

Violence in America - Effective Solutions

by

Edgar A. Suter MD
National Chair, Doctors for Integrity in Research & Public Policy
Family Practice
San Ramon CA

William C. Waters IV, MD
Internal Medicine/Nephrology
Atlanta GA

George B. Murray MD
Director, Psychiatric Consultation Service, Massachusetts General Hospital
Associate Professor of Psychiatry, Harvard Medical School
Boston MA

Christie B. Hopkins MD
Professor of Medicine, Acting Division Director, Cardiology
University of South Carolina School of Medicine
Columbia SC

Joseph Asiaf MD
Associate Clinical Professor of Pediatrics
Boston University School of Medicine
Boston MA

John B. Moore MD FACS
Chairman, Colorado Committee on Trauma
Associate Clinical Professor of Surgery
University of Colorado Health Sciences Center
Denver CO

Col. Martin Fackler MD
Chief, US Army Wound Ballistics Laboratory (retired)
Hawthorne FL

David N. Cowan PhD, MPH
Adjunct Assistant Professor of Preventive Medicine
Uniformed Services University of the Health Sciences School of Medicine
Bethesda MD

Roderic G. Eckenhoff MD
Assistant Professor of Anesthesiology
University of Pennsylvania School of Medicine
Wallingford PA

Thomas R. Singer MD
Assistant Clinical Professor of Ophthalmology
Stanford University School of Medicine
Palo Alto CA

Miguel A. Faria, Jr. MD
Editor in Chief, Journal of the Medical Association of Georgia
Professor of Surgery (Neurosurgery) and Professor of Medical History,
Mercer University School of Medicine
Macon GA

Joseph W. Goldzieher MD

Distinguished Professor of Obstetrics & Gynecology
Texas Tech Health Sciences Center, School of Medicine
Amarillo TX

Nicholas Johnson JD
Professor of Law
Fordham University School of Law
New York City NY

Glenn Harlan Reynolds JD
Associate Professor of Law
University of Tennessee Law College
Knoxville TN

Claude Zeifman MD
Assistant Professor of Critical Care Medicine
Texas Tech University School of Medicine
El Paso TX

Harry H. White MD
Professor of Neurology
University of Missouri School of Medicine
Columbia MO

Donald E. Waite DO, MPH
Professor Emeritus, Department of Family Medicine
College of Osteopathic Medicine
Michigan State University
Lansing MI

Lawrence E. Widman MD, PhD
Assistant Professor of Medicine (Cardiology)
University of Oklahoma Health Sciences Center
Oklahoma City OK

Allen Clark MD
Professor, Department of Surgery
Division of Plastic & Reconstructive Surgery
Medical College of Georgia
Augusta GA

Theodore A. Noel II, MD
Clinical Assistant Professor of Anesthesiology
University of Florida College of Medicine
Maitland FL

Jerome C. Arnett, Jr, MD
Pulmonology
Elkins WV

David Stolinsky MD
Oncology
Los Angeles CA

Timothy Wheeler MD
President, Doctors for Responsible Gun Ownership
Member, Technical Advisory Committee on Violence, California Medical
Association
Otorhinolaryngology
Upland CA

Lenwood Wert DO
Family Practice
Lansdowne PA

George Raniolo MD
Family Practice
St. James NY

Henry E. Schaffer PhD
Professor, Department of Genetics
North Carolina State University
Raleigh NC

Edwin H. Cassem MD
Chief, Department of Psychiatry, Massachusetts General Hospital and
Associate Professor
Harvard Medical School
Boston MA

Barlow Smith MD
Department of Pathology
Medical College of Virginia
Richmond VA

George R. Brown MD
Director of Psychiatric Research
Mountain Home Veterans Administration Medical Center/ East Tennessee State
University
Johnson City TN

Michael L. Foreman MD, FACS
Director, Division of Trauma
Baylor University Medical Center
Dallas TX

Michael L. Hawkins MD, FACS
Chief, Trauma/Surgical Critical Care
Medical College of Georgia
Augusta GA

Arthur Astorino MD
Ophthalmology
Newport Beach CA

Wayne Pickard MD
Anesthesiology
Brandon FL

Julian M. Goldman MD
Director of Anesthesia Research
Assistant Professor of Anesthesiology
University of Colorado School of Medicine
Denver CO

