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THE ASSAULT WEAPONS BAN—SAVING LIVES

*Jeffrey Y. Muchnick**

I. INTRODUCTION

In late August 1994, after months, and even years, of cantankerous debate, the United States Senate gave final approval to comprehensive anti-crime legislation. The Senate's action ended an often painful process which at times had appeared doomed to fail.

One of the most controversial aspects of the bill, at least among politicians, was the provision to ban nineteen specific types of assault weapons as well as copycat models. Although the American people, according to every public opinion poll taken in the last five years, overwhelmingly support the ban, the powerful gun lobby had pulled out all the stops to defeat the legislation.

In November 1993, Senator Dianne Feinstein offered the ban as an amendment to the original Senate Crime Bill. At the time, nobody thought she had the fifty votes. In previous sessions, before Feinstein entered the Senate, Senator Dennis DeConcini had gained Senate approval for a more modest measure, but the House of Representatives had failed to act. Senator Feinstein's bill differed from Senator DeConcini's in two important ways. First, it outlawed not only a specific list of weapons but also weapons which were essentially the same. Second, it specifically listed more than 650 commonly used hunting weapons which were explicitly exempt.

By including the list of exempted firearms, Feinstein was able to persuade a majority of Senators to support the amendment, which survived a motion to table by one vote.

By including a set of criteria to prohibit new or copycat assault weapons, Congress dramatically improved previous legislation. For instance, the Tec-9 assault pistol and similar models now produced by the Intratec Corporation are included in the list of banned weapons. The Tec-9 is one of two of the banned weapons, the M-11 was the other, which was among the ten guns traced most often in crime from 1991 through early 1994 according to a study recently conducted by the Coalition to Stop Gun Violence. Several states, including California, had already banned the Tec-9 by name which led Intratec to rename the weapon Tec-DC9. Feinstein's law ensures that such obvious attempts to skirt

* Legislative Director, Coalition to Stop Gun Violence. This Article is adapted from a report prepared in 1991 by the Coalition to Stop Gun Violence in support of a District of Columbia law which held makers and sellers of assault weapons strictly liable for damages caused by their weapons in Washington, D.C. Years earlier the District had banned these weapons, but they continued to be used in District crimes because of the weak laws in surrounding jurisdictions. While this law obviously differed from attempts to ban assault weapons, the argument for taking action against assault weapons is essentially the same.

the law will be unsuccessful.

In May 1994, the House of Representatives passed a bill similar to Feinstein's by two votes. After several months of delay, a final version of the assault weapon ban was included in the crime bill which was signed into law on September 13. Below is a summary of the Feinstein amendment as well as other changes in the Nation's gun laws incorporated in the crime bill.

A. Assault Weapons

Existing guns are "grandfathered" in. More than 650 commonly used sporting weapons are specifically exempted. The following specific models are prohibited:

- Norinco, Mitchell and Poly Technologies Avotomat Kalishnikovs (AK-47s)(all models);
- Uzi and Galil;
- Berretta Ar70(SC-70);
- Colt AR-15;
- Fabrique National FN/FAL, FN/LAR and FNC;
- SWD M-10, M-11, M-11/9, and M-12;
- Steyr AUG;
- INTRATEC TEC-9, TEC-DC9 AND TEC-22;
- Streetsweeper or Striker 12 shotguns.

In addition, the Bureau of Alcohol, Tobacco, and Firearms (ATF) will prohibit new guns which have the following characteristics:

- Pistols that accept a detachable magazine and also have two or more of the following military-style features: threaded barrels for the attachment of a silencer; a barrel shroud to allow two-handed spray firing; an ammunition clip outside the pistol grip; or weight in excess of 50 ounces;
- Semi-automatic rifles which have the ability to accept a detachable ammunition magazine and two of the following: a folding stock; a pistol grip; a bayonet mount; a flash suppressor; or a grenade launcher;
- Semi-automatic shotguns which have two or more of the following features: folding or telescopic stock; a pistol grip; fixed magazine capacity over 5 rounds; and the ability to accept a detachable magazine;
- Ammunition clips or magazines of more than ten rounds would also be banned with the same grandfathering provisions.

