The right to vote, like the right to keep and bear arms, is a fundamental right of Americans.<sup>69</sup> But no serious legal scholar doubts that before letting a citizen cast his ballot, the government may require the citizen to register and may take steps to check whether he or she really is an eligible voter. And the

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<sup>66</sup> *NFIB v. Sebelius*, 132 S. Ct. 2566, 2589 (2012) (opinion of Roberts, C.J.) (quoting *South Carolina v. United States*, 199 U.S. 437, 449 (1905)).

<sup>67</sup> 554 U.S. at 626–27.

<sup>68</sup> 130 S. Ct. at 3047 (plurality opinion).

<sup>69</sup> Compare *Harper v. Virginia State Board of Elections*, 383 U.S. 663 (1966) (holding that the right to vote is fundamental), with *McDonald v. City of Chicago*, 130 S. Ct. 2020 (2010) (holding that the right to keep and bear arms is fundamental).

Supreme Court agrees; in *Crawford v. Marion County Election Board*, for example, it concluded that Indiana’s voter ID law was a permissible means of ensuring that only eligible voters participate in an election.<sup>70</sup> Checking whether a voter is eligible before giving that voter a ballot is comparable to checking whether a purchaser is eligible before letting her acquire a gun. Just as the former is constitutional, so is the latter. And the argument is of course even stronger in the instance of firearms. For, unlike a ballot in the hands of an ineligible voter, which might in the end prove to make no difference to who wins or loses the election at issue, a gun in the hands of even one ineligible owner poses a deadly danger all by itself.

History reinforces common sense and case law in this regard. The Supreme Court in *Heller* and *McDonald* stressed the role of history in interpreting the scope of the Second Amendment; “longstanding” prohibitions upon gun ownership, the Court indicated, are presumptively exempt from Second Amendment scrutiny.<sup>71</sup> Lower courts have likewise noted that history plays an important, though not exclusive, role in determining the scope of permissible regulation under the Second Amendment.<sup>72</sup> Measures to keep guns out of the hands of prohibited owners – owners who could not safely be entrusted with control of a lethal weapon – have a strong historical pedigree. For example, many states have longstanding laws—sometimes, laws dating back a century or more—requiring sellers to keep registers of all firearm purchasers; the registers had to be open to peace officers.<sup>73</sup> The government could use thus use

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<sup>70</sup> 553 U.S. 181 (2008) (plurality opinion).

<sup>71</sup> See 554 U.S. at 626–27; 130 S. Ct. at 3047 (plurality opinion).

<sup>72</sup> See, e.g., *Heller v. District of Columbia*, 670 F.3d 1244, 1253 (D.C. Cir. 2011); *Ezell v. City of Chicago*, 651 F.3d 684, 701–04 (7th Cir. 2011); *United States v. Marzzarella*, 614 F.3d 85, 89 (3d Cir. 2010); *United States v. Chester*, 628 F.3d 673, 680 (4th Cir. 2010); *United States v. Reese*, 627 F.3d 792, 800–01 (10th Cir. 2010).

<sup>73</sup> See *Heller*, 670 F.3d at 1253–54.

these registers to determine whether any of the purchasers had obtained weapons in violation of the law.

To be sure, modern computerized background checks differ from the more cumbersome historical enforcement measures known to history. But “a constitution [is] intended to endure for ages to come.”<sup>74</sup> Just as the Second Amendment covers modern weapons, like handguns, that did not exist when the Bill of Rights was ratified in 1791, so too does it cover modern enforcement measures, like mandatory computerized background checks, that could not have been anticipated in 1791. Reasonable background checks fit into the long historical tradition to which registration requirements belong, and that is enough to sustain them without further ado under the tests established by the Supreme Court in *Heller* and *McDonald*.

In short, all relevant legal considerations—logic and common sense, directly applicable precedent, analogies to surrounding legal doctrines, and history and tradition—point to the same conclusion. The Second Amendment does not prohibit Congress from passing laws to carry into effect concededly constitutional prohibitions on firearm purchases. The universal background check, in particular, easily passes constitutional muster as a permissible regulation of the transfer of firearms.