Theodore L. Fritsche MD
Alternate Delegate, American Medical Association
President, Minnesota Academy of Ophthalmology
Associate Clinical Professor of Ophthalmology, University of Minnesota
Marshall MN

John Cavanaugh MD, MS

Academic Fellow of Anatomic Pathology
Lutheran General Hospital
Park Ridge IL

David G. Mohler MD
Musculo-skeletal Tumor Surgery
Clinical Faculty, Department of Orthopedics
University of California
San Francisco CA

Daniel Orr DDS, PhD, JD
Oral & Maxillofacial Surgery
Professor of Surgery
University of Nevada
Las Vegas, NV

(academic and profesional affiliations of the authors do not necessarily indicate official policies of the respective universities or organizations)

Violence in America - Effective Solutions

Treating the weapon

In 1662 the Armarium Urguentum advised physicians on the treatment of gunshot and other wounds:

If the wound is large, the weapon with which the patient has been wounded should be anointed daily; otherwise, every two or three days. The weapon should be kept in pure linen and a warm place but not too hot, nor squalid, lest the patient suffer harm.[1]

Three centuries later some physicians are still treating the weapon instead of the wound.

It is increasingly common to hear "guns are a virus"[2] or discussion of "the bullet as pathogen."[3] According to Koch's Postulates of Pathogenicity, the criteria used to assess disease-causing potential, any observation of the peaceful use of firearms is sufficient reason to reject the hypothesis that guns or ammunition are pathogens. The half of American homes with guns offer a multitude of such observations. Further still, review of the literature shows that guns and ammunition meet none of Koch's Postulates of Pathogenicity.[4] As appealing as the claim may be to some, guns are not pathogens and crime is not a disease. Crime is a social problem that does not lend itself to analysis or treatment under the medical model.

Treating crime as a disease - the essence of the "public health" approach to gun violence - is as illogical and ineffectual as the converse, treating disease as a crime. We would mock any criminologist who advocated criminalizing disease by measures such as fines for obesity or jail time for tobacco-related emphysema. We would condemn the police if they invaded bedrooms to ensure the use of condoms in the crusade against AIDS. The silliness of such proposals are readily apparent, yet are no more illogical and insupportable than the proposals by advocates of the "public health" model of gun violence, banning or severely restricting good citizens' access to guns simply because a tiny fraction of guns are misused by predatory aberrants. It is a distorted concept, indeed, that the rights of good people, the most virtuous and productive citizens, should be defined -

more precisely, restrained - by the criminal actions of predators in our society.

"Do no harm!"

Reducing violence is a laudable goal we share with many of our colleagues, but the evidence suggests that the gun control proposals made by many of our colleagues will be worse than ineffectual. The weight of evidence suggests that gun bans and draconian restrictions will not reduce criminals' access to guns, but will instead disproportionately disarm good citizens who cannot be effectively protected by the police - in so doing, gun control will do more harm than good.

It may seem a harsh claim, indeed, but there is considerable documentation that zealous advocacy of gun prohibition by some high-profile researchers and editors has been associated with a panoply of sins - a spectrum of transgressions ranging from simple unfamiliarity with the literature, through bias, incompetence, and even outright mendacity.[4,5,6,7,8,9,10] The most common transgression, however, is the medical literature's refusal to recognize or address the majority of the literature on guns and violence which is in sociological and criminological literature. Several acclaimed reviews are available.[11,12,13,14,15] The second most common flaw is the "costs only" approach to gun violence, neither acknowledging nor analyzing the evidence that many more lives are protected by guns than are taken by guns.

Certain authors' unfamiliarity with guns and gun safety jeopardizes not only the quality of their work, but has also caused them to advance potentially dangerous "solutions." For example, it has been proposed that gun manufacturers make "childproof" triggers - heavy trigger pulls - to enhance safety.[16] Such a proposal enhances safety neither for adults nor for children. For adults, a heavy trigger pull is not conducive to good marksmanship and increases the chance that an innocent bystander, rather than an assailant, would be injured. A child frustrated by a stiff trigger pull will attempt to obtain greater mechanical advantage than available from the natural shooting grip by inserting a thumb into the trigger guard and gripping the gun's handle with four fingers. This grip points the pistol at the child, increasing the risk of death or injury. It is education in a few infallible safe gun handling habits, not a myriad of fallible devices, that enhance gun safety.