B. Dealer Licensing

Applicants for licenses will be photographed and finger-printed; ATF will now have sixty days instead of forty-five to investigate applicants; applicants will have to be in compliance with all state and local laws; ATF will have access

to dealers' records whenever a crime gun is traced to that dealer; dealers must report any theft within forty-eight hours; dealers must respond to all trace requests immediately; and the chief law enforcement officer in each jurisdiction will receive from ATF a list of dealers within his jurisdiction.

C. Kids and Guns

It is now illegal for children under eighteen to own or possess a handgun and for anyone to transfer a handgun to a juvenile. Exemptions are allowed for certain supervised situations. This closes a loophole in the law which prohibited licensed dealers from selling handguns to kids but did not prohibit others from doing so.

II. THE VIOLENCE OF ASSAULT WEAPONS

- February 8, 1990: In Clayton, Missouri, a police officer and alleged drug dealer were both hospitalized following a shootout which erupted while police attempted to execute a search warrant. Upon subsequent search of the home, police recovered \$1,000 cash, about ten pounds of marijuana and thirty weapons. The weapons included two Chinese made AK-47s and three "Streetsweeper" shotguns.
- March 23, 1989: In a suburb of Denver, Eugene Thompson went on an unexplained mad rampage with his MAC-11 assault pistol. Thompson raped one woman, killed her and her mother, raped another woman, and shot and wounded two police officers before finally killing himself.
- May 9, 1989: An Ipswich, Massachusetts postal worker named Alfred Hunter killed his ex-wife then stole a small airplane. Armed with an AK-47, he began firing randomly as he flew over the city of Boston. After narrowly missing skyscrapers and coming dangerously close to a filled Fenway Park, Hunter landed the plane safely. Amazingly, only one pedestrian was hurt.
- December 11, 1988: Christopher DeFrisco of Portland, Oregon kidnapped his estranged wife and shot and killed her with a MAC-10 on an Illinois highway. A state trooper who stopped to investigate was also wounded. The police later apprehended DeFrisco as he tried to run a roadblock.
- November 1, 1989: Three teenagers were arrested for ambushing another group of teens at a Bridgeport, Connecticut intersection. An AK-47 was used in the attack. One teen was killed and four others injured in the attack in which more than eighty bullets pelted their car.
- December 16, 1988: A fifteen-year-old student at a religious school in Virginia Beach, Virginia opened fire with a MAC-11 assault pistol killing one teacher and wounding another. The student, who is black, complained of racial taunts by other students.

For the past several years, assault weapons violence has been steadily on the rise across the United States. Indeed, violence of all kinds has been increasing dramatically. In 1990, nine of the nation's twenty largest cities set new records for the number of homicides in one year. According to preliminary reports, the nation as a whole will also set a new homicide record. It is expected that when all the bodies are counted, 1990 will be the bloodiest year in American history with over 23,000 murders. By 1992, the figure had reached over 24,000.¹

Handguns continue to be the leading homicide weapon accounting for more than one of every two murders nationwide. Assault weapons, however, are becoming more and more prevalent. A 1989 survey by Cox newspapers found that compared with their proportion of all the guns in the United States, assault weapons are ten times more likely to be used in crime than other guns.² A more recent survey conducted by the Coalition to Stop Gun Violence found two assault weapons to be among the ten guns traced most often to crime through early 1994.³ Only about one million assault weapons are currently in circulation in the United States as compared to nearly seventy million handguns. It would be a public policy disaster to wait until assault weapons are as numerous as handguns before limiting their production and availability.

Additionally, despite the media's tendency to use the term assault rifle, the assault guns most often used in crimes are assault pistols such as the Tec-9 and the MAC-10 and M-11.

The Tec-9, an assault pistol designed to fire thirty-two rounds without reloading and equipped to accept a silencer, was found to be among the five guns most often used in crimes. The maker of the Tec-9, Carlos Garcia of Miami, accepts no responsibility for his guns use once they leave his hands. "I know some of the guns going out of here end up killing people. But I'm not responsible for that," Mr. Garcia told a Cox reporter.⁴

The M-11 is the latest version of the MAC-10 pistol to hit the streets. The SWD corporation of Georgia markets the gun with the slogan "The gun that made the 80s roar."

