

Abatement of Gun Violence

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Street crime or violent crime with firearms is a major problem in America, most would agree. Several studies have attempted to examine the root causes and how they might best be addressed. Unfortunately some of those studies are intended to marshal public opinion or activate a political movement; as polemical tracts such “studies” have a propensity to skim, to indulge in hype, and to distort or misperceive the issues. A typical tract is “*Every 48 Hours: An Analysis Of Assault Rifles Traced To Crime In Maryland.*” (1), a call to activists by group called Ceasefire Maryland, which asserts, “...*assault weapons are so frequently used in crime that one assault rifle is traced back to a Maryland crime every 48 hours.*” Ceasefire Maryland has insufficiently researched, inaccurately reported, and mainly misunderstood gun abatement facts in the following ways:

- Exaggerating the threat of so-called, “assault” firearms,
- Grossly misrepresenting the statistics on registration and tracing of guns, and
- Conjuring up a nebulous definition and discussion of “assault” firearms.

In this paper we shall look at “*Every 48 Hours*”, point by point. Then we shall end by advocating some realistic measures, that have been actually used or proposed by firearms investigators, and that would enhance the ability of law enforcement officers to protect the public, thereby increasing safety.

“*Every 48 Hours*” begins with the hyped, oversimplified assertion that “ For years the vast majority of Americans have recognized that military style assault weapons have no place on our streets and in our communities”, implying that all one has to do to prevent street crime is to remove “assault weapons”, by which term they refer to certain automatic/semiautomatic rifles. The authors offer up Columbine mass murder (2) and the DC area sniper shootings (3) as illustrations. In both cases a semiautomatic firearm was used, but the Columbine episode featured rapid repetitious firing of the rifle whereas the DC area snipers fired precise single shots. And these two uses must be distinguished in terms of wounding per round fired as the following examples will show.

The North Hollywood Shootout (4) is possibly the best known and visible use of actual illegally converted machine guns capable of sustained automatic firing to commit a violent, street crime. The robbers, Larry Phillips and Emil Matasareanu fired an estimated **1100 rounds** (largely 7.62X39 and 7.69X51); only 12 officers and 8 civilians suffered wounds, but only 1 person was wounded severely. {N.B. the illegally converted machine guns had been previously confiscated on a

traffic stop. But after the prosecutors offered nolle prosequi (no prosecution) in court due to complications, the firearms were returned to the perpetrators. These firearms were originally semiautomatic and capable of firing only one round per trigger pull. They were converted to fully automatic firearms which makes them contraband under state and federal law and they should not have been returned. }

In contrast the Texas Tower massacre (5) involved a deranged Charles Whitman who, using a bolt action, scoped, high powered hunting rifle, amassed a body count of **13 killed** and **33 wounded** (not including the savage killing of his wife and mother with a fixed blade knife). He achieved this with only a few dozen rounds, a small fraction of that expended by Phillips and Matasareanu. Obviously automatic/semiautomatic firearms were irrelevant here.

As these examples show (and for other reasons discussed later), it seems clear that automatic/semiautomatic firearms represent less of a threat than a precision firearm in the hands of a trained perpetrator who obtains a superior tactical position such as Whitman in the fortified tower or such as Lee Boyd Malvo hiding in the trunk of a car designed for precision shooting.

“Every 48 Hours” bases its main assertion, quoted in the first paragraph, by ATF’s practice of labeling every gun as a “crime gun”, regardless of whether the gun was traced to a crime or a criminal. Firearms tracing is a procedure of law enforcement agencies when they seize or obtain a firearm for processing and **it is policy in most departments to function test, trace, and fingerprint any firearm taken, regardless of whether the firearm was involved in the commission of a crime or processed by a ‘prohibited person’ (see Maryland and Federal Law Charts)**. For example, in 2002, a person was “dead on arrival” (DOA) in Ashton, Maryland; when the police arrived at his home, they found 47 firearms that *“Every 48 Hours”* criteria would define as assault weapons; but none of these firearms were involved in any crime and the owner had no criminal history. **To truly be a “crime gun”, it should be traceable to a crime or a criminal.**

Often civil actions such as Emergency Evaluation Petitions (EEP) to evaluate mental competency result in the civil taking of firearms that are not connected to street crime. For example, in 2003, EEPs in Kensington, MD resulted in the taking of 57 “assault” firearms; in 2004, EEPs in Bethesda – 23 firearms; and, in 2006, EEPs in Gaithersburg – 80 firearms. Although these persons may have been deemed a risk to themselves and hence to others, and although the possession of

firearms could make them theoretically even more of a risk, the firearms taken from them were not “crime guns” as they were not involved with any criminal enterprise or possessed by a criminal.