Since the promotion of stringent gun regulation and gun bans is so familiar in the medical literature, it would be redundant to repeat such advocacy here. Instead, we will examine what is unfamiliar, a few representative flaws in common gun law proposals. We will also identify promising areas of research to reduce violence in our society - a problem that takes a terrible toll, but a problem that is often overstated as being an "epidemic." [4] Our research and policy proposals focus upon the root causes of violence, rather than upon the instruments or symbols of violence. We expect that solutions will be neither simple, quick, nor cheap.

Cost-without-benefit analysis (Doctors or Guns - Which is the deadlier menace?)

Amongst the most pervasive flaws in the medical literature on guns is the discussion of the "costs" of gun violence without any consideration of the innocent lives saved by guns. These and other benefits of guns are not so "intangible" as has been dogmatically claimed.[17] We would be mortified if our colleagues' cost-without-benefit analysis[18,19] became the standard for evaluating the medical profession. The 1990 Harvard Medical

Practice Study quantified non-psychiatric inpatient deaths from physician negligence (excluding outpatient, extended care, and inpatient psychiatric deaths) in New York State.[20] "If these rates are typical of the United States, then 180,000 people die each year partly as a result of iatrogenic injury, the equivalent of three jumbo-jet crashes every two days." [21] - almost five times the number of Americans killed with guns. One might fairly conclude from such a "costs only" analysis that doctors are a deadly public menace. Why do we not reach that conclusion? Because, in balance, doctors save many more lives than they take and so it is with guns.

A conservative estimate from the largest scale, methodologically sound study to date, the study by Kleck and Gertz, suggests that there are 2.5 million protective uses of guns by adults annually.[22] As many as 65 lives are protected by guns for every life lost to a gun. For every gun tragedy sensationalized, dozens are averted by guns, but go unreported. Whether or not "newsworthy," scientific method begs accounting of the benefits of guns - enumeration of the lives saved, the injuries prevented, the medical costs saved, and the property protected. Such an accounting is absent from the medical literature. The protective benefits of guns - and the politicized "science" that has been used to underestimate or totally deny those benefits and to exaggerate the costs of guns - have been extensively reviewed.[4-12]

As ten studies have shown, in any year, about 1 to 2.5 million Americans use guns to protect themselves and their families. and about 400,000 of those defenders believe that they would almost certainly have lost their lives if they had not had a gun for defense.[11,22] Even if only one-tenth of those defenders are correct, the lives saved by guns would still be more numerous than the lives lost to guns. The flaws in the only study to suggest otherwise, the outlier data of the National Crime Victimization Survey (NCVS), have been discussed elsewhere.[22,23] Briefly, the NCVS is a study of victimization, not defense, and, by its design, undercounts the most numerous types of defensive gun use (e.g. women protecting against domestic attacks). As additional sources of undercount error, the NCVS is the only such survey conducted by law enforcement and the only study in which the respondents are denied anonymity. When any statistic, such as the NCVS count of defensive gun use, is at odds with every other measurement, it is discarded.[22]

Nonetheless, even those US Bureau of Justice Statistics samples show that defense with a gun results in fewer injuries to the defender (17.4%) than resisting with less powerful means (knives, 40.3%; other weapon, 22%; physical force, 50.8%; evasion, 34.9%; etc.) and in fewer injuries than not resisting at all (24.7%).[11] Guns are the safest and most effective means of self defense. This is particularly important to women, the elderly, the physically challenged, those who are most vulnerable to vicious and bigger male predators.

These benefits can be weighed against the human costs of guns - recently about 38,000 gun deaths from all causes and about 65,000 additional serious injuries annually (the remainder of gun injuries were so minor as to require no hospital treatment at all). Totaling all gun deaths, injuries, and criminal mischief with guns leads to a generous estimate of about 1 million criminal misuses of guns annually (involving less than one-half of 1% of America's more than 200-million guns)[7,11] So, all things considered, the human benefits of guns at least equal and likely exceed the costs of guns to society by a factor of 2.5.