This is not to say that all conceivable background check systems would comport with the Constitution. Suppose, for example, that Congress were to pass a law requiring handgun purchasers to undergo an extensive check on the purchasers themselves and all their family

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<sup>74</sup> *McCulloch v. Maryland*, 17 U.S. 316, 415 (1819).



members and housemates, a check that took years to complete. Such a scheme would plainly impose a very severe burden on the right to keep and bear arms for self-defense. The burden would be entirely disproportionate to the objective the government is seeking to pursue. Where a background check is taken to such lengths that it effectively destroys the right to keep and bear arms, rather than ensuring that the right is enjoyed only by those constitutionally entitled to it, the government has overstepped the lawful boundaries of its power.

Such concerns are entirely out of place here, however. Whether a particular background check scheme that Congress adopts would go too far obviously depends on the specific details of that scheme. But none of the proposals seriously under consideration at the present come remotely close to overstepping constitutional boundaries. The proposed background check frameworks, especially those that rely on checks conducted instantaneously through the National Instant Background Check System, impose a constitutionally insignificant burden upon law-abiding citizens. Indeed, an instant background check is much *less* onerous than the Voter ID law that the Supreme Court upheld in *Crawford v. Marion County Election Board*; it is also much less cumbersome than longstanding registration requirements and other conditions on sale<sup>75</sup> that are concededly constitutional. Ultimately, therefore, I see no merit to the constitutional objections to the background check proposals presently being seriously considered by Congress.

### III. The Consistency of the President's Measures with the Separation of Powers

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<sup>75</sup> See *Heller*, 670 F.3d at 1253.

This January, President Obama announced twenty-three steps that his Administration would take to prevent gun violence.<sup>76</sup> The President has begun to implement these steps by using the executive powers vested in him by the Constitution and laws of the United States. Because the President adopted these measures by executive action, without specific congressional involvement, some have concluded that the President violated the separation of powers established by the Constitution. This claim is legally untenable; the President is acting well within his powers as head of the executive branch.

Some of the President's measures involve nothing beyond communicating with members of the public. Measure 23, for example, is to "[l]aunch a national dialogue ... on mental health." There is plainly no constitutional problem with executive steps of this sort. The President obviously does not need congressional permission every time he decides to give a speech or publish a press release.

Another category of measures—and this covers the great majority of the actions that the President has committed to take—includes steps that will improve the enforcement of federal laws already on the books. Thus, the President has agreed to "[m]aximize enforcement efforts to prevent gun violence and prosecute gun crime."<sup>77</sup> He has likewise decided "to require federal law enforcement to trace guns recovered in criminal investigations."<sup>78</sup> These improvements to

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<sup>76</sup> See, e.g., Colleen Curtis, *President Obama Announces New Measures to Prevent Gun Violence*, Jan. 16, 2013, available at <http://www.whitehouse.gov/blog/2013/01/16/president-obama-announces-new-measures-prevent-gun-violence>.

<sup>77</sup> Measure 13.

<sup>78</sup> Measure 9.

federal law enforcement efforts plainly fall within the President’s constitutional power—and constitutional responsibility—to “take Care that the Laws be faithfully executed.”<sup>79</sup>

A third group of measures involves the making of rules and regulations under preexisting congressionally granted authority. For instance, step 21—“[f]inalize regulations clarifying essential health benefits and parity requirements within ACA exchanges”—simply carries into effect authority granted by the Patient Protection and Affordable Care Act.<sup>80</sup>

Step 11, “[n]ominate an ATF director,” is equally clearly within the President’s constitutional powers; the Constitution expressly states that the President “shall nominate, and by and with the Advice and Consent of the Senate, shall appoint ... Officers of the United States.”<sup>81</sup> Likewise, the Constitution plainly authorizes the President’s requests for information from executive branch officials, such as step 15, “direct[ing] the Attorney General to issue a report on the availability and most effective use of new gun safety technologies and challenge the private sector to develop innovative technologies”; Article II provides that the President “may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices.”<sup>82</sup>

Finally, and perhaps most controversially, some of the President’s measures entail the issuance of interpretations of existing laws. To this class belongs, for instance, step 16, “[c]larify[ing] that the Affordable Care Act does not prohibit doctors asking their patients about

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<sup>79</sup> U.S. Const. art. II, § 3.

<sup>80</sup> Patient Protection and Affordable Care Act of 2010, Pub. L. 111-148, § 1321(a).

<sup>81</sup> U.S. Const. art. II, § 2, cl. 2.