III. THE POLITICS OF ASSAULT WEAPONS

Assault weapons became a household word, a permanent part of the American consciousness, on the afternoon of January 17, 1989. That night the evening news showed the grisly scene of five elementary school age Asian-American children lying dead on a school playground in Stockton, California. A few hundred yards away lay the gunman, beside him his Chinese

1. U.S. Senate Committee on the Judiciary, 101st Cong., 2d Sess., 1990 Murder Toll—Initial Projections (July 31, 1990).

2. Jim Stewart & Andrew Alexander, *Assault Weapons Muscling in on Front Lines of Crime*, ATLANTA J.—CONST., May 21, 1989, at 1.

3. COALITION TO STOP GUN VIOLENCE, AMERICA'S CRIME GUNS (Sept. 1994).

4. Jim Stewart & Andrew Alexander, *A 'High Spirited' Gun*, ATLANTA J.—CONST., May 21, 1989, at 7.

made AK-47 assault rifle from which he was able to fire over 100 rounds of ammunition in under one minute.

Gun control advocates had already been calling, without success, for legislation banning these weapons of mass killing. By the mid 1980s, gun publications had begun to tout the advantages of semi-automatic assault weapons.⁵ Years later the gun lobby would deny that semi-autos were “assault weapons” by claiming that only machine guns were true assault weapons. The National Rifle Association and its allies now claim that using the term “assault weapon” for semi-automatic guns was an invention of the “gun-grabbers,” who know nothing about firearms. The truth is that the term “semi-automatic assault weapons” began with the initial marketing scheme for manufacturers looking to profit from Rambo-style guns.

It took the Stockton shooting, however, to awaken the public to the dangers these guns posed. Most were not aware that in almost every state, anyone over the age of eighteen could purchase an assault weapon with no questions asked. Over and over the question was asked, “Why would anyone need one of those guns?” Since Stockton, public opinion polls have consistently shown that over seventy percent of the American people support banning assault weapons.

Two months after the Stockton shooting, President George Bush, at the request of newly appointed drug czar William Bennett, placed an emergency, temporary ban on the import of all assault rifles. By the summer, ATF made the ban permanent for forty-two weapons which they deemed not suitable for sport.

While conducting the study, ATF reviewed the weapons in question and determined that assault weapons were guns which were usually based on a military design and had a preponderance of military characteristics. The most important military feature was the ability to accept a large capacity magazine. The others included: the capability of accepting a bayonet or grenade launcher; a threaded barrel to accept a silencer; pistol grips; folding stocks; night sights; and bipods.⁶

President Clinton twice expanded the import prohibition, first in August 1993 by adding assault pistols, and again in May 1994 when he prohibited all Chinese-made weapons from entering the United States. Since the original import ban, Chinese manufacturers had exported hundreds of thousands of SKS rifles into the United States. The SKS often retailed for under \$100 and had become one of the nation’s top ten crime guns.⁷

For those not familiar with certain weapons terminology, here is a quick primer. Military weapons or machine guns are fully automatic. They fire a continuous stream of bullets with each pull of the trigger. Since 1986, it has been illegal to manufacture such guns for civilian use. A recent attempt to overturn this law failed when the U.S. Supreme Court refused to hear the case of *Farmer*

5. JACK LEWIS, *THE GUN DIGEST BOOK OF ASSAULT WEAPONS* (1986).

6. BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, *REPORT AND RECOMMENDATION OF THE ATF WORKING GROUP ON THE IMPORTABILITY OF CERTAIN SEMIAUTOMATIC RIFLES* (1989).

7. COALITION TO STOP GUN VIOLENCE, *supra* note 3.

*v. Higgins*⁸ in which J.D. Farmer sought to be allowed to manufacture machine guns. The Court's action let stand a lower court ruling which denied Farmer's request to be allowed to manufacture machine guns.

Semi-automatic weapons require a separate trigger pull for each discharge. Many semi-automatics are not assault weapons. Semi-automatic assault weapons are ones which have many of the characteristics listed above. For example, the Colt AR-15 is simply the civilian semi-automatic version of the military's fully automatic M-16. In practical terms, a semi-automatic weapon can fire twenty rounds in about five seconds. A fully automatic weapon only needs three seconds. The public is still allowed to purchase, in most cases with very few restrictions, semi-automatic assault weapons.