Of the 38,000 gun deaths, a majority are suicides. This has caused advocates of gun prohibition to note that gun bans result in lower gun suicide rates, but they fail to note a compensatory increase in suicide

from other accessible and lethal means of suicide (hanging, leaping, auto exhaust, etc.). The net result of gun bans? No reduction in total suicide rates.[11] People who are intent in killing themselves find the means to do so. Are other means of suicide so much more socially acceptable that we should cede resources to measures that only shift the means of suicide, but do nothing to reduce total suicide deaths?

"Friends and Family"

It is common for the "public health" advocates of gun bans to claim that most murders are of "friends and family." The medical literature includes many such false claims, that "most [murderers] would be considered law abiding citizens prior to their pulling the trigger"[24] and "most shootings are not committed by felons or mentally ill people, but are acts of passion that are committed using a handgun that is owned for protection." [25]

Not only do the data show that acquaintance and domestic homicide are a minority of homicides,[26] but the FBI's definition of acquaintance and domestic homicide requires only that the murderer knew or was related to the decedent. That dueling drug dealers are acquainted does not make them "friends." Over three-quarters of murderers have long histories of violence against not only their enemies and other "acquaintances," but also against their relatives.[27,28,29,30] Oddly, medical authors have no difficulty recognizing the violent histories of murderers when the topic is not gun control - "A history of violence is the best predictor of violence." [31] The overwhelming majority of the perpetrators of acquaintance and domestic homicide are vicious aberrants with long histories of violence inflicted upon those close to them. This reality belies the deceptive imagery of "friends and family" murdering each other in fits of passion simply because a gun, an evil talisman, was present "in the home."

Economic analysis

The actual economic cost of medical care for gun violence is approximately \$1.5-billion per year[32] - about 0.16% of America's \$900-billion annual health care costs. To exaggerate the costs of gun violence, the advocates of gun prohibition routinely include estimates of lost lifetime earnings - assuming that gangsters, drug dealers, and rapists would be as socially productive as teachers, factory workers, and other good Americans - to generate inflated claims of \$20-billion or more in "costs." [32] One recent study went so far as to claim the "costs" of work time lost while workers gossip about gun violence.[33]

What evidence is there that the average homicide decedent can be fairly compared to the average worker, that average wages should be attributed to homicide victims? What fraction of homicide victims are actually "innocent children" who strayed into gunfire? Far from being pillars of society, more than two-thirds of gun homicide "victims" are involved with drug trafficking or have evidence of ante-mortem illicit drug use.[34,35] In one study, 67% of 1990 homicide "victims" had a criminal record, averaging 4 arrests for 11 offenses.[35] Such active criminals cost society not only untold human suffering, but also an average economic toll of \$400,000 per criminal per year before apprehension and \$25,000 per criminal per year while in prison.[36] It is not a slander on the few truly innocent - and highly sensationalized - victims to note that the overwhelming predominance of homicide "victims" are as predatory and socially aberrant as the perpetrators of homicide. Cost-benefit analysis is necessarily a bit hardhearted, and, though repugnant for physicians to consider monetary savings alone, the advocates of gun prohibition routinely force us to

address the "costs" of gun violence. So, we are forced to notice that, in cutting their violent "careers" short, the gun deaths of those predators and criminals may actually represent an economic savings to society on the order of \$4.5 billion annually - three times the declared "costs" of guns.

Those annual cost savings are only a small fraction of the total economic savings from guns, because the \$4.5 billion does not include the additional financial savings from the innocent lives saved, injuries prevented, medical costs averted, and property protected by guns. If we applied the prohibitionists' methods[33] to compute the savings by guns, we would find that the annual savings approach \$1/2 trillion, about 10% of the US Gross Domestic Product. We perform this exercise only to demonstrate that all such "virtual reality" estimates of "indirect" costs and savings are inflated and to condemn them all as meaningless.

