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Monday, August 25, 1997

A Question of Commitment

■ Weapons: Attorney general says he has enforced '89 ban on sales. But assault guns continue to flood state.

By STEVE BERRY, JEFF BRAZIL, Times Staff Writers

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California Atty. Gen. Dan Lungren says he is fully committed to enforcing the state's assault weapons law. Others think not, and here is why:

* When Colt Manufacturing Co. challenged the statute's constitutionality in 1991, Lungren agreed to put on hold a crucial provision aimed at restricting newly marketed assault weapons--a delay now in its sixth year. During that span, arms manufacturers have flooded the state with thousands of assault weapons that lawmakers anticipated would now be banned.

* When the Legislature-mandated deadline for people to register their assault weapons expired in 1992, subjecting violators to possible criminal penalties, Lungren quietly waived the provision. Since then, his office has allowed assault weapon owners to register their guns without requiring proof that they were bought before the law's implementation--and without receiving the Legislature's authorization.

* After Santa Clara County authorities prosecuted a man arrested in a motel room with an assault weapon and 550 rounds of ammunition, Lungren argued in court papers that the gun was not specifically covered by the state law and thus should be returned to the defendant. A judge in the case called the attorney general "all wet."

* When Kings County officials refused to release a seized assault rifle to a lawyer who said it was being offered as payment from a client, Lungren's office sided with the National Rifle Assn.--and against the state's police chiefs and sheriffs. A top Lungren official testified that the gun was almost identical to an AK47 but was legal because it was not specifically named in the law--"clearly an erroneous assumption," a lower court judge ruled.

Lungren, who has positioned himself as a moderate on gun control issues, contends that these moves and others undertaken by his office have been aimed not at weakening the law but at preserving it. A former congressman touted as the leading Republican candidate in next year's gubernatorial race, Lungren says he has enforced the Assault Weapons Control Act "in good faith," doing his best with a statute he calls "complex," "difficult" and full of "holes." "If anybody thinks this law is a slam-dunk," Lungren says, "they're wrong."

Lungren told The Times, however, that he will reconsider

his decision to waive the Legislature's deadline for registering assault weapons.

"At the time, I thought it was the right decision," Lungren says. "I'm going to sit down with my people and see whether at this point in time it makes any sense."

Explaining other controversial decisions made by his office, the attorney general says he relied on the advice of his deputies.

Lungren, who owns two .22-caliber rifles, says he has fired an assault weapon at a police range. How did it feel? "Pretty powerful," he says.

Although weakened by compromises with gun interests, the law was the nation's first to attempt to control the spread of assault weapons, with their fearsome firepower and large ammunition capacity.

Rather than describe the characteristics of an assault weapon, the law restricted several dozen named models, with the important caveat that additional assault weapons would be included by the attorney general as they came onto the market, even if arms makers sued the state in each case.

Lungren, however, has not succeeded in adding a single gun to the list. What's more, he has stunned police, prosecutors, judges and victims across the state by refusing to restrict weapons virtually identical to those named in the law.

Dennis Henigan, legal director for the Center to Prevent Handgun Violence, says that Lungren, as the state's top law enforcement officer, "should resolve all disputes in favor of public safety. Instead, he bends over backwards to compromise the [assault weapon] statute."

Particularly outraged is former Assemblyman Mike Roos, co-author of the assault weapon measure.

"The fact that [the law] is being stalled out is extremely frustrating," Roos says. "It is thwarting the will of courageous legislators who went against their own political inclinations and for once did the right thing. Dan Lungren will never get in line with the spirit of the law."

Concessions Undermine Measure

In drafting California's assault weapon restrictions, legislators built in a stern warning to gun makers: If you try to sell high-powered firearms like those already restricted, expect the attorney general to wage a vigorous fight to outlaw them.

So far, that hasn't happened.

Since taking office in January 1991, Lungren has tried to include just one gun on the list--the Colt Sporter, a copycat of the restricted Colt AR-15 assault rifle.

