

EXHIBIT O

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 22-cv-2680-NYW-SKC

ROCKY MOUNTAIN GUN OWNERS,
NATIONAL ASSOCIATION FOR GUN RIGHTS,
CHARLES BRADLEY WALKER,
BRYAN LAFONTE,
GORDON MADONNA,
JAMES MICHAEL JONES, and
MARTIN CARTER KEHOE,

Plaintiffs,

v.

THE TOWN OF SUPERIOR,
CITY OF LOUISVILLE, COLORADO,
CITY OF BOULDER, COLORADO, and
BOARD OF COUNTY COMMISSIONERS OF BOULDER COUNTY,

Defendants.

Declaration of James Yurgealitis

I, James E. Yurgealitis, declare as follows:

1. I am over the age of 18 years of age and competent to testify to the matters stated below and do so based on my personal knowledge.

2. Attachment A is a true and accurate copy of my expert report in the above-captioned matter. It contains the opinions to which I would testify if called upon as a witness in the above-captioned matter, and I declare under penalty of perjury that it is true and correct to the best of my knowledge.

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

Executed on this 17th day of October, 2023
at Manchester, Maryland.


James E. Yurgealitis

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

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ROCKY MOUNTAIN GUN OWNERS,
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BRYAN LAFONTE,
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and GORDON
MADONNA,
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THE TOWN OF SUPERIOR,
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COLORADO, CITY OF BOULDER,
COLORADO, and
BOARD OF COUNTY COMMISSIONERS OF BOULDER COUNTY,

Defendants.

Expert Report of James Yurgealitis

I, James E. Yurgealitis, state as follows:

1. I have been retained by the Town of Superior, the City of Boulder, the City of Louisville, and the Board of County Commissioners of Boulder County to render expert opinions in this case and to prepare an expert report for disclosure under FRCP 26(a)(2)(B) addressing the types and operation of firearms, the evolution and operation and of assault weapons, the evolution and operation of large-capacity and lower-capacity magazines, and the use of firearms in self-defense. This report is based on my own personal knowledge and experience. I hold all opinions expressed herein to a reasonable degree of professional certainty.

2. I am currently self-employed as a Legal and Forensic Consultant providing firearms related technical and public policy consulting, forensic case reviews, and testing and training services to corporations, legal counsel, and the public sector. During my previous 26-year career as a Federal Law Enforcement Officer, I have been recognized, and testified as, an expert witness in numerous local, state, and federal courts. I have toured numerous firearms and ammunition manufacturers' facilities both in the United States and overseas. I maintain a personal library of firearms- and ammunition-related books and periodicals and maintain contact with other recognized experts in the field. My final assignment in government service was as Senior Special Agent and Program Manager for Forensic Services for the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), U.S. Department of Justice, a position I held for nine years. During that time, I was responsible for all Bureau firearms- and forensic-firearms-related training and research at the ATF National Laboratory Center in Ammendale, Maryland.

3. My credentials, training, background, and experience are stated in my curriculum vitae, a true and correct copy of which is attached as **Exhibit A**. My credentials, training, background, and experience as an expert witness, including all cases where I have testified at trial

or by deposition within the last four years, are detailed on my Statement of Qualifications, a true and correct copy of which is attached as **Exhibit B**.

4. I am being compensated at the rate of \$400 per hour for my work and \$1,600 per travel + work day.

5. My opinion or opinions as stated in this report are the result of my training, knowledge, and experience, technical, statistical, and historical research, review of the firearms ordinances challenged in this case (the “Ordinances”), as well as the Plaintiffs’ pleadings in this case as submitted.

6. During the course of my work in this case, as additional research, technical or statistical materials become available or relevant, they will be reviewed. As such, I reserve the right to amend my report, opinion, or testimony to include consideration of those materials should their relevance warrant.

SUMMARY OF OPINIONS

7. As discussed in this report, many of the firearms covered by the Ordinances directly trace their origins to weapons developed for use in military combat. As such, these weapons were never initially intended for general distribution to the public or sale in the civilian market.

8. Similarly, detachable magazines were initially developed for, and can trace their heritage to, late 19th century advancements and developments in military small arms technology. As such, large-capacity magazines were neither initially designed, nor intended, for utilization by the civilian population/general public. They are an evolutionary development of military technology which has subsequently been adopted by manufacturers of civilian firearms.

9. The prohibited features of the firearms covered by the Ordinances were designed to increase the effectiveness of the firearm in a military combat scenario. However, such features are not necessary or suitable for civilian self-defense.

10. Firearms without these prohibited features are lawful under the Ordinances and widely available to civilian customers and provide effective means for civilian self-defense.

11. Firearms traditionally considered “sporting” or “hunting” firearms traditionally have magazine capacities which are legal under the Ordinances (both rifles and shotguns).

12. The operation of any firearm which utilizes a large-capacity magazine is unaffected by a magazine with a capacity legal under the statute. As their function is unaffected by the number of rounds in the magazine, they will operate as designed regardless of the capacity of the magazine.

13. Detachable magazines compliant with the Ordinances are, and have been, widely available since the mid 1990s. There are numerous options available that are both effective for civilian self-defense and compliant with the Ordinances.

14. As tragically demonstrated by recent mass shootings in Colorado and elsewhere, assault weapons and large-capacity magazines, as defined under the Ordinances, are capable of inflicting significant carnage upon civilians in a short period of time.

15. Additionally, assault weapons and large-capacity magazines, as defined under the Ordinances, pose a significant risk to law enforcement officers and other first responders.

DISCUSSION

I. Firearms Terminology, Types, and Operation

16. As the issues in this case center around firearms terminology and technology, it is important to discuss different types of modern firearms and how they function.

A. Handguns and Long Guns

17. Modern firearms as currently manufactured for civilian ownership fall into two general types: handguns and long guns (or shoulder-fired weapons).

i. Handguns

18. **Handguns.** Handguns are generally defined as a firearm having a short stock (grip), and are designed to be held, and fired, with one hand. The term “handgun” defines two distinct types of modern firearms: the revolver and the semi-automatic pistol.

19. **Revolver.** A revolver is a handgun designed and manufactured with a revolving cylinder to contain, chamber, and feed multiple rounds of ammunition. In a modern double-action revolver, pulling the trigger rotates the cylinder, bringing an unfired ammunition cartridge in line with the barrel and firing pin. Pulling the trigger also cocks the hammer and then releases it either directly (or indirectly via a firing pin) to strike the primer of the cartridge, initiating the firing sequence. In this type of revolver, the trigger must again be pulled to rotate the cylinder in order to fire another cartridge. When all cartridges have been fired, the user must unlock the cylinder from the frame and swing it out to the side of the frame to facilitate removal of cartridge casings and insert unfired cartridges. The cylinder is then closed and relocked within the frame and the handgun is again ready to fire when the trigger is pulled.

20. **Semi-automatic pistol.** A semi-automatic pistol is a handgun designed and manufactured with the firing chamber as an integral part of the barrel and generally utilizes a detachable “box” magazine to contain and feed multiple rounds of ammunition. In this type of handgun, generally, the box magazine is inserted into the firearm and the slide or bolt is pulled back and released. It then springs forward and loads a cartridge into the chamber. When the trigger is pulled, the firing pin or striker is released and impacts the primer of the cartridge and initiates the firing sequence of the ammunition. In most pistols, a portion of the recoil or gas pressure

generated by firing the cartridge is utilized to move the slide or bolt rearward, extract and eject the expended cartridge case, and chamber another round from the magazine. This sequence can be repeated by pulling the trigger once for each shot. The pistol can then be reloaded by removing the empty magazine and inserting a loaded magazine.

ii. Long Guns

21. In terms of modern firearms manufacture, long guns are generally of two distinct types: rifles and shotguns.

22. **Rifle.** A rifle is a firearm which is designed and intended to be fired from the shoulder. It fires a single shot through a rifled bore for each pull of the trigger.

23. **Shotgun.** A shotgun is a firearm that is also designed and intended to be fired from the shoulder. It fires either a number of ball shot (commonly termed “buckshot” or “birdshot”) or a single projectile (commonly termed a “slug”) through a smooth (non-rifled) bore for each pull of the trigger.

24. In terms of rifle “types,” there are numerous variations. All of these variations, generally speaking, are defined and distinguished by the way they are loaded and reloaded.

25. **Single-shot rifle.** For example, single-shot rifles fire one shot for each pull of the trigger. They have no internal or external magazine capacity and must be reloaded with a new unfired cartridge by hand for each shot. Many of these have a hinged or “break open” receiver to facilitate loading and unloading.

26. **Pump-action rifle.** A pump-action rifle requires the operator to manually manipulate a forearm piece which is traditionally found underneath the barrel. After firing, the forearm is pulled rearward, which unlocks the bolt and extracts and ejects the fired cartridge case. Pushing the forearm forward feeds an unfired cartridge from the magazine, cocks the firearm

mechanism, and locks the bolt for a successive shot. Pump-action rifles have been manufactured with both tubular and detachable box magazines.

27. **Bolt-action rifle.** Bolt-action rifles require the operator to manually manipulate the bolt of the rifle. After firing, the bolt is first unlocked from the chamber and then moved rearward. This action also extracts and ejects the expended cartridge case. The bolt is then moved forward, which feeds an unfired cartridge from the magazine into the chamber. Once the bolt is then locked again by the operator, it is ready to fire. Bolt-action rifles usually have an internal fixed magazine or tubular magazine which will facilitate reloading via manipulation of the bolt until that capacity is exhausted, but models that use detachable magazines are also available. Bolt-action rifles are popular among hunters to this day and were generally the choice among military forces through the end of World War II.

28. **Lever-action rifle.** A lever-action rifle is similar to the bolt-action rifle in that the operator is required to manipulate the mechanism of the firearm. A lever at the bottom of the rifle's receiver is manipulated in a up and down motion in order to unlock the bolt and move it rearward, extract and eject the expended cartridge case, feed an unfired cartridge into the chamber, and lock it. This action is required for each shot fired through the rifle. Generally speaking, lever-action rifles are usually manufactured with tubular magazines which will vary in capacity depending on the caliber of the firearm and length of the magazine tube.

29. **Semi-automatic rifle.** A semi-automatic rifle utilizes the energy generated by the firing of the cartridge to power the cycle of fire. This is accomplished by siphoning off a portion of the gases generated by firing to operate the mechanism, or by utilizing the recoil generated by firing, much like a semi-automatic pistol, as described previously. Once loaded, the operation of this cycle of fire is not dependent on the operator for any portion of the process other than to pull

the trigger. Semi-automatic rifles are, and have been previously, manufactured with both fixed internal magazines and a capacity to accept detachable external magazines. As such, this type of rifle is capable of firing with each pull of the trigger until the supply of ammunition is exhausted. As stated previously, the majority of military firearms through World War II were bolt action. The exception to this rule was the United States entering the war with the semi-automatic M1 Garand rifle in .30-06 caliber as standard issue. The Garand had a fixed internal magazine with an 8-round capacity. Some soldiers also carried the select-fire Browning Automatic Rifle (BAR), which used 20-round detachable magazines, and the U.S. military also developed the semi-automatic M1 carbine that entered service in 1942 for paratroopers, tankers, and support troops with 15-round detachable magazines.

30. Modern shotguns, as stated previously in regard to rifles, are generally classified and characterized by their operating system (i.e., the manner in which they function, are loaded, and are reloaded). Additionally, in the case of shotguns with multiple barrels, they are defined by the placement or orientation of their barrels.

31. **Single-shot shotguns.** Single-shot shotguns function similarly to the single-shot rifle. They may have a hinged receiver which allows the operator to open the action to facilitate loading and unloading of the firearm. There are also single-shot models that are loaded and unloaded through a bolt-action mechanism and have no additional magazine capacity.

32. **Bolt-action shotguns.** Bolt-action shotguns are manufactured with internal, tubular, or detachable magazines to facilitate easier and faster reloading. They function in the same way as a bolt-action rifle and require manual manipulation of the bolt by the operator to unload and reload.

33. **Lever-action shotguns.** Lever-action shotguns again function in the same fashion as similarly designed rifles. Manual manipulation of the lever is required for successive shots.

34. **Pump-action shotguns.** Pump-action shotguns have the same general operating system as similarly designed rifles. The forearm piece of the shotgun must be worked forward and back by the operator to unlock the bolt, extract and eject the expended shotgun shell, reload, and relock the bolt for firing.

35. **Semi-automatic shotguns.** Semi-automatic shotguns, as with their rifle-caliber counterparts, utilize energy (either recoil or gas pressure) generated by firing ammunition to “power” the operating system of the firearm. These are manufactured with a number of different magazines, both internal and fixed, as well as external and detachable. They are capable of firing a single shot with each pull of the trigger until the supply of ammunition in the magazine is exhausted.

36. **Break-open, double-barreled, and “tip-up” shotguns.** Break-open, double-barreled, and “tip up” shotguns have a hinged receiver which facilitates access to the rear of the chamber for unloading and reloading. They are manufactured in single-shot and double-barreled variations. Double-barreled variations are further delineated by the placement of their barrels. Side-by-side shotguns have two barrels positioned next to one another in a horizontal arrangement. Over-under shotguns have two barrels superimposed upon one another in a vertical plane. The mechanisms in each of these allow staggered firing of each of the two barrels with a separate pull of the trigger. When the hinged action is opened, the expended shotgun shell hulls can be manually extracted, although more complex designs with auto ejectors perform that function when “opened” without action by the operator.

B. General Firearms Definitions

37. In discussing modern firearms, it is important to understand how they are defined under statute, how they function, and the differences between types commonly found and available to the public.

38. Additional terms often used when discussing modern firearms are semi-automatic, full-automatic, select-fire, rifling, caliber, gauge, and magazine. I define these terms as follows:

39. **Semi-automatic.** Semi-automatic fire refers to a repeating firearm that fires one shot for each pull of the trigger until the ammunition supply is exhausted. The energy of the fired cartridge is utilized to cycle the mechanism of the firearm to feed and chamber the next shot.

40. **Full-automatic.** Full-automatic refers to a firearm that will continuously fire successive shots when the trigger is pulled, and will only stop when the trigger is released or the supply of ammunition is exhausted. Fully automatic weapons are commonly known as machine guns.

41. **Select-fire.** A select-fire firearm is capable of switching between and functioning in either full- or semi-automatic firing mode.

42. **Rifling.** Rifling refers to a series of grooves cut or impressed inside the barrel in a spiral pattern. The “high” portions of these patterns are called “lands.” The “lower” portion of this pattern are called “grooves.” When a projectile (or bullet) is fired in a “rifled” firearm, it comes into contact with the lands as it leaves the chamber and begins to travel down the barrel. Because the lands are oriented in a spiral pattern, the rifling imparts spin on the projectile, which improves stability and accuracy.

43. **Caliber.** Caliber is a dimensional measurement of the inside (or bore) of a rifled barrel. In the United States, caliber is traditionally expressed in fractions of an inch. For example, a .22-caliber firearm is designed to chamber and fire a projectile which measures 0.22 inches (or slightly less than a quarter of an inch). A .50-caliber firearm chambers and fires a projectile which is approximately a half-inch in diameter.¹

¹ In Europe and most other countries that utilize the metric system, “caliber” has historically been expressed in millimeters (mm). Therefore, a 9mm firearm is designed to chamber and fire a

44. It is important to note for the purposes of this report that the caliber designation of any given ammunition cartridge usually refers only to the diameter of the projectile (bullet) and not the relative “power” of the cartridge itself (in terms of muzzle energy, effective range, and muzzle velocity). For example, there is an important distinction between cartridges commonly referred to as .22 caliber and cartridges commonly referred to as .223 caliber.

45. .22-caliber ammunition is a popular and relatively low-power cartridge developed in the 1880s. It is also known as “.22 rimfire,” as the primer mixture in the cartridge is seated in the rim of the cartridge and not contained in a separate primer cup in the cartridge base. It is commonly used for target shooting as well as hunting small game and can be fired from both handguns and rifles chambered in that caliber. The bullets for .22-caliber cartridges typically weigh between 30 to 60 grains (0.08 to 0.13 ounces). Their muzzle velocities are usually in the 1,100 to 1,300 feet per second (fps) range.

46. .223-caliber ammunition, by comparison, is a high-velocity cartridge developed in the 1950s in part for use in the original AR-15 and M-16 rifles. It is a “centerfire cartridge,” meaning the primer is contained in a separate cup in the center of the cartridge base. Although the diameter of the bullet is only slightly greater (approximately the width of a human hair) than the .22-caliber cartridge mentioned previously, it is a vastly more powerful cartridge in terms of muzzle velocity and range. This ammunition is also somewhat interchangeable with 5.56mm NATO ammunition. Here is a side-by-side comparison of a .223-caliber cartridge (left) and a .22-caliber cartridge (right) with a quarter for size reference:

projectile with a diameter of 9mm. European caliber designations may also include the measurement of the length of the cartridge case (9x19mm, 7.62x39mm, etc.). A number of widely manufactured firearm calibers have two separate caliber designations, one in inch measurements and one in metric, which are equivalent and interchangeable. For example, .380 ACP caliber ammunition in the U.S. is referred to as 9x17mm caliber in Europe.



47. The bullets used in .223/5.56mm ammunition are heavier than .22-caliber rimfire projectiles, typically weighing between 50 to 62 grains (0.11 to 0.14 ounces). Common muzzle velocities are approximately 3,200 to 3,500 fps—about three times as fast as .22 caliber projectiles. A heavier bullet and increased velocity equate to more of the cartridge’s energy being transferred to the target. A writer for *American Rifleman*, a National Rifle Association (NRA) magazine, tested the U.S. Army’s .223-caliber M885A1 cartridges in 2014, and the results are published here: <https://www.americanrifleman.org/content/testing-the-army-s-m855a1-standard-ball-cartridge/>.