<sup>82</sup> U.S. Const. art. II, § 2, cl. 1.

guns in their homes.” To be sure, the Article III judiciary must ultimately interpret laws when applying those laws in the context of concrete cases or controversies. But it is well established that the President also has the authority to interpret the law—and especially the power to announce legal interpretations concerning issues that have not yet been settled by the courts. In fact, the tradition of presidential clarifications of the law goes back to President George Washington’s Neutrality Proclamation. The tradition also has a solid grounding in the text of the Constitution; it is based on the Constitution’s vesting in the President of “the executive Power,” and in its imposition on the President of the power and duty to “take Care that the Laws be faithfully executed.”<sup>83</sup>

In sum, although some opponents of gun regulation might disagree with some of the President’s executive actions as a matter of policy, those disagreements cannot plausibly be translated into constitutional objections. From a separation-of-powers perspective, the President has acted well within the bounds of his constitutionally assigned authority.

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In closing, I note that I share the beliefs of many that the prevalence of guns in our country is by no means the only significant contributor to the tragedy at Newtown and to the many other gun-related massacres we have seen in recent months and recent years, or to the deaths of an average of over 30 Americans, nearly 5 of them children, *each and every day* as a result of gunfire homicides in less visible, and often virtually unnoticed, tragic incidents.<sup>84</sup>

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<sup>83</sup> U.S. Const. art. II, §§ 1, 3.

<sup>84</sup> The Center for Disease Control reports that in 2010, 11,078 individuals in the U.S. died from firearm-related homicides. 1,773 of them were between the ages of 0 and 19. *See* CENTER FOR DISEASE CONTROL, NATIONAL CENTER FOR INJURY PREVENTION & CONTROL, *WISQARS*

Violence has many causes. Violent video games, for example, some of them simulating mass shootings, may well play a significant role in the inculcation of violent attitudes among children.<sup>85</sup> And mental illness plainly played a significant part in bringing about the massacre at Newtown. If our country is to reduce the incidence of similar unspeakable violence in the future, the widespread availability of high-powered guns to people who should not possess them and who have no constitutional right to do so is by no means the only phenomenon that our government, our society, and our families need to address.

But it is simply not true that the presence of other causes of gun violence means that we neither can nor should do anything significant about the prevalence, too often in the wrong hands, of high-powered guns and high-capacity magazines that turn those guns from means of self-defense into weapons of mass destruction. It is not true constitutionally, it is not true politically, and it is not true morally. We must do our best to address in a serious way *every* source of avoidable death by firearms that we can, and if we always point to other problems still waiting to be solved we will never get started.

The time to get started on sensible gun regulation is not now—it was weeks, months, years, even decades ago. The Second Amendment is not a barrier. We have already delayed too long, and our society has paid a terrible price. We should delay no longer.

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*Fatal Injury Reports, National and Regional, 1999 – 2010*,  
[http://webappa.cdc.gov/sasweb/ncipc/mortrate10\\_us.html](http://webappa.cdc.gov/sasweb/ncipc/mortrate10_us.html) (last visited Feb. 4, 2013).

<sup>85</sup> See *Brown v. Entertainment Merchants Ass’n*, 131 S. Ct. 2729, 2767–71 (2011) (Breyer, J., dissenting).

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## **EXHIBIT 62**

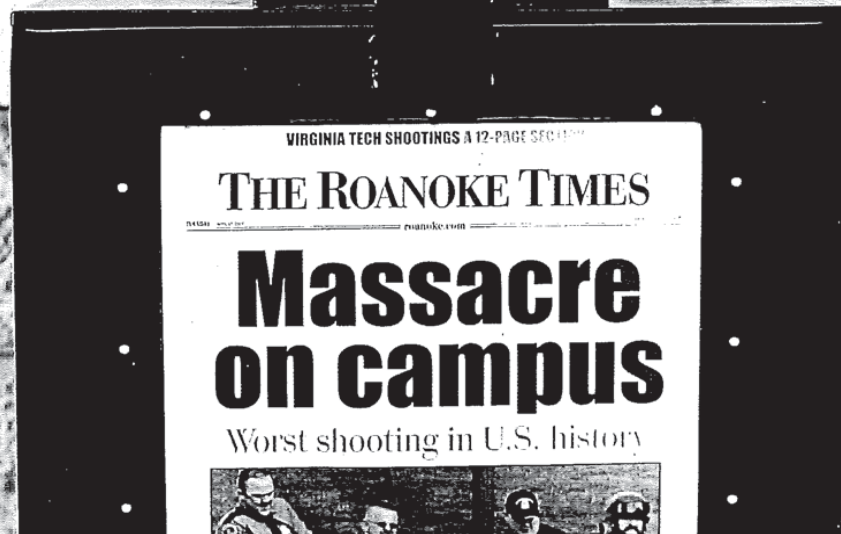
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**Second Edition**

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Rather than lose his beloved children, he decided to keep them together, at least spiritually. According to police, Elizalde had told friends that he would rather kill his children than let them go.