After President Bush banned imported assault weapons, he came under vicious attack from gun owners and the gun lobby. Only months before the President announced his action, he had run a Presidential campaign in which he proclaimed himself the champion of gun rights and his opponent, Michael Dukakis, a gun grabber. Following the import ban, a movement was even begun (it later fizzled) to revoke Bush's life member status in the National Rifle Association.

What was overlooked, at least initially, by those who felt betrayed by the President, were the many loopholes in the President's action. Only foreign assault rifles were banned, thus allowing the continued flow of assault pistols into the country. Further, prohibiting imports did nothing to stop domestic production of assault weapons. It actually proved to be a boon and did not prevent domestic production of the banned foreign guns.

In 1986, the federal government prohibited the importation of a South African riot shotgun used primarily for crowd control. The shotgun was capable, at least according to its advertisements, of firing twelve, twelve-gauge rounds in under three seconds. Soon thereafter, several companies in the United States began to legally manufacture the gun domestically under the trade names "Striker 12" and "Streetsweeper."

There are indications that the same scenario is now unfolding in regards to the AK-47. The Violence Policy Project reported last September that a group in Arizona has already begun distributing domestically produced AK-47s around the country.⁹

The President's announcement of an import ban set off a two-year struggle in Congress between Members who sought to tighten restrictions on assault weapons and those who were adamantly opposed to any gun restrictions. Each side won some roll call votes. In the end, however, no further restrictions on assault weapons emerged from the 101st or the 102d Congress.

The House of Representatives and the Senate opted for much different approaches, and considered vastly different solutions to the problem of assault

8. 498 U.S. 1047 (1991).

9. Josh Sugarman, *AK-47 Assault Rifles Now Produced Domestically--Action Further Weakens Bush Administration Import Ban*, Violence Policy Center press release (Sept. 12, 1990).

weapons violence. For the first time in recent memory, the Senate acted first on a gun control issue.

Senator Dennis DeConcini, a Democrat from Arizona and former NRA legislator of the month, wrote the Senate version of the assault weapons ban. Senator DeConcini sought to ban a specific list of weapons which according to him, police organizations had said were the guns most frequently used in crime. The weapons were: AK-47; UZI and Galil; Beretta AR-70 (SC-70); Colt AR-15 and CAR-15; Fabrique Nationale FN/FAL, FN/LAR and FNC; MAC-10 and MAC-11; Steyr AUG; Tec-9; and Streetsweeper and Striker 12.

The Senate considered the DeConcini legislation as part of larger crime legislation. It was believed that the bill stood a better chance of being signed by the President if it was part of the larger legislation. A presidential spokesperson later confirmed that President Bush would sign the crime bill if it were presented to him—even if it included the DeConcini gun language—although he continued to oppose the ban itself.¹⁰

Opponents of the DeConcini measure attempted three times to have it removed from the crime bill. On all three occasions, they failed to do so by one vote.

The Democratic leadership of the House determined that it would be best to keep all gun bills separate from the crime bill. They believed that gun language would only slow down the crime legislation.

The Chairman of the House Subcommittee on Crime, Representative Bill Hughes of New Jersey, authored both the crime bill and the assault weapons legislation in the 101st Congress. He took a different tactic from Senator DeConcini. Representative Hughes' legislation borrowed from the ATF report and would have banned any assault weapon which did not have a sporting purpose. By applying the same criteria to domestic assault weapons that were already applied to foreign assault weapons, Rep. Hughes hoped to make it more difficult for Members to vote against his proposal.

In his omnibus crime bill, Hughes included a section prohibiting the domestic production of banned foreign assault weapons. This seemingly innocuous language was removed when Representative Jolene Unsoeld of Washington state substituted an amendment which only prohibited domestic assembly of parts of banned foreign assault rifles.

After the vote on the Unsoeld Amendment, the leadership in the House determined it best to hold off on an assault weapons vote. In the Conference Committee to reconcile the differences between the House and Senate Crime bills, the Senate agreed to drop the DeConcini language in exchange for the House dropping its proposal to prohibit the death penalty when applied in a racially discriminatory manner.

A similar scenario took place in the next session of Congress in 1991 and 1992. During the four years of delay, many more Americans became victims of

10. Steven Holmes, *Senate Votes Sweeping Crime Bill; Biden Calls it Toughest in History*, N.Y. TIMES, July 11, 1990, at B1.

assault weapon violence. The shootings in Louisville, Kentucky in September 1989 which took eight lives; at CIA headquarters in January 1992; and the July 1993 attack at the law firm of Petit, Martin are just some of the best known examples.