48. **Gauge.** Gauge is a dimensional measurement which is traditionally used to denote the bore of a non-rifled or “smoothbore” firearm (i.e., a shotgun). Shotguns were initially designed to fire a mass of round shot as opposed to one solid projectile, and therefore a caliber designation is not readily applicable. Gauge refers to the number of lead spheres that will fit inside the bore and equal one pound. For example, in a 12-gauge shotgun, you can fit 12 spheres of lead, which are approximately 18.52mm or 0.73 inches in diameter, the total weight of which will equal one pound. If the diameter of the spheres is increased, less of them are required to equal one pound.

Therefore, the smaller the “gauge,” the larger the bore diameter. The exception to this measurement system is .410-gauge ammunition for shotguns and handguns, which is actually a caliber designation.

49. **Magazine.** A magazine holds the ammunition for a firearm before it is chambered and fired. The earliest magazines were “fixed,” or integral, to the firearm, such as the tubular magazines located underneath the barrels of lever-action rifles and, later, pump-action shotguns. Toward the very end of the 19th century, inventors developed firearms that utilized detachable magazines, which facilitate faster reloading.

C. General Firearms Operation

50. Modern firearms operate utilizing the expanding gases generated by the rapidly burning gunpowder contained in modern ammunition. Gunpowder (or smokeless powder) is the propellant contained within metallic cartridges or shotshells utilized by modern firearms. A single cartridge or shotshell is also referred to as a “round” of ammunition. Once a cartridge or shotshell is chambered or loaded in a modern firearm, and the trigger is pulled, the primer at the base of the cartridge or shotshell is struck by a firing mechanism. The primer contains a pressure-sensitive explosive compound which ignites when struck. The ignition of the primer, in turn, ignites the main powder charge contained in the case of the cartridge or shotshell. The main powder charge ignites and burns rapidly in what is essentially a contained explosion.

51. This contained explosion generates gases at enormous pressures. The generated gases push the projectile out of the mouth of the cartridge, down the barrel of the firearm, and out of the firearm through the muzzle.

52. More simply defined, a firearm is a weapon that utilizes the gas pressure generated by combusting gunpowder in a modern ammunition cartridge to propel a projectile through the barrel and out of the firearm through the muzzle.

53. All modern breech-loading firearms,² no matter the type, operate according to a nine-step process known as the “cycle of fire.”³ These steps are:

- 1) **Feeding:** Feeding refers to the process for insertion of cartridges into the chamber; the breech bolt pushes the cartridge into final position. Typically, the incoming round slides across the bolt or breech face during this caroming action. The feeding function can be manual or performed by various kinds of magazines and clips. For example, machine guns use belts of cartridges.
- 2) **Chambering:** Chambering is the insertion of the cartridge into the chamber. If a cartridge of the incorrect length or diameter is used or if there is foreign matter in the chamber, chambering may be obstructed, causing a malfunction. Excess oil or grease in the chamber may cause overpressure, resulting in a ruptured cartridge case and potentially serious accidents.
- 3) **Locking:** The breech bolt mechanism locks the cartridge into position in the barrel before firing. Most quality firearms are equipped with an interrupter mechanism that disconnects the trigger from the firing pin, thus making it impossible to fire until the mechanism is safely locked. This critical relationship is referred to as

² A breech-loading firearm is one in which the cartridge is loaded and fired from the breech (rear) end of the barrel as opposed to a muzzle-loading firearm, wherein the propellant/powder and bullet are loaded from the muzzle (front) end.

³ This nine-step process is outlined in the training program for apprentice forensic firearm and toolmark examiners, a program developed by the Association of Firearm and Toolmark Examiners (AFTE) in conjunction with the U.S. Department of Justice (DOJ) and the National Institute of Justice (NIJ). *Cycle-of-Fire Steps*, Firearm Examiner Training (2008), https://projects.nfstc.org/firearms/module08/fir_m08_t04.htm. An animated illustration of these steps as they occur in the AR-15 and M-16 is viewable here: <https://www.youtube.com/watch?v=omv85cLfmXU&t=261s>.

timing. (Blowback mechanisms involve a spring-held bolt; the mechanism is not technically locked, but is held together by spring tension and bolt inertia.)

- 4) **Firing:** When the breech is fully locked, a pull on the trigger mechanically translates to the firing pin release. In the cocked position, the firing pin has a hammer behind it with a spring forcing it towards the primer, restrained only by a sear that is engaged by the trigger. A pull on the trigger trips the sear from the engaging notch in the hammer. The hammer, actuated by a cocked spring, drives the firing pin sharply against the percussion sensitive primer, which fires the cartridge.
- 5) **Obturation:** Obturation occurs when powder gases under high pressure (e.g., two and one-half tons per square inch in the .30-06 Springfield cartridge) are sealed to prevent them from jetting between primer cup and cartridge case, cartridge case and primer wall, and projectile and bore. Cartridge cases must be sufficiently flexible to expand against the chamber wall and transmit the instantaneous powder pressure to the barrel metal that surrounds the chamber. When the chamber pressure has returned to zero, the cartridge case must also be flexible enough to release itself from the chamber wall (even though it is now pressure form-fitted to the chamber). Likewise, the primer cup has been pressure-held against the side of the cartridge case and depends upon the face of the breechblock for locked support during the interval of high chamber pressure. Obturation also occurs with the projectile; bullets are made sufficiently larger than the bore diameter to extrude into the rifling grooves and seal the gases. The sharp hammer action of the instantaneous high pressure and temperature may upset the projectile base, which enhances sealing. Shotgun wads perform the sealing function in smoothbore weapons.

- 6) **Unlocking:** This is the reverse of the locking process and is frequently performed in conjunction with extraction.
- 7) **Extraction:** Although cartridge cases do not commonly exceed their elastic limit during firing, they have a tendency to stick to the chamber after firing. After firing, cartridge cases are larger in diameter than before firing. All cartridge cases are designed with a rim or groove (cannelure) at the base so that an extractor claw can grasp this edge in order to achieve extraction.
- 8) **Ejection:** In the final stages of extraction, the cartridge case encounters a projection that is usually at right angles to the exit portal of the breech. Rotating on the fulcrum of the extractor, the case base is contacted on the opposite side by the ejector, which flips the case out of the actuating mechanism.
- 9) **Cocking:** The hammer spring is usually cocked when the bolt of a rifle, pistol, or repeater shotgun is retracted. An exception to this is the M1917 Enfield rifle, which cocks upon forward motion of the bolt. Exposed hammers may be cocked by manual retraction, using the thumb. The Walther series of pistols provides for manual cocking or trigger pull cocking (double action), as do most open hammer revolvers.

II. Recent Development and Evolution of Firearms with Features Designed for Military Purposes

54. In recent years, there has been an increase in the popularity and availability of semi-automatic rifles, pistols, and shotguns with features initially designed (or patterned after those designed) for a military purpose. It is important to discuss the history of the development and evolution of firearms with these features.

A. Assault Rifle Development and Evolution

55. The first “assault rifle” or “assault weapon” was the German StG 44 (*Sturmgewehr* Model 1944), which appeared in production form late in World War II. Earlier pre-production variants included the MP 42 and MP 43 (*Maschinenpistole* 1942 and 1943 respectively). The Germans termed the rifle “*Sturmgewehr*” (literally “storm rifle”), and a number of the features included utilization of a portion of the gas generated by the burning cartridge propellant to operate the rifle, extensive use of steel stampings in its construction, a detachable magazine, a separate pistol-style grip (not integrated with the shoulder stock), a bayonet mounting lug, and a threaded barrel to facilitate the attachment of a grenade launcher. It fired a cartridge that was smaller dimensionally and less “powerful” (in terms of muzzle velocity and foot-pounds of energy) than the standard 8mm Mauser cartridge in use by the German Army in their issued bolt-action Mauser rifles.



[4]

⁴ STG 44 Image source: Peter Suci, “Sturmgewehr, the First Assault Rifle,” Recoil: The Ultimate Firearms Destination for the Gun Lifestyle, June 19, 2016, available at <https://www.recoilweb.com/sturmgewehr-the-first-assault-rifle-100907.html>.

56. It is important to note that the features designed into the German StG 44 were intended to increase the effectiveness of the individual soldier in combat:

57. **Gas-powered semi-automatic fire.** Gas-powered semi-automatic fire enabled more rapid fire than was possible using standard-issue bolt-action rifles.

58. **Steel stampings.** Steel stampings made for a lighter weapon, increasing the amount of ammunition an individual combatant could carry and/or increasing mobility. Additionally, steel stampings were easier and less expensive to manufacture.

59. **Detachable magazine.** Detachable magazines allow more rapid reloading than previous standard-issue bolt-action firearms.

60. **Separate pistol-style grip.** A separate pistol-style grip enhanced the ability of combat soldiers to quickly maneuver their firearms into firing position and retain stability for more precise aim while firing rapidly.

61. **Barrel shroud.** A barrel shroud encircles and protects the barrel while providing an auxiliary grip surface for the soldier's nondominant hand and preventing it from being burned.

62. **Bayonet mounting lug.** This feature allowed soldiers to mount bayonets on their rifles, providing them with an additional weapon for use in close combat.

63. **Threaded barrel.** A threaded barrel allowed for the attachment of grenade launcher (on this particular rifle), providing combat soldiers with an additional weapon, albeit for use at a greater distance.

64. It is widely accepted that in the design of military small arms, "form follows function," and each of these innovations primarily served to increase the firepower and lethality of an individual combatant.

65. Following the end of World War II, captured StG 44s were analyzed by the Allies, and although there was reluctance to move to a smaller-caliber cartridge, a number of the features of the StG 44 found favor in the design of successive European, American, and Eastern Bloc military rifles. Noted firearm expert and historian Jim Supica wrote in his foreword to the book *Guns*:

Most military establishments hesitated to “downsize” the range and power of their primary rifles in the early Cold War years. The semi-auto detachable magazine concept was an obvious success and there was something to be said for full auto capability.^[5]

He further writes:

However the assault rifle concept wouldn’t go away. The Soviet Union accepted the lower power round idea in its fixed magazine semi-auto chambered for an intermediate power 7.62 x 39 mm round in 1945, the SKS, which saw wide distribution and production in Soviet client states.^[6]

66. Two years later in 1947, the USSR followed the SKS with what Supica terms “the quintessential assault rifle—the Kalashnikov designed AK-47.”⁷

67. The design of the AK-47 carried forward a number of the features introduced on the German StG 44. These features include a gas-powered operating system, use of steel stampings in its construction, a separate pistol grip, separate shoulder stock, a detachable magazine, a bayonet lug, and provision for attachment of a grenade launcher. Due to the separate stock and pistol grip, the AK, much like the StG 44, also utilized a barrel shroud, or handguard, on the forward third of the rifle. Some variations of the early AK-47s (AKMs) also featured a “compensator” at the muzzle

⁵ Supica, *Guns* (TAJ Books 2006). PP. 26-28.

⁶ *Id.*

⁷ *Id.*

that deflected gas upward and to the right to compensate for the rifle's tendency to kick up and to the right with every shot.

68. In the 1950s, many countries sought to replace World War I and World War II vintage bolt-action and semi-automatic rifles with these newer and more effective designs. With the birth of the North Atlantic Treaty Organization (NATO), however, utilization of Soviet Bloc AK or SKS assault rifles was not possible. Accordingly, a number of firearms manufacturers outside the Soviet sphere of influence developed military rifles that carried forward these same features to one extent or another. *Fabrique Nationale* (FN) of Herstal, Belgium, and Heckler & Koch (HK) of Oberndorf, Germany are two noteworthy examples.

69. FN developed the FAL (*Fusil Automatique Leger*) and HK the G3, which found a ready market among nations that did not favor the Soviet AK-type designs. Both incorporated features that, like the AK, were derived directly from the StG 44. Their designs featured some parts made from metal stampings as opposed to heavier and more expensive machined-steel pieces. Their separate pistol grips and shoulder stocks, detachable magazines, and barrel shrouds followed the basic design of the StG 44. Flash suppressors and muzzle brakes have appeared in production variations of both rifles. These rifles were destined from inception to become widely exported as the domestic market in both countries was relatively limited. The FAL and G3 have been in production since the 1950s, and both FN and HK have licensed production to numerous countries in South America, Africa, and the Middle East.

70. In the United States, progress in this arena moved at a significantly slower pace.

71. The prevailing wisdom in the United States was to stay away from lighter, smaller rifle calibers and cartridges, as the .30-06 cartridge used in the M1 Garand rifle during World War II had proven to be very effective. The U.S.'s initial answer to the burgeoning move towards

assault rifles was a variation of the basic M1 Garand operating system, the T44, or M-14. Outwardly, the M-14 retained a full-length wood stock similar to the Garand; however, the M-14 featured a detachable magazine, select-fire (both semi-automatic and full-automatic) capability, and a flash suppressor. It competed directly against the FN FAL (designated the T88) in U.S. Army trials and was selected in 1957.

72. In the mid 1950s, Eugene Stoner, the chief engineer of the American company ArmaLite Corporation, developed a number of lightweight assault rifle designs which resulted in the AR-10 (or ArmaLite Rifle Model 10) in .308 caliber. Its design closely followed what was now becoming standard assault rifle design, i.e., light weight (forged aluminum receivers as opposed to machined steel), a separate pistol grip and shoulder stock, a barrel shroud/handguard, detachable magazines, and numerous flash suppressor/muzzle brake variations. ArmaLite continued to refine the basic design of the AR-10, which resulted in the AR-15. The AR-15 was designed to chamber and fire the 5.56x45mm NATO cartridge, which is mostly interchangeable with .223 Remington ammunition.

73. In 1961, the Department of Defense purchased a quantity of AR-15 rifles from Colt for evaluation. A number of these were subsequently shipped to U.S. Army advisors in Vietnam to test their suitability for issue to South Vietnamese Army forces. Following the field evaluation, the Department of Defense Advanced Research Projects Agency (DARPA) prepared a report (AD-343778, dated August 20, 1962) summarizing the results. Amongst the data compiled via surveys of the U.S. Army advisors are a number of comments regarding actual field use of the weapon and cartridge. These comments describe various catastrophic injuries to Viet Cong combatants who were shot by AR-15s, including severing of limbs and decapitation.⁸

⁸ Advanced Research Projects Agency, Office of the Secretary of Defense, Field Test Report, AR-15 ArmaLite Rifle, at 24 (July 31, 1962), available at <https://apps.dtic.mil/sti/pdfs/AD0343778.pdf>.

9. (C) Remarks. Unit Commanders' and Advisors' remarks concerning the value of the AR-15 to Vietnamese Units and its worth as a combat weapon in the war in South Vietnam as opposed to existing weapons were also requested. Generally, the comments were extremely favorable to the AR-15. All of the comments received are presented below in their entirety and in the form in which they were received.

(1) (C) "On 160900 June 62, one platoon from the 340 Ranger Company was on an operation vic. YT260750 and contacted 3 armed VC in heavily forested jungle. Two VC had carbines, grenades, mines, and one had a

4

ANNEX "A"

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SMG. At a distance of approximately 15 meters, one Ranger fired an AR-15 full automatic hitting one VC with 3 rounds with the first burst. One round in the head-took it completely off. Another in the right arm, took it completely off, too. One round hit him in the right side, causing a hole about five inches in diameter. It cannot be determined which round killed the VC but it can be assumed that any one of the three would have caused death. The other 2 VC ran, leaving the dead VC with 1 carbine, 1 grenade and 2 mines." (Rangers)

(2.) (C) "On 9 June a Ranger Platoon from the 40th Inf Regt was given the mission of ambushing an estimated VC Company. The details are as follows:

- a. Number of VC killed: 5
- b. Number of AR-15's employed: 5
- c. Range of engagement: 30-100 meters
- d. Type wounds:
 1. Back wound, which caused the thoracic cavity to explode.
 2. Stomach wound, which caused the abdominal cavity to explode.
 3. Buttock wound, which destroyed all tissue of both buttocks.
 4. Chest wound from right to left, destroyed the thoracic cavity.
 5. Heel wound, the projectile entered the bottom of the right foot causing the leg to split from the foot to the hip.

These deaths were inflicted by the AR-15 and all were instantaneous except the buttock wound. He lived approximately five minutes.

74. This rifle was adopted as standard issue by the U.S. Army in the mid 1960s. The production of the rifle had been licensed to Colt, and initially the model designation was, as produced, AR-15.



[9]

Later, after a series of engineering changes, the standard U.S. military designation was changed to M-16. When first deployed as a standard-issue rifle for U.S. military forces, the AR-15/M-16 platform was maligned as unreliable and prone to jamming. This was due, in part, to inadequate maintenance by the operators themselves. Once the problems were addressed and rectified, the rifle proved to be as reliable and accurate as the AK-type rifles deployed by the North Vietnamese and Viet Cong.

75. In the ensuing 50-plus years, both the military and civilian versions of the M-16/AR-15 platform have undergone numerous modifications both cosmetic and mechanical. However, the basic configuration, appearance, construction, and operation of the internal gas-operating system (as designed) has remained unchanged since its initial inception and acceptance

⁹ Colt AR-15 Image Source: Stevens, R. Blake & Ezell, Edward C., *The Black Rifle*, (Collector Grade Publications, 2004), P.95.

as a military weapon. However, Colt continued to promote the similarity between the M-16 rifle produced for the U.S. military and the civilian semi-automatic variant.

76. The expiration of Colt's patents in the late 1970s naturally spawned competition in the marketplace. Throughout the design's lifespan, many of the internal fire-control components have remained unchanged and their specifications standardized industry wide. There are multiple internal parts that are completely interchangeable between military M-16s manufactured in the 1960s by Colt and an AR-15 type rifle produced today by any one of hundreds of U.S. manufacturers who produce either receivers or internal operating parts. For example, a bolt carrier manufactured in 1967 by Colt will fit, and function as designed, in an AR copy manufactured today. Additionally, the overall configuration of "copycat" AR rifles remains virtually identical to the original production design of the early 1960s. The overall design configuration (two-piece hinged receiver, shoulder stock in line with the chamber and barrel, placement of the magazine, external switches, and other features) are identical or nearly so.