The devoted father purchased a gallon of gasoline from a filling station some three blocks from his apartment. After returning home, he doused his sleeping children with gasoline and set them afire, one at a time. When he was sure they were dead, he set himself on fire. By killing them all, he thought he had ensured that they would be reunited in a better life after death.

When love becomes a component in the mass killer's motivation, outsiders—neighbors, friends and extended kin—are typically incredulous when learning that a seemingly loving and normal husband/father has slaughtered his wife and children before committing suicide. In July 2000, residents of the seaside suburban community of Barry, outside of Cardiff in South Wales, were shocked to discover a gruesome family annihilation in their midst. Forty-nine-year-old Robert Mochrie, often described as a “devoted family man,” had hanged himself after bludgeoning to death his wife and four children as they slept in their middle-class single-family home.

Mochrie had a 10-year history of severe depression and had seen a psychiatrist on a number of occasions. He and his wife of 23 years were no longer intimate, and one of their children was autistic. On top of everything else that went wrong, he had recently experienced a number of failed business ventures which left him in deep debt, unable to pay his bills and faced with bankruptcy. Being a “loving father and good husband,” Mochrie made sure that his family members died in their sleep with a blow to the head, minimizing their pain and suffering. He then covered each body with a blanket, as though trying to protect his wife and children from the elements.

### Sweet Revenge

A twisted sense of love and responsibility clearly cannot explain many cases of mass murder. Why would a 31-year-old former postal worker, Thomas McIlvane, go on a rampage in Royal Oak, Michigan, killing four supervisors before shooting himself in the head? And what would provoke a 28-year-old graduate student, Gang Lu, to execute five others at the University of Iowa before taking his own life? And why would 35-year-old Colin Ferguson open fire on a crowded Long Island train, killing six commuters? The common denominator in these three cases is the killer's desire to execute his enemies, real or imagined, for the sake of sweet revenge.

Although each case has its unique aspects, by far the most frequent motivation for mass murder is revenge—the desire to get even for perceived mistreatment by family members, a company, or a whole category of people. In all forms of revenge-motivated mass murder, the perpetrator's objective is to punish all those whom he holds responsible, directly or indirectly, for his failures and disappointments.

On August 20, 1986, the morning after being reprimanded for poor job performance, 44-year-old Patrick Henry Sherrill “gave notice” in a most unconventional way. Arriving at the Edmond, Oklahoma, post office at 6:45 a.m., the part-time letter carrier was



The case against psychiatric medications would be stronger if it weren't for the fact that killers who were being treated at the time they committed murder typically had all of the warning signs associated with such crimes. In almost every case, there was a good reason why a psychiatrist had prescribed a psychotropic drug: The killer had been profoundly depressed, disappointed, and discouraged about the future. Moreover, the actions of killers who commit a rampage are typically neither episodic nor spontaneous. Wesbecker, for example, had planned his assault for months, including accumulating an arsenal of weaponry; yet he had taken Prozac for only a few weeks before the massacre. The drug may at most have reduced his inhibitions, but it hardly inspired him to kill.

Biological or chemical factors may be useful for explaining spontaneous or impulsive acts of extreme violence, but mass killings are typically planned and methodical rather than episodic. Massacres occurring at home, work, or school typically involve a complex set of contributors, including those located in the social environment of the perpetrator.

The social environment can be toxic when it involves the violent behavior and supporting attitudes of significant others. In fact, we learn to be violent not only from being directly rewarded and punished; we learn it through the role models we imitate. Clearly, other people may serve as models of learning in many other areas of life—for example, in acquiring language, using facial expressions, and dressing for various occasions. We should probably not be surprised, therefore, that imitation also occurs in learning violent behavior—even multiple homicide.

Early on, Bandura (1977) suggested that the mass media generally, but television in particular, provide a powerful source of models for aggressive conduct. Findings obtained in a large number of studies over several decades on the effects of televised influences on behavior support this argument: They show that our popular culture—television, motion pictures, iPods, video games, and the Internet—can serve as a tutor in teaching violent styles of behavior (Murray, 2008). We really shouldn't be surprised, considering the enormous amount of time that children tune in to popular culture. The typical youngster spends, on average, more than 38 hours weekly—almost 5½ hours on a daily basis—watching TV, playing video games, listening to music, and surfing the Internet. Nearly three-quarters of the children in the United States live in a home that possesses at least three TV sets.