Assault weapon manufacture and use have increased as has the costs associated with treating their victims.

IV. PRODUCTION AND USE

One of the truly indefensible aspects of firearm laws in the United States is that guns are essentially unregulated. No records are kept of how many are sold or to whom. The Consumer Product Safety Commission is forbidden by statute from investigating firearms' defects. Records are kept on how many guns are made and we can assume that most of them are eventually sold to private individuals and do not spend eternity on the wall of a gun shop.

Representative Pete Stark of California recently asked ATF for the number of assault weapons produced domestically over the last several years. A dramatic rise is seen between 1988 and 1989.

We have divided the weapons into three categories: 1) those with threaded barrels for accepting silencers; 2) those designed with bayonet attachments; and 3) shotguns.¹¹ All of the domestic guns on the DeConcini list are represented.

DOMESTIC GUNS DESIGNED TO ACCEPT SILENCERS

| | 1988 | 1989 |
|----------------------------------------|--------|---------|
| Encom MK.IV Pistol | 237 | 115 |
| Feather Industries AT22 Rifle | 1,894 | 3,388 |
| Feather Industries Mini AT Pistol | 96 | 0 |
| Intratec Tec-9 Pistol | 13,770 | 15,837 |
| Intratec Scorpion Pistol | 5,286 | 15,821 |
| Military Armament Corp. M10A1 (MAC-10) | 360 | unknown |
| Partisan Avenger Pistol | 195 | 600 |
| Scarab Skorpion Pistol | 93 | 518 |
| SWD M11/9 Pistol (MAC-11) | 12,273 | 13,563 |
| Total | 34,204 | 49,842 |

11. Letter from Bureau of Alcohol, Tobacco and Firearms to Representative Pete Stark (Jan. 14, 1991) (on file with the *University of Dayton Law Review*).

DOMESTIC GUNS WITH BAYONET ATTACHMENTS

| | 1988 | 1989 |
|-----------------------------------------|--------|--------|
| Armcorp FAL Rifle, M14 Rifle | 449 | 512 |
| Colt AR-15 Rifles | 17,368 | 17,399 |
| Colt AR-15 (All Copies) | 9,411 | 19,461 |
| Springfield Armory M1A, BM59, M1, SAR48 | 4,002 | 9,846 |
| Total | 31,230 | 47,218 |

SHOTGUNS

| | 1988 | 1989 |
|---------------|------|-------|
| Striker 12 | 380 | 2,100 |
| Streetsweeper | 414 | 2,956 |
| Total | 794 | 5,056 |

Domestic production of these weapons increased dramatically in just one year. Weapons made to take silencers increased by forty-six percent. Those capable of having bayonets attached rose by fifty-one percent, and production of the assault shotguns increased by an incredible 500%.

With these figures in mind it is no wonder that these same weapons are being used more often in crime. The Washington, D.C. police department was able to provide some information on how often assault weapons are used in crime in the District.

In 1990, very few of the foreign made guns were used in the District. Washington police counted four AK-47s and a couple of UZIs. They also turned up one "Streetsweeper"¹² which is significant only in light of claims from the NRA that no "Streetsweeper" has ever been used in a crime. Richard Gardner, the director of the NRA's state and local division, made the claim while debating District Council Chairman and author of the Liability Act, David Clarke, on CNN's "Crossfire."

The assault weapons which were confiscated most often were the Tec-9 and the MAC family of firearms. Forty-four Tec-9s were confiscated in Washington in 1990.¹³ In the first ten months of 1989, only seven were used in District crimes.¹⁴ The numbers for the MAC-10 and M-11 were similar. In 1990, twenty-

12. Interview with George Wilson, Firearms Division Chief of the District of Columbia Police Department (Jan. 31, 1991).

13. *Id.*

14. D.C. POLICE FIREARMS DIVISION, PROJECT LEAD (Nov. 1989).

one MAC-10 or M-11s were confiscated¹⁵ as opposed to five¹⁶ used in District crimes in the first ten months of 1989. It is unfortunate that we only had the records for January through October 1989. We feel, however, that the discrepancy between the number of guns in the two years is so great that the unaccounted for two months would not have made a significant difference.