77. As stated previously, due to their modular construction, AR-type rifles are easily customized to suit the owner's personal preference. This also applies to pistols which are based on AR- and AK- type rifle receivers. The rifle receiver itself is a hinged two-piece unit and the "upper receiver" and "lower receiver" can be swapped out for other similar pieces with relative ease. The design also facilitates replacement of internal fire control components and assemblies. The following video illustrates this: <https://www.youtube.com/watch?v=F00FEJZbrb0>.

78. It is important to note the respective characteristics of the 5.56mm/.223 caliber cartridge that influenced the U.S. military's decision to switch over from the 7.62 x 51mm/.308 caliber round used in the preceding model M-14 rifles. Dimensionally, the 7.62 x 51mm cartridge

is 71mm (2.8 inches) long overall and weighs approximately 0.9 ounces. The 5.56mm cartridge is 57mm (2.24 inches) long overall and weighs approximately 0.4 ounces.



Five pounds (80 oz.) of 7.62 ammunition would consist of 89 cartridges. Five pounds of 5.56 would consist of 200 cartridges. The lighter weight and smaller dimensions of a 5.56/.223 caliber cartridge would allow more ammunition to be carried by an individual combatant for an equivalent weight. The shorter overall dimensions of the 5.56 also commensurately allowed for smaller detachable magazines and/or larger capacity magazines for the same size. A 30-round magazine for a 5.56mm AR-15 rifle is smaller than a 20-round magazine for a 7.62mm M-14 rifle.

79. Performance in terms of muzzle velocity was also a consideration. The 7.62x51mm (.308) cartridge has a muzzle velocity of approximately 3,200 fps. The 5.56mm cartridge has approximately the same velocity (for reference, a 9mm pistol cartridge has a muzzle velocity of approximately 1,100 fps). 5.56mm bullets, upon contacting tissue, will “yaw” (begin to rotate on its axis), which contributes to the creation of both temporary and permanent large wound cavities.

¹⁰.223 and .308 caliber ammunition Image Source: <https://www.intherabbithole.com/e176/>

In contrast, because handgun-caliber bullets are heavier and travel at lower velocities, they do not typically yaw upon contact with tissue and do not create as large of a wound cavity nor commensurate destruction of tissue. The yaw movement of .223/5.56mm bullet can also cause it to fragment upon striking bone, which contributes to additional tissue damage not immediately adjacent to the cavity itself.

80. Noted wound ballistics expert Vincent DiMaio, in *Gunshot Wounds*, writes:

As the bullet enters, the body, there is “tail splash” or backward hurling of injured tissue. This material may be ejected from the entrance. The bullet passes through the target, creating a large temporary cavity whose maximum diameter is up to 11-12.5 times the diameter of the projectile. The maximum diameter of the cavity occurs at the point at which the maximum rate of loss of kinetic energy occurs. This occurs at the point where the bullet is at maximum yaw, i.e., turned sideways (at a 90[-degree] angle to the path) and/or when it fragments. If fragmentation does not occur and the path is long enough, the yawing continues until the bullet rotates 180[degrees] and ends up in a base-forward position. The bullet will continue traveling base first with little or no yaw as this position puts the center of mass forward.

The temporary cavity will undulate for 5-10 msec before coming to rest as a permanent track. Positive and negative pressures alternate in the wound track, with resultant sucking of foreign material and bacteria into the track from both entrance and exit. In high-velocity centerfire rifle wounds, the expanding walls of the temporary cavity are capable of doing severe damage. There is compression, stretching and shearing of the displaced tissue. Injuries to blood vessels, nerves, or organs not struck by the bullet, and a distance from the path, can occur as can fractures of bones, though, in the case of fractures, this is relatively rare. In the author’s experience, fractures usually occur when the bullet perforates an intercostal space fracturing ribs above and below the bullet path.^[11]

81. DiMaio further states:

Projectile fragmentation can amplify the effects of the temporary cavity increasing the severity of a wound. This is the reason for the effectiveness of the 5.56 x 45-mm cartridge and the M-16 rifle. For the M-193 55-gr. bullet, on the average, the yaw becomes significant

¹¹ DiMaio, *Gunshot Wounds*, 2d (CRC Press LLC, 1999). P. 54-55

at 12 cm with marked issue disruption occurring most commonly at 15-25 cm due principally to bullet fragmentation.^[12]

82. This video graphically illustrates the temporary wound cavity as described by DiMaio: <https://www.youtube.com/watch?v=8HM96wpPVoQ>.

83. Because of the propensity of the 5.56/.223 caliber round to create significant damage upon impacting living tissue, it is not generally considered to be nor favored as a hunting cartridge.

84. Colt sought to capitalize on the military acceptance of the AR-15/M-16 and shortly thereafter began to produce these rifles for sale on the civilian market. The only difference between the military and civilian versions was removal of select-fire (both semi-automatic and full-automatic) capability. The additional features on these rifles intended to enhance their capability as military firearms remained. As the AR-15/M-16 gained a reputation for reliability in military use, its popularity in terms of sales to the civilian market increased. Arguably, the AR-type rifle is in second place behind AK-type firearms in terms of production, sale, and use by military forces worldwide. This animation thoroughly details the key operational components of the M-16/AR-15 in full-automatic, semi-automatic and burst modes: <https://www.youtube.com/watch?v=omv85cLfmXU>

B. Evolution and Development of Pistol-Caliber Firearms

85. It is also important in terms of this particular case to address the evolution and development of firearms that chamber and fire pistol-caliber ammunition, including those firearms known as submachine guns. Submachine guns are defined as machine guns that fire “sub caliber” (i.e., pistol-caliber) ammunition. A number of the pistols that are prohibited under the Ordinances

¹² *Id.*, P. 56

are direct evolutionary descendants of submachine guns initially designed and produced for military use.

86. Many of the construction and design features attributed to assault weapons, and the StG 44, were first utilized in the design and manufacture of mid-20th-century submachine guns. Nazi Germany entered World War II with the innovative *Maschinenpistole* 38 (MP38). It was chambered in 9mm and later, after a number of engineering changes, re-designated as the MP40. It has design features commonly found in later assault weapons, including an adjustable stock, a separate pistol grip, a detachable magazine, and the use of steel stampings in its construction. The MP40 is pictured here:



[13]

87. While the United States initially entered World War II with a military variant of the Thompson .45-caliber submachine gun, it was heavy and expensive to manufacture because a number of the major components were machined from solid steel. Before the end of the war, the Thompson had been supplemented by the M3 “Grease Gun” initially produced by General Motors. The receiver was a stamped and welded sheet-metal assembly with an adjustable, sliding shoulder stock. Like the MP38 and MP40, it had a separate pistol grip, a sliding/adjustable shoulder stock,

¹³ MP40 Image Source: <https://www.rockislandauction.com/detail/84/613/german-erma-mp40-submachine-gun>

and a detachable box magazine with a 30-round capacity. In a utilitarian sense, it was as effective as the Thompson and, at approximately \$20, it was less than half as expensive.

88. The United Kingdom produced over one million Sten submachine guns during World War II. A rugged and reliable firearm made largely from welded steel stampings, it is known for its utility, reliability, and ease of manufacture. Features shared with the American M3 and German MP38/MP40 include an adjustable shoulder stock, a detachable magazine, and, on some variations, a barrel shroud allowing the operator to utilize the area surrounding the barrel as an auxiliary grip without touching a heated barrel.

89. Prior to and during World War II, a number of other nations developed submachine guns which followed the same design and construction philosophy. Notable examples include the Soviet PPSH-41, the Italian Beretta Model 38/42, and the Swedish Carl Gustav Model 45.

90. Following World War II, most new submachine gun designs continued the design philosophy which combined utility, ease of manufacture, and the features of wartime firearms. In the early 1960s, HK introduced the MP5 which became an immensely popular choice for military and law enforcement agencies worldwide due to its inherent reliability and accuracy. The MP5 was produced in multiple iterations to include a semi-automatic civilian version as well as a pistol variant without a provision for a shoulder stock (HK SP89). The SP89 is pictured here:



[14]

91. Israeli Military Industries also successfully marketed their Uzi submachine gun for export in select-fire and civilian semi-automatic variants. The Uzi Pro” pistol is shown below:



[15]

¹⁴ SP89 Image Source: https://www.gunsinternational.com/guns-for-saleonline/pistols/9mm-pistols/excellent-condition-factory-german-hk-sp89-9mm-pistol.cfm?gun_id=101037518.

¹⁵ Image Source: <https://blog.cheaperthandirt.com/shot-2013-iwi-uzi-pro-pistol/>

92. Additionally, a number of submachine gun designs proved unsuccessful in terms of military and government sales but nonetheless found a ready market when re-engineered as semi-automatic pistols. Notable examples include the Military Armaments Corporation (MAC) MAC-10 (and successive variants) and the Intratec TEC-9, which was initially designed and produced in Sweden as the Interdynamic MP-9 submachine gun. A MAC-10 is pictured here:



[16]

A TEC-9 pistol is shown in the following picture:

¹⁶ Image Source: <https://www.armslist.com/posts/11522946/st-louis-missouri-handguns-for-sale-vulcan-mac-10>



[17]

III. Features of Assault Weapons Under the Ordinances

93. Equipment designed, produced, and issued to modern military forces for utilization in the field emphasizes functionality. In terms of small arms designed and produced for military use, form follows function, and features are present to maximize effectiveness. Maximizing effectiveness in terms of military small arms includes the ability to deliver reliable lethality or the ability to incapacitate the chosen target and provide increased survivability for the operator in battle.

94. Numerous assault weapons available for purchase by the public are, save the lack of select-fire capability, identical copies of military firearms. As such, they retain a number of features originally designed to maximize their effectiveness in battle. Other firearms available to the public that were not initially intended for sale to government or military customers incorporate features mimicking those found on military firearms. There are countless accessories available to

¹⁷ Image Source:

https://www.egunner.com/intratec-tec-dc99mmpara.name,11952922,auction_id,auction_details

add to firearms traditionally considered “sporting firearms” (i.e., those initially designed and manufactured for target shooting or hunting), which brings their functionality more towards the military side of the spectrum and away from the sporting side.

A. Prohibited Firearms and Features Under the Ordinances

i. Prohibited Firearms

95. The Ordinances do not ban all firearms, all semi-automatic firearms, or even all firearms chambered to fire .223/556mm (AR-platform) or 7.62x39mm (AK-platform) caliber ammunition.

96. Instead, the Ordinances prohibit a number of firearms and features with obvious military (i.e., non-sporting) heritage. The features delineated in the Ordinances are direct descendants from those on military firearms. These features are not necessary for civilian self-defense; firearms without these features are permitted under the Ordinances, and these lawful alternatives are widely available to civilian customers and provide effective means for civilian self-defense.

97. Each Ordinance also bans certain weapons based on magazine capacity. I discuss magazine capacity below.

ii. Prohibited Features

98. Included in the Ordinances’ definitions of “assault weapon” are a number of features that, when added to certain firearms, bring those firearms under the statutory definition of assault weapons. Specifically, a semi-automatic rifle or pistol that has the capacity to accept a detachable magazine (or can be readily modified to do so) or a semi-automatic shotgun is considered an assault weapon if the firearm includes one of the features delineated in the Ordinances.

99. Each of the following features, whether incorporated into the firearm by the manufacturer as standard equipment or subsequently added by the owner as an accessory, can generally be considered capable of increasing the firearm's effectiveness in a military combat scenario.

100. **A pistol grip or thumbhole stock** (for semi-automatic rifles and shotguns). A semi-automatic rifle or shotgun that includes a pistol grip (without a shoulder stock) increases the ability of the operator to conceal the rifle or shotgun and to maneuver the firearm in a confined space such as a vehicle. The pistol grip also facilitates easier firing from positions other than the shoulder (firing from the hip or a point position directly in front of the operator). Thumbhole stocks have historically been utilized on some firearms for sport and target shooting; however, during the time the Federal Assault Weapons Ban was in effect (1994 to 2004), a number of AK-style firearms (amongst others) were equipped with thumbhole stocks to circumvent the ban's prohibition on pistol grips.

101. **Folding or telescoping stock** (for semi-automatic rifles and shotguns): Folding and telescoping stocks allow the operator to more easily conceal or maneuver the weapon in a confined space such as a vehicle. They also facilitate easier or more comfortable firing from positions other than the shoulder. However, a firearm does not need an adjustable stock to operate. Folding stocks were added to the M1 carbine in World War II for paratrooper use. More recent variants of the U.S. military's M-16 (M-4 carbine) have incorporated telescoping stocks as a standard feature.

102. **Flash suppressor** (for semi-automatic rifles and pistols). A flash suppressor reduces the muzzle flash, allowing the operator to more easily maintain vision in low-light conditions and also helps to conceal the flash from view. This allows the operator to more easily

acquire additional targets in a shorter period of time without having to wait for their vision to adjust to a brighter muzzle flash as well as helps conceal the shooter's position.

103. **Shroud attached to the barrel, or that partially or completely encircles the barrel** (for semi-automatic rifles and pistols). Historically, barrel shrouds were a feature of military rifles produced and adopted at the beginning of the 20th century. The bolt-action U.S. Model 1903 Springfield Rifle (standard issue for U.S. Forces in WWI) incorporated a wooden barrel shroud to protect the shooter's nondominant hand. The M1 Garand rifle utilized by the U.S. military during WWII also incorporated a traditional wooden stock and a wooden handguard that covered two-thirds of the barrel. Barrel shrouds encircle and protect the barrel from damage and provide the operator with an auxiliary grip point without being burned. In a modern gas-operated semi-automatic military rifle, it also serves to protect the gas tube/piston mechanism from inadvertent damage and provides additional space for the operator to grip and control the rifle during rapid repeat firing without risking being burned by a hot barrel.

104. **Threaded barrel** (for semi-automatic pistols). A threaded barrel allows for attachment of a suppressor (commonly referred to as a silencer) which allows the operator to better conceal themselves from their target by reducing the report of their firearm. It also allows the attachment of some flash suppressors with the resultant effect mentioned previously.

105. **A secondary protruding grip or other device to allow the firearm to be stabilized with the non-trigger hand** (for semi-automatic pistols, rifles (Boulder County only), and shotguns (Boulder County only)). Protruding foregrips allow increased stability of the firearm by the operator. This allows the operator to better control recoil and muzzle climb, thus increasing their hit probability for successive shots. A protruding foregrip is not a feature found on traditional sporting firearms. It appeared on some versions of AK-based rifles; however, it was not until the

advent of the Rail Attachment Systems (RAS) and acceptance by the U.S. military that foregrips for semi-automatic rifles became more widespread. Adding a foregrip to a pistol also renders it “any other weapon” under the National Firearms Act and subjects it to more restrictive controls, including registration in a national database.

106. **The capacity to accept a detachable ammunition feeding device at some location outside of the pistol grip** (for semi-automatic pistols). The placement of a detachable ammunition feeding device or magazine outside of the pistol grip is a feature not common to sporting pistols and can trace its origin to military pistols. The Bergmann Military Model 1897 (or No. 5) featured a detachable magazine outside the pistol grip. Further evolution of this design can be found in the Mauser C96 or “Broomhandle” pistols, which were manufactured with fixed internal as well as detachable magazines forward of the pistol grip. Modern firearms recently or currently manufactured in this configuration are either semi-automatic pistol variants of submachine gun designs (HK SP89, Czech Scorpion, TEC-9, etc.) or pistols based upon AR and AK receivers. The forward magazine placement provides a second grip, which can increase stability and allow for more controlled rapid fire.

107. **A manufactured weight of 50 ounces or more when unloaded (for semi-automatic pistols).** Under federal law, a handgun, whether it be a pistol or revolver, is designed to be “held and fired with the use of a single hand.”¹⁸ Unloaded, an AR-platform pistol weighs between 5 and 6 pounds, effectively requiring two hands to hold and operate. By comparison, the Glock 17, a popular semi-automatic pistol, weighs 22 ounces unloaded and can be held and fired with one hand.

¹⁸ 18 USC § 921(a)(30).

108. **Buffer tube, arm brace, or other part that protrudes horizontally under the pistol grip** (for semi-automatic pistols). An arm brace converts a rifle-caliber pistol into a short-barreled rifle (a type of weapon restricted under the National Firearms Act), as it can allow the operator to fire it from the shoulder, increasing stability while maintaining concealability. Buffer tubes provide a mounting point for arm braces and/or shoulder stocks facilitating conversion of a pistol to a short-barreled rifle.

109. **Fixed magazine that has the capacity to accept more than five rounds** (for semi-automatic shotguns) **or ten rounds** (for semi-automatic pistols). This feature prohibits larger-capacity fixed magazines. A fixed magazine capable of holding more than 5 rounds of ammunition for a semi-automatic shotgun or 10 rounds for a semi-automatic pistol is not necessary for the firearm to operate as designed. All firearms are capable of functioning with compliant capacities. It is also worth noting that most modern semi-automatic shotguns that are designed, manufactured, and marketed as “hunting shotguns” have a fixed magazine capacity of less than 5 rounds, including, for example, the Remington Model 1100, which has a fixed magazine capacity of 4 rounds. As for pistols, semi-automatic models that utilize fixed magazines, let alone fixed magazines that hold over 10 rounds of ammunition, are not common.

110. **An ability to accept a detachable magazine** (semi-automatic rifles and pistols; semi-automatic shotguns (Boulder County only)). Detachable magazines allow shooters to replace an empty or depleted magazine with a fresh magazine to resume firing quickly.

111. For more than 30 years, these types of prohibited features—useful for offensive military applications in combat settings but not necessary or suited for civilian self-defense—have been the subject of study and regulation.