The impact of popular culture frequently goes unchallenged. Many parents fail to impose any restrictions on their children's viewing behavior. In fact, some 53% of all parents permit a set in their youngster's bedroom; 58% leave a set on while the family has dinner; and only 5% watch TV with their older children.

Research by David Phillips (1983) suggests strongly that media images can teach even the most violent acts. He examined the homicide rate in America immediately following televised heavyweight prizefights and found a brief but sharp increase in homicides, an overall increase of 13%. This effect seemed to peak on the third day after the prizefights, especially following heavily publicized events. The biggest third-day peak occurred after the fights that received the greatest publicity.

Models for murder can also be located in the groups to which an individual belongs. Sutherland's differential association theory contends that criminal behavior is learned during adolescence from an individual's most intimate social relations—his peers, family, and friends. Criminal skills are acquired in such groups. In addition, the individual

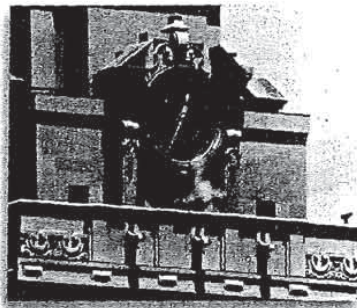


between the successes of individuals and their peers, Agnew recognizes the influence of what sociologists have called "relative deprivation." Moreover, chronic strain may play a major role in encouraging mass killings at school, at work, or in the family. When life's disappointments become intolerable, an individual may seek vengeance, restoration of control, and/or infamy through the barrel of a gun.

## The Great Equalizer

Men have unequal access to and training in the use of handguns and rifles. Three quarters of mass murderers kill with a firearm. It is difficult to kill a large number of people at one time using other weapons, such as a knife or a club. Typically, mass killers are fascinated with guns; own large collections of rifles, including military-style assault weapons; and have the shooting skills to match.

Twenty-five-year-old Charles Whitman, for example, had grown up around firearms. His father, himself a gun aficionado, had taught Charles to hunt when he was a young boy. Charles later fine-tuned his marksmanship skills while serving in the Marines.



**Photo 13.1** Random massacres, such as Charles Whitman's shooting spree from the University of Texas tower, attract the most attention yet are the rarest form of mass murder.

Charles Whitman's 1966 assault at the University of Texas was widely termed the "Crime of the Century," reflecting the rarity of such mass murder at the time. Of course, those who saw Whitman's crime as history-making could not have imagined what new and much deadlier slaughters lay ahead in the remaining quarter of the century. Whitman's crime may have helped to define the term *mass murder* in the American consciousness, but more recent tragedies have pushed the limits of public anxiety to the breaking point. We have witnessed massacres in schoolyards and shopping malls, trains and planes, post offices, and fast food establishments. People everywhere wonder, "Is nowhere safe?"

Several factors have coalesced recently to produce a deadly mix of resentment and despair. A growing number of middle-aged men are losing those aspects of their lives that give them meaning and support, particularly their families and their jobs. A shrinking and more competitive labor mar-

ket has left thousands of men feeling hopeless and worthless. A high rate of divorce, greater residential mobility, and a general lack of neighborliness have left many men feeling very much alone. Though their crimes are reprehensible, a few of these desperate people feel that they have no place to turn and no means to resolve their problems other than use of their guns. The one problem they don't have is finding a high-powered weapon of mass destruction.



## Chapter 13 For Love, Money, or Revenge

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On November 1, 1991, Gang Lu, a 28-year-old Chinese-born graduate student at the University of Iowa, methodically shot and killed five people on campus whom he held responsible for denying him a coveted prize given for the top science dissertation. In advance of his massacre, Gang Lu had written to his sister in China outlining his funeral wishes, sending along the contents of the bank account he shortly wouldn't need. He also wrote a letter to the media outlining his grievance against the Physics Department and describing how his gun would help to right the terrible wrongs that had been done to him. "Private guns make every person equal, no matter what/who he/she is," he wrote. "They also make it possible for an individual to fight against a conspired/incorporated organization such as Mafia or Dirty University officials."