V. THE COSTS OF ASSAULT WEAPONS INJURIES

Gunshot wounds put a tremendous strain on the health care system in the United States. This threat is especially acute to the nation's trauma centers. Many gunshot victims, most estimates say over half, cannot pay their medical costs. This leaves the burden on the taxpayers and on the hospitals and other care givers themselves.

There is no way to determine how many of the gunshot victims are treated for assault weapons injuries as opposed to wounds resulting from other types of firearms. At this time, no national reporting system exists to determine which guns are used in any particular shooting. However, we can make some assumptions. According to the ATF report on imported assault weapons, their most deadly feature is their ability to fire multiple rounds without reloading. An increase in the use of assault weapons then is likely to result in an increase in the number of people shot during a single incident as well as an increase in the number of wounds suffered by each victim. As Dr. Howard R. Champion of the Washington Hospital Center told the *Detroit News*, "these chaps are coming in with more bullet holes in them, and they are being shot with more powerful weapons."¹⁷

Several other pieces of evidence point to an increase in the use of assault weapons. For instance, the U.S. army now trains its doctors in urban hospitals to prepare for injuries they are likely to see in a war.¹⁸ Further, more and more "innocent bystanders" are being shot. Doctor C. William Schwab of the University of Pennsylvania Hospital's trauma center estimates that ten percent of Philadelphia's gunshot victims are innocent bystanders.¹⁹

The cost of treating gunshot victims is tremendous. In a typical month, according to the office of the District of Columbia Commissioner on Public Health, approximately \$10 million in medical care is needed to treat gunshot wounds in just Washington. This includes ambulance care and other services such as emergency room bills.²⁰ Because more than half of the victims are uninsured, either the government or the care provider picks up most of the costs.

In 1988, the *Journal of the American Medical Association* published a

15. Wilson, *supra* note 12.

16. D.C. POLICE FIREARMS DIVISION, *supra* note 14.

17. Deb Price, *Field Hospitals of the Drug Wars*, *DET. NEWS*, Sept. 16, 1990, at 14A.

18. Mark Thompson, *Combat Doctors Train in Drug War*, *PHIL. INQ.*, Apr. 30, 1990.

19. See Price, *supra* note 17.

20. Interview with Dr. Beverly Coleman-Miller, D.C. Commissioner of Public Health's Office (Feb. 4, 1991).

study investigating the cost of hospitalizing gunshot victims in San Francisco. When extrapolating for the entire United States, the researchers determined that hospital care alone for gunshot victims costs taxpayers \$429 million a year.²¹

In the last three years, forty trauma centers have been forced to close for financial reasons. This, of course, has a dangerous negative effect not just upon shooting victims but all victims of serious injuries including people hurt in car accidents.²²

The story of a recent shooting victim encountered at the Washington Hospital Center demonstrates how expensive trauma care can be. This victim required hospitalization for 151 days resulting in bills totaling \$190,000. Medicaid paid \$5,000.²³ The hospital picked up the rest of the tab or passed it along to other paying customers. According to a Hospital spokesperson, the intensive care unit is “filled with comatose multiple gunshot wound victims, who may leave behind \$500,000 in medical bills when they die.”²⁴

We all are paying for allowing these weapons to be built. Either through our tax dollars or by losing vital medical care or by simply living in fear and terror that the next victim will be either us or someone we know. One way or another, we all pay.

VI. CONCLUSION

As gun violence and particularly assault weapon violence continue to worsen throughout the United States, elected officials will be forced to deal with the public’s demand that action be taken to protect them from weapons of mass killing. Although assault weapons currently account for only a fraction of gun violence, there is no reason to wait until the problem worsens. Seventy million handguns have proved a disaster for the nation and repeating the same mistake with even more deadly weapons would be inexcusable. The 1994 Crime Bill was a positive step toward eliminating the scourge of assault weapons violence in this country.

21. Michael J. Martin, Thomas Hunt, & Stephen Hulley, *The Cost of Hospitalization for Firearms Injuries*, 260 JAMA 3048 (1988).

22. Price, *supra* note 17.

23. Price, *supra* note 17.

24. Price, *supra* note 17.