Hearing on the Assault Weapons Ban of 2013

February 27, 2013

Senator Grassley's Questions for David Hardy on the Assault Weapons Ban

Mr. Hardy:

1) The President has called so-called assault weapons "weapons of war" and the United States Attorney today called them "military-style" weapons. Are they?

Answer: they are definitely not "weapons of war." No one would go to war with a semiautomatic AR-15; they'd use a full automatic firearm. The Department of Homeland Security recently issued a request for proposals seeking 7,000 AR-15s (or firearms closely matching them), and it called them "Personal Defense Weapons."

It is strange that people those who describe these as "weapons of war," still want police to be issued them. Why would police need "weapons of war"? The purpose of a police firearm is the same as that of a "civilian" arm; to enable the user to protect against criminal attack.

They may justly be termed military "style" firearms in that they *look like* military issue firearms. I cannot see how looks matter, particularly when a constitutional protection is involved.

2) If one were to attempt to ban the most dangerous "weapons of war" as President Obama calls them, wouldn't it make more sense to ban based on the caliber of the weapon and not simply cosmetic features?

Answer: The power of the firearm (usually expressed in foot-pounds of energy at the muzzle) would be a better distinction than caliber (which is the diameter of the bullet). A .243 is considerably more powerful than a .45 ACP, for instance.

If the power of the firearm were the criterion, then all so-called assault rifles would likely pass muster, since they have about half the power of a WWII rifle. Many hunting rifles would fail, however: hunters are the primary users of the more powerful cartridges, such as the .300 Winchester Magnum and the .338 Winchester Magnum; the latter has *three times* the energy of the AR-15's round.

I would agree that banning rifles based on outward appearance makes no sense at all. There are two features of S. 150 to which I would draw special attention. One of the banned features is "A threaded barrel." (p. 3, l. 6). *Virtually all rifles have a threaded barrel*. The breech end of the barrel is threaded so that it can be screwed into the receiver. S. 150 draws no distinction between a barrel threaded at the breech and one threaded at the muzzle.

Another banned feature is "A pistol grip." (p.2, l. 24). *All semiautomatic rifles produced in the last century have a pistol grip* (see my written testimony for images). The Remington Model 8, a semiautomatic hunting rifle that entered production in 1908, has such a grip, and all other semiautomatic rifles made since then have had it too, I believe, as have most civilian bolt action rifles. As drafted, S. 150 would ban, as supposed "assault rifles," all semiautomatic rifles with detachable magazines. This would include even the Ruger 10-22, a popular .22 rimfire rifle, with detachable magazine and pistol grip.

S. 150 is thus seriously flawed and will ban firearms that I think even its drafters would have not wanted to ban. .22 rimfires are hardly "assault rifles."

3) Would a ban based on caliber be constitutional? If not, why not?

Answer: Any ban based on caliber or muzzle energy would be unconstitutional in my view. It would ban large categories of firearms that are rarely, if ever, used in crime. Any line drawn would of necessity be arbitrary. Is 2,000 foot-pounds of energy too much? Most deer rifles (at least here in the Southwest) generate more than that, as do the longer-ranged varmint rifles.

4) Can you elaborate on your prepared testimony how S. 150 treats differently assault weapon ownership by private citizens and by retired law enforcement and the Second Amendment implications of that distinction?

Answer: To give retired law enforcement officials an exemption from the law draws a completely arbitrary distinction between two classes of now private citizens, with regard to exercise of constitutional rights. The only rationale I can see for it is that of satisfying police chiefs who espouse this legislation – but only if it will not apply to them, even after they step down from their duties. I do not think drawing a distinction on such a basis can withstand constitutional muster.

Moreover, a friend who is a psychiatrist, and has done disability assessments, points out that when an officer has psychiatric issues so overwhelming that he or she cannot do their job, they are given a disability retirement. S. 150 would thus restrict

firearms ownership by ordinary citizens, while not restricting firearms ownership by former LEOs with proven and serious mental conditions.

I note that it has been proposed to give military veterans an exemption from the ban, and objection was made that those veterans might have PTSD. It is hard to justify restricting retired military on the mere *chance* that they *might* have psychiatric issues while not restricting retired LEOs who have been *proven* to have serious psychiatric problems.

5) Can you discuss why a ban on large capacity magazines would not affect mass killings?

Answer: The typical mass killer is both evil and calculating, and in the majority of cases carries more than one gun. At Columbine, the killers carried two shotguns, a carbine, a pistol, and bombs. At the Aurora theater, the killer carried a shotgun, a rifle and two pistols. At Newtown, the killer had two pistols and a rifle, plus a shotgun in his car. In situations like these, the killer does not have to switch magazines, he simply switches guns. With police response time typically 10-20 minutes, he has plenty of time to switch guns or reload, and the magazine size simply does not matter.