In the wake of virtually any large mass shooting, significant debate surfaces about the role of firearms in facilitating a bloodbath. Of course, guns didn't make Gang Lu lose out to his rival countryman, nor did they encourage his desire to kill those whom he blamed for ruining his life. However, for Gang Lu, the gun was a necessary instrument to achieve his desired outcome, and it was likely the only weapon that would do. Certainly, knives or other objects would not have made it possible to execute his entire hit list without being subdued. Explosives, on the other hand, might have provided a means of mass destruction—much like what occurred in Bath, Michigan, on May 18, 1927, when Andrew Kehoe detonated a cache of explosives hidden in the basement of a local school, killing 38 children, 5 adults, and himself. However, Gang Lu's plan was not to kill just anyone, only those intended targets for payback. A firearm was his only logical choice.

As indicated, firearms, especially high-powered ones, are the weapons used by most mass killers. Handguns and rifles are, of course, far more lethal than knives or clubs for the assailant who seeks to kill large numbers of victims in a short period of time. In countries where guns are relatively inaccessible, mass killings are far less likely to occur, even if the motivation for large-scale destruction exists. For example, China's strict gun laws prevent angry would-be mass murderers from securing a firearm and going on a deadly shooting spree. At the end of April 2010, a knife-wielding man in his forties burst into the Leicheng First Primary School in the city of Leizhou and stabbed 18 children and a teacher before being subdued by the police. All of the victims were wounded, but none suffered life-threatening injuries.

Mass murderers who seek out certain people for revenge are especially likely to use firearms because they are more predictable and controllable in their destructiveness than fire, explosives, or even poison. Thus, for their lethality and precision, the largest massacres in terms of body count almost always involve a firearm.

Because of their high-profile nature in terms of publicity (see Duwe, 2000), mass murders are often exploited for the sake of advancing some political agenda, and this is especially true when it comes to the role of firearms as a contributing factor to mass murder. Mass shootings have served as ammunition in the debate over gun control, but used, ironically enough, by advocates on both sides of the issue to further their cause.

In the wake of particularly deadly and widely publicized shootings, gun control proponents have argued that the carnage would not be so great were it not for the easy availability of high-powered firearms, especially assault weapons. By playing on public

As in high school, Harry was unpopular and was even ostracized. He had an inauspicious start at The Citadel. Harry's commanding officer (CO) was embarrassed when he mistakenly marked Harry present at formation when Harry actually had forgotten to appear. Of course, the CO took his embarrassment out on Harry, and the other cadets followed suit. As the weeks passed, Harry's peers forgot the particular incident but never reversed their opinion of him. As Harry continued to suffer from scorn, letters from his father urged him on, telling him, "No matter how tough they make it, you know you can take it" (quoted in Roesche, 1979, p. 85).

As Thanksgiving of 1976 approached, he could stand no more, and he left The Citadel for what he hoped was the last time, telling the school that his mother was sick with cancer. Military school was more than he could take: He was fed up with living the way his father wanted him to, and he was tired of being pushed, yet he couldn't bring himself to tell his father about not wanting to return to school. His father had always told him that "quitters were failures."

On November 28, Harry, Jr., returned home late, around 3 a.m., after visiting some of his former high school friends. He took a pistol, one of several in the house, and went to his parents' room, where they were asleep. He paced the room for some time, deciding what to do: Should he stand up to his father or simply release himself from the bondage? He held the gun to his father's head for 15 minutes. Finally, he fired. His mother stirred at the explosion, and he shot her. He then shot his father again. Next, he proceeded to his brothers' room. His 15-year-old brother, Ronald, lay there motionless, his eyes wide open. Harry shot and killed him. The other brother—Eric, age 12—made a rush for Harry. Harry shot him twice in the face and once in the chest, but he was still alive and struggling to get up. Harry bludgeoned him to death with the revolver and stuffed his body in a metal cabinet in the attic.

Harry, Jr.'s entire life had revolved around guns. They provided his uppermost achievement as well as his greatest tragedy. For Harry, the gun represented an instrument, a means not only to kill his persecutor but also to measure his own self-worth.

Harry's family annihilation ensured that he would never again bear the intolerable burden of his father's expectations or suffer the regimentation of military school. Instead, he would spend his adult years in a much more oppressive environment—a New Jersey state penitentiary.

Harry, Jr. received four life sentences to be served concurrently. Based on the New Jersey statute in force at the time of his murders, he became eligible for parole in 2002. However, having failed on several bids for release, he remains incarcerated.



stolen property. In October 1984, he did a 30-day stint in county jail in Woodland, California, for being an accomplice to a robbery.