112. For example, in 1989, an ATF working group formed under the President George H.W. Bush administration evaluated the importability of semi-automatic rifles and completed a report, which is attached as **Exhibit C**.¹⁹ That working group determined that certain civilian rifles were generally semi-automatic versions of select-fire military assault rifles.²⁰ As the working group explained, select-fire military assault rifles can fire in fully automatic mode (AKA: a machine gun). By contrast, civilian semi-automatic assault weapons cannot fire in fully automatic mode, but they have the same “general characteristics which are common to the modern military assault rifle.”²¹

113. These characteristics are associated with features that are designed for offensive military applications. As the working group found, these characteristics and features carried over from the military assault rifle to the semi-automatic versions, and distinguished the semi-automatic assault weapons from traditional sporting rifles.²² The ability to accept a detachable magazine, folding and telescoping stocks, pistol grips, and other identified characteristics were “military configurations.”²³ As a result, the ATF working group determined that semi-automatic assault weapons were not “generally recognized as particularly suitable for or readily adaptable to sporting purposes.”²⁴

114. In 1994, Congress enacted the federal assault weapons ban, creating criminal penalties for the manufacture, transfer, or possession of assault weapons and large-capacity magazines. In enacting the federal ban, Congress recognized the tragic threat posed by gangs,

¹⁹ *Report and Recommendation on the Importability of Certain Semiautomatic Rifles*, Department of the Treasury Bureau of Alcohol, Tobacco and Firearms (July 6, 1989).

²⁰ *Id.* at 5-6.

²¹ *Id.* at 6.

²² *Id.*

²³ *Id.* at 6-7

²⁴ *Id.* at 12.

drug-traffickers, mentally deranged persons, and others armed with assault weapons.²⁵ Specifically, Congress noted that assault weapons had become the weapon of choice for gangs, and law enforcement faced a “rising level of lethality ... from assault weapons on the street.”²⁶

115. Congress, when drafting the 1994 Federal Assault Weapons Ban, incorporated the technical work of the 1989 ATF working group.²⁷ Congress recognized that “semiautomatic assault rifles ... represent a distinctive type of rifle distinguished by certain general characteristics which are common to the modern military assault rifle.”²⁸ Congress further recognized that these features serve “specific, combat-functional ends” that provide “a capability for lethality—more wounds, more serious, in more victims—far beyond that of other firearms in general, including other semiautomatic guns.”²⁹

116. ATF organized two subsequent working groups in 1998 and 2011. The 1998 working group concurred with the conclusions of the 1989 study and added a finding that “the ability to accept a detachable large capacity magazine originally designed and produced for a military assault weapon should be added to the list of disqualifying military configuration features identified in 1989.”³⁰ The 2011 working group then considered the importability of certain shotguns, finding that features such as a folding, telescoping, or collapsible stock, magazines holding over 5 rounds, and forward pistol grips were most appropriate for military or law enforcement use and not sporting purposes.³¹

²⁵ H.R. Rep. No. 103-489, Public Safety and Recreational Firearms Use Protection Act (May 2, 1994) (attached as **Exhibit D**) at 12.

²⁶ *Id.* at 13-14.

²⁷ *Id.* at 17.

²⁸ *Id.*

²⁹ *Id.* at 18–20.

³⁰ *Department of the Treasury Study on the Sporting Suitability of Modified Semiautomatic Assault Rifles, Department of the Treasury Bureau of Alcohol, Tobacco and Firearms* (April 1998) (attached as **Exhibit E**) at 2.

³¹ *ATF Study on the Importability of Certain Shotguns, U.S. Department of Justice Bureau of*

117. As described above, the prohibited features serve military-style offensive purposes as opposed to traditional sporting or self-defense uses. And the ATF's concerns about the offensive nature of these firearms have certainly been borne out by their subsequent criminal use in mass shootings and assaults on law enforcement in the past decade.

B. Prohibited Large-Capacity Magazines

118. Magazine capacity plays a role in defining assault weapons under the Ordinances, and the Ordinances also separately restrict large-capacity magazines themselves, which are generally defined as magazines with the capacity to accept more than ten rounds of ammunition.

119. Modern semi-automatic rifles that are designed, manufactured, and marketed as "hunting rifles" traditionally have an internal magazine capacity of less than 10 rounds depending on caliber. For example, the Browning BAR in .30-06 caliber as currently manufactured has an internal magazine capacity of four (4) rounds.

120. The operation (or cycle of fire) of any firearm designed and manufactured to accept a detachable magazine will function regardless of the maximum capacity of the magazine itself. For example, firearms such as the Glock 17 semi-automatic pistol and AR-15 type semi-automatic rifle will function as designed whether the operator utilizes a magazine limited to 10 rounds or one of greater capacity. In fact, both of those examples will still fire a chambered round if there is no magazine inserted. Generally speaking, any firearm designed to accept a detachable magazine holding more than 10 rounds will also accept a magazine with a maximum capacity of 10 rounds or fewer. This includes the vast majority of handguns and shoulder-fired firearms designed and manufactured to utilize detachable magazines.

Alcohol, Tobacco, Firearms and Explosives (January 2011) (attached as **Exhibit F**), at iv, 9-13.

121. Large-capacity detachable magazines were not initially designed or intended for the civilian marketplace. The lineage and refinement of large-capacity detachable magazines and belt-feeding mechanisms can be traced directly to a military heritage. WWI introduced numerous magazine-fed light machine guns to combat, and the trend continued through WWII. As far as the individual infantryman's rifle was concerned in WWII, the standard-issue semi-automatic rifle for the U.S. Army as well as the U.S. Marine Corps was the M1 Garand chambered in .30-06. The M1 has an internal fixed magazine with a capacity of 8 rounds. The magazine was loaded via an 8 round "en bloc" which was ejected from the magazine after those 8 rounds were expended. It was not until the mid-1950s, with the adoption of the M-14, that a rifle with a detachable magazine was approved as standard issue to front line members of the U.S. military. The M-14 was issued with a 20-round magazine.³²

122. Although technological advances in military firearms accelerated at a rapid pace following WWII, large-capacity detachable magazines were not commonly marketed for the general public. For example, when the AR-15 (later designated M-16) was first purchased and issued to U.S. Forces in the early 1960s, it was intended to be utilized, and was issued, with 20-round detachable magazines.³³ However, when the first semi first semi-automatic variants of the M-16, the Colt AR-15 SP1 Sporter, became available for sale to the public in 1964, it came supplied with two five-round magazines, not the military-issue 20-round magazines.

³² Hogg, Ian V. & Weeks, John S., *Military Small Arms of the 20th Century*, 7th Ed., (Krause Publications, 2000), P. 291

³³ Stevens, R. Blake & Ezell, Edward C., *The Black Rifle* (Collector Grade Publications, 2004), P. 108



**COLT AR-15 SPORTER
SEMI-AUTOMATIC RIFLE
.223 CALIBER**

Colt's answer to the demand for a semi-automatic version of the AR-15 automatic rifle purchased by The United States Armed Forces. Painsstaking engineering redesign efforts have resulted in a Government-approved conversion of the Colt AR-15 automatic rifle without sacrificing any performance or weight characteristics. The semi-automatic AR-15 Sporter weighs only 6.3 pounds. Its recoil is light and barrel rise minimal.

MODEL R-6000 **RETAIL PRICE* \$189.50**

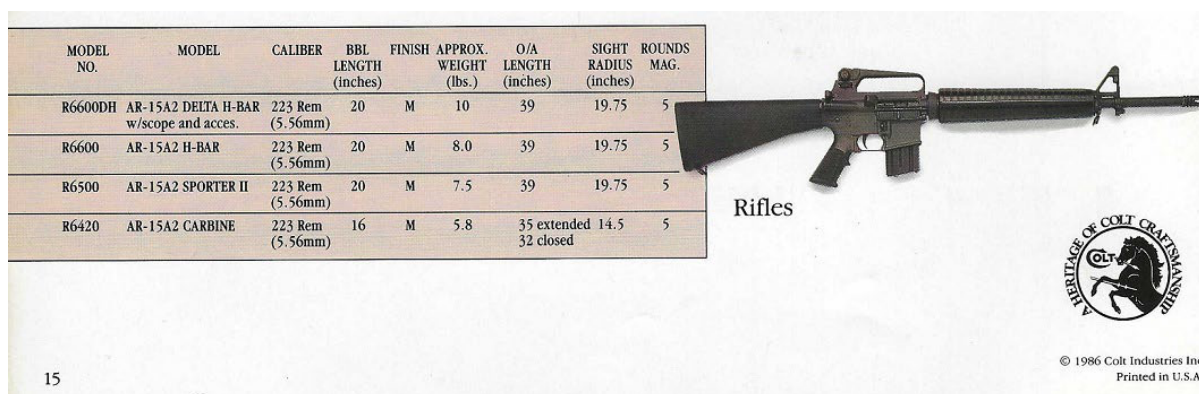
Lightweight • Extremely accurate • Easy to handle • Straight line construction — barrel, bolt, recoil buffer unit and stock assembled in a straight line • Rapid semi-automatic fire is more controllable than with rifles of commercial design • Simple to maintain.

CALIBER	BARREL LENGTH	OVERALL LENGTH	CAPACITY	SIGHTS	SAFETY	WEIGHT
.223	21"	39"	5 rounds	Double tang rear peep sight adjustable for windage. Post type front sight adjustable for elevation.	Rotary safety—selector lever	Approx. 6¾ lbs.

*The suggested retail price of the Sporter is \$189.50 and includes two magazines (each blocked for five rounds), sling, flash suppressor, rubber recoil pad, cleaning rod assembly, cleaning brush, and the Colt AR-15 Sporter Operation and Maintenance manual.

123. “Initially, Colt simply added a five round limitation spacer to the 20-round magazine which could be installed or removed at will by simply removing the floor plate of the magazine. This was primarily intended for hunters, in compliance with the laws in most states which limit magazines in the field to a five-round capacity for hunting. With the introduction of the Colt Sporter series, the configuration of this magazine was altered by the addition of a permanent rivet in the floorplate to prevent the removal of the spacer, thus making this a magazine of dedicated five-round capacity for hunting applications.”³⁴

³⁴ Bartocci, Christopher R., *The Black Rifle II* (Collector Grade Publications, 2004), P. 263



Colt continued to provide five round magazines with their AR-15 rifles as late as 1987.³⁵

124. Post-war development of semi-automatic pistols continued after WWII; however, magazine capacities generally remained under 10 rounds. Notable examples include the Beretta Model 1951 (8 rounds), Sig Sauer P220 (1975, 7 to 10 rounds depending on caliber), Heckler & Koch P7 (1978, 8 rounds).

125. In 1994, Congress adopted the Violent Crime Control and Law Enforcement Act, (which included provisions also known as the Federal Assault Weapons Ban or “AWB”), which, like the Ordinances, limited the maximum capacity of a detachable magazine to ten rounds. As a result, numerous firearm manufacturers, as well as aftermarket magazine manufacturers, initiated production of what were colloquially termed “post-ban” magazines to conform to the new legislation. The post-ban magazines were modified, or retooled, versions of existing large-capacity magazines, in order to keep their dimensions identical and ensure that the 10-round magazines functioned identically to existing magazines of 11 rounds or more in their firearms. For example, pictured below is a “pre-ban” 13-round magazine for a Browning 9mm “Hi Power” semi-automatic pistol:

³⁵ Colt Firearms 1987 Catalog, (Colt Industries Inc., 1986), P.16



126. And shown below is a “post-ban” 10-round magazine for the same pistol. You will note the 10-round magazine differs as a portion of the metal magazine body is replaced with a molded polymer plug. This modification effectively limits the interior volume and capacity of the magazine to 10 rounds. Manufacturers have also utilized various other methods to restrict magazine capacity, including dimpling the lower quadrant of the magazine body inwards, placing rivets in the magazine body, or thickening the walls of polymer-bodied magazines to reduce capacity.



127. Following the expiration of the Federal Assault Weapons Ban, numerous states and localities enacted their own legislation, which also contained magazine capacity limitations. As a result, many manufacturers of popular semi-automatic handguns and rifles during the Federal Assault Weapons Ban continued to offer “state compliant” versions to customers in states so affected. Manufacturers such as Glock, Sig Sauer, FN USA, Beretta, and Smith & Wesson, among numerous others, offer handguns and rifles compliant with individual state regulations. Most major firearm manufacturers offer models that come “standard” with 10-round magazines.

128. Shown here is a page from the current online catalog of FN USA (the U.S. based subsidiary of Belgian arms manufacturer *Fabrique Nationale*) showing the “California Compliant” version of their “Five-seveN” pistol.

FN Five-seven® There's Only One Five-seven®

AS9100C/EN9100:2009 certified. For consumer, law enforcement, and military sales.

PISTOLS

Primary Features

- Single-action operation, delayed blowback
- Adjustable rear combat sight
- Up to 20-round capacity
- Low recoil
- High-performance projectiles

Operating Controls

- Fully ambidextrous safety lever
- Reversible magazine release

Magazine

- Polymer body, low-friction follower, polymer base

Slide

- Steel slide
- Polymer cover
- Front and rear cocking serrations

Barrel

- Cold hammer-forged
- Chrome-lined chamber and bore

Frame

- Polymer construction
- Checkered grip
- MIL-STD-1913 accessory mounting rail
- Serrated trigger guard
- Black or Flat Dark Earth finishes available

Warning

Use only specially coated, factory-loaded ammunition. Use of any non-factory coated and loaded ammunition can result in excessive pressures leading to possible personal injury and damage to the pistol.

FN Five-seven®

- Caliber: 5.7x28mm
- Magazine: 10/20 Rd.
- Barrel Length: 4.8"
- Sights: Adjustable 3-dot
- Use: Carry or duty

LEARN MORE >>>

FUL FN Five-seven® SPECS: PAGE 130 - ACCESSORIES 120

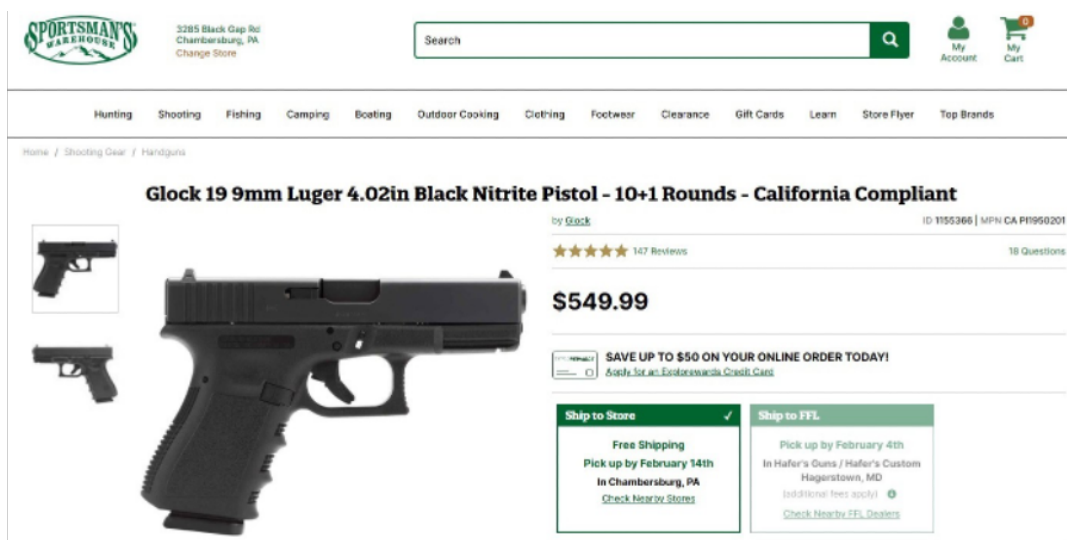
TO LEARN MORE ABOUT THE FN 5.7X28MM, GO TO PAGE 118

FNAMERICA.COM | 43

[36]

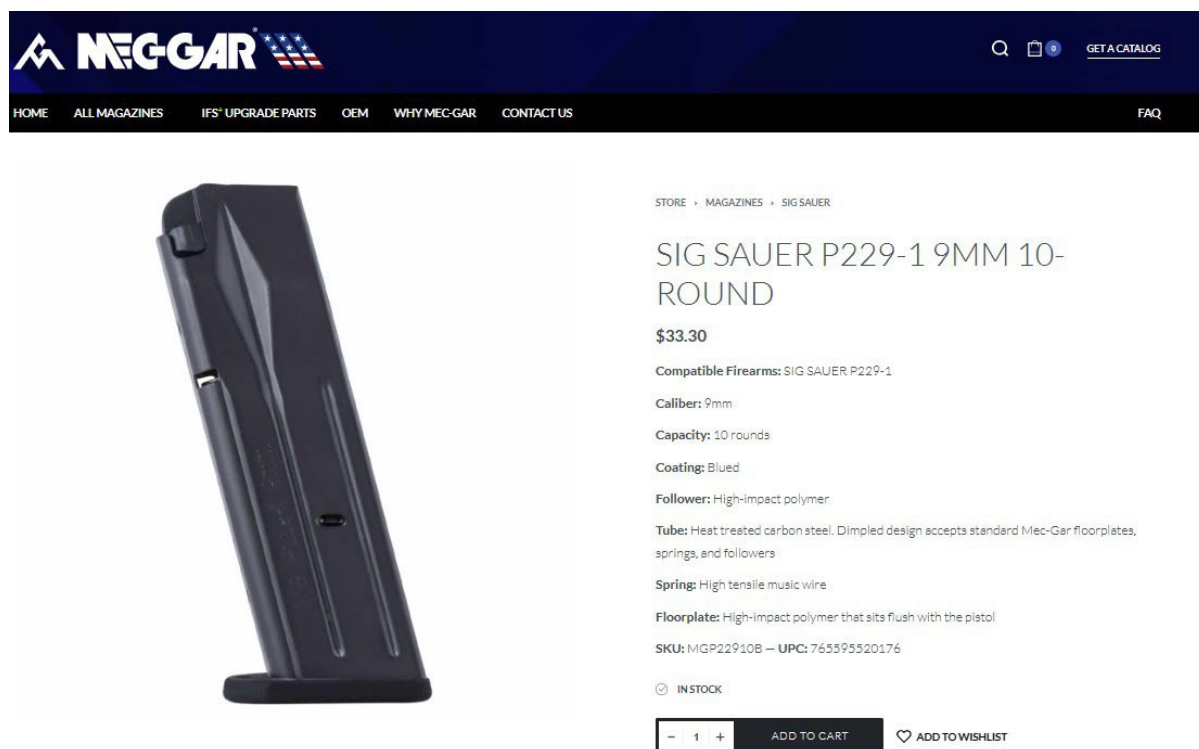
129. And a “California Compliant” Glock Model 19 9mm pistol available from Sportsman’s Warehouse:

³⁶ Image Source: <https://fnamerica.com/catalog-and-wallpapers/>

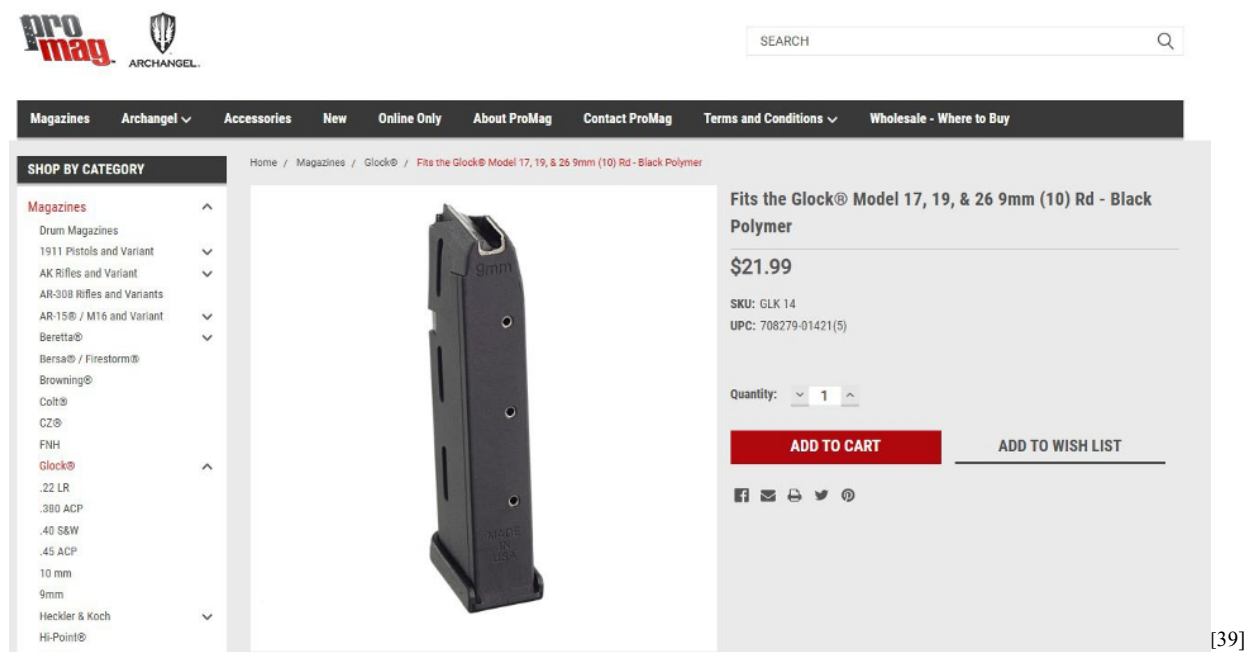


130. Additionally, there are numerous well-respected aftermarket manufacturers who offer 10-round magazines specifically for use in handguns that come with LCMs. Mec-Gar and ProMag are two of many:

³⁷ Image Source: <https://www.sportsmans.com/shooting-gear-gun-supplies/handguns/glock-19-9mm-luger-402in-black-nitrite-pistol-101-rounds-california-compliant/p/1155366>



[38]



[39]

³⁸ Image Source: <https://mec-gar.com/shop/magazines/sig-sauer/sig-sauer-p229-1-9mm-10-round/>

³⁹ Image Source: <https://promagindustries.com/fits-the-glock-model-17-19-26-9mm-10-rd-black-polymer/>

131. In regard to semi-automatic rifles compliant with the Ordinances, many manufacturers also offer magazines that have a 10-round maximum capacity. For example, magazines compliant with the Ordinances for the Ruger Mini-14 rifle (a weapon generally legal under the Ordinances) are available here:

<https://gunmagwarehouse.com/magfinder/ruger-mini-14>

132. Without argument, the ability to fire an increased quantity of cartridges without reloading increases the lethality and effectiveness of small arms in combat, or the military would not have incorporated this feature. Less time required to reload can equate to more time spent acquiring targets and shooting. As stated previously, form follows function in regard to equipment designed and intended for military use.

133. To the best of my knowledge, any semi-automatic capable of accepting a large-capacity detachable magazine will accept a magazine with a capacity of ten rounds or less. I have fired a significant number of handguns and rifles with magazines of varying capacities. The capacity of the magazine did not affect the ability of those firearms to function as designed. In fact, based on my training, knowledge, and experience, I am not aware of a single firearm that specifically requires a large-capacity magazine, as defined in the Ordinances, to operate.

IV. Assault Weapons and Self-Defense

134. It is my opinion that assault weapons, as defined by the Ordinances, are a poor choice for civilian self-defense.

135. I have been asked on numerous occasions over the past 35 years what firearm I would recommend for personal or home defense. My recommendation is based upon my inquiry in return regarding the individual's (and their family members') personal experience and comfort level with firearms. In over 25 years, I have never recommended an AR, AK, or other similar rifle or assault pistol as a personal-defense or home-defense weapon.

136. Home defense and/or self-defense (including street/commercial robbery) situations are rarely, if ever, lengthy shootouts at long ranges with extensive exchanges of gunfire. Assault weapons, as defined by the Ordinances, were designed to be effective at battlefield ranges of up to 500 yards. The typical muzzle velocity of a .223-caliber bullet is 3,200 fps. Projectiles travelling at velocities found in these weapons pose a serious risk of overpenetration in most home construction materials, such as gypsum board/sheet rock and typical 2x4 lumber. When this cartridge was designed for the AR-15/M-16, it was intended to kill or incapacitate enemy combatants at distances of hundreds of yards, not dozens of feet.

137. In August 2014, the NRA's *American Rifleman* published an article by Stanton Wormley titled "The AR-15 for Home Defense: Penetration Tests."⁴⁰ Wormley conducted penetration tests on nine different types of .223/5.56mm ammunition by firing them through simulated wall sections constructed of gypsum board/sheet rock and wooden 2x4 studs. When fired at a 90-degree angle to the walls, all nine types of ammunition (including "frangible" rounds designed to disintegrate when hitting a hard surface) easily penetrated the wall sections as well as the water jugs placed three feet behind them:

But just how much energy did the penetrating projectiles carry? All the loads, including the Glaser, exploded one-gallon water jugs placed 3 feet behind the wall sections.^[41]

138. The tests conducted by Wormley also included firing longitudinally through the wall sections, resulting in the penetration of three successive 2-inch-thick 2x4 studs by a number of the projectiles. These tests vividly highlight the inherent dangers of utilizing assault weapons with high-velocity ammunition in a home-defense scenario.

⁴⁰ <https://www.americanrifleman.org/content/the-ar-15-for-home-defense-penetration-tests/>

⁴¹ *Id.*

139. In reference to the *American Rifleman* article mentioned previously, current U.S. Army-issue .223-caliber ammunition is capable of penetrating 3/8-inch hardened steel at 350 yards. Potential overpenetration in a confined environment is problematic in terms of risks to bystanders or family members outside the target location. Most jacketed, commercially available .223/5.56mm ammunition has impressive penetration capabilities in this regard. Additionally, the (former) NATO-issue M855 SS109 5.56mm is readily available for purchase by civilians. This ammunition was designed to penetrate up to 3mm of “soft” (non-hardened) steel. This capability is certainly unnecessary for self-defense and poses substantial risks to individuals in adjoining rooms, neighboring apartments, or other attached dwellings.

140. During a stressful situation such as a home invasion or break-in, there may be multiple steps required by the operator to bring the weapon from a “safe” condition to a firing condition. Manipulation of a charging handle, safety switch, or inserting a magazine may be difficult to accomplish under stress, particularly if the operator has not adequately trained or practiced with their firearm. Other family members may not be familiar with bringing the weapon to a firing condition or fail to complete adequate steps to do so under duress. Unloaded, an AR-platform rifle weighs approximately 6.5 to 7 pounds. It also requires two hands to aim and fire. In a home-defense scenario, a homeowner would likely be attempting to call 911 while addressing the intruder, which is difficult if not impossible while wielding their AR-15 effectively and safely. Additionally, it would hamper, if not prevent, leading a vulnerable adult away from danger or guiding/carrying a small child. By comparison, common handgun weights are between 2 and 3 pounds and require only one hand to operate.

141. While employed as a Special Agent with ATF, the agency transitioned to an AR-type rifle in the early 2000s. Each agent was required to attend, and successfully complete, a one-

week/40-hour transition training class in order to familiarize themselves, and qualify, with the firearm. The training included repetitive live-fire drills under stressful conditions. Additionally, we were required to requalify with these firearms quarterly and repeat the same drills as during the initial transition training. Nonetheless, I witnessed agents make errors that resulted in a failure of the weapon to fire during those drills, even though those agents had performed the drills repeatedly under stress. It is worth noting here that the M4 carbines issued to ATF Field Offices were select-fire rifles (i.e., machine guns capable of fully automatic fire) that were converted to semi-automatic fire only.

142. Assault pistols are also a poor choice for home defense or personal protection. Due to their weight and length, many assault pistols prohibited by the Ordinances require two hands to effectively aim and shoot. (Certainly, the same can be said for a rifle.) In a home-defense situation, an individual may be required to use one hand to call 911 while attempting to operate a two-handed firearm with just one hand. Such a situation would also preclude the homeowner from utilizing their non-gun hand to pick up or guide a small child, or an elderly or disabled individual, during such an event.

143. Additionally, I am not of the opinion that an abundance of ammunition is a substitute for weapons familiarization and shot placement. Repeated practice and shooting with your chosen firearm will make you a more effective deterrent than the capability to fire more rounds should deadly force be required.

144. If the individual had a preference for shoulder-fired weapons, I have recommended a pump-action 12- or 20-gauge shotgun (Remington 870, Mossberg 500, etc.) loaded with 00 buckshot and stored with the “hammer dropped” on an empty chamber and the safety off. The only action required to bring the shotgun from a “safe” unloaded condition to a firing condition is to

work the pump action of the shotgun. The advantages of this type of firearm and storage condition are unmatched stopping power, low probability of overpenetration (as compared to high velocity, rifle-caliber projectiles), and zero manipulation of safety mechanisms required in high-stress situations. The loading/chambering process itself is an audible deterrent. Training and familiarization with this type of a firearm is simple and straightforward.

145. For a handgun, my first inclination is to recommend an eight-shot revolver in .38 +P caliber/.357 Magnum (such as a Smith & Wesson Model 627, Taurus Model 608, etc.) loaded with hollow-point bullets. As with my rationale for recommending a pump-action shotgun, there are no complicated safety mechanisms to manipulate in a high-stress situation and the probability of overpenetration is low. In addition, it is easy to reload with a speed loader should more than eight shots be required. Revolvers are also easier and less complicated for other family members to learn to operate, especially if they have less familiarity with firearms.

146. In terms of a carry handgun, I value concealability over ammunition capacity. The advantage of concealed carry is protection without broadcasting the fact. In a street robbery scenario, I believe the best course of action is to quickly extricate yourself from the “kill zone” and not engage in a protracted gunfight. When I was employed as a Special Agent with ATF, our primary duty weapons were Sig Sauer P229 pistols in .40 S&W caliber. We were also given the choice of a Sig Sauer P239 in .40 S&W or a five-shot Smith and Wesson Model 640 in .357 Magnum as a backup firearm. When off duty, I carried the S&W Model 640 and a speed loader extensively as opposed to the P229. I found it easy to conceal and am of the opinion that 10 rounds was an adequate amount of ammunition to enable me, or myself and my wife, or child, to extricate myself from a street or retail location robbery should I encounter one. Consequently, I have most often recommended either a lightweight small revolver (such as a S&W Bodyguard, Ruger LCR,

Smith and Wesson Model 36, 640 or variant) carried with a speed-loader or a small, low-profile, small semi-automatic pistol (Sig Sauer P239, Ruger LCP, Colt Mustang Pocketlite etc., which each generally hold 6 to 7 rounds of ammunition) with a spare magazine.

147. Essentially, the types of firearms classified as assault weapons under the Ordinances, specifically AR- and AK-type rifles and pistols, are direct developmental descendants of military weapons designed for use in combat. The “civilian” AR-15-type rifles in .223/5.56mm retain the same performance characteristics (in terms of muzzle velocity, range, etc.) as the military M-16 and its variants (M-16A2, M-4, etc.).

148. According to the U.S. Army Manual 3-22.9 “Rifle Marksmanship M-16A1, M-16A2/3, M-16A4, and M4 Carbine, April 2003,” the maximum range of these rifles is 2,650-3,000 meters. They were not designed, nor are they suitable, for personal or home defense in short-range or close-quarter situations.

FM 3-22.9(FM 23-9)

CHAPTER 2 CHARACTERISTICS, AMMUNITION, AND ACCESSORIES

This chapter describes the general components, characteristics, ammunition, and accessories for the M16- and M4-series weapons to include a brief explanation of how to mount the various accessories.

2-1. CHARACTERISTICS

The M16-/M4-series weapons are 5.56-mm, magazine-fed, gas-operated, air-cooled, shoulder-fired weapons. This section describes the general characteristics (Table 2-1) and the components of the M16-/M4-series weapons. Table 2-2 (page 2-2) shows the characteristics of various accessories.

CHARACTERISTIC	M16A1	M16A2/A3	M16A4	M4
WEIGHT (pounds):				
Without magazine and sling	6.35	7.78	9.08	6.49
With sling and loaded:				
20-round magazine	6.75	8.48	9.78	7.19
30-round magazine	7.06	8.79	10.09	7.50
Bayonet knife, M9	1.50	1.50	1.50	1.50
Scabbard	0.30	0.30	0.30	0.30
Sling, M1	0.40	0.40	0.40	0.40
LENGTH (inches):				
Rifle w/bayonet knife	44.25	44.88	44.88	N/A
Overall rifle length	30.00	39.63	39.63	N/A
Buttstock closed	N/A	N/A	N/A	29.75
Buttstock open	N/A	N/A	N/A	33.0
OPERATIONAL CHARACTERISTICS:				
Barrel rifling—right hand 1 twist (inches)	12	7	7	7
Muzzle velocity (feet per second)	3,250	3,100	3,100	2,970
Cyclic rate of fire (rounds per minute)	700-800	700-900	800	700-900
MAXIMUM EFFECTIVE RATE OF FIRE:				
Semiautomatic (rounds per minute)	45-65	45	45	45
Burst (3-round bursts) (rounds per minute)	N/A	90	90	90
Automatic (rounds per minute)	150-200	150-200 A3	N/A	N/A
Sustained (rounds per minute)	12-15	12-15	12-15	12-15
RANGE (meters):				
Maximum range	2,653	3,600	3,600	3,600
Maximum effective range				
Point target	460	550	550	500
Area target	N/A	800	600	600

Table 2-1. Characteristics of the M16-/M4-series weapons.

NOTE: For further technical information, refer to TM 9-1005-319-10 and TM 9-1005-249-10.

2-1

V. Assault Weapons as a General Threat to Public Safety

149. As mentioned previously in this report, many of the firearms prohibited by the Ordinances directly trace their origins to those developed for use in combat. As such, these firearms were never initially intended for general distribution or sale to the public.

150. As tragically demonstrated by recent mass shootings in Colorado and elsewhere throughout the country—such as the 2021 shooting at the King Soopers supermarket in Boulder (10 fatalities); the 2022 Club Q nightclub shooting in Colorado Springs (5 fatalities, 17 wounded); the 2012 Aurora movie theater shooting (12 fatalities, 70 wounded); the Pulse Nightclub shooting in Orlando, Florida, in 2016 (49 fatalities, 50+ wounded); the 2017 Las Vegas shooting (60

fatalities, 400+ wounded); the 2022 Uvalde, Texas, school shooting (21 fatalities, 17 wounded); and the July 4, 2022, shooting in Highland Park (7 fatalities, 48 wounded)⁴²—the assault weapons, in conjunction with large-capacity magazines, as defined under the Ordinances are capable of inflicting significant carnage upon civilians in a short period of time.

151. Rifle-caliber assault weapons as prohibited under the Ordinances pose a significant risk to law enforcement officers. It has been my experience that the soft body armor issued to most Uniformed Officers has a “Level II” or “Level IIIA” protection rating. These ratings are suitable for protection against most handgun bullets, as those projectiles range up to 1,200 fps in velocity. Rifle-caliber assault weapons, including AR- and AK-type rifles, can achieve muzzle velocities of between 2,700 to 3,200 fps and readily penetrate Level II and Level IIIA body armor (as well as some Level III hard body armor, which is not universally standard issue among law enforcement agencies nationwide). Not only do the firearms subject to the Ordinances pose a threat to overall public safety, but they increase the likelihood that first responders charged with stopping such a threat or attending to wounded citizens may be injured or killed in the performance of their duty.