Whether by human or economic measure, we conclude that guns offer a substantial net benefit to our society. Some "quality of life" benefits, such as the feeling of security and self-determination that accompany protective gun ownership, are not easily quantified. There is no competent research that suggests making good citizens' access to guns more difficult (whether by bureaucratic paperwork, exorbitant taxation, zoning laws, contrived application of environmental or consumer product safety statutes, reframing the debate as a "public health" issue, or outright bans - the current tactics of the anti-self-defense lobby[37]) will reduce violence. No matter what tactics are used by the anti-self-defense lobby to incrementally achieve citizen disarmament, it is only good citizens who comply with gun laws, so it is only good citizens who are disarmed by gun laws. As evidenced by jurisdictions with the most draconian gun laws (e.g. New York City, Washington, DC, etc.), disarming these good citizens before violence is reduced causes more harm than good. Disarming these good citizens costs more - not fewer - lives.

Imagery and fact collide

Mountains of scholarly data on guns and gun laws[11] including the work of Presidential Commissions and the National Institute of Justice,[12,13] are available, yet the medical literature frequently cites instead editorials and articles by avowed gun control advocates. Besides failing to perform a true risk-benefit assessment, our colleagues commonly make errors of fact easily preventable by a literature search. Consider false assertions about "assault weapons." Over two dozen studies overlooked by those who advocate the prohibition of such guns show that these false icons of violence are rarely used in crime.[10,38] Pejoratively and inaccurately named, "assault weapons" are, in fact, civilian firearms that fire one shot per trigger pull, but share cosmetic similarities with true military weapons (e.g. black plastic stocks, bayonet lugs, corrosion resistant finishes, and similar features that do nothing to enhance the criminal use of such guns). Claims of "sheer destructive power"[18] are only unscientific and inflammatory imagery refuted by peer-reviewed research in the medical literature.[10,39,40,41] Discredited theories of wounding, "watermelon wound ballistics,"[42] should have no place in the medical literature. Unfortunately, particularly when coming from physicians, the political effectiveness of such embarrassingly unscientific hyperbole cannot be denied.

Unlike hunting weapons which, by definition, are designed to kill, military weapons are designed to wound,[39] our colleagues' claim of "designed to kill human beings at close range"[18] notwithstanding. In military doctrine, wounding is more useful than killing because it removes not only the injured enemy, but also removes personnel and resources necessary to transport and care for the injured. "Assault weapons" using typical

military ammunition actually have reduced lethality when compared to sporting weapons, reduced lethality that is comparable to handguns using non-expanding ammunition.[39]

Our colleagues briefly noted that "these weapons account for only a small percentage of firearm deaths." [18] More pointedly, ten times more Americans die annually from attacks using hands and feet than die from military-style rifles.[43] Let us emphasize that, in the worst areas of gang and drug crime, over two dozen studies show that military-style, semiautomatic guns account for generally 0% to 3% of crime guns.[10,38] Unfortunately, our colleagues completely overlooked the legitimate and constitutionally protected uses of these guns.[10,38]

Police protection

Criminals do not announce their intentions and police resources are stretched, so it is unsurprising that the police rarely arrive in time to prevent death or injury from much violent crime. Many are surprised, however, to discover that the police do not have any legal obligation - not even a theoretical obligation - to provide protection to individuals, even if in immediate danger. The police are only obligated to provide some unspecified level of general protection to the community at large.[44,45,46,47,48] It is a bitter irony indeed that, at the same time the police are relieved of responsibility for our protection, we are forced to depend upon their protection. We are often told that we may not and should not have the same tools that the police say they need to protect themselves from the same criminals who threaten us.

Gun ban advocates routinely portray good citizens with guns as inept and dangerous, but good citizens use guns about seven to ten times as frequently as the police to repel crime and apprehend criminals[11] and they do it with a better safety record than the police. About 11% of police shootings kill an innocent person - about 2% of shootings by citizens kill an innocent person. The odds of a defensive gun user killing an innocent person are less than 1 in 26,000.[49] Citizens intervening in crime are less likely to be wounded than the police.[49] We can explain why the citizen record is better than the police (the police usually come upon a scene in progress where it may not be clear who is attacker and who is defender; also, the police, unlike defenders, must close to handcuff the arrestee), but the simple truth remains: citizens have an excellent record of protecting themselves, their families, and their communities.