Three years passed, and Purdy's behavior became increasingly outrageous. In 1987, he was arrested for indiscriminately firing a 9mm pistol in the El Dorado National Forest. On top of this, he was charged with resisting arrest for kicking a deputy sheriff and shattering a window of the patrol car with his feet. While being held in advance of trial, Purdy attempted to commit suicide by hanging himself in his jail cell and slicing open his wrist with his sharpest fingernail. But like everything else he tried, Purdy even failed at taking his own life.

By January 1989, life had become completely hopeless for Purdy. He despised almost everyone, but especially people in positions of authority and especially his "enemies," the newcomers to America's shores. Purdy had a special hatred for Southeast Asians. He often bragged about his father's conquests in the Vietnam War, slaughtering all those "gooks." Purdy fantasized about following in his dad's army footsteps, but it would have to remain a fantasy because Patrick was only 7 years old when the U.S. forces pulled out of the Vietnam conflict.

No problem—Purdy would fight his own war against Southeast Asians. He would try one more time to achieve something big, and this time, his mission would not fail.

For weeks, Purdy had been living in Room 104 of the El Rancho Motel on the edge of Stockton, California, a riverfront agricultural city located some 80 miles east of San Francisco. He needed to concentrate, to plot his final assault on those who were to blame for his miserable existence. "General Purdy" spent hour after hour, day after day, in his "war room," manipulating the hundreds of toy soldiers, tanks, jeeps, and weapons that he had collected in order to simulate an attack and to develop an effective military strategy. There were toy soldiers everywhere: on the shelves, on the heating grates, even in the refrigerator.

Purdy prepared himself for battle as well. Perceiving a conspiracy involving people in charge, he displayed symbols of anti-Americanism boldly and loudly. He had carved the words "freedom" and "victory" into the butt of his AK-47 military assault rifle. On the camouflage shirt that he wore over his military jacket, he wrote "PLO," "Libya," and "Death to the great Satan." As reflected by the mistaken inscription for the name of the devil, spelling was never Purdy's strong suit . . . but then, he didn't seem to have any strong suit.

On Tuesday morning, January 17, Purdy donned his military flak jacket, picked up a handgun and his AK-47 semiautomatic assault rifle, and drove his 1977 Chevrolet station wagon a couple of miles to the Cleveland Elementary School in Stockton—the same elementary school he had attended from kindergarten to third grade. But things recently had begun to seem different to him, and it wasn't just having grown older. When he had lived there as a child, the neighborhood was white; now it was predominantly Asian.

Arriving at the Cleveland School just before noon, Purdy could see hundreds of young children—most of them refugees from Cambodia, Vietnam, China, and Mexico. Purdy preferred the term "boat people" when he spoke disparagingly of Asian refugees. Despite the chill in the air, the children played joyfully at recess on the blacktop in front of the brown stucco building, unaware of the war that would soon be declared.



### Minority Against Majority

White males cannot, of course, claim sole ownership of resentful attitudes. Many minority Americans are angry as well: They see a racist behind every possibility for advancement. Some even envisage a large-scale conspiracy on the part of white supremacist groups, corporations, and government to deprive them of success, if not their lives. Thus, whereas Baumhammers, Williams, Lepine, Hennard, and Purdy were all members of the dominant group beating back the threat of a minority, mass murder can also serve as the weapon of a minority to retaliate for perceived oppression.

In a suburb not far from the city of Pittsburgh, a 39-year-old black resident of Wilksburg was at his wit's end. After a lifetime of racial insults and slights, Ronald Taylor felt that he could no longer tolerate what he believed to be the continuing racist neglect by his white maintenance man, John DeWitt. The front door of Taylor's apartment unit had remained broken for some period of time without being repaired, and Taylor fixated on his white maintenance man as the source of the problem.

On March 1, 2000, racial revenge was on Taylor's mind. Leaving his apartment, he remarked to a black neighbor living nearby that he wasn't going to hurt any black people—that he was just “out to kill white people.” Taylor was true to his word. Not finding John DeWitt, he instead fatally shot a carpenter who had been working in the building. Then, he walked to a fast-food restaurant in the Wilksburg business district, where he shouted “White trash. Racist pig” and opened fire again, killing two and injuring two more (Levin & Rabrenovic, 2004, p. 55). All of Taylor's victims were white.