When Colt filed a constitutional challenge, Lungren entered into a series of concessions that have raised questions about his willingness to assume the watchdog role the Legislature envisioned.

First, in a pretrial arrangement with Colt, the attorney general agreed to waive a provision in the law authorizing a sales suspension of up to 30 days for a challenged gun.

The Legislature crafted the 30-day rule to prevent gun makers from cranking up sales before the gun's potential removal from the market--until a court hearing could be held on whether to restrict the weapon.

"We spent a lot of time on those procedures," recalls Donne

Brownsey, chief legislative consultant for the law's co-author, former state Sen. David A. Roberti. "The presumption is that if the attorney general determines this is an assault weapon, then it is not to be disseminated."

The attorney general also entered into an agreement that has had even more profound ramifications for the law, effectively undermining one of its most important components.

When the Colt case first reached court, Lungren agreed to an injunction that not only allowed the company to continue selling the Sporter but went far beyond, blocking any new guns from being restricted until resolution of the Colt case. The impact: California has been awash in newly marketed assault weapons, some of which have repeatedly surfaced in horrific shootings.

Lungren has said in court documents that he signed off on the sweeping moratorium because, at the time, the Legislature was correcting technical flaws in the law and he was awaiting the outcome of a federal court challenge to the statute before pressing ahead.

But by the fall of 1992, both of those issues had been resolved, including a ruling by the federal court upholding the constitutional authority of the attorney general to ban new weapons.

Still, in an act that puzzled some and infuriated others, Lungren did not move to have the court overseeing the Colt case lift the broad injunction, which would have allowed him to start banning weapons as the Legislature intended.

In December 1993, Colt lost its case when a Superior Court judge ruled that the Sporter fit the bill of an assault weapon and that the attorney general could add it to the list of restricted guns. The company promptly appealed, requesting yet another moratorium so it could continue selling the gun until a decision was rendered.

This time, Lungren argued that such an injunction should not be granted, but he lost.

More than three years have passed, and the state appeals court has yet to set a court date on Colt's appeal. Nor has Lungren pushed the court to act, despite the fact that the case has languished three times longer than normal for the 3rd District Court of Appeal.

The court's presiding justice, Robert Puglia, declined to comment on why the weapons case has not been set for oral arguments.

Richard Iglehart was chief assistant to former Atty. Gen. John K. Van de Kamp and served for three months in Lungren's administration. Now chief assistant district attorney in San Francisco County, Iglehart says: "It is unheard of for a case to sit that long and for the attorney general not to ask the court to speed it up."

"The attorney general's office has done that in a number of criminal cases, and this is a quasi-criminal matter because you are dealing with guns that would be banned under the criminal code."

Although such a long delay is unusual, anyone involved in the suit can ask the court to set a date for arguments, says Gerald Uelmen, former dean of Santa Clara University School of Law.

"Lawyers are always worried that might predispose a court

against their side," he says, "but ordinarily that is not going to be a problem, especially if you are just trying to get the case calendared."

Roberti, the Van Nuys Democrat who co-wrote the law, mostly blames the court for the delay. Nonetheless, he agrees that Lungren should have moved more aggressively.

"We never envisioned one suit tying it all up," he says. "We never envisioned the attorney general stipulating to an injunction" that has blocked the addition of new weapons to the law.

Former Assemblyman Roos, a Democrat, accuses Lungren of, at best, a level of complacency that has placed the public--the attorney general's clients--at risk.

"If you took his issue, which is abortion, he would never have signed a stipulation [to delay implementation]. He'd be out there filing lawsuits."

Lungren says he knows what the lawmakers envisioned.

"That's one of the luxuries of being a legislator. . . . There are a lot of people out there not in my shoes, not required to enforce the law, who can take potshots."

Lungren says he's "very frustrated" with the Colt case and insists that tactical decisions made at the time were believed to be the quickest way to resolve the issue in the state's favor. He says he is "at a loss" to explain the delay and talks of his office's usual willingness to press courts to act swiftly. Asked, however, whether his office has filed a single motion or letter asking the court to act on the Colt case, he replies: "I don't know."