Other large firearms seizures occur with relatively new domestic violence laws wherein convicted defendants and other civil actions (ex parte and final protective order) require the seizure by law enforcement of these firearms. Although all these weapons are traced as crime guns, roughly half that are seized annually are returned to their respective owners for a variety of rationales (not guilty, no prosecutorial merit, a judge finds no facts etc) and therefore do not constitute a crime gun. Typically these seizures are approximately equivocal to 25% of all seizures within a jurisdiction. This is just another means that the statistics reported are greatly skewed.

Interestingly, in Montgomery County, which is one of the top three Maryland highest seizing jurisdictions where approximately 300 *crime guns* were taken in 2006 (separated and labeled differently as ‘crime guns’), none were ‘*assault weapons*’ by “Every 48 Hours” criteria (see chart below). Baltimore County seized over 1500 firearms and roughly .5% could be truly labeled crime guns and assault rifles (roughly 7 guns). Thus, given that so many firearms are seized in civil EEP and domestic violence cases but are either subsequently returned to their owner or not true crime guns to begin with, it is likely that the 789 ‘assault weapons’ that “Every 48 Hours” is citing is a grossly skewed statistic in terms of actual street criminal firearms.

What does Ceasefire believe is an “assault weapon”? They begin with the negative definition that assault weapons are NOT intended for legal hunting or competitive shooting. This statement fails to recognize the fact that there are service rifle competitions involving M-1 Garand’s, M-14’s, and AR15’s that are prominent sport shooting and competitive events.

“*Every 48 Hours*” asserts that there is no significant difference between the military assault weapons and their civilian versions, citing the 1986 Federal Law regarding machine gun law and definitions. In fact, machine guns (as well as short barreled rifles and shotguns) have been strictly regulated since the National Firearms Act of 1934. The essential difference between civilian firearms is that they are not fully automatic. But as noted before, fully automatic firearms may not have a higher lethality, indeed perhaps just the opposite.

“Every 48 Hours” states that certain features, viz. high capacity magazines, rear pistol or thumb hole grip, and a forward grip or barrel shroud allows for “deadly and indiscriminate spray firing”, usually done by “firing from the hip”. And *“Every 48 Hours”* asserts that mode of firing in combat situations has no place in civil society. We would agree, because it doesn’t have place in combat situations either. Only in the movies like Rambo or Terminator is such spray firing from the hip common. Contrariwise, military training manuals stress that full auto fire or even rapid fire in semi auto is to be done usually in ambush, counter ambush, or close quarter battle engagements and always to be shoulder mounted (5). The manuals specify “low carry technique” and “high carry technique”, both of which dictate a shouldered weapon to give greater control. The greatest emphasis is on controlled fire over ‘spraying’ a target.

In conclusion, *“Every 48 Hours”* attempts to define and propose resolution of gun violence issues in Maryland, but it suffers major misperceptions about the types and uses of civilian firearms and indulges in skewed statistics. It is a polemical tract that does not offer a substantive solution to the abatement of gun violence

COMMENTARY

Important measures for gun violence abatement should include better education of police departments as has been done in certain jurisdictions in Maryland. Not every police department in the Nation, let alone Maryland, has the same acute awareness and knowledge of state and federal firearms law. One has only to look at prosecution rates. Baltimore City and Prince George’s County have arguably the highest violent crime rate but some of the lowest prosecution and sentencing rates as compared to Montgomery County and Baltimore County. This is not by chance but by the creation of local firearms investigations units, such as those in Baltimore County and Montgomery County, that specialize in addressing gun violence as it affects their respective jurisdiction. These units are also dedicated to insuring that all firearms seized are appropriately processed and maximal prosecution occurs with career-armed criminals. Both of these units conduct agency level training for officers/detectives, prosecutors and even judges to highlight the threat presented by repeat armed criminals and the effect they have on the community.

If the North Hollywood police department had tested the functional operability, they would have been required to destroy the weapons as contraband and the North Hollywood shootout would

never have occurred. It is equally important that prosecutors and judges have the same awareness and knowledge of firearms law.

Finally, we believe in changing the law with regard to any *Project Exile* system wherein felons arrested with firearms would be given mandatory 5-year sentences and firearms trafficking (Public Safety Article 5) would result in a minimum 5-year sentence to discourage the practice. These are measures recommended by those of us who are Maryland State Certified Police Detectives contributing to this paper. A casual poll of a number of other gun investigators reveals 100% agreement. Other factors which would curb gun violence include stricter adherence to drug distribution sentencing and violent crime sentencing. It sets a precedence that the criminal element has become completely familiar that crime in fact does pay when probation before judgment or even probation is such a common occurrence with first time, second time and multi recidivist offenders.