152. This video illustrates the capability of commonly available .223/5.56mm caliber ammunition to penetrate Level III body armor. The narrator states that this test was performed at a distance of “about 7 yards.” <https://www.youtube.com/watch?v=oMYkEMhPsO8>

153. The argument that commercially available, AR-type firearms are somehow less dangerous or lethal simply because they fire only in semi-automatic mode is misleading. They retain the identical performance capabilities and characteristics (save full-automatic capability) as initially intended for use in combat. With even minimal training, an operator can fire 40 to 50 shots per minute in semi-automatic mode. According to the U.S. Army manual referenced in paragraph

⁴² <https://everytownresearch.org/wp-content/uploads/sites/4/2023/03/data.csv>

148, the most effective use of the M-16 at ranges beyond 25 yards is rapid semi-automatic fire—not full-automatic fire.

7-8. RAPID SEMIAUTOMATIC FIRE

The most important firing technique during modern, fast moving combat is rapid semiautomatic fire. Rapid-fire techniques are the key to hitting the short exposure, multiple, or moving targets described previously. If properly applied, rapid semiautomatic fire delivers a large volume of effective fire into a target area. The soldier intentionally fires a quick series of shots into the target area to assure a high probability of a hit. (Figure 7-10, page 7-8 shows the current training program for rapid semiautomatic fire.)

Figure 7-10. Rapid semiautomatic fire training program.

a. **Effectiveness of Rapid Fire.** When a soldier uses rapid semiautomatic fire properly, he sacrifices some accuracy to deliver a greater volume of effective fire to hit more targets. It is surprising how devastatingly accurate rapid fire can be. At ranges beyond 25 meters, rapid semiautomatic fire is superior to automatic fire in all measures (shots per target, trigger pulls per hit, and even time to hit). The decrease in accuracy when firing faster is reduced with proper training and repeated practice.

154. Such capability, combined with the performance characteristics of .223/5.56mm ammunition originally intended for combat, can, and has, resulted in catastrophic civilian mass-casualty events.

Executed on 05/05/2023 at MANCHESTER, MD.
/s/ James E. Yurgealitis
James E. Yurgealitis

EXHIBIT A

James E. Yurgealitis

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24 Hour Mobile: (443) 452-7248
Email: jyurgealitis@gmail.com

SUMMARY:

Self employed as a Legal and Public Policy Consultant providing Technical Firearms and Forensic Consulting, Testing and Policy Research / Training Services to Corporations, Legal Counsel and the Public Sector

EDUCATION:

B.A., Political Science and Psychology, St. John Fisher University, Rochester, New York – May 1985

PROFESSIONAL EXPERIENCE:

December 2012 to Present: Independent Legal and Policy Consultant / Subject Matter Expert

Currently provide independent consulting services to Corporations, Legal Counsel and Governmental entities in regard to Public Policy and Technical matters relating to Firearms, Firearms Policy, Forensics and Law Enforcement. Current and former clients include the Office of the District Attorney for Cook County Illinois, The City of Sunnyvale, California, The City of Highland Park, Illinois, The Office of the Attorney General for the Commonwealth of Massachusetts and the Center for American Progress, Washington D.C. I have provided sound policy and technical assistance for my clients to include expert testimony which successfully endured the opposition's legal appeals to the U.S. Circuit Court of Appeals and the U.S. Supreme Court.

December 2003 to December 2012: Senior Special Agent / Program Manager for Forensic Services ATF National Laboratory Center (NLC), Beltsville, Maryland. U. S Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)

Directed the administration and management of ATF's Forensic Training Programs to include the National Firearms Examiner Academy (NFEA) a 12-month training program for State and Local Forensic Firearm Examiner Trainees. Also managed two additional forensic training programs. Administered a \$1M + budget in accordance with strict ATF and National Institute of Justice (NIJ) guidelines and reporting requirements. Responsible for oversight of all Forensic Firearms related research at the NLC. Supervised a full and part time cadre of fifty-two (52) instructors and administrative personnel. Maintained liaison with commercial firearms and ammunition manufacturers and subject matter experts and ensure that lesson plans and curriculum reflected the latest technical developments in firearms manufacture, forensics and their application to federal and state law. Applied for, received and managed in excess of \$2M in external grants to facilitate uninterrupted delivery of training during internal budget shortfalls. Detailed to the Department of Homeland Security Command Center in 2005 with overall responsibility to coordinate and direct Federal, State and Local Law Enforcement assets during and following Hurricanes "Irene" and "Katrina" and again in 2010 for "Andrew" and "Danielle".

June 1997 - December 2003: Special Agent / Violent Crime Coordinator, ATF Baltimore Field Division, Baltimore, Maryland

Responsible for management of ATF's "Project Disarm", a joint law enforcement initiative between ATF, The United States Attorney's office for the District of Maryland (USAO), the Baltimore City Police Department, the Baltimore City States Attorney's Office and the Maryland State Police. Duties included reviewing over 400 state and local firearms related arrests annually for subsequent referral to the USAO and Federal Prosecution. Managed a caseload of 75 – 100 criminal cases annually. Responsible for selection, referral, follow - up investigation and subsequent indictment and prosecution of armed career criminals. Testified in front of Federal Grand Juries in excess of 75 times annually. Was recognized, and testified, as an expert witness in the Identification, Operability and origin of Firearms and Ammunition in three Federal Judicial Districts. Toured over 25 firearms and ammunition manufacturing facilities in Europe and the United States. Temporarily assigned in 2001 for three months to the 9-11 Task Force investigation in conjunction with FBI Assets. Temporarily assigned to the D.C. Sniper Task Force Intelligence Group in 2002 for two months.

June 1990 – June 1997:

Special Agent, ATF Baltimore Field Division, Baltimore, Maryland

Served in various capacities as a street-level Special Agent. Acted as Group Supervisor and Assistant Special Agent in Charge on numerous occasions. Served on the Washington – Baltimore High Intensity Drug Trafficking Area (HIDTA) task force from 1995 – 1999. Investigated armed narcotics trafficking organizations, seized assets, authored and executed Federal and state search and arrest warrants, conducted surveillance, interviews / interrogations, testified in Federal and state courts as a fact witness, purchased firearms, explosives and narcotics while in an undercover capacity, investigated fatal bombings and arsons, firearms trafficking, alcohol and tobacco trafficking, homicide, fraud and gun store burglaries. Also while detailed for 8 months as the Public Information Officer authored press releases, provided interviews to local and national print and television media outlets and made presentations to local and national public and special interest groups and associations.

April 1989 – June 1990 and July 1986 – March 1987: Special Agent, United States Department of State, Diplomatic Security Service (DSS), Washington Field Office, Rosslyn, VA

Conducted investigations of violations of Federal Law under the department's purview to include Passport and Visa Fraud, Illegal trafficking of restricted firearms and war materials to prohibited countries, human trafficking, seized assets, authored and executed State, local and Federal Arrest and Search Warrants, testified in Federal Court as a fact witness, detailed on an as needed basis to the Dignitary Protection Division as Agent in Charge of multiple protective details for visiting and resident foreign dignitaries, temporarily assigned to support Physical and Personal Protective Security in various U.S. Embassies overseas on an as needed basis, detailed to the Secretary of State Protective Division on an as needed basis to supervise agents assigned to augment the permanent protective detail.

March 1987-February 1989: Special Agent, DSS, Secretary of State Protective Division, Washington, DC

Served in various capacities as Acting Agent in Charge, Acting Shift Leader, Lead Advance Agent and Shift Agent. Responsibilities included close personal protection of the Secretary of State both domestically and overseas, extensive foreign travel to facilitate and prepare security arrangements for overseas visits to include Presidential Summit meetings, liaison with foreign host government officials to plan and solicit assistance with security arrangements, supervision of agents temporarily assigned to augment the detail, liaison with U.S Government Intelligence Agencies and other Federal, State and Local Law Enforcement Agencies to identify and protect against potential threats to the Secretary of State.

CLEARANCES: Top Secret March 1986 valid through February 2015. Numerous prior SCI Clearances.

TEACHING EXPERIENCE:

- Instructed at the Federal Law Enforcement Training Center (FLETC), for ATF and other Federal Law Enforcement Agencies
- Instructed at the International Law Enforcement Academy (ILEA) in Budapest, Hungary
- Instructed for numerous State, local and / or regional law enforcement agencies both in the United States, Canada and Central America

LINKEDIN PROFILE AND ENDORSEMENTS:

https://www.linkedin.com/in/james-jim-yurgealitis-68618464?trk=nav_responsive_tab_profile_pic

REFERENCES:

Available upon request

EXHIBIT B

Professional Qualifications of James E. Yurgealitis
Independent Legal, Public Policy and Forensic Consultant

I, James E. Yurgealitis, being duly sworn, depose and state:

- 1.) That I was previously employed as a Senior Special Agent / Program Manager with the Bureau of Alcohol, Tobacco Firearms & Explosives, (ATF) United States Department of Justice, and had been so employed since 1990. Prior to 1990 I was employed as a Special Agent with the Bureau of Diplomatic Security, (DSS) United States Department of State and had been so employed since 1986.
- 2.) I have a Bachelor of Arts Degree in Political Science and Psychology from St. John Fisher College, Rochester, New York.
- 3.) I am a graduate of the Federal Law Enforcement Training Center, Glynco, Georgia, the Criminal Investigator Training Program, Bureau of Diplomatic Security New Agent Training, and the Bureau of ATF New Agent Training Program.
- 4.) I have completed the Firearms Interstate Nexus Training Program conducted by the Firearms Technology Branch, ATF Headquarters, Washington, D.C.
- 5.) I have completed both Advanced Interstate and European Nexus Training conducted by ATF in conjunction with several domestic and European firearm manufacturers.
- 6.) I have testified in excess of 200 times before Federal Grand Juries regarding the classification, operability, and commerce of firearms and / or ammunition.
- 7.) I have previously qualified as an expert witness regarding the origin, operability / classification and interstate movement of firearms and ammunition in U.S. District Court for the District of Maryland, U.S. District Court for the District of Delaware and the Circuit Court For Baltimore City, Maryland.
- 8.) I have conducted regular training for local, state and federal law enforcement agencies both domestically and overseas regarding firearms classification, operability and firearms statutes.
- 9.) I maintain a personal library of books, printed material and documents that relate to the field of firearms, ammunition, and firearms classification, attend local and national trade shows and professional association meetings, and regularly review periodicals relating to firearms and ammunition.
- 10.) I attend trade shows, maintain contact with, and regularly consult with other persons, to include published authors and recognized experts in the origin, identification and classification of firearms and ammunition.
- 11.) I have, during my tenure with ATF, personally examined in excess of five thousand

Qualifications Of James E. Yurgealitis contd.

firearms to determine their origin and classification and operability, and to facilitate the tracing of those firearms.

I have toured production facilities for numerous firearms and ammunition manufacturers. The tours were conducted by corporate historians, corporate officers, or production engineering personnel.

Domestic Firearm Manufacturers:

Bushmaster Firearms, Ilion, NY, USA
Colt, New Haven CT, USA (4x)
H&R 1871 Inc., Chicopee, MA, USA (2x)
Marlin, North Haven CT, USA (4x)
O.F. Mossberg & Sons, North Haven, CT, USA (4x)
Remington Firearms, Ilion, NY, USA
Savage Arms Inc., Westfield, MA, USA (4x)
Sig-Sauer / SIGARMS Inc., Exeter, NH, USA (3x)
Smith and Wesson, Springfield, MA, USA (4x)
Sturm Ruger, Newport, NH, USA (4x)
Yankee Hill Machining, Florence, MA, USA

Foreign Firearm Manufacturers:

Carl Walther GmbH, Ulm, Germany
Ceska Zbrojovka (CZ), Uhersky Brod, Czech Republic
Fegarmy (FEG), Budapest, Hungary
F.N Herstal S.A., Herstal, Belgium
Glock GmbH, Deutsch-Wagram, Austria
Heckler & Koch GmbH, Oberndorf au Neckar, Germany
J.P. Sauer & Sohn GmbH, Eckernforde, Germany

Domestic Ammunition Manufacturers:

Fiocchi Ammunition, Ozark, MO, USA
PMC, Boulder City, NV, USA
Remington, Lonoke, AR, USA (4x)
Sierra, Sedalia, MO, USA
Starline Brass, Sedalia, MO, USA

European Proof Houses

Beschussamt Ulm, (Ulm Proofhouse) Ulm, Germany
Beschusstelle Eckernforde, (Eckernforde Proofhouse) Eckernforde, Germany
Czech Republic Proofhouse, Uhersky Brod, Czech Republic
Liege Proofhouse, Liege, Belgium

Qualifications Of James E. Yurgealitis contd.

I have been allowed regular access to the following reference collections:

Bureau of Alcohol, Tobacco Firearms and Explosives Reference Collection, Martinsburg, West Virginia, USA consisting of 5,000+ firearms

Liege Proofhouse, Liege, Belgium consisting of 1,000+ ammunition cartridges

Springfield Armory National Historic Site Firearms Collection, Springfield, MA, USA consisting of 10,000+ Firearms

Smithsonian Institution (Museum of American History) Firearms Reference Collection Washington, DC, USA, consisting of 4000+ firearms

Wertechische Studiensammlung des BWB, (Federal Defense Procurement Bureau Museum) Koblenz, Germany consisting of 10,000+ Firearms

I have toured the following museums:

Heeresgeschichtliches Museum, (Museum of Military History), Vienna, Austria

Hungarian Military Museum, Budapest, Hungary

Springfield Armory National Historic Site, Springfield, MA, USA

United States Air Force Museum, Dayton, OH, USA

United States Army Ordnance Museum, Aberdeen Proving Ground, Aberdeen, MD, USA

United States Military Academy Museum, West Point, NY, USA

United States Naval Academy Museum, Annapolis, MD, USA

Wertechische Studiensammlung des BWB, (Federal Defense Procurement Bureau Museum) Koblenz, Germany

Membership in Professional Organizations:

Member, International Ammunition Association (IAA)

Technical Advisor (pending approval), Association of Firearm and Toolmark Examiners (AFTE)

Member, Federal Law Enforcement Officers Association (FLEOA)

James E. Yurgealitis: Consulting Engagements 2013 – 2023

(D) – Engaged by Defendant’s Counsel

(P) – Engaged by Plaintiff’s Counsel

(O) – Engaged by other entity

1. State of Maryland v. Smith, Linwood T, Circuit Court for Baltimore County, Maryland, Case No. 03-K-12-004002 (D) – Defendant’s Private Counsel. Case review and consultation.
2. Freidman v. City of Highland Park, Illinois, United States District Court for the District of Illinois, Case No. 1:13-cv-9073 (D) – Defendant’s Private Counsel acting as City Attorney. Report & Deposition.
3. Wilson v. Cook County, Illinois, Illinois Supreme Court, Case No. 2012 IL 112026 (D) – Office of the State’s Attorney for Cook County, IL. Report & Deposition.
4. Fyock v. The City of Sunnyvale, California, United States District Court for the Northern District of California, Case No. 13-cv-05807 RMW (D) – City Solicitor. Declaration.
5. Wrenn v. District of Columbia, United States District Court for the District of Columbia, Civil Action Case No. 15-162 CKK (D) – U.S. Attorney’s Office for the District of Columbia. Report & Deposition.
6. Mosaic Research Management, New York, New York, (O) – Private consulting firm. Confidential business assessment and projection.
7. Worman v. Healey, United States District Court for the District of Massachusetts, Case No. 1:17-cv-10107 (D) – Office of the Attorney General for the Commonwealth of Massachusetts. Report & Deposition.
8. Buckeye Firearms v. City of Cincinnati, Hamilton County, Ohio Court of Common Pleas, Case No. A1803098 (D) – Office of the City Attorney. Report & Deposition.
9. Powell v. The State of Illinois, United States District Court for the Northern District of Illinois, Case No. 18-cv-6675 (D) – Plaintiff’s Private Counsel. Consultation.
10. Fletcher v. Century Arms, Circuit Court of the 15th Judicial District, in and for Palm Beach County, Florida, Case No. 502018CA009715 (P) – Plaintiff’s Private Counsel. Case Review, Consultation & Deposition.
11. Pullman Arms v. Healey, United States District Court for the District of Massachusetts, Case No. 4:16-40136-TSH (D) - Office of the Attorney General for the Commonwealth of Massachusetts. Report.

Yurgealitis Consulting Engagements 2013 – 2023 contd.

12. United States v. Richard Cooke, United States District Court for the Western District of New York, Case No. 17-CR-0038 (D) – Office of the Federal Public Defender for the Western District of New York. Case review & consultation.
13. Long v. GAMO Outdoor U.S.A. Inc., District Court, Clark County Nevada, Case No. A-16-748401-C (P) – Plaintiff’s Private Counsel. Test firing & consultation.
14. Viramontes v. Cook County, IL, United States District Court for the Northern District of Illinois, Case No. 1:21-CV-04595 (D) – Office of the State’s Attorney for Cook County, Illinois. Report & Deposition.
15. Arnold, Joseph et al., v. Kate Brown et al - Harney County, OR Circuit Court, Case No. 22CV41008 (D) – State of Oregon. Case review & Court Testimony.
16. Oregon Firearms Federation et al., v. Kotek et al., United States Court for the District of Oregon, Pendleton Division, Case No. 2:22-cv-01815-IM (lead case), 3:22-cv-01859-IM (trailing case), 3:22-cv-01862-IM (trailing case), 3:22-cv-01869-IM (trailing case) (D) – State of Oregon. Case review, declaration & deposition.
17. National Assn. for Gun Rights & Capen v. Campbell, United States Court for the District of Massachusetts, Case No. 1:22-cv-11431-FDS (D) – Office of the Attorney General for the Commonwealth of Massachusetts. Declaration.
18. Delaware State Sportman’s Assn. et. al. v. Delaware, United States District Court for the District of Delaware, Case No. No. 1:22-cv-00951-RGA (Consolidated), (D) – Office of the Attorney General for the State of Delaware. Declaration & consultation.
19. National Assn. for Gun Rights v. Lopez, United States District Court for the District of Hawai’i, Case No. 1:22-cv-404-DKW-RT (D) – Office of the Attorney General for the State of Hawai’i. Declaration.
20. Harrel et.al. v. Raoul, United States District Court for the Southern District of Illinois, Case No. 23-141-SPM (D) – Office of the Attorney General for the State of Illinois. Declaration
21. Herrera v. Raoul et.al., United States District Court for the Northern District of Illinois, Case No. 1:23-cv-00532 (D) – Office of the District Attorney for Cook County, Illinois. Declaration
22. Gates et.al. v. Polis, United States District Court for the District of Colorado, Case No. 1:22-cv-01866 (D) – Office of the Attorney General for the State of Colorado. Expert Report.