The Deadline That Wasn't

In crafting the assault weapon law, the Legislature knew not to even hint at the possibility of forcing people to surrender their high-capacity firearms. Lawmakers did, however, pass a requirement that anyone owning a restricted weapon before the law's passage must register it with the state. Failure to do so could lead to imprisonment.

The registration provision was enacted, in part, at the request of law enforcement officials, who said it would make it easier for them to trace weapons involved in crimes.

It was no mere exercise in bureaucracy. Legislators and law enforcement officials say the deadline also was intended as a way to keep a lid on the number of weapons in circulation--and thus reduce the risk that they could end up in violent hands through theft or under-the-table transactions.

After one extension in the hopes of getting more people to register their weapons, the Legislature, at Lungren's urging, set March 31, 1992, as the "drop-dead deadline."

But, thanks to Lungren, the registrations continue.

Without input or consent from the Legislature, he has, to this day, allowed thousands of guns to be registered as assault weapons after the deadline, according to Department of Justice documents obtained under the state public records act.

Lungren says he does not make gun registrants prove that they bought their weapons before the restrictions because "someone might not have that" information. Moreover, he says, gun owners sign papers with the state attesting to the lawful registration of their firearms. This, the attorney general says, is done under the penalty of perjury.

Lungren also makes no apologies for not informing the Legislature.

"I am the attorney general of the state of California, elected by the people," he says.

He argues that, from a public safety perspective, it's better to register late than never. Lungren does acknowledge, however, that when he approved the policy, he expected that late registrations "would peter out after a month." Instead, registrants kept coming. "That is not what I expected," he said.

But just hours after Lungren's interview with The Times, Deputy Atty. Gen. Paul Bishop said his boss was "mistaken" about the events surrounding the deadline extension and had forgotten a "legal theory" explained to him six years ago, justifying continued registration of assault weapons.

According to Bishop, that view is supported by a provision in the law that allows someone charged with illegally possessing an assault weapon to get their punishment reduced by registering the weapon. That means the Legislature actually set no hard and fast registration deadline, Bishop argues.

Roberti, the measure's co-writer, doesn't buy it.

"Nice try, but that's not right," he says.

He says Lungren "should be called to task" for not enforcing the deadline.

"It violates the whole provision of the law. People caught without registering should be prosecuted," he says. "We agreed on a firewall separation once the deadline had passed."

Critics say, moreover, that Lungren's failure to require purchase-date information at the time of registration makes evading the assault weapons law dangerously simple--"an invitation for gun dealers to wink and say it's OK to buy an illegal weapon," says the statute's co-author, Roos.

"This is making up the law the way you want it to be," Roos says, "not the way the Legislature intended it to be."

And the word is out.

At a gun show in Nevada, where many weapons restricted in California are legal, one seller after another says the registration law is easy to skirt.

"I can put any date you want on the receipt," says a man trying to sell an assault rifle to a Californian.

A dealer hawking a California-restricted AK47 offers this advice: "You would be able to [register it], but you'd have to tell them you owned it before 1989 and just hadn't registered it yet."

Julian Campbell of San Diego emerges from the Las Vegas gun show with a fully-equipped Colt AR-15 rifle, which is illegal to purchase in California. The weapon, which can be fitted with a 100-round ammunition drum, is equipped with scope and laser sight, collapsible stock for concealment and a Hellstorm 2000 trigger, making it fire faster than some fully automatic weapons.

"I could not buy one of these in California," he says. "No way."

Campbell says he will register the rifle when he gets home--and he anticipates no snags.

Lungren said the fact that such incidents are occurring is news to him.

"If they are doing that," he says, "they are breaking the law."

At Cross Purposes

Local prosecutors and the attorney general usually are on the same side.

Not, however, in the case of the People vs. Dingman.

In March 1993, responding to a disturbance complaint at the Vagabond Motel in Santa Clara, police knocked on the door of Room 127. Answering was James Dingman.