References

1. <http://www.ceasefiremd.org/> September 2006
2. http://en.wikipedia.org/wiki/Beltway_sniper_attacks
2. http://en.wikipedia.org/wiki/Columbine_High_School_massacre
3. http://en.wikipedia.org/wiki/North_Hollywood_shootout
4. www.associatedcontent.com/article/20857/charles_whitman_the_texas_tower_massacre.html.
5. *Advanced MOUT Training*. Third Ranger Battalion, Circular 350-1-2, August 1999. MOUT is defined as Military Operations Urban Terrain
6. *United States Code 18USC922 Prohibited Persons Statute*
7. *Maryland State Public Safety Article 5-133b Prohibited Persons Statute*
- 8 *Montgomery County Trace of Crime Guns*

QUICK REFERENCE TO FEDERAL FIREARMS LAWS

I. POSSESSION OR RECEIPT OF A FIREARM OR AMMUNITION BY A PROHIBITED PERSON

18 U.S.C. 922 (g) & (n) Punishable by up to 10 years imprisonment. May receive minimum sentence of 15 years without parole if the felon has 3 or more prior convictions for a felony

crime of violence (e.g. burglary, robbery, assault, possession of an offensive weapon) and/or drug trafficking (18 U.S.C. 924 (e)).

ELEMENTS:

- A. Possession or receipt of a firearm or ammunition;
- B. By a subject who falls within one of the following categories:
- FELON**- (additionally persons awaiting trial on felony charges are prohibited from **receiving** firearms)
Convicted of a crime punishable by imprisonment for a term exceeding one year (persons under indictment or information for such a crime are prohibited from receiving firearms or ammunition)
 - FUGITIVE FROM JUSTICE** (requires interstate flight to avoid prosecution or testimony in a criminal case)
 - DRUG USER OR ADDICTIS**- (may be shown by recent conviction for use, recent possession of drugs, or recent arrest for use of drugs, or positive drug tests)
 - ALIENS**- illegally or unlawfully within the US or those lawfully admitted in non-immigrant status (i.e. aliens without permanent residence status)
 - MENTAL DEFECTIVES (ADJUDICATED)**- or persons committed to a mental institution
 - FORMALLY RENOUNCING US CITIZENSHIP**
 - DISHONORABLY DISCHARGED FROM THE MILITARY**
 - **SUBJECT TO A COURT ORDER** prohibiting harassing, stalking, or threatening of an intimate partner or child of an intimate partner, or placing such person in reasonable fear of bodily injury (the order must have been issued after a hearing for which the person had notice and an opportunity to participate and the order must either find a credible threat to the intimate partner or child, or by explicit terms prohibit the use, attempted use or threatened use of physical force)
 - **CONVICTED OF A MISDEMEANOR CRIME OF DOMESTIC VIOLENCE** (need not be classified as “domestic” crime as long as offense involves the use or attempted use of physical force, or the threatened use of a deadly weapon committed by a current or former spouse, parent or guardian. The subject must have had counsel and a jury trial (if applicable) unless those rights were waived
- C. The firearm or ammunition was transported at any time across a State line or from a foreign country.

Maryland State Prohibited Persons Crib

- you have been convicted of a crime of violence
- you have any felony conviction in this State
- you have a conviction for conspiracy to commit any described above’ you have a misdemeanor conviction that carries a statutory penalty of more than two years (whether you served jail time or not)

- you have a conviction for any common law offense (any of the above convictions arising out of military proceedings are also applicable)
- you are the respondent in an Ex Parte Order or a Protective Order
- you are a fugitive (wanted on a criminal warrant) or under indictment
- you are an unlawful/ habitual user of controlled dangerous substances (found guilty of two narcotics violations, on within the last 5 years)
- you are a habitual drunkard (found guilty of three alcohol offenses, on in the past year)
- you have been adjudicated as a mental defective, suffer from a mental disorder, or have been committed to a mental institution
- you are under 21 years of age purchasing a regulated firearm
- you are an illegal alien who entered the United States illegally (a resident alien has legally resided in Maryland for at least 90 days)
- you are not a resident of the State of Maryland
- you have renounced your United States citizenship
- you are visibly under the influence of alcohol
- you are now or have been a participant in a ‘straw purchase’ (buying the gun for someone else who may be prohibited)

Montgomery County Crime Guns Traced for 2006 (does not include non crime guns seized and traced)

Revolvers	86
Pistols	150
Shotguns	128
Rifle	54
<u>Assault Weapons</u>	0