Yurgealitis Consulting Engagements 2013 – 2023 contd.

23. Herrera v. Raoul et.al., United States District Court for the Northern District of Illinois, Case No. 1:23-cv-00532 (D) – Department of Law, City of Chicago, IL. Declaration
24. National Association for Gun Rights v. The City of Highland Park, Illinois, United States District Court for the Northern District of Illinois, Case No. 22-cv-4774 (D) – City of Highland Park, IL. Declaration.
25. Rocky Mountain Gun Owners et.al. v. The Town of Superior, Colorado (additional defendants The City and County of Boulder & City of Louisville, CO). United States District Court for the District of Colorado, Case No. 22-cv-1685-RM-NRN (D) – Town of Superior, CO. In progress.

EXHIBIT C



DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
WASHINGTON, D.C. 20226

JUL 06 1989

MEMORANDUM TO: Director

FROM: Associate Director (Compliance Operations)


SUBJECT: Report and Recommendation on the
Importability of Certain Semiautomatic Rifles

The working group has completed its evaluation of the semiautomatic rifles whose importation was suspended pending a determination as to whether these weapons are, as required by 18 U.S.C. § 925(d)(3), of a type "generally recognized as particularly suitable for or readily adaptable to sporting purposes".

Attached for your review and approval is the report and recommendation on the importability of these rifles.


Daniel Black

Attachment

Approved:  7/6/89

Disapprove: _____

**REPORT AND RECOMMENDATION OF THE ATF WORKING GROUP
ON THE IMPORTABILITY OF CERTAIN
SEMIAUTOMATIC RIFLES**

SUSPENSION OF ASSAULT-TYPE RIFLE IMPORTATIONS

On March 14, 1989, ATF announced that it was suspending, effective immediately, the importation of several makes of assault-type rifles, pending a decision as to whether these weapons meet the statutory test that they are of a type generally recognized as particularly suitable for or readily adaptable to sporting purposes. The announcement stated that ATF would not approve, until further notice, the importation of AKS-type weapons, Uzi carbines, FN/FAL-type weapons, FN/FNC-type weapons and Steyr Aug semiautomatic weapons. On April 5, 1989, the suspension was expanded to include all similar assault-type rifles.

For purposes of this suspension, assault-type rifles were rifles which generally met the following criteria:

- a. military appearance
- b. large magazine capacity
- c. semiautomatic version of a machinegun

Based on these criteria, ATF suspended action on pending applications and suspended outstanding permits covering certain firearms listed in Attachment 1. These included both centerfire and .22 rimfire caliber firearms. At that time, ATF indicated that the reexamination of these weapons would take approximately 90 days.

This ATF working group was established to conduct the reevaluation of the importability of these semiautomatic rifles. This report represents the findings and recommendations of the working group.

BACKGROUND

Section 925(d)(3) of Title 18, United States Code, as amended, provides in pertinent part that:

The Secretary shall authorize a firearm. . .to be imported or brought into the United States . . . if the firearm . . .

(3) is of a type that does not fall within the definition of a firearm as defined in section 5845(a) of the Internal Revenue Code of 1954 and is generally recognized as particularly suitable for or readily

adaptable to sporting purposes, excluding surplus
military firearms. . .

This provision was originally enacted by Title IV of the Omnibus Crime Control and Safe Streets Act of 1968, and was also contained in Title I of the Gun Control Act of 1968, which amended Title IV later that year. According to the Senate Report on Title IV, this provision was intended to “curb the flow of surplus military weapons and other firearms being brought into the United States which are not particularly suitable for target shooting or hunting.” S. Rep. No. 1097, 90th Cong. 2d Sess. 80, 1968 U.S. Code Cong. and Admin. News 2112, 2167.

Moreover, there is legislative history which indicates that Congress intended the standard to allow the importation of traditional sporting rifles, while excluding military-type rifles. The Senate Report on the Gun Control Act observed that the importation standards “. . . are designed and intended to provide for the importation of quality made, sporting firearms, including . . . rifles such as those manufactured and imported by Browning and other such manufacturers and importers of firearms.” S. Rep. No. 1501, 90th Cong. 2d Sess. 38 (1968). Significantly, the rifles being imported by Browning at that time were semiautomatic and manually operated traditional sporting rifles of high quality.¹

An explanation of the effect of this section by one of the sponsors of the bill specifically stated that military firearms would not meet the “sporting purposes” test for importation. The mere fact that a military firearm may be used in a sporting event does not make it importable as a sporting firearm².

There is a reference in the Senate Report on Title IV which notes that the importation prohibition “. . . would not interfere with the bringing in of currently produced firearms, such as rifles . . . of recognized quality which are used for hunting and for recreational purposes, or for personal protection.” S. Rep. No. 1097, 90th Cong. 2d Sess. 80, 1968 U.S. Code Cong. and Admin. News 2112, 2167. However, this language is not inconsistent with the expressed purpose of restricting importation to firearms particularly suitable for target shooting or hunting since firearms particularly suitable for those purposes can obviously be used for other purposes such as recreational shooting and personal protection.

The determination of a weapon’s suitability for sporting purposes “rest[s] directly with the Secretary of the Treasury.” 114 Cong. Rec. 27465 (1968) (Statement of Sen. Murphy). While the legislative history suggests that the term “sporting purposes” refers to the traditional sports of target shooting, trap and skeet shooting, and hunting, the statute itself provides no criteria beyond the “generally recognized” language of section 925(d)(3). S. Rep. No. 1097, 90th Cong. 2d Sess. 80, 1968 U.S. Code Cong. and Admin. News 2167. The Senate Report on the Gun Control Act stated:

The difficulty of defining weapons characteristics to meet this target [of eliminating importation of weapons used in crime] without discriminating against sporting quality firearms, was a major reason why the Secretary of the Treasury has been given fairly broad discretion in defining and administering the import prohibition.

S. Rep. No. 1501, 90th Cong. 2d Sess. 38 (1968).

Following enactment of the Gun Control Act in 1968, the Secretary established a Firearms Evaluation Panel to provide guidelines for implementation of the “sporting purposes” test of section 925(d)(3). This panel was composed of representatives from the military, law enforcement, and the firearms industry. The panel focused its attention on handguns and recommended the adoption of factoring criteria to evaluate the various types of handguns. These factoring criteria are based upon such considerations as overall length of the firearm, caliber, safety features, and frame construction. An evaluation sheet (ATF Form 4590) was developed thereafter by ATF and put into use for evaluating handguns pursuant to section 925(d)(3). Attachment 2.

The 1968 Firearms Evaluation Panel did not propose criteria for evaluating rifles and shotguns under section 925(d)(3). Other than surplus military firearms which Congress addressed separately, long guns being imported prior to 1968 were generally conventional rifles and shotguns specifically intended for sporting purposes. Thus, in 1968, there was no cause to develop criteria for evaluating the sporting purposes of rifles and shotguns. Until recently, all rifles and shotguns were approved for importation so long as they were not otherwise excluded by section 925(d)(3). Only rifles and shotguns covered by the National Firearms Act (NFA), 26 U.S.C. S 5845(a) (for example, machineguns and short-barreled rifles and short-barreled shotguns), and surplus military rifles and shotguns had been denied importation.

The Firearms Evaluation Panel did briefly comment on whether a model BM59 Beretta, 7.62mm NATO Caliber Sporter Version Rifle was suitable for sporting purposes. Minutes of the Firearms Advisory Panel, December 10, 1968. Attachment 3. It was the consensus of the Panel that this rifle did have a particular use in target shooting and hunting. Accordingly, it was recommended that importation of the Beretta BM59, together with the SIG-AMT 7.62mm NATO Caliber Sporting Rifle and the Cetme 7.62mm NATO Caliber Sporting Rifle, be authorized for importation. (The Beretta BM59 and the Cetme, the predecessor to the HK91, are two of the rifles whose importation has been suspended. The SIG-AMT is no longer being produced.) However, the Panel recommended that importation of these weapons should include the restriction that they not possess combination flash suppressors/grenade launchers.

The working group found the Panel’s consideration of these rifles to be superficial and unpersuasive. The vast majority of the work of the 1968 Panel was devoted to handguns and the establishment of the factoring criteria for the importation of handguns. Indeed, we found compelling evidence that these rifles are not generally recognized as particularly suitable for sporting purposes.

The first time that ATF looked beyond the restrictions on NFA and surplus military rifles and shotguns and undertook a meaningful analysis under the “sporting purposes” test was in 1984. At that time, ATF was faced with a new breed of imported shotgun. It was clear that the historical assumption that all shotguns were sporting was no longer viable. Specifically, ATF was asked to determine whether the Striker-12 shotgun was suitable for sporting purposes. This shotgun is a military/law enforcement weapon initially designed and manufactured in South Africa for riot control. When the importer was asked to provide evidence of sporting purposes for the weapon, ATF was provided information that the weapon was suitable for police/combat style competitions. ATF determined that this type of competition did not constitute “sporting purposes” under the statute, and that this shotgun was not suitable for traditional sporting purposes, such as hunting, and trap and skeet shooting. Accordingly, importation was denied. Attachment 4.

Thereafter, in 1986, the Gilbert Equipment Company requested that the USAS-12 shotgun be classified as a sporting firearm under section 925(d)(3). After examination and testing of the weapon, ATF found that it was a semiautomatic version of a selective fire military-type assault shotgun. In this case, ATF determined that, due to its weight, size, bulk, designed magazine capacity, configuration, and other factors, the USAS-12 was not particularly suitable for or readily adaptable to sporting purposes. Again, ATF refused to recognize police/combat competitions as a sporting purpose under section 925(d)(3). The shotgun was reviewed on the basis of its suitability for traditional shotgun sports of hunting, and trap and skeet shooting and its importation was denied. Attachment 5. This decision was upheld by the United States District Court in Gilbert Equipment Company, Inc. v. Higgins, 709 F. Supp. 1071 (S.D. Ala. 1989). The case is currently on appeal to the Eleventh Circuit.

These two cases involving shotguns represent ATF's first thorough examination of the suitability of certain combat-type weapons for sporting purposes. In these cases ATF adopted an interpretation of sporting as being limited to certain traditional sports and not simply any lawful activity in which the weapons might be employed.

ANALYSIS

A. Defining the type of weapon under review.

As noted above, section 925(d)(3) expressly provides that the Secretary shall authorize the importation of a firearm that is of a type that is generally recognized as particularly suitable for sporting purposes. The legislative history also makes it clear that the Secretary shall scrutinize types of firearms in exercising his authority under section 925(d). Specifically, in its explanation of section 925(d)(3), the Senate Report on the Gun Control Act stated:

This subsection gives the Secretary authority to permit the importation of ammunition and certain types of firearms--(1) those imported for scientific or research purposes or for use in competition or training under chapter 401 of title 10 of the United States Code; (2) an unserviceable firearm other than a machinegun; (3) those firearms not coming within the purview of the National Firearms Act (26 U.S.C. 5801, et seq.) and suitable for sporting purposes (in the case of surplus military weapons this type is limited to shotguns and rifles) and those taken out of the United States. (Emphasis added.)

S. Rep. No. 1501, 90th Cong. 2d Sess. 38 (1968).

In light of the statutory mandate that types of firearms be scrutinized, the working group first attempted to determine whether the semiautomatic rifles suspended from importation fall within a type of firearm.

The working group determined that the semiautomatic rifles in question are generally semiautomatic versions of true selective fire military assault rifles.³ As a class or type of firearm they are often referred to as "assault rifles," "assault-type rifles," "military style rifles," or "paramilitary rifles."⁴ Since we are only concerned with semiautomatic rifles, it is somewhat of a misnomer to refer to these weapons as "assault rifles." True assault rifles are selective fire

weapons that will fire in a fully automatic mode.⁵ For the purposes of this paper, it was necessary to settle on one term that best describes the weapons under consideration, and we will refer to these weapons as “semiautomatic assault rifles.” They represent a distinctive type of rifle distinguished by certain general characteristics which are common to the modern military assault rifle. The modern military assault rifle, such as the U.S. M16, German G3, Belgian FN/FAL, and Soviet AK47, is a weapon designed for killing or disabling the enemy and, as described below, has characteristics designed to accomplish this purpose.

We found that the modern military assault rifle contains a variety of physical features and characteristics designed for military applications which distinguishes it from traditional sporting rifles.⁶ These military features and characteristics (other than selective fire) are carried over to the semiautomatic versions of the original military rifle. These features and characteristics are as follows:

1. Military Configuration.

- a. Ability to accept a detachable magazine. Virtually all modern military firearms are designed to accept large, detachable magazines.⁷ This provides the soldier with a fairly large ammunition supply and the ability to rapidly reload. Thus, large capacity magazines are indicative of military firearms. While detachable magazines are not limited to military firearms, most traditional semiautomatic sporting firearms, designed to accommodate a detachable magazine, have a relatively small magazine capacity. In addition, some States have a limit on the magazine capacity allowed for hunting, usually 8 rounds or less.⁸ That a firearm is designed and sold with a large capacity magazine, e.g., 20-30 rounds, is a factor to be considered in determining whether a firearm is a semiautomatic assault rifle.
- b. Folding/telescoping stocks. Many military firearms incorporate folding or telescoping stocks.⁹ The main advantage of this item is portability, especially for airborne troops. These stocks allow the firearm to be fired from the folded position, yet it cannot be fired nearly as accurately as with an open stock. With respect to possible sporting uses of this feature, the folding stock makes it easier to carry the firearm when hiking or backpacking. However, its predominant advantage is for military purposes, and it is normally not found on the traditional sporting rifle.
- c. Pistol grips. The vast majority of military firearms employ a well-defined pistol grip that protrudes conspicuously beneath the action of the weapon.¹⁰ In most cases, the “straight line design” of the military weapon dictates a grip of this type so that the shooter can hold and fire the weapon. Further, a pistol grip can be an aid in one-handed firing of the weapon in a combat situation. Further, such grips were designed to assist in controlling machineguns during automatic fire. On the other hand, the vast majority of sporting firearms employ a more traditional pistol grip built into the wrist of the stock of the firearm since one-handed shooting is not usually employed in hunting or competitive target competitions.
- d. Ability to accept a bayonet. A bayonet has distinct military purposes.¹¹ First, it has a psychological affect on the enemy. Second, it enables soldiers to fight in close quarters

with a knife attached to their rifles. We know of no traditional sporting application for a bayonet.

- e. Flash suppressor. A flash suppressor generally serves one or two functions. First, in military firearms it disperses the muzzle flash when the firearm is fired to help conceal the shooter's position, especially at night. A second purpose of some flash suppressors is to assist in controlling the "muzzle climb" of the rifle, particularly when fired fully automatic.¹² From the standpoint of a traditional sporting firearm, there is no particular benefit in suppressing muzzle flash. Those flash suppressors which also serve to dampen "muzzle climb" have a limited benefit in sporting uses by allowing the shooter to reacquire the target for a second shot. However, the barrel of a sporting rifle can be modified by "magna-ported" to achieve the same result. There are also muzzle attachments for sporting firearms to assist in the reduction of muzzle climb. In the case of military-style weapons that have flash suppressors incorporated in their design, the mere removal of the flash suppressor may have an adverse impact on the accuracy of the firearm.
- f. Bipods. The majority of military firearms have bipods as an integral part of the firearm or contain specific mounting points to which bipods may be attached.¹³ The military utility of the bipod is primarily to provide stability and support for the weapon when fired from the prone position, especially when fired fully automatic. Bipods are available accessory items for sporting rifles and are used primarily in long-range shooting to enhance stability. However, traditional sporting rifles do not come equipped with bipods, nor are they specifically designed to accommodate them. Instead, bipods for sporting firearms are generally designed to attach to a detachable "sling swivel mount" or simply clamp onto the firearm.
- g. Grenade launcher. Grenade launchers are incorporated in the majority of military firearms as a device to facilitate the launching of explosive grenades.¹⁴ Such launchers are generally of two types. The first type is a flash suppressor designed to function as a grenade launcher. The second type attaches to the barrel of the rifle either by screws or clamps. We are not aware of any particular sporting use for grenade launchers.
- h. Night sights. Many military firearms are equipped with luminous sights to facilitate sight alignment and target acquisition in poor light or darkness.¹⁵ Their uses are generally for military and law enforcement purposes and are not usually found on sporting firearms since it is generally illegal to hunt at night.

2. Whether the weapon is a semiautomatic version of a machinegun.

The vast majority of modern military firearms are selective fire, i.e., they can shoot either fully automatic or semiautomatic. Since machineguns are prohibited from importation (except for law enforcement use) the manufacturers of such weapons have developed semiautomatic versions of these firearms.¹⁶

3. Whether the rifle is chambered to accept a centerfire cartridge case having a length of 2.25 inches or less.

Modern military assault rifles and submachineguns are generally chambered to accept a centerfire cartridge case of 2.25 inches or less.¹⁷ On the other hand, while many traditional sporting rifles will fire a cartridge of 2.25 inches or less, such firearms usually do not have the other military features outlined in Items 1a-h.

These features and characteristics are not usually found on traditional sporting firearms.¹⁸ This is not to say that a particular rifle having one or more of the listed features should necessarily be classified as a semiautomatic assault rifle. Indeed, many traditional sporting firearms are . semiautomatic or have detachable magazines. Thus, the criteria must be viewed in total to determine whether the overall configuration places the rifle fairly within the semiautomatic assault rifle category.

Using these criteria, we determined that, on balance, all of the firearms on the original suspension list are properly included in the semiautomatic assault rifle category, with the exception of the .22 rimfire caliber rifles and the Valmet Hunter. While the .22 rimfire caliber rifles bear a striking resemblance to the true assault rifle, these rifles employ, by and large, conventional .22 rimfire caliber semiautomatic mechanisms.¹⁹ Moreover, they are not semiautomatic versions of a machinegun and contain only a few of the other relevant characteristics. Further, the working group determined that, in general, .22 caliber rifles are generally recognized as suitable for small game hunting. The Valmet Hunter, while based on the operating mechanism of the AK47 assault rifle, has been substantially changed so that it is now akin to a traditional sporting rifle and does not properly fall within the semiautomatic assault rifle category. More specifically, its receiver has been modified and its pistol grips, bayonet, and flash suppressor have been removed. The trigger mechanism has been moved to the rear of the modified receiver to facilitate its use with a traditional sporting stock. Also, its military-style sights have been replaced with traditional sporting-style sights. See Attachment 6.

B. Scope of “Sporting Purposes”.

The second step of our process was to determine the scope of “sporting purposes” as used in the statute. This is a critical aspect of the process. The broadest interpretation could take in virtually any lawful activity or competition which any person or groups of persons might undertake. Under this interpretation, any rifle could meet the “sporting purposes” test. A narrower interpretation which focuses on the traditional sports of hunting and organized marksmanship competition would result in a more selective importation process.²⁰

To determine the proper interpretation, we consulted the statute itself, its legislative history, applicable case law, the work of the original Firearms Evaluation Panel, and prior interpretations by ATF. In terms of the statute itself, the structure of the importation provisions would suggest a somewhat narrow interpretation. In this regard, firearms are prohibited from importation (section 922(1)) with certain specific exceptions (section 925(d)(3)). A broad interpretation which permits virtually any firearm to be imported because someone may wish to use it in some lawful shooting activity would render the statute meaningless.

As discussed earlier, the legislative history suggests a narrow meaning and indicates that the term “sporting purposes” refers to the traditional sports of target shooting, skeet and trap shooting, and hunting. Moreover, the history discussed earlier strongly suggests that Congress intended the provision to allow the importation of traditional sporting type rifles while excluding military type rifles. There is nothing in its history to indicate that it was intended to recognize every conceivable

type of activity or competition which might employ a firearm. To the contrary, the history indicates that mere use in some competition would not make the rifle a sporting rifle.

Finally, the 1968 Firearms Evaluation Panel specifically addressed at least one informal shooting activity and determined that it was not a legitimate sporting purpose under the statute. The panel addressed what is commonly referred to as “plinking” (shooting at randomly selected targets such as bottles and cans). It was the Panel’s view that “while many persons participated in this type of activity and much ammunition was expended in such endeavors, it was primarily a pastime and could not be considered a sport for the purposes of importation. . .”
See Attachment 3.

Based on the above, the working group determined that the term “sporting purpose” should properly be given a narrow reading. It was determined that while hunting has been a recognized rifle sport for centuries, and competitive target shooting is a recognized rifle sport, the so-called activity of plinking is not a recognized sport. Moreover, we believe that reference to sporting purposes was intended also to stand in contrast to military and law enforcement applications. Consequently, the working group does not

believe that police/combat-type competitions should be treated as sporting activities. This position is supported by the court’s decision in Gilbert Equipment Company, Inc., v Higgins, 709 F. Supp. 1071 (S.D. Ala. 1989) and is consistent with prior interpretations of ATF as noted on pages 4 and 5 in discussing the Striker-12 shotgun and USAS-12 shotgun.

C. Suitability.

The final step in our review involved an evaluation of whether semiautomatic assault rifles are a type of rifle generally recognized as particularly suitable for or readily adaptable to the traditional sporting applications discussed above.

The criminal misuse of semiautomatic assault rifles is a matter of significant public concern and was an important factor in the decision to suspend their importation. Nevertheless, the working group did not consider criminal misuse as a factor in its analysis of the importability of this type of rifle. Instead, the working group confined its analysis to the question of whether this type of rifle meets the test provided in section 925(d)(3).

Rather than criminal misuse, our comprehensive examination of this issue focused on the legal analysis and technical assessment of these firearms discussed earlier. In addition, the working group used the information gathered under Items 1-7 outlined in the next section in determining whether this type of firearm is generally recognized as particularly suitable for sporting purposes. These items take into account technical and marketing data, expert opinions, the recommended uses of the firearms, and data on the actual uses for which the weapons are employed in this country.

In evaluating these firearms, we believe that all rifles which are fairly typed as semiautomatic assault rifles should be treated the same. Therefore, the fact that there may be some evidence that a particular rifle of this type is used or recommended for sporting purposes should not control its importability.²¹ Rather, all findings as to suitability of these rifles as a whole should govern each rifle within this type.

This is consistent with the approach taken with respect to handguns since 1968. Although certain handguns may be used or recommended for sporting purposes, they may fall within the type of easily concealable handguns barred from importation by the administrative factoring criteria used by ATF to determine the importability of handguns. Furthermore, a pistol specifically designed for target shooting, but lacking a safety as required by the factoring criteria, would be a type of handgun prohibited from importation as not particularly suitable for sporting purposes for this reason. Finally, just as ATF allows handguns to be modified so as to meet the factoring criteria, a semiautomatic assault rifle could be modified into a sporting configuration and be importable, as was done in the case of the Valmet Hunter referred to earlier.

D. Evaluation of Information from Outside Sources

As part of our comprehensive analysis as to whether semiautomatic assault rifles meet the statutory criteria for importation, the following sources of information were also considered:

1. How has the weapon been advertised, marketed and categorized by the manufacturer and/or importer?
2. How has the use of the rifle been described by firearms technical writers?
3. What is the rifle's reported use by importers?
4. Do hunting guides recommend the rifle?
5. Do editors of hunting magazines recommend the rifle?
6. Is the rifle used in target shooting competitions?
7. Do State game commissions allow the use of the rifle to hunt?

Items 1-6 focus upon how the rifles are marketed, advertised, and recommended for use. Item 7 addresses the legal restrictions pertaining to the use of the weapons for sporting purposes.

The working group reviewed the advertising and marketing literature concerning each of the weapons (Item 1) and reviewed evaluations of the firearms by technical writers (Item 2). In addition, the working group solicited information from the importers of the weapons and other knowledgeable sources (Items 3-6).

Questionnaires were drafted and sent out to licensed hunting guides, State game and fish commissions, local hunting associations, competitive shooting groups, and hunting/shooting magazine editors to determine the extent to which the weapons are used for sporting purposes or recommended for such use. The working group believed that the actual uses of the weapons for sporting purposes would be a factor to be considered in determining whether this type of rifle meets the sporting purposes test.

The review of advertising and marketing literature indicates that these rifles are not generally marketed for hunting or competitive shooting. The review of the technical evaluations revealed that these rifles are not regarded as suitable for these sporting activities.²²

To the extent that the technical evaluations made recommendations with respect to the use of the rifles suspended from importation, the majority recommended them for law enforcement or military use or for activities such as collecting, plinking, home and self-defense, and combat target shooting. Only 5 of over 50 evaluations reviewed contained recommendations for the use of these firearms for hunting purposes.

The importers were asked to submit information concerning the sporting uses of the semiautomatic rifles they import. Thirty-nine importers were asked to submit this information and 19 responded. In general, their comments were conclusory and stated that their weapons could be used for sporting purposes. A small number of importers, e.g., Gun South, Inc., and Heckler & Koch, Inc., provided more specific data showing the sporting uses made of their firearms by their customers.

Of 3 hunting associations to whom questionnaires were sent, 2 responded. They stated that they place no restrictions on the use of semiautomatic rifles by their members, on the minimum caliber of ammunition used to hunt large game, or on the number of rounds allowed in semiautomatic rifle magazines. However, over 1,800 hunting guides were sent questionnaires and, of these, 706 responded. Over 73 percent of those responding indicated that their patrons used either bolt or lever action rifles for hunting. Only 10 of the 706 guides indicated that their patrons had used any of the rifles whose importation had been temporarily suspended.

Of the 20 hunting/shooting editors to whom questionnaires were sent, 14 responded. Nine of the fourteen editors recommended semiautomatic rifles for use in hunting large game, including 5 who recommended use of any of the rifles subject to the temporary suspension. Eleven of the fourteen editors recommended semiautomatic rifles for target competitions, including 7 who recommended semiautomatic assault rifles for such use.

The recommendations of editors were contradictory. One editor pointed out that what made the assault rifle successful as a military weapon made the semiautomatic version totally unfit for any other use. On the other hand, another editor stated that semiautomatic rifles had certain advantages over conventional sporting rifles especially for the physically disabled and left-handed shooters. While this may be true, there appears to be no advantage to using a semiautomatic assault rifle as opposed to a semiautomatic sporting rifle.

A total of 54 competitive shooting groups were sent a questionnaire and 53 groups responded (some of the responses were from unsolicited groups). Fifty of these groups indicated that they sponsor high power rifle competition events. While none of the groups prohibited the use of the semiautomatic assault rifles in their competitions, none stated that any of the rifles covered by the temporary suspension were used in a specific event.

Finally, the information gathered under Item 7 reveals that most of these weapons could legally be used in most States for most hunting purposes.

The working group reviewed all of the information gathered under Items 1-6 and determined that while these weapons may legally be used for sporting purposes in most States, the evidence was compelling that, as a type of firearm, the semiautomatic assault rifle is not generally recognized as particularly suitable for sporting purposes. The working group found persuasive the technical and expert evaluations of these firearms which generally did not recommend them as particularly suitable for sporting purposes. The group was also impressed by the comments of the hunting guides which showed that these rifles were not widely used for hunting purposes. The comments of the hunting guides are consistent with the opinion of the technical experts who generally do not recommend the rifles for hunting purposes.

The opinions of the editors were fairly divided with respect to the sporting uses of these rifles. The importers generally recommended their own weapons for such uses. The competitive shooting groups indicated that the rifles could be used in certain shooting events. Thus, while there was some evidence that these rifles could be used for hunting and target shooting, there was no evidence of any widespread use for such purposes. The mere fact that they are not generally prohibited from use for sporting purposes does not mean that the rifles meet the test for importation.

CONCLUSIONS

The working group has dealt with a complex issue, the resolution of which has required the group to take into account interpretations of law, technical assessments of firearms and their physical characteristics, marketing data, the assessment of data compiled from responses to questionnaires and, finally, Bureau expertise with respect to firearms. We fully recognize that particular findings as well as the results will be controversial.

From the cross section of representation within ATF, we have brought to bear our technical, legal, and administrative expertise to resolve the issues in what we believe to be a fair manner, taking into consideration all points of view. While some of the issues were difficult to resolve, in the end we believe that the ultimate conclusion is clear and compelling. These semiautomatic assault rifles were designed and intended to be particularly suitable for combat rather than sporting applications. While these weapons can be used, and indeed may be used by some, for hunting and target shooting, we believe it is clear that they are not generally recognized as particularly suitable for these purposes.

The purpose of section 925(d)(3) was to make a limited exception to the general prohibition on the importation of firearms, to preserve the sportsman's right to sporting firearms. This decision will in no way preclude the importation of true sporting firearms. It will only prevent the importation of military-style firearms which, although popular among some gun owners for collection, self-defense, combat competitions, or plinking, simply cannot be fairly characterized as sporting rifles.

Therefore, it is the finding of the working group that the semiautomatic assault rifle is not a type of firearm generally recognized as particularly suitable for or readily adaptable to sporting purposes and that importation of these rifles should not be authorized under 18 U.S.C. § 925(d)(3).

Based on our evaluation, we recommend that the firearms listed on Attachment 7 not be authorized for importation. For the reasons discussed in this report, we recommend that the firearms listed on Attachment 8 be authorized for importation. These are the .22 rimfire caliber rifles and the Valmet Hunter which we do not believe are properly included in the category of semiautomatic assault rifles. Attachment 9 is a compilation of the responses from the questionnaires. Attachment 10 combines the criteria for identifying semiautomatic assault rifles and the items considered in assessing suitability. Attachments 11 and 12 contain the data compiled for each of the criteria listed in Attachment 10. Finally, Attachment 13 contains the source materials used in locating persons and organizations who were sent questionnaires.

NOTES

1. Paul Wahl, ed., Gun Trader's Guide, 13th Edition, (South Hackensack, NJ. 1987), 155-162.
2. Although a firearm might be recognized as “suitable” for use in traditional sports, it would not meet the statutory criteria unless it were recognized as particularly suitable for such use. Indeed, Senator Dodd made clear that the intent of the legislation was to” [regulate] the importation of firearms by excluding surplus military handguns; and rifles and shotguns that are not truly suitable for sporting purposes.” 114 Cong. Rec. 13325 (1968) (Statement of Sen. Dodd) [emphasis added].

Similarly, it is apparent that the drafters of the legislation did not intend for “sports” to include every conceivable type of activity or competition which might employ a firearm; otherwise a “sporting purpose” could be advanced for every firearm sought to be imported. For example, in response to Sen. Hansen’s question concerning the meaning of “sporting purposes” in the bill which became section 925(d), Senators Dodd and Hansen engaged in the following colloquy:

Mr. HANSEN. Would the Olympic shooting competition be a “sporting purpose?”

Mr. DODD. I would think so.

Mr. HANSEN. What about trap and skeet shooting?

Mr. DODD. I would think so. I would think trap and skeet shooting would certainly be a sporting activity.

Mr. HANSEN. Would the Camp Perry national matches be considered a “sporting purpose?”

Mr. DODD. Yes: that would not [sic] fall in that arena. It should be described as a sporting purpose.

Mr. HANSEN. I understand the only difference is in the type of firearms used at Camp Perry which includes a wide variety of military types as well as commercial.

Would all of these firearms be classified as weapons constituting a “sporting purpose?”

Mr. DODD. No. I would not say so. I think when we get into that, we definitely get into military type of weapon for use in matches like these at Camp Perry; but I do not think it is generally described as a sporting weapon. It is a military weapon. I assume they have certain types of competition in which they use these military weapons as they would in an otherwise completely sporting event. I do not think that fact would change the nature of the weapon from a military to a sporting one.

Mr. HANSEN. Is it not true that military weapons are used in Olympic competition also?

Mr. DODD. I do not know. Perhaps the Senator can tell me. I am not well informed on that.

Mr. HANSEN. It is my understanding that they are. Would the Senator be inclined to modify his response if I say that is true? (27461)

Mr. DODD. It is not that I doubt the Senator’s word. Here again I would have to say that if a military weapon is used in a special sporting event, it does not become a sporting weapon. It is a military weapon used in a special sporting event. I think the Senator would agree with that. I do not know how else we could describe it.

Mr. HANSEN. If I understand the Senator correctly, he said that despite the fact that a military weapon may be used in a sporting event it did not, by that action become a sporting rifle Is that correct?

Mr. DODD. That would seem right to me As I said previously the language says no firearms will be admitted into this country unless they are genuine sporting weapons..... I think the Senator and I know what a genuine sporting gun is.

114 Cong. Rec. 27461-62 (1968).(Emphasis added.)

3. Ken Warner, ed., Gun Digest 1989, (Northbrook, IL 1988), pp. 293-300; William S. Jarrett, ed., Shooter’s Bible, No. 80, (Hackensack, NJ. 1988), pp. 345-363; Edward Clinton Ezell, Small Arms of the World, (Harrisburg, Pa. 1983), p. 844; Pete Dickey, “The Military Look-Alikes,” American Rifleman, (April 1980), p. 31. Also, see generally, Ian V. Hogg, ed., Jane’s Infantry Weapons, 1987-88, (New York 1987); Jack Lewis, ed., The Gun Digest Book of Assault Weapons, (Northbrook, IL 1986).
4. Art Blatt, “Tomorrow’s State-of-the-Art Sporting Rifle,” Guns & Ammo, (July 1981), p. 48; Jarrett, pp. 345-363; Warner, pp. 293-300.
5. Daniel D. Musgrave and Thomas B. Nelson, The World’s Assault Rifles, (Virginia, 1967), p. 1.
6. See generally, Angus Laidlaw, ed., Paul Wahl’s Big Gun Catalog/1, (Bogota, NJ. 1988); Musgrave and Nelson; Hogg; Jarrett; and Warner.

7. Ibid.
8. Arizona, 5 rounds; Colorado, 6 rounds; Michigan 6 rounds; New Hampshire, 5 rounds; New York, 6 rounds; North Carolina, 6 rounds; North Dakota, 8 rounds; Oregon, 5 rounds; Pennsylvania, semiautomatic rifles prohibited; Vermont, 6 rounds.
9. See generally, Hogg; Musgrave and Nelson; Ezell; Warner; Jarrett; Laidlaw; and Lewis.
10. Ibid.
11. Ibid.
12. Ibid.
13. Ibid.
14. Ibid.
15. Ibid.
16. Ezell, p. 844; Dickey, p. 31.
17. Musgrave and Nelson, pp. 11-29; and, see generally, Hogg; and Ezell.
18. Ezell, pp.844-866; and, see generally, Warner; Jarrett; and Laidlaw.
19. See, for example, Walter Rickell, "The Plinker's AK GunsMagazine, (July 1986) p. 21; John Lachuk, "Bantam Battle Rifles," Guns & Ammo, (January 1987), p. 37; John Lachuk, ".22 Erma Carbine," Guns & Ammo, (May 1968), p. 58; JackLewis, "Something New: The AK in Twenty-Two," Gun World, (July 1985), p. 32; Roger Combs, "A Most Unique Carbine," Gun World, (December 1985), p. 28; Garry James, "Mitchell Arms AK-22," Guns & Ammo, (November 1985), p. 72.
20. See note 2, colloquy between Senators Dodd and Hansen.
21. Ibid.
22. See generally, bibliography.

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