A horrific shooting that shocked New Yorkers and appeared to many as an indiscriminate shooting by a madman actually was more a carefully orchestrated hate crime. The gunman was indeed mad, but specifically because of feelings of personal slight and racial discrimination.

On any other day, it was the 5:33 local to Hicksville, but on December 7, 1993, it was the 5:33 express to hell. Hundreds of commuters, exhausted from a long workday in Manhattan, boarded the Long Island Rail Road commuter train at Penn Station, unprepared for the horror that would soon erupt in car #3. Just about 6:10 p.m., as the train raced toward Garden City in suburban Nassau County, a heavyset but gentle-looking black man rose quietly from his seat at the rear of the car and turned the weary scene into instant chaos.

Without warning, the gunman pulled from his canvas bag a Ruger P89 9mm semiautomatic pistol, a lightweight handgun known for its high velocity and accuracy, and started filling the air with gunfire. Stunned riders struggled to find cover in a death train that offered very little. The gunman slowly walked backward down the aisle, row by row, shooting alternately to his left and then his right.

Midway through the car, the assailant paused to reload with a second 15-round clip, then promptly resumed his attack. He moved to the front of the car, disappeared momentarily into the vestibule connecting to the forward car, but soon returned to finish his sweep of car #3. Fifteen rounds later, when again he stopped to reload, three heroic commuters rushed at the gunman and pinned him against a seat. Moments later, the train pulled into the Merillon Avenue Station. As terrified commuters bolted from



his job, the only activity that he found satisfying was working with his gun collection. Being without friends was not a problem—he could always count on his guns.

If only we had gun laws as strict as those in England, some Americans lament, James Huberty might never have become such a prolific mass killer. Of course, they likely have not heard of Michael Ryan, a resident of Hungerford, England, who killed 15 people and wounded just as many during a 4-hour siege through town before taking his own life. His victims included his own mother, his neighbor, and his two dogs, but most of those gunned down were perfect strangers who just happened to get in Ryan's way. Ryan was able to accomplish his tour of murder, which began at his home and ended at the school that he once attended, despite the country's rather restrictive gun laws.

Ryan, a 27-year-old good-for-nothing, had long had a bad reputation for belligerence. Despite his argumentative nature, however, he never had a brush with the law or involvement in the mental health system. Indeed, neither a criminal record nor a history of profound mental illness is a requirement for mass murder, even the indiscriminate type. Although he may have tended toward paranoia, he was far from psychotic in his thinking. Thus, each time Ryan applied to have his gun permit expanded, he was able to survive the screening process—a process that included an interview with local police to verify his sporting purpose.

By 1987, Ryan was licensed legally to own semiautomatic rifles for the sake of sportsmanship, but he viewed it as a license to murder. Ryan used his large cache of weapons that he had legally purchased under English law to take target practice on humanity. In the process, he committed the crime of the century, at least by English standards. In America, it would have been the crime of the week.

It took more than a large arsenal of weapons for Ryan to carry out his assault on his hometown. He developed the gun-handling skills through membership in a variety of gun clubs, the same memberships that earned him the legal right to own his weapons. But mass murderers don't have to join hunting clubs to become expert marksmen. Many of them are trained to handle high-powered firearms in preparation for military careers. The skills they acquire in the military for going to war prepare them in civilian life for going berserk.

When it comes to pseudo-commandos, Julian Knight of Melbourne, Australia, was as pseudo as they come. For as long as he could remember, and with his interest fostered by his adoption into a military family, the 19-year-old Aussie had focused nearly all his energies and thoughts toward a career in the military. In short, Knight was obsessed. He fashioned himself as a military man—better yet, a war hero. But the only war he would ever fight was a civil war. On August 7, 1987, along Hoddle Street in Melbourne, the "enemy" consisted of innocent strangers, 7 of whom were killed and 19 more of whom were wounded.

Unlike other pseudo-commandos, such as James Huberty and Patrick Purdy, Knight survived to become a hero in his own eyes. "I performed exactly as my Army superiors would have expected me to perform in a combat situation," reflected Knight from his jail cell. "In other circumstances I would have gotten a medal for what I did" (Time-Life Books editors, 1992, p. 70).

Knight was indeed well-trained to kill. He received his first gun, an air rifle, as a gift for his 12th birthday. Even with this relatively "harmless" initiation into weaponry, within 2 years, Knight was being trained in the use of an M16 rifle. Within 2 more years,