Initially, court records say, he told officers that, for six months, he had been hearing voices and was certain people were plotting his death--which he later denied. In his room was an SKS assault rifle with a 30-round clip attached, two pistols and hundreds of rounds of ammunition.

Lungren acknowledges that his office advised Santa Clara County prosecutors that, in the attorney general's opinion, the SKS was legal.

But prosecutors, who felt strongly about pursuing the case anyway, charged Dingman with possessing an illegal assault weapon, in violation of the state law. He pleaded no contest and received probation. But that was only the beginning.

A gun shop owner referred Dingman to the NRA. Before long, Dingman was back in court, withdrawing his plea and arguing that his SKS weapon was legal because it was not specifically covered by the Assault Weapons Identification Guide produced by the attorney general's office.

Judge Robert Schneider found the attorney general's guide "deceptive," saying it "doesn't comply with the law. The attorney general is, to put it in the vernacular, all wet and misleading citizens."

Dingman tried the same tack during his trial in Superior Court, but yet another judge considered the weapon illegal and found him guilty. Dingman was sentenced to three years probation and was given community service.

When Dingman went to the appeals court, the justices there didn't mince words either.

"We have no trouble reading the statute to mean what it says," they wrote. "... Nor do we think any ordinary person of reasonable intelligence, or anyone familiar with gun parlance, would doubt that the weapon is prohibited."

Next stop, the California Supreme Court. Enter Dan Lungren.

Despite stinging rebukes from three lower court judges, Lungren broke ranks with prosecutors and sided with the defendant, whose case is pending before the state's high court.

In legal papers, Lungren argued that the Legislature intended to restrict only SKS weapons manufactured to use detachable ammunition clips. He said Dingman's weapon was made with a fixed clip, which he later modified to be detachable.

Therefore, the attorney general argued, the weapon is legal under the law.

"I'm not taking on a D.A.; I'm defending the law," Lungren says. "And sometimes when you defend the law, you have to do uncomfortable things."

Lungren concedes he is also "uncomfortable" being put in a position of defending a heavily armed suspect who was holed up in a motel room. He says he was unaware of the circumstances surrounding Dingman's arrest or his alleged

mental problems.

"We never discussed that," Lungren says. "The only thing presented to me were the legal facts."

Lungren's finely nuanced interpretation of the law--along with his decision to not back up prosecutors--has infuriated Santa Clara Deputy Dist. Atty. Stanley Voyles, who filed the original charges against Dingman.

"It was an appalling thing for him to do," he says of the attorney general.

What's in a Name?

Local authorities in Kings County also found themselves at odds with Lungren and his reading of the assault weapons law.

In May 1994, attorney J.W. Harrott filed a lawsuit against the county to obtain a number of guns seized from a client who had promised them as payment.

The county refused to release one of them--a Clayco, imported from China by Golden State Arms Distributors in Manhattan Beach. Deputy County Counsel Will Murphy argued that the weapon, a virtual duplicate of the AK47, was banned under the law.

"I defy anyone to find a single rivet that's different," says Murphy, who during the trial of the lawyer's suit called one of Lungren's senior criminalists, John Hamman, to compare the Clayco and the AK47.

Hamman testified that many of their parts are interchangeable and that any differences in their operation are negligible. Nonetheless, Hamman said he and his superiors in Lungren's office believed that the Clayco was legal because it was not specifically listed in the law.

The judge presiding over the case disagreed, saying: "That's clearly an erroneous assumption of what the law says." He deemed the Clayco a banned weapon.

The lawyer appealed, however, and this time he won. The appellate court ruled that only the attorney general has the authority to ban a weapon, not a judge.

Lungren, saying his office was again placed in a "difficult position" in the Harrott case, criticizes the law, saying weapons should not have been restricted based on the "way they looked."

Today, the Harrott ruling is under review by the California Supreme Court, where the NRA and the attorney general have filed briefs arguing in favor of the Clayco's legality.

Roberti says Lungren has completely misread the Legislature's intent.

"I used to give speeches after we passed the law where I explained that facsimiles are included in the ban over and above what the attorney general lists."

Kings County Counsel Denis Eymil says that if the appeals court decision stands, "the practical effect . . . will be the unregulated release to the streets of not only this weapon, but all other amorphous twins of AK series assault weapons."

Lungren's stance also has drawn opposition from top law enforcement groups. A legal brief filed by the California Police Chiefs Assn., the California Sheriff's Assn. and the California Peace Officers Assn. and the Center to Prevent Handgun Violence states:

"Assault rifles that have been simply renamed from those on

a list of banned weapons are every bit as deadly, and just as significant a threat to the health and well-being of California citizens."

* * *

Times staff photographer Carolyn Cole, researcher Janet Lundblad and staff writer Myron Levin contributed to this report.

* * *

The Law

Here is an excerpt from the Assault Weapons Control Act:

The Legislature ... declares that the proliferation and use of assault weapons poses a threat to the health, safety and security of all citizens of this state. The Legislature has restricted the assault weapons specified . . . based upon finding that each firearm has such a high rate of fire that its function as a legitimate sports or recreational firearm is substantially outweighed by the danger that it can be used to kill and injure human beings.

* * *

A Rifle by Any Other Name...

Gun manufacturers, seizing on loopholes in state and federal assault weapon laws, have succeeded in stocking shelves with thousands of "copycats"--legal weapons that are cosmetically different from those restricted by the law but pose the same hazard. As one Southern California gun dealer put it, "Virtually every gun that has been banned is available today in some form."

Colt

Colt, a gun manufacturer in Hartford, Conn., has produced several legal substitutes for the Colt AR-15, which is restricted under both state and federal laws.

* * *

Restricted: Colt AR-15. The civilian version of the military's M-16. Was restricted by California in 1989 and by the federal government in 1994.

* * *

Under legal challenge : Colt Sporter. Introduced in 1990.

How it was changed: The internal trigger area was altered to make it more difficult to convert to a fully automatic weapon. The bayonet lug was removed. And it comes with only a five-round ammunition clip, though it can accept higher-capacity clips. California sued Colt in 1991, saying it was too similar to the AR-15.

* * *

Legal: Colt Match Target. One of the latest generations of the AR-15/Sporter series.

How it was changed: It has no flash suppressor or bayonet lug and remains legal.

AR 1-5 Clones

Companies such as Eagle Arms, Olympic Arms and others

have made their own AR-15 legal lookalikes. Among them:

* * *

Bushmaster DCM: Billed as "looking like a stock AR-15."
 Eagle Arms M15A2: Introduced 1995.
 Stoner SR-25: Introduced 1993.
 Eagle Arms M15A3 Predator: Introduced 1995.
 Olympic Arms PCR-1: Introduced 1994. Name stands for
 "Politically Correct Rifle."
 Olympic Arms PCR-2

Source: Colt, Gun Digest, California attorney general

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About This Series

OUTGUNNED. *The Holes in America's Assault Weapon Laws.*

Six months ago, after the nation saw two North Hollywood bank robbers terrorize scores of police officers and civilians with a seemingly endless spray of assault rifle bullets, Times staff writers Jeff Brazil and Steve Berry set out to answer this question:

Why, years after federal and state laws were passed to restrict these lethal semiautomatic guns, do they continue to proliferate, felling innocent people from coast to coast? Through documents obtained under public records laws and interviews with victims, gun makers and law enforcement officials, the reporters found that the country's assault weapon statutes have been circumvented and undermined--that the law has been outgunned.

* Sunday: How the arms industry has exploited flaws in the law, with tragic consequences.

* Today: The questions surrounding California Atty. Gen. Dan Lungren's commitment to enforcing the state's landmark assault weapon restrictions.

* Tuesday: A look at assault weapon owners, who represent a fraction of the overall arms market but exercise significant clout in the nation's gun policy debate.

* Wednesday: Australia's answer to assault weapon violence in the wake of the world's worst attack by a lone gunman.

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