Some polls claim that Californians support "more restrictive" gun laws, yet many Californians were surprised to discover that existent "waiting period" law thwarted their attempts to arm themselves for protection during the 1992 Los Angeles riots. The police department was so overwhelmed that residents discovered that they were virtually abandoned to a "let burn" policy. Indeed, without causing even a single death or injury, it was those good citizens displaying their fearsome "assault weapons" who turned back mob and gang violence, protecting their lives, their families, and their livelihoods. It was good citizens displaying such weapons who turned back looting police and out-of-control US Army National Guardsmen during Hurricane Hugo.[50] It was armed African-Americans that protected themselves and their families from Ku Klux Klansmen and other racist terrorists (terrorists that often included local law enforcement officers).[51,52,53]

When faced with multiple assailants, mob and gang violence, terrorism, or civil insurrection, it is precisely high-capacity "assault weapons" that are necessary for good people to defend themselves - particularly when police resources are stretched to the breaking point. It is not only

protection from criminals and lunatics about which we must be concerned. Governments are the worst mass murderers. Not including wars, as a conservative estimate, in this century 65 million people have been killed by their governments - after first being disarmed.[54] Protection, not "sporting use," is the issue.

The automobile model of gun ownership

Advocates of increased gun restrictions have promoted the automobile model of gun ownership, however, the analogy is selectively and incompletely applied. It is routinely overlooked that no license or registration is needed to "own and operate" any kind of automobile on private property. No proof of "need" is required for automobile registration or drivers' licensure. Once licensed and registered, automobiles may be driven on any public road and every state's licenses are given "full faith and credit" by other states. There are no waiting periods, background checks, or age restrictions for the purchase of automobiles. It is only their use and misuse that is regulated.

Although the toll of motor vehicle tragedies is many times that of guns, no "arsenal permit" equivalent is asked of automobile collectors or motorcycle racing enthusiasts. Neither has anyone suggested that automobile manufacturers be sued when automobiles are misused by criminals, as they frequently are, by drunk and reckless drivers, in drive-by shootings, bank robberies, car bombs, and all manner of crime and terrorism. No one has suggested banning motor vehicles because they "might" be used illegally or are capable of exceeding the 55 mph speed limit, even though we "know" speed kills. Who needs a car capable of three times the national speed limit? "But cars have good uses" is the usual response. So too do guns have good uses, the protection of 2.5-million good Americans every year.[22]

Importantly, the proponents of the automobile model of gun ownership fail to note that controls appropriate to a privilege (driving) are inappropriate to a constitutional right (gun ownership and use).

Constitutional issues

An important nexus exists where public policy touches the constitution. Television violence has been deemed a cause of violence,[55,56,57] but outlawing entertainment violence and sensationalized newscasting is precluded by First Amendment guarantees. The spread of AIDS might be reduced by draconian measures that, thankfully, are precluded by our inherent enumerated and unenumerated civil rights guaranteed in the Bill of Rights. Analogously, even if gun bans could be demonstrated to be effective in reducing violence, such measures are precluded by our right to keep and bear arms, our inherent and irrevocable right to protection against criminals, crazies, and tyrants.

We are alarmed that the constitutional impediments to gun bans, draconian restrictions, and confiscatory levels of fees and taxation, if discussed at all, are offhandedly and mistakenly dispatched.[58] No "need" must be demonstrated or license obtained in order to exercise a constitutional right; such "prior restraint" is a patently unconstitutional denial of civil rights. To support purportedly "reasonable" restrictions, the claim is often made that the Right to Keep and Bear Arms is only a collective right of states to maintain militias.[58,59,60] Such a claim is incongruous with Supreme Court case law,[61,62] the history of the right,[63,64,65,66] and legal scholarship.

In fact, the Supreme Court has explicitly acknowledged a pre-existent

("pre-existent," rather than "granted" by the Constitution) _individual_ right[67,68,69,70,71] to keep and bear _military-style_7lweapons. The familiar contention that there is no individual right to arms derives partly from a common misunderstanding of the constitutional "militia." Advocates of "broad-based gun control"[58] emphasize merely the mention of "militia," but historians, legal scholars, and Supreme Court Justices agree that, "The 'militia' was the entire adult male citizenry," so that "one purpose of the Founders having been to guarantee the arms of the militia, they accomplished that purpose by guaranteeing the arms of the individuals who made up the militia."[61]

Adherents of the "states' right only" theory of the Second Amendment assert their position without examining the implications of their own theory. A full understanding of the "states' right only" theory leads to conclusions that will make its proponents even more uncomfortable than if they accepted the individual right theory.[72] An honest application of the "states' right only" theory, according to the rationale advanced by its own adherents,[58-60] demands not merely armed state militias, but full military parity for the states. In these times of tension between the states and the federal government, gun prohibitionists should rethink the advisability of promoting a theory that would return the US to armed confederacy. Further, as Reynolds and Kates discuss, citizen disarmament would not necessarily be an outcome of an honest application of the "states' right only" theory of the Second Amendment.[72]

That the Supreme Court has acknowledged the individual right, but done little to protect that right, is reminiscent of the sluggishness of the Supreme Court in protecting other civil rights before those rights became politically fashionable. It has taken over a century for the Supreme Court to meaningfully protect civil rights guaranteed to African-Americans in the Fourteenth Amendment. The claim that "no court has ever overturned a gun law on Second Amendment grounds" is not only false (Nunn v. State [73] and in re: Brickey[74] overturned gun laws on Second Amendment grounds), but is also the equivalent of a morally indefensible claim in 1950 that "no court has ever overturned a segregation law."

Supreme Court decisions have been thoroughly reviewed in the legal literature. Since 1980, of thirty-nine law review articles, thirty-five note the Supreme Court's acknowledgment of the individual right to keep and bear arms[75] and only four claim the right is only a collective right of the states (three of these four are authored or co-authored by employees of the antiselfdefense lobby).[76] One would never guess such a precedential and scholarly mismatch from the casual misinterpretations of the right in the medical literature and popular press. The error of the gun prohibitionist view is also evident from the fact that their "states' right only" theory is exclusively an invention of the twentieth century "gun control" debate - a concept of which neither the Founding Fathers nor any pre-1900 case or commentary seems to have had any inkling.[61-65,77]

Though the gun control debate has focused on the Second Amendment, legal scholarship also finds support for the Right to Keep and Bear Arms in Ninth Amendment "unenumerated" rights,[78] Fourteenth Amendment "due process" and "equal protection" rights,[79,80,81,82] and natural rights theory.[77] Also, in the absence of explicit delegated powers, the Tenth Amendment guarantees that the powers are reserved to the States and the people,[83] making several provisions of the Brady Law unconstitutional.[84]

Progressive reform

Complete, consistent, and constitutional application of the automobile model of gun ownership could provide a rational solution to the debate and

enhance public safety. Reasonable compromise on licensing and training is possible. Generally, where state laws have been reformed to license and train good citizens to carry concealed handguns for protection, violence and homicide have fallen.[49,85] Even those unarmed citizens who abhor guns benefit from such policies because predators cannot distinguish in advance between intended victims who carry and victims who eschew _concealed_ weapons.

In Florida, as in other states where they have opposed reform, the anti-self-defense lobby claimed that blood would run in the streets of "Dodge City East," the "Gunshine State," that inconsequential family arguments and traffic disputes would lead to murder and mayhem, that the economic base of communities would collapse, and that many innocent people would be killed[49,88] --- but we do not have to rely on irrational propaganda, imaginative imagery, or political histrionics. We can examine the data.

One-third of Americans live in the 22 progressive states that have reformed laws to allow good citizens to readily protect themselves outside their homes, openly or concealed.[49,88] In those states crime rates are lower for every category of crime indexed by the FBI Uniform Crime Reports.[26] Homicide, assault, and overall violent crime are each 40% lower, armed robbery is 50% lower, rape is 30% lower, and property crimes are 10% lower.[26] The reasonable reform of concealed weapon laws resulted in none of the mayhem prophesied by the anti-self-defense lobby. In fact, the data suggest that, providing they are in the hands of good citizens, more guns "on the street" offer a considerable _net_ benefit to society - saving lives, a deterrent to crime, and an adjunct to the concept of community policing.

As of 12/31/93, Florida had issued 188,106 licenses and not one innocent person had been killed or injured by a concealed weapon licensee in the 6 years post-reform.[49] Of the 188,106 licenses, 17 (0.01%) were revoked for misuse of the firearm. Not one of those revocations were associated with any injury whatsoever.[49] In opposing reform, fear is often expressed that "everyone would be packing