

1-1-1995

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### Recommended Citation

Tartaro, Joseph P. (1995) "The Great Assault Weapon Hoax," *University of Dayton Law Review*: Vol. 20: No. 2, Article 7.

Available at: <https://ecommons.udayton.edu/udlr/vol20/iss2/7>

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# THE GREAT ASSAULT WEAPON HOAX

*Joseph P. Tartaro\**

## I. INTRODUCTION

On the morning of September 13, 1994, President William Jefferson Clinton, surrounded by Vice President Gore, members of the Clinton Cabinet, members of both houses of Congress, the mayors of several major cities, and numerous supporters of the legislation among police administrators, signed into law the Violent Crime Control and Law Enforcement Act of 1994.

Passage of the bill did not come easily. It involved a combination of preventive and punishment initiatives, most of which were contentious to one group or another. Many civil libertarians opposed the classification of some sixty federal crimes as punishable by the death penalty. Fiscal conservatives denounced the proposed expenditure of over \$30 billion which was not actually budgeted by the 103d Congress. Even some mayors and local police administrators demanded changes in the bill to permit them to spend money on equipment and training rather than additional patrol officers—one of the main justifications for the bill.

Perhaps one of the most contentious points was the provision which banned the future manufacture, importation, sale and transfer of a whole class of semi-automatic rifles, shotguns and pistols and ammunition magazines of over 10-round capacity. Described with noticeable artifice as merely a reasonable ban on only nineteen semi-automatic “assault weapons,” the law bans almost 200 commonly owned firearms, the magazines for most popular modern police and self-defense pistols, and even replicas of the black-powder era 1860 Henry Repeating Rifle. The sweep of the ban came as a surprise to many, including the revelation after passage that the law added people who are under restraining orders to the list of those who are prohibited from buying or possessing any firearm, which had previously been limited to convicted felons, drug and alcohol abusers and mental patients.

While the new law, with its grandiose name, will change the nature, character and technology of firearms and ammunition used for civilian self-protection, competition and sport in the future, and will put a number of American craftsman out of work and manufacturers and importers out of business, it will not remove one single firearm from the hands of any criminal. Notwithstanding this, many major newspapers that supported the gun and

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magazine ban provisions of the crime bill called for defeat of the legislation in the weeks immediately preceding its final passage. *USA Today* called it “a fraud,” saying it would actually release some 15,000 convicted criminals from prison. The *New York Times*, the *Dallas Morning News* and other papers also urged defeat of what they argued was seriously and dangerously flawed legislation.

Indeed, Congress nearly did what the newspaper editorialists asked when it rejected on August 11, 1994 by a 225-210 margin a procedural rule that put the “crime bill” on hold. Following that setback, President Clinton and key members of his cabinet used the considerable power and patronage of the presidency to win over thirty-four Republican Members of Congress, while losing seven Democrats, to pass the bill out of the House on August 21 by a 238-189 vote. The Senate then debated the bill for four days before supporters of the measure overcame largely Republican procedural moves and passed the bill 61-38.

Thereafter, President Clinton, who had repeatedly said that every day enactment of the bill was delayed cost the lives of additional victims of crime, departed for a Massachusetts vacation and did not sign the bill until an appropriate ceremony could be arranged eighteen days later.

## II. GENESIS AND DECEPTION

The legislation to ban semi-automatic firearms, some derived from fully automatic or selective-fire military designs, was not something conceived in the 103d Congress or the Clinton Administration. Similar bills had been filed in both houses of the U.S. Congress, several state legislatures and many city and town councils every year since 1989. While no federal law prohibiting their manufacture or possession was enacted in the early years of the “assault weapons” initiative, two states—California (1989) and New Jersey (1990)—had passed laws banning or restricting possession of what the bill-drafters called “assault weapons.”<sup>1</sup> In addition, several cities and towns had passed local ordinances prohibiting possession of varying lists of such firearms.<sup>2</sup>

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1. In March 1989 the Bush administration suspended importation of a number of foreign-made semi-automatic versions of military style rifles, which previously had been approved as particularly suitable for sporting purposes by the Bureau of Alcohol, Tobacco and Firearms (ATF). *NEW GUN WK.*, March 31, 1989. In July the ban was made permanent for forty-three guns when ATF reversed itself on the sporting purposes evaluation. *NEW GUN WK.*, July 21, 1989. Later, when certain cosmetic changes, not functional or ballistic changes, were made in some of the guns, they were once again declared suitable for sporting purposes.

2. The following localities had adopted ordinances banning semi-automatic firearms: Atlanta, Georgia; Chicago, Illinois; Cicero, Illinois; Lincolnshire, Illinois; Niles, Illinois; East Chicago, Indiana; Gary, Indiana; Boston, Massachusetts; Albany, New York; New York City, New York; Rochester, New York; Brooklyn, Ohio; Cincinnati, Ohio; Cleveland, Ohio; Columbus, Ohio; Dayton, Ohio; Dublin, Ohio; and Philadelphia, Pennsylvania. In 1993, the Cleveland ban was upheld by the Ohio Supreme Court as reasonable although the same decision acknowledged the fundamental right to keep and bear arms under the state constitution. In 1994, a federal district court in Cincinnati ruled that the Columbus ban violated the federal constitution for being too vague.

The New York City ordinance provided for confiscation of previously authorized and registered semi-automatic firearms on the prohibited list.

The drive to ban so-called “assault weapons” continues. Even final passage of the “crime bill” with its gun ban in the 103d Congress has not dimmed the debate in the legislatures of several states.<sup>3</sup> If the arguments against these firearms were valid, it is unlikely that the issue would still be a subject of debate after all these years, nor would the President have to cajole members of Congress to support it. No matter how some segments of the media rail against “the powerful gun lobby,” pro-gun organizations, no matter how wealthy, large or powerful, would not have been able to hold off the legislation for so many years unless there was substance to their case for the continued legal sale and possession of these firearms. Whatever might be said about elected officials, they are usually keenly aware of the attitudes of their constituents.

### A. *Factual Evidence*

Indeed, despite a barrage of widely disseminated and often repeated misinformation and outright lies, the factual evidence continues to deny the claims made against the firearms erroneously referred to as “assault weapons.” There are reports from federal, state and local police files—most of them drafted since 1989—that clearly show that the targeted guns are far from the scourge their detractors claim. In this Article, it will become evident that there are no valid statistics to support the claims that “assault weapons are the ‘weapons of choice’ for drug dealers and other violent criminals” or that police are being mowed down by such guns and are vastly “outgunned.” What data exist clearly show that even with the most generous interpretation of statistics, these guns are used in well under two percent of homicides in America.<sup>4</sup> If only the data regarding rifles and shotguns defined as “assault weapons” is tabulated, these guns represent less than one percent of “crime guns.”<sup>5</sup>

If this evidence exists, one must wonder why the debate over these particular firearms continues. The answer, of course, lies in the total confusion that surrounds the issue. Let us examine some elements of the mystification.

First, the term “assault weapon” is erroneously applied. Assault weapons are by military procurement definition “selective fire (full auto continuous or burst fire plus autoloading) arms of sub caliber.” Since fully automatic and selective firearms have been severely restricted, taxed and licensed—and owners screened by local and federal law enforcement—since 1934, real assault weapons have been strictly regulated by federal as well as state laws for sixty years. The firearms which are targeted by recent laws and current legislative proposals are mostly semi-automatic (requiring a single trigger pull for each shot) or, in the case of the Street-Sweeper type shotgun, functional revolvers. They are

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3. While many state legislatures had recessed or adjourned *sine die* as of July 3, 1993, rejecting or leaving in committee various assault weapons ban proposals, similar proposals were still pending in such states as Massachusetts, Michigan and New York.

4. State and local official reports of types of firearms used in homicides or confiscated by police for any purpose.

5. See FBI Uniform Crime Reports for all recent years beginning with 1985.



indistinguishable in operation from other semi-automatic firearms used for self-defense, pest and vermin control, sport hunting and recreational shooting since the turn of the century.

To illustrate how difficult it is to define assault weapons outside the lexicon of the Pentagon, one need only examine some of the legislation which has been proposed or passed. When Senator Howard Metzenbaum filed his first "assault weapon" ban legislation in 1989, Peter Kokalis, technical editor for *Soldier of Fortune* magazine, applied the Ohio Democrat's definition to existing catalogs of available arms and discovered that the bill would have banned more than 250 different models.<sup>6</sup> Among these were .22 caliber semi-automatic repeaters that have been around for more than fifty years, and semi-automatic military style guns of World War II and Korea, such as the M1 Garand and the M1 carbine, beloved by millions of war veterans, collectors and recreational shooters.

Further indication of the difficulty in crafting a definition of a semi-automatic assault weapon can be found in the experience of the two states which have enacted such laws. In California, Department of Justice reports show that thousands of firearms which were not included in that state's ban have been registered by individuals and law enforcement officials who did not know the difference, and that hundreds of thousands of estimated "assault weapons" have not been registered.<sup>7</sup> In New Jersey, a similar situation exists, with a confused public failing to comply as predicted and with the legislature and attorney general trying to decide which of the guns already outlawed may be lawfully owned by private citizens for marksmanship programs sanctioned by the Department of the Army.<sup>8</sup>

The term "assault weapon" was originally coined by the Nazi military machine in Germany to describe a sub- or mid-caliber selective fire (fully automatic) light rifle or carbine. It first appeared in the designation of the Sturmgewehr 44, a lighter, rapid fire military small arm which fired a projectile smaller (and logistically lighter and cheaper) than that of the standard battle rifle. The Germans had been making similar arms before 1944, but they had generally been classified as machine pistols or submachine guns. While the Korean War era Grease Gun and M2 carbine might be classified as "assault rifles," the M-16 developed by Colt was the first American "assault weapon."<sup>9</sup>

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6. S. 386, 101st Cong., 1st Sess. (1989) (introduced by Sen. Howard Metzenbaum (D-OH)); NEW GUN WK., Mar. 24, 1989.

7. L.A. TIMES, May 20, 1992, WASH. TIMES, June 27, 1992; ORANGE COUNTY REG., June 28, 1992.

8. The New Jersey Attorney General is authorized by the 1990 ban to permit registration of some of the prohibited firearms for limited marksmanship programs. At present the status of four commonly used rifles—the World War II era M1 Garand and M1 carbine and the later semi-auto M14 and its civilian counterpart the Springfield M1A—are still in doubt.

9. The Vietnam War era M14, while a selective fire (full auto and semi-auto), is excluded because it is a .30 caliber firearm thus not fitting the Pentagon "Assault Weapon" definition.

### B. *Mortgaging Rights*

The idea of calling semi-automatic versions of military small arms “assault weapons” did not originate with either anti-gun activists, media or politicians. The term “assault weapon” was first corrupted by importers, manufacturers, wholesalers and dealers in the American firearms industry to stimulate sales of selected “exotica”—firearms which did not have a traditional appearance.<sup>10</sup> The fact that even some of the semi-automatic versions of the military-style firearms retained their bayonet lugs, extended pistol grips, “banana-clip” magazines, folding stocks and even threading for silencers and muzzle brakes has been used to erroneously define “assault weapons.”<sup>11</sup> But these design features were part of the Walter Mittyesque “romance” of what some like to call “ugly guns.” All of these features are merely cosmetic and there is little if any evidence that their inclusion on a gun has been essential to some specific criminal use.<sup>12</sup>

None of these features has contributed to the criminal misuse potential of these guns, but they do help them to look scarier to those who know little about firearms. With some in the firearms industry trying to sell the sizzle of guns that operated in exactly the same way as others that most people already owned by exploiting the term “assault weapon,” the firearms community and industry were mortgaged to a long and expensive legislative, legal and public relations struggle.

In 1988, anti-gun theorist Josh Sugarmann released a strategy paper to the anti-gun community which noted that the civilian disarmament crowd had been largely unsuccessful in denying the law-abiding ownership of handguns and other traditional styles of firearms, even after years of ingenious propaganda. Sugarmann took note of the public’s inability to tell the difference between a full automatic and a semi-automatic firearm and urged that the anti-gunners make use of this bafflement to open another front with greater prospects of success.<sup>13</sup>

The date of Sugarmann’s paper is September 1988. That was months before the mentally-disabled, career-criminal Patrick Purdy opened fire on a schoolyard full of children in Stockton, California on January 17, 1989.

Many people believe that the “assault weapons” debate began with that tragedy, one that could have been prevented by the criminal justice system which allowed Purdy to walk after more than six felony arrests, and which also allowed him to buy handguns despite California’s fifteen-day waiting period and record check law.<sup>14</sup> But, as with almost everything else connected with the surreal world of the great assault weapons hoax, that was not the case.

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10. See SHOTGUN NEWS and other firearms publications beginning in the early 1980s.

11. Various legislative prohibitions have been based not on a specific firearm but on these cosmetic features of esoteric value even to criminals.

12. If anyone knows of the bayoneting of anyone, police or civilian, the author would appreciate particulars or news clippings. This is an open-ended solicitation for published reports of violence regarding the misuse of these firearms because bayonet lugs are present on a rifle. Since first issued in the June 11, 1993 of THE NEW GUN WEEK, no examples have been submitted.

13. Josh Sugarmann, *Assault Weapons and Accessories in America: a strategy paper*, Sept. 1988. Written while Sugarmann was affiliated with a group called the “New Right Watch.”

14. Al Pickles, *Stockton: Where the Blame Belongs*, NEW GUN WK., Feb. 10, 1989.

### *C. A Worldwide Offensive*

While the random mass murder and wounding of children in a Stockton, California schoolyard in January 1989 by mentally disabled criminal Patrick Purdy is often erroneously believed to be the start of the push to ban semi-automatic firearms in America, the antecedents of this anti-gun offensive can be traced further back in time and linked to a worldwide offensive against law-abiding gun owners. These roots even precede the previously mentioned Sugarman strategy paper issued in the fall of 1988.

Even the 1987 use of a semi-automatic rifle by another deranged man in a mass murder in Hungerford, England, while a more likely anti-gun flash point for the worldwide "assault weapon" ban offensive, cannot be properly cited as the beginning. That shooting led to a new cry for more controls in Great Britain, as well as in Australia, with less public opposition in America where there is a stronger tradition of civilian gun ownership. In 1988, the British Parliament enacted a stringent new gun law that not only banned the semi-automatic versions of military rifles, but semi-automatic and pump shotguns as well. Many so-called sporting shotguns were further restricted in the name of the "assault weapon" proscription.

In Australia, the prime minister proposed a sweeping new ban in January 1988 which subsequently set off a major political confrontation that toppled the anti-gun Labor Party government of New South Wales.<sup>15</sup> At about the same time, the Colombian government, with the aid of some political and media voices in the United States, were blaming semi-automatic firearms from America for the success of the Medellin drug lords in that South American country, and bans and restrictions in the United States were advocated as a means of solving the drug and murder problem in Colombia.<sup>16</sup>

Clearly, a worldwide push to ban semi-automatic firearms was well in progress by 1988—well before Patrick Purdy started shooting at children in Stockton.

### *D. Isolated Incidents*

There had, of course, been a few isolated reports of crimes committed with semi-automatic versions of the Uzi,<sup>17</sup> not just in the United States but in Canada as well. But in no country was there any significant criminal use of such firearms before January 1989. And, in mid-1993, there was still no evidence in the United States or elsewhere that the so-called assault weapons posed any special threat

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15. NEW GUN WK., Jan. 8, 1988; NEW GUN WK., Apr. 15, 1988; DAVID KOPEL, *THE SAMURAI, THE MOUNTIE AND THE COWBOY* (Prometheus Books, Buffalo, NY 1992).

16. NEW GUN WK., Apr. 22, 1988.

17. News reports of any hold-up committed with a semi-automatic version of the Uzi pistol or carbine included mention that the victims thought they were threatened by the full automatic versions seen in movies and television shows.



to the public or law enforcement.<sup>18</sup>

The few reported incidents then, or now, were rare, but the idea that the victims did not know the difference between the highly publicized and richly fantasized full automatic Uzi and the semi-automatic version helped shape the debate for years to come. In no country has there been more than a handful of crimes committed with the semi-automatic Uzi or any of the other targeted semi-automatics, including armed robberies as well as shootings.

In the Spring of 1988, anti-gun leaders in the California legislature filed a bill to ban semi-automatic firearms and large-capacity magazines. That first bill was sponsored by Assemblyman Michael Roos (D-Los Angeles) and moved successfully through a few committees but failed to win approval by the legislature.

Meanwhile, former California Attorney General John Van deKamp, who was looking for greater public name recognition so that he could pursue higher political office, decided to become a major player in the campaign to ban the so-called assault weapons.<sup>19</sup> In late 1988, he mailed a lengthy survey to all police agencies in California asking them to provide data on the criminal use of a specified list of guns. The survey was to be returned in December, and some twenty major police agencies did report back to the attorney general. However, the report failed to provide any statistical evidence that the semi-automatic firearms in question posed any special risk for law enforcement or the general public.

This report was perhaps the first official document which contradicted the claims of the anti-gunners like Sugarmann, Van deKamp, Roos and others, and it was the first to be suppressed.<sup>20</sup> The concealment of this report and the issuance of misleading claims that the targeted guns represented a special public menace and risk to law enforcement marks the essential, anti-gun strategy for the great assault weapons hoax in America. The general media seems at that point to have entered into the campaign of duplicity, either through incompetence or design.

No journalist ever appears to have challenged the statements of people like Van deKamp in the early years of the assault weapons ban offensive, and only a few have done so since.<sup>21</sup> A wealth of information and testimony by unimpeachable witnesses has been totally concealed or given very little exposure.

In 1989, after the Stockton shooting, Roos and California state Senate President Pro Tem David Roberti immediately announced a new assault weapons ban bill. Hearings were held and law enforcement witnesses from Los Angeles testified that the targeted guns represented less than one percent of the crime

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18. See FBI Uniform Crime Reports for all recent years beginning with 1985.

19. The following year, Van deKamp was a candidate for the U.S. Senate seat previously held by Pete Wilson, who was elected governor.

20. A more detailed and damaging report completed by the California Department of Justice in 1991 was not made public, despite requests for it, until it was leaked in 1992.

21. See generally ORANGE COUNTY REG.; WALL ST. J.; LAS VEGAS REV. J. (general commentary challenging claims of anti-gun advocates).



guns seized by that city's police.<sup>22</sup> But there was little if any reporting of this fact.

In Congressional testimony, experts from the Bureau of Alcohol, Tobacco and Firearms and other qualified witnesses told House and Senate committees that the guns were no special threat, were used for sporting purposes and, while cosmetically different, functioned in exactly the same way as other semi-automatic firearms which had been marketed since the turn of the century.<sup>23</sup> But that got little play.

### *E. Televised Fakery*

When a Los Angeles television station, which early on in 1989 had bought the false claim that the ammunition fired from the targeted semi-automatics was more powerful than regular ammunition, could not tape an AK-47 doing anything spectacular, they faked it. Lieutenant Colonel Martin Fackler, a doctor in the Army's Wound Ballistics Laboratory, discovered the deception and tried to expose the fakery, but none in the general media chose to report it. The spurious television news video had shown an AK-47 round causing a melon to explode. But *Gun Week's* attempt to replicate that videotape required the same fakery that Fackler had exposed.<sup>24</sup> While the media did not pick up on that test, many stations in later years did replicate the melon shooting exercise, with the same results.<sup>25</sup>

In the early days of the assault weapons hoax it became standard procedure for political supporters of the ban to give speeches and have demonstrations for TV cameras in which the anti-gun governor or legislator asked for a ban on semi-automatics while the viewers saw pictures of police and other experts firing full automatics.<sup>26</sup> At about this time it became popular for the anti-gun politicians and media to claim that the semi-automatic assault weapons were "the weapons of choice of drug dealers."<sup>27</sup> There was not then nor is there now any evidence to support this claim, but it continues to be widely repeated as part of the fundamental catechism of the anti-gun crowd. Indeed, a news story in the *Philadelphia Inquirer* which supported the idea that baseball bats were the weapons of choice of drug dealers was not given wide coinage.<sup>28</sup>

Also in 1989, another police expert, the chief firearms training officer for the San Jose, California, police department, Leroy Pyle, produced a videotape in

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22. Testimony of Detective James L. Trahin, Firearms/Forensic Ballistics Unit, Los Angeles Police Department, before California State Assembly, Feb. 13, 1989.

23. Statement of Edward D. Conroy, Deputy Associate Director, Bureau of Alcohol, Tobacco & Firearms, before Senate Subcommittee on the Constitution, Feb. 10, 1989.

24. Marshall Brown, *Wound Ballistics Expert Exposes TV Fakery*, NEW GUN WK., May 5, 1989.

25. *Peter Jennings Special Report* (ABC television broadcast, Jan. 24, 1990).

26. On several television news programs, former New York Governor Mario Cuomo talked about the semi-automatic versions of the military-origin firearms while a state police officer was shown firing a full automatic version which has been strictly controlled by federal law since 1934.

27. These phrases coined in the early days of the assault weapons hoax are still being used by proponents of the ban in 1993.

28. Linda Loyd, *Raising the Penalties on Baseball-Bat Crime*, PHILA. INQUIRER, Sept. 23, 1992.

which he explained and detailed both visually and audibly, the difference between a full auto and a semi-auto.<sup>29</sup> This brief technical video by a police expert was also suppressed or ignored by anti-gun officials and the national media. For his efforts to shed light on the issue, Officer Pyle was suspended, given a punishment assignment and driven from his 25-year police career by his anti-gun chief Joseph McNamara. One of the charges McNamara leveled at Pyle was that he wore a San Jose police uniform during part of his public educational effort, something the chief himself was doing in paid advertising for Handgun Control, Inc. and in other public appearances to influence legislative decisions.<sup>30</sup>

As the battle to ban the maligned semi-automatics was underway in California, in Congress and in several cities, a new shooting incident gave it greater impetus. In September 1989 there was another much publicized mass shooting in a Louisville, Kentucky, printing plant in which several workers were killed or wounded by psychiatric patient Joseph Wesbecker, a former employee of the firm.

#### *F. Suppression of Evidence*

The shooting in Louisville not only gave new impetus to supporters of the assault weapons ban, but introduced some new elements in the debate. Evidence found in his apartment showed that the Louisville printing plant shooter was clearly a copy-cat. He used the same type of firearm as Purdy, a semi-automatic version of the AK-47, took his own life, and in his apartment were found news magazines which sensationalized the Stockton mass murder. Additionally, for the first time, the psychotropic drug Prozac, as well as other prescribed medications, were introduced as having a causal relationship to extreme mood swings and violence by a patient.<sup>31</sup>

Some journalists and others began investigating any possible relationship between Prozac and other drugs prescribed for psychiatric patients and extremely aberrant behavior. The Citizens Commission on Human Rights took the lead in this inquiry and others within and without the psychiatric profession have continued it.<sup>32</sup> A number of newspapers and magazines also pursued the inquiry, but the drug manufacturers have denied any possible determinable linkage.

There are now a number of people who believe that they were victimized by prescription drugs rather than the shooter. Among them is Jacquie Miller, a survivor of the Louisville shooting who is still in a wheel chair, just like James

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29. This video was later circulated to lawmakers and the public by the National Rifle Association.

30. In 1989, Chief McNamara wrote fund-raising letters for Handgun Control, Inc. on San Jose Police Department letterhead. He also appeared in Handgun Control, Inc. national advertising.

31. In 1993, the Citizens Commission on Human Rights, established in 1969 by the Church of Scientology, released a 64-page report on Psychiatry's Role in the Creation of Crime. The report is available for \$2 from 6362 Hollywood Blvd., Suite B, Los Angeles, California 90028.

32. A number of articles have explored the adverse reaction of Prozac (fluoxetine) and other psychotropic drugs. See generally articles appearing in J. CLINICAL PSYCHIATRY, Sept. 1989; J. CLINICAL PSYCHIATRY, Dec. 1991; J. CLINICAL PSYCHIATRY, July 1992; NEWSWEEK, Apr. 1991; COURIER J., Louisville, Kentucky, Oct. 26, 1989; COURIER J., Nov. 23, 1989.

Brady who was wounded in the 1991 assassination attempt on President Reagan.<sup>33</sup>

### *G. Blames Prescription*

Miller has said: "Prozac shot me . . . I looked up into the face of who was holding the rifle. He was completely gone. There was just nothing there of what makes a person a person." Miller has become a witness against assault weapons ban legislation.<sup>34</sup> She had a handgun in her purse that fateful day in 1989, even though she was not supposed to have. She was in an office in the building but did not realize what was going on until the shooting moved to the hallway outside her office. At that point, she moved toward her desk, her purse and her gun. But before the gun cleared her purse, Wesbecker had burst into the room and had fired four rounds into her.

Miller also says she is thankful her assailant had the assault weapon with its lower powered cartridges rather than a traditional hunting rifle. Many operations later, Miller believes that had she gotten to her handgun in time, she might have saved herself and others from injury and possibly reduced the death toll. She is a witness against the false claim that assault weapons are more powerful and deadly than other firearms.

Miller has been victimized in other ways by Congressional committees, the media and others who deny her an opportunity to testify on proposed legislation. While Jim Brady is wheeled into hearing rooms, usually in the morning while the television news cameras and print photographers can still make deadlines, Miller is denied the opportunity to appear even late in the day when only some of the committee and staffers are still on hand.<sup>35</sup> Much was made of the use of a semi-automatic by Wesbecker, but the general media gave little or no attention to the one wounded victim who was in a position to speak against the semi-auto ban, or to raise more questions about the possible role that prescribed drugs may have played in her shooting and the deaths of others.

Finding a definite link between a mass murderer and Prozac or another drug is much more difficult than some might imagine. The drug does not leave a trace that is picked up in routine autopsy tests. Special tests have to be conducted to determine the presence of certain drugs and they are not always conducted unless there is a specific request for them. Additionally, police do not generally make public all autopsy evidence.

While Ms. Miller has been denied an opportunity to testify by the anti-gun leaders in the House of Representatives, she has been at least accorded some exposure on television talk shows.

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33. Miller has undergone several operations but as of August 1993 was still confined to a wheel chair.

34. Miller, while denied an opportunity to testify before a House Committee in 1990, has since testified before Congress and the legislatures of several states, including Kentucky, Ohio, and Missouri.

35. Standard stage management for these House and Senate hearings organized witnesses in panels. The first two panels support new firearms restrictions and testify before the print and electronic media have to leave to meet deadlines. Pro-gun speakers spoke later after the media had left.



In order for the hoax being perpetrated by those who would ban the semi-automatic assault weapons to work, evidence which exposes the hoax must continue to be suppressed. The strategy developed by others but drafted by Sugarmann is based on exploiting the lack of information and understanding about such firearms among the general public, the media and politicians. The greatest danger to that strategy is widespread publication and broadcast of reliable technical data, crime statistics and other factual information which might reshape public and political opinion.

#### *H. Ignoring and Hiding Evidence*

As early as 1989, many media leaders, who already had a social and cultural aversion to all kinds of firearms, had joined in the assault weapons hoax in order to achieve the kind of victory over firearms owners which had previously been denied them.<sup>36</sup> The editors of *Time* magazine, for instance, admitted that they had already made up their minds in the gun issue debate and would ignore any evidence which threatened their position.<sup>37</sup> Further, *Time* has used its editorial pages to shape the public perception of militia-type small arms as well as any other type of firearms of which the editors disapprove.

That evidence has been both available and largely suppressed since the gun-banners started their campaign in earnest in 1989. There is none to support the claim that these semi-automatic versions of the small, personal arms possessed by our regular and reserve military units are more dangerous than others.<sup>38</sup> Indeed, all of the evidence contradicts the anti-gunners, and most has been shamelessly ignored by the general media or otherwise kept from the public.

For example, in March 5, 1989 testimony, Detective James L. Trahin, a Los Angeles Police Department ballistics expert, testified that out of 4,000 guns seized in a year, not more than 120, or three percent, could be classified as

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36. The editorial position of the *New York Times*, *Washington Post*, *Boston Globe*, *Los Angeles Times*, *Miami Herald*, and *Chicago Tribune*, all of which had previously officially supported proposed restrictive new gun laws, immediately embraced any proposal to ban, license or restrict manufacture, sale and possession of semi-automatic versions of military origin firearms.

37. In form letters to readers who complained of bias in a July 17, 1989 cover story, *Time Magazine*, through Gloria Hammond of the publishers executive offices, replied:

The July 17 cover story is the most recent in a growing number of attempts on the part of *Time* editors to keep the gun-availability issue resolutely in view. Such an editorial closing of ranks represents the exception rather than the rule in the history of the magazine, which has always endeavored to provide a variety of opinions and comment, in addition to straightforward news reporting as a way of engaging readers in interpreting the significance of issues and events as they arise. But the time for opinions on the dangers of gun availability is long since gone, replaced by overwhelming evidence that it represents a growing threat to public safety. As we see it—and as we indicated in the report—our responsibility now is to confront indifference about the escalating violence and the unwillingness to do something about it.

Letter from Gloria Hammond to *Time* readers, reprinted in *NEW GUN WK.*, Sept. 9, 1989.

38. Congressional Research Service Report to Congress on Assault Weapons: Military-Style Semiautomatics Firearms Facts and Issues, May 13, 1992 (technical revision June 4, 1992).



assault weapons.<sup>39</sup>

In 1991, Lieutenant Dennis Gibson of the San Diego police gang detail told the *San Diego Tribune* that of 3,000 firearms seized in the three year period 1989 to 1991, only nine could be labeled assault weapons. Gibson noted that in 1990, the San Diego police had picked up two so-called military style semi-automatics.

In Chicago, a Fortune 500 company economist, Jay Simkin, obtained and studied official police records for a ten-year period and discovered just one homicide out of over 2,000 could have been considered to have involved use of a military-style cartridge, and there is no other evidence of criminal homicide with any specific firearms that has been erroneously labeled an assault weapon. The *Wall Street Journal* did join *Gun Week* in printing a summary of his findings.<sup>40</sup>

A 1991 report by the California Department of Justice, dated September 21, 1991, and originally kept under wraps by California officials, concluded that assault weapons play a very small role in assault and homicide firearm cases.<sup>41</sup>

Another California study of crime laboratories in forty-six of fifty-eight counties reached conclusions similar to those contained in the Department of Justice report. The director of the California Criminalities Institute wrote that this was further confirmation that assault weapons are unusual in firearms assaults. This report results from the scarcity of representative samples of assault weapons in crime in California.

In 1989, the Florida legislature established the Florida Assault Weapons Commission to determine the types of firearms that are misused in the commission of crimes in that state. When the Commission issued its report in February 1990, the survey which covered the period 1986 to 1989 reported that only one-tenth of one percent of the violent crime involving firearms was attributable to military-look-alike semi-automatic firearms. Of 219 firearm-related homicides that were committed in the four-year period, only three were committed with so-called assault weapons. Not a single AK-47 type firearm was involved in a serious crime during the study period.<sup>42</sup>

### *I. Facts Contradict Claims*

When I began writing this paper on the great assault weapons hoax, two states—California and New Jersey—had enacted bans on semi-automatic

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39. Testimony of Detective James L. Trahin, Firearms/Forensic Ballistics Unit, Los Angeles Police Department, before California State Assembly, Feb. 13, 1989.

40. The report by Jay Simkin was undertaken and distributed by the Heartland Institute, published in summary in the *Wall Street Journal* on March 25, 1991 and in detail in *The New Gun Week* on March 8, 1991.

41. See *supra* note 20 and accompanying text.

42. In 1989, the Florida legislature established the Assault Weapons Commission as a fact-finding resource to assist the legislature in determining whether a state ban was needed. After the report was returned in 1990, the legislature decided there was no need for such legislation.

During 1994, the Pennsylvania state legislature authorized a similar study commission which is still gathering testimony and statistical evidence.

military origin firearms similar to those issued to the regular military, National Guard, reserve and state militia units. Later, a third state was taken in by the hoax; Connecticut passed a law banning sales and possession of a long list of guns on June 8, 1993 and required expensive registration for limited use of the ones purchased before October 1 of the same year.

On the same day, the Rhode Island House of Representatives voted down a similar measure, and the day previous, the New York Assembly voted for a ban.<sup>43</sup> Apparently, the lawmakers in both houses of the Connecticut legislature and the Assembly members in New York ignored the overwhelming evidence against such a ban while the House members in Rhode Island paid attention to it.

In addition to ignoring data that argued against the need for such a ban, the Connecticut legislators also ignored a five-year report from their own State Police which showed that the guns listed in the legislation represented less than two percent of all of the firearms seized by police from 1988 to 1992. The report, prepared by Major Kenneth H. Kirschner, commanding officer of the Bureau of Police Support Services, Division of State Police, Department of Public Safety, was dated March 11, 1993.

The report showed that the guns listed as assault weapons totaled 198 out of a total of 11,002 confiscated between 1988 and 1992. Thus, the percentage of assault weapons was 1.79 % of all firearms seized by police whether or not bodily injury was related to the confiscations. When the sixty-six handguns—already regulated by the state's handgun licensing laws—were included in the assault weapons definitions are removed from the total, the percentage of rifles and shotguns included on the assault weapons list drops closer to one percent of those seized. Curiously, one of the rifles specifically debated for inclusion in the ban, the Connecticut-manufactured Colt AR-15, was so rare among the guns confiscated that during the peak year for this firearm, 1992, when a total of 2,662 firearms were confiscated in the state, there were only three Colt AR-15s.<sup>44</sup>

In California, the first state to enact a ban, there are at least two major official reports that show that so-called "assault weapons" are not a special problem. A Department of Justice study dated September 21, 1991, which contradicted claims of widespread criminal use of the so-called assault weapons, was originally suppressed. However, when it came to light through the efforts of the California Organization for Public Safety (COPS) it showed that assault weapons play a very small role in assault and homicide firearm cases.

The analysis of data from twenty-one city and county crime laboratories throughout California found that for 1989 only forty-five of the 4,844 firearms that the laboratories kept track of fell under the designation "assault weapon" as listed in the Roberti-Roos Act of 1989. And of the 963 firearms that were actually used in homicides and assaults, only thirty-six were assault weapons.

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43. See *NEW GUN WK.*, June 25, 1993 (New York); *NEW GUN WK.*, July 2, 1993 (Rhode Island).

44. Report of the Connecticut Department of Public Safety, Division of State Police, Mar. 11, 1993.

The study also proved that the sixty guns included in California's assault weapons ban are not a particular problem in drug-related crime or in gang-related crime. This latest California Department of Justice study confirmed the findings of Attorney General John Van deKamp's earlier 1989 survey. The results are further supported by individual city data from Los Angeles and San Diego.<sup>45</sup>

The California and Connecticut reports are not unique. They are further confirmed by individual city and county reports from all across the nation. Many of these have been systematically compiled by Dr. Alan S. Krug, NRA state liaison for Pennsylvania. For example:

In Minneapolis, Minnesota, of 2,200 firearms received by the police departments property section over a two-year period beginning in 1989, only nine were so-called "assault weapons."<sup>46</sup>

In Buffalo, New York, police department records for 1990 revealed that only twenty-five of 1,071 firearms seized were of the assault-weapon type. A similar report in 1991 showed that the percentage of assault weapons to other firearms remained constant.<sup>47</sup>

Several other New York state cities provided reports when the City of Poughkeepsie was considering a local ban in 1992. In 1992, Auburn's police chief told the *Poughkeepsie Journal*, "In the past three years, I don't think we've taken in more than half a dozen of them."<sup>48</sup> Elmira's chief said "We've encountered maybe two assault weapons over the past couple of years."<sup>49</sup> Poughkeepsie's own police firearms expert said in June 1992 that only one of the forty-six handguns city police confiscated in 1991 would be prohibited under the then-proposed city assault weapons ordinance.<sup>50</sup> Poughkeepsie rejected the ban.

In 1990 and 1991, New York City police spokesmen stated that assault weapons are not a major factor in firearms-related crime there. The city's annual Police Firearms Assault Report for each recent year has also shown that the so-called "assault weapons" are not a significant threat to police. The latest report, for 1992, lists no assault weapons among the 301 firearms used or possessed by perpetrators in assaults involving police. Apparently, high capacity magazines are not a problem either. In seventy-six gunfights involving perpetrators and police, the perpetrators fired an average of three shots per incident; the police fired 7.7.<sup>51</sup>

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45. Testimony of Los Angeles Police Detective James L. Trahin and San Diego Police Gang Detail Lieutenant Dennis Gibson before Congress on March 5, 1989 (as reported in *SAN DIEGO TRIB.*, Aug. 28, 1991).

46. Reports of Minneapolis Police experts Sergeant Wes Reins (April 3, 1989) and Sergeant David Lindwan (August 6, 1990), as cited by Alan S. Krug, Ph.D., in an ongoing report entitled *THE ASSAULT WEAPONS ISSUE*.

47. This data was obtained by reporter Marshall J. Brown from the Erie County, NY, Department of Criminal Justice Services. *NEW GUN Wk.*, July 19, 1991; *NEW GUN Wk.*, May 8, 1992.

48. Report of Auburn City Police Chief J.C. Mochler. *POUGHKEEPSIE J.*, June 28, 1992.

49. *Id.* (citing Elmira City Police Chief Joseph Michalko).

50. *Id.* (citing Poughkeepsie Police Department firearms expert Sergeant David Bennett).

51. New York City Police Department 1992 year Police Firearms Assault Report.



### J. Capitalizing on Confusion

The latest New York City report further disproves one of the recurring basic themes of this anti-gun hoax: that police are outgunned by the criminals and are at greater risk because of semi-automatic firearms with large-capacity magazines. The number of rounds actually fired by police, an average of 7.7 in seventy-six recorded gunfights between law enforcement and criminals, exceeded the number fired by the perpetrators who fired an average of three per incident. The total number of hits by police was ninety-six; the total by perpetrators was seventeen. This confirms statements made by one senior police official when the New York City department was trying to block state legislation which would have required the city to issue Glock autoloading pistols. His contention then was that police did not need the higher-capacity Glocks since the six-shot issue revolvers would suffice for most encounters with criminals.<sup>52</sup> If this is so, as he claims, then the police are not outgunned or at serious special risk because of the guns targeted by the assault weapons hoax.

Additionally, the 1992 New York City Firearms Discharge Assault Report shows the total number of incidents for 1992 was down to 392 from the previous year's 440, and the number of such incidents in 1992 was the lowest since 1988 when there were 371—both a far cry from the 1972 high of 994.<sup>53</sup> As New York City police note, if there is a problem firearm at all, it is the handgun, which has been strictly regulated in New York State since 1912.

Perhaps one of the most significant reports, previously cited, is the Florida Assault Weapons Commission report mandated by that state's legislature. That report, issued in February 1990, showed that one-tenth of one percent of the violent crimes involving firearms were attributable to military-look-alike semi-automatic firearms.

### K. Irrational Push

The previously cited reports, plus others from Illinois,<sup>54</sup> Massachusetts,<sup>55</sup> Ohio,<sup>56</sup> Pennsylvania,<sup>57</sup> and Texas,<sup>58</sup> continue to show that semi-automatic

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52. Jane Fritsch, *Gun of Choice for Police Officers Runs into Fierce Opposition*, N.Y. TIMES, May 31, 1992 (citing Michael Julian, inspector of the New York Police Department Office of Management Analysis and Planning).

53. New York City Police Department 1992 year Police Firearms Assault Report.

54. See Krug, *supra* note 46. In Chicago, a study of crime data for the period 1965 to 1989 by economist Jay Edward Simkin, Ph.D. of the Chicago Police Department clearly contradicts claims that so-called "assault weapons" are an increasing threat to law enforcement and the public in that city. See Jay Edward Simkin, *Control Criminals, Not Guns*, WALL ST. J., Mar. 25, 1991.

55. See Krug, *supra* note 46. Data released by the Massachusetts State Police show that in the period January 1, 1985 to July 10, 1992, only nine such firearms were involved in the 1,568 fatal and non-fatal shootings that occurred in that state. Report of Trooper Michael R. Arnold, Firearms Identification Section, Massachusetts State Police, July 16, 1992.

56. See Krug, *supra* note 46. In Cleveland, Ohio, the Police Department reported in 1992 that of some 800 firearms seized the previous year and a half, only about ten could be considered semi-automatic assault weapons.



military-origin firearms are not a special problem anywhere in the United States. Nowhere is there credible evidence that the so-called "assault weapons" are a special threat to public safety or to members of the law enforcement community. Yet despite all of the evidence, there continues to be an irrational push to ban semi-automatic firearms of this type at the federal as well as the state and local level.

On June 20, 1993, the *New York Times*, long a vigorous advocate of assault weapons bans, reported that the two-year-old New Jersey ban has had little effect on crime. The report, by Iver Peterson, noted that "Although New Jersey's pioneering ban on military-style assault rifles was sold to the state as a crime-fighting measure, its impact on violence in the state, two years after it took effect, has been negligible, both sides agree, and debate over its impact is colored more by opinion than by fact." The *Times* reported that until the ban was imposed, the police were not required to keep statistics on the number of crimes involving assault rifles. In the years since, the statistics show them to be a tiny fraction of the total.

Even though Governor James Florio claimed that there were once 300,000 of these firearms in the state—guns they claimed had only one purpose, for killing people—and later revised the figure down to 40,000, only about 2,000 have been registered or otherwise rendered inoperable. This means that there are still tens of thousands of the targeted guns still in private hands, yet they account for .026 of 1 percent of guns used in crime.

Frederick DeVesa, first assistant attorney general, told the *Times*: "We're ready to concede that there is not a really high percentage of crimes committed with assault firearms." And then he added, "And we're going to make sure that number does not grow."

Joseph Constance, deputy chief of police in Trenton's capital city force, termed the assault weapons issue "pure nonsense, political pap." Constance, who has always opposed the state's ban, said: "Assault rifles have never been an issue in law enforcement. I have been on this job for twenty-five years and I haven't seen a drug dealer carry one. They are not used in crimes, they are not used against police officers."

The *Times* quoted Dominick Polifrone, head of the New Jersey bureau of ATF, as saying, "I've never encountered an assault rifle. The guns we have been dealing with are mostly 9-millimeter handguns, .38-caliber pistols and

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57. See Krug, *supra* note 46. Pennsylvania State Police officials in the southwest region of the Commonwealth reported in the May 17, 1992 issue of the *Greensburg Tribune-Review* that only a single homicide is known to have been committed with an assault weapon in southwestern Pennsylvania.

58. See Krug, *supra* note 46. During the period July 1985 to December 1992, the Bexar County Criminal Investigation Laboratory examined all of the 13,190 firearms that were seized by the San Antonio Police Department and the Bexar County Sheriff's Department. Of these firearms, only 24 were assault weapons. Chief Medical Examiner Vincent J.M. DiMaio, M.D., director of the Criminal Investigation Laboratory, reported that only two of 831 homicides in Bexar County (San Antonio) during the five-year period 1988 to 1992 involved assault weapons. In one of those two cases, the shooter was a law enforcement agent and the victim an armed drug smuggler. See Dr. DiMaio's report in the December 2, 1992 issue of the *Journal of the American Medical Association*.

25-millimeter handguns, because they're easier to conceal."

This statement, perhaps without intention, thus helps to focus on another argument of the anti-gun crowd, which insists that the assault weapons are easily concealed, and that somehow, 9-millimeter ammunition, rejected by the U.S. military at the turn of the century but adopted eighty years later for international political reasons, is somehow more deadly than other munitions. Senator Daniel Moynihan of New York apparently believes this claim because 9-millimeter cartridges are among those munitions he has proposed to ban through legislation in the U.S. Senate.<sup>59</sup>

One of the key elements of the anti-gun strategy to gull the public into supporting bans on the so-called "assault weapons" is to foster confusion. As stated previously, the public does not know the difference between a full automatic and a semi-automatic firearm. They have been further hoodwinked by the television charades of people like New York's former Governor Mario Cuomo talking about semi-automatic firearms while the camera shows a full automatic firing.<sup>60</sup>

Fully automatic weapons have been strictly regulated and registered since 1934. Real assault weapons are controlled by the 1934 law and by laws in most states. There is no need for a new law on semi-automatic firearms. However, the anti-gunners responsible for the hoax have continued to perpetuate it by exploiting public confusion.

In a hearing, almost any firearm can be labeled an assault weapon by a witness before the news cameras and the legislative body. The eight-shot Government Model 1911 pistol has been so labeled. So has the eight-shot World War II Garand service rifle of which over a million have been in private hands for the past thirty to forty years.

### *L. Tec-9 Crazyiness*

One of the most interesting subjects of the anti-gunners has been the Intertec Tec-9 semi-automatic pistol. It is frequently shown on television and in newspaper articles as signature art for a story on assault weapons. Curiously, however, while the Tec-9 may look exotic (considering its extensive use as a prop in so many shoot-em-up movies and television shows), it operates no differently than most other autoloading handguns.

Recently, one newspaper used an illustration of the Tec-9 to claim that "9-millimeter guns were the choice on the streets."<sup>61</sup> Another newspaper used the Tec-9 to illustrate that 9-millimeters, and particularly the Tec-9, were not the

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59. Senator Moynihan has for several years filed federal legislation to ban .25 and .32 caliber ammunition and in the 102d Congress added 9-millimeter ammunition to the list of prohibited ammunition. He has reintroduced similar legislation in the 104th Congress.

60. See *supra* note 26.

61. William Recktenwald, *9-millimeter Guns the Choice on the Streets*, CHICAGO TRIB., June 13, 1993. This article deals not so much with the TEC-9 but with increasing use of all 9-millimeter handguns in Chicago homicides.

“weapons of choice on the streets.”<sup>62</sup>

What is the general public to believe?

Several studies show that the average citizen considers crime the most critical problem confronting the nation.<sup>63</sup> Anti-gun politicians blame the crime on guns, particularly those they arbitrarily label “assault weapons.” They claim “these are the guns of choice of criminals; these are guns that have no sporting purpose; these are the guns that put police lives at special risk.”<sup>64</sup> They claim the guns fire faster than they really do, that they account for an inordinate amount of crime and homicides, that they are more powerful than other guns, and that nobody needs an assault weapon.

Nothing they say is true. The factual data do not support any of these claims. Yet the facts are ignored and the claims are continuously repeated.<sup>65</sup>

The real purpose of the anti-gunners is to ban guns—any guns. They believe that the guns that look unusual are more likely to be banned with less political risk. They also believe that they can include almost any gun on their assault weapons lists because the public does not know the difference. And they have been pursuing a domino theory strategy, taking one state at a time and trying to push the neighboring state into following.<sup>66</sup>

#### *M. Facts vs. Emotion*

The whole public debate over the semi-automatic firearms which have been intentionally mislabeled as “assault weapons” is like something out of *Alice in Wonderland*. Anyone who recalls Alice’s attempts to carry on rational discussions with the various characters in Lewis Carroll’s book will remember that it was impossible to make any sense out of them. That is the case with the great assault weapons hoax.

Proponents of bans claim the semi-automatics fire 600 rounds a minute. That is not true, nor is it technically or practically possible.<sup>67</sup> But the claim is often repeated.

The banners claim the semi-automatic assault weapons are “more

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62. *Tec-9 Not the Most Popular Weapon in Drug-Trade Circles*, RICHMOND TIMES-DISPATCH, Apr. 7, 1993. This article contradicted claims about the Tec-9 made by Virginia Governor L. Douglas Wilder. It also reported that in all of 1991 and 1992 only two Streetsweepers banned by legislation in 1993 were seized by Richmond police.

63. Luntz-Webber Research & Strategic Services June 1993 National Survey on Crime, Violence and Guns, and Buffalo Survey & Research Mayoral Issue Poll, reprinted in BUFFALO NEWS, May 9, 1992.

64. See generally speeches and op-ed commentaries by Representative Charles E. Schumer (D-NY); Assemblyman Oliver Koppell (D-NY); State Senator David Roberti (D-CA).

65. Even after proponents of the assault weapons ban legislation passed in Connecticut in 1993 were informed of the available data, they repeated their original erroneous claims during the legislative debate.

66. Lobbyists for Handgun Control, Inc. and supporting editorialists for New York, Massachusetts and Rhode Island newspapers used the passage of ban legislation in adjoining Connecticut to encourage immediate passage of similar legislation in the respective neighboring states.

67. Rates of fire are rated in rounds per minute for military procurement purposes, but no firearm actually fires that many rounds in a minute due to magazine capacity, the need to change magazines, and the need to cock the firearm. Semi-automatics which require one pull of the trigger for each shot rarely if ever deliver actual firing rates anywhere near a quarter of the stated rounds per minute.

powerful.” They do not explain more powerful than *what*. Sometimes this claim appears in the form “high powered bullets” or “more powerful ammunition.” In none of the forms is this true. In fact, the ammunition for any of the current military individual small arms, even when fired from true assault weapons, is less powerful than the military ammunition of just a few decades ago.<sup>68</sup>

The gun-banners also claim that these firearms are more deadly because they have pistol grips, bayonet lugs, flash suppressers, muzzle brakes, and threading for silencers. That none of these characteristics has significantly contributed to any special public or law enforcement menace is ignored; that these cosmetic differences do not affect the function of the so-called “assault weapons” is also ignored.<sup>69</sup>

The gun-banners also contend that these semi-automatic firearms have no legitimate purpose; that they were designed only for killing people. Reports that show that these guns function like any other semi-automatics, that they are not only used for organized competition, small and big game hunting, varmint hunting and pest control, as well as for self- and community-protection are ignored.

### *N. Gibberish*

Indeed all of the arguments of the anti-gun crowd sound like the sort of gibberish you might get from Alice’s caterpillar, the Tea Party gang or the Red Queen. When confronted in a head-to-head debate, the people who want to ban these semi-automatic versions of the same guns issued to National Guardsmen and reserve units cannot respond on a rational basis.

Nobody needs such guns, they claim. And, certainly, they say, nobody needs them in a densely-populated urban environment. But those arguments are spurious. If applied to anything else in America, they would be ridiculed. Certainly no one needs a car that goes faster than sixty-five miles an hour. No one needs a cosmetically exotic looking car when a Plain Jane four-door sedan will get everyone to the same places, maybe more safely.

As previously stated, the anti-gun crowd has taken advantage of the public confusion over what are essentially cosmetic differences. If you show someone a Mini 14 with a wooden stock, you get a sort of “ho-hum” reaction from the uninformed. If you show them a Mini 14 with a folding stock, pistol grip or bipod, they immediately get excited and ask “Is that a machine gun?”

Government study after government study has shown that the semi-automatics called “assault weapons” are not a special problem in crime

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68. The ballistic data for the .30-06 and M1 carbine cartridges, the .45 ACP used in World War II and Korea, and the .308(7.62 X 39) M-14 individual infantry arm used by some units in Vietnam are substantially more powerful than the 5.56mm (.223) U.S. small arms cartridge of the M16 or 5.45 X 39mm Soviet Russian cartridge fired in current AK47 military small arms and their semi-automatic civilian derivatives.

69. Various state hunting and conservation groups have reported on the uses of the targeted firearms by thousands of big game, small game and varmint hunters and articles about their legitimate use have appeared in firearms publications as well as ranching and farming periodicals, but seldom in the mainstream media.



statistics. Lawmakers such as those in Connecticut still vote for a ban even after having seen the mountains of reports and studies which refute the arguments usually offered in defense of these bans. We have cited many of the reports showing that the targeted semi-automatics are involved in less than one percent of violent crimes. There are other such reports.<sup>70</sup> The evidence is clear. The arguments against these guns are false. The attendant media editorial demands for banning them are part of a great hoax being perpetrated on Americans.

Rational people ask why, when the facts mitigate against bans, new bans on the fake assault weapons continue to be enacted.

### *O. Emotional Argument*

The answer is simple. The facts and the evidence are on the side of the civil rights of gun owners and would-be gun owners. But the facts have nothing to do with the public debate.

While the pro-gun side continues to attempt to fend off these infringements on their rights by using reason, logic and facts, the other side is using only emotion. Any student of public attitudes will tell you that the general public, like their elected officials, do not want to learn the facts. They do not want to study an issue. They want the debate in capsule form. And if the emotional argument gets through with a few slogans, that is how they will judge the issue.

So far, the factual response by the pro-gun side has had no decisive impact. It is an intellectual response to an emotional issue.

It is so strange a debate that even many gun owners buy the emotional side. They assume that those "nasty assault weapons" are guns owned by someone else, even though the actual legislative definitions include millions of guns law-abiding Americans have owned and used legally for years. Among the millions of owners of M1 carbines, of Model 12 shotguns, of Marlin-Glenfield Model 60 .22 rifles, there are those who believe that assault weapons should be banned because they do not know that the guns they already own have been intentionally mislabeled "assault weapons" and put on the ban list.

The reporters and editorialists at newspapers, magazines, radio and television stations have also bought the emotional argument and have largely ignored the mountains of data which refute the charges made by the anti-gunners against the targeted firearms.

The debate has been going on for years, fueled by the Stockton, California, schoolyard shooting and other isolated incidents of mass violence. The headlines are there for all to see, and the headlines are used to keep pushing the ban agenda.

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70. See David B. Kopel & Eric C. Morgan, *The Assault Weapon Panic: Political Correctness Takes Aim At The Constitution*, Apr. 10, 1993 (issue paper for the Independence Institute); Krug, *supra* note 46.

*P. Change in Tactics*

As long as the debate continues to be evidence against emotion, the pro-gun side can be expected to lose. It is impossible to argue facts while your opponent is arguing emotion. And if the debate is ever going to be won by the pro-gun side, new tactics are needed. Pro-gunners must exploit the emotional side of their argument. They must transform the debate into one in which emotion is pitted against emotion.

The anti-gun crowd have been exploiting victims for years; Sarah Brady is only one of many who have been enrolled by the anti-gunners and exploited to score emotional debating points.

It is time that the pro-gun side identify and counter this strategy by presenting its own victims, or would-be victims. They need to get greater exposure for the people who use firearms of all kinds for self-defense. The other arguments are superfluous and they are harder for the general public, or the media, to understand. But everyone understands and can empathize with the person who used a firearm, especially a semi-automatic military origin gun, to defend against looters during riots, hurricanes and other disasters, or to defend one's home against the sudden, violent and threatening invasion by easily identified "bad guys."<sup>71</sup>

At the same time, there must be a major effort to educate the media and the lawmakers about what these guns they hate are all about. This is especially true with the media because the general public learns from the media.

One of the simplest ways to help others to understand the truth about these controversial firearms is to invite politicians, media reporters and editorial board members to demonstration shoots. They should be taught to fire the guns safely and to learn about the characteristics of as many of the targeted semi-automatics as possible. When feasible and legal, they should also have a demonstration of full auto and selective fire versions of the guns.

Let them see for themselves that "spray fire," a popular media term, also means "inaccurate fire."

If politicians and their aides, as well as members of the general media, really knew the facts about guns in general and the so-called assault weapons in particular they would not be supporting the hoax either.

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71. See generally news reports of their use during tragedies such as the blizzard of 1977 in Buffalo, New York; the floods of 1977 in Johnstown, Pennsylvania; Hurricane Hugo in 1989 in the Virgin Islands and Southeastern states; the rioting, looting, arson and murder spree in Los Angeles in late April 1992; and during Hurricane Andrew in South Florida and Louisiana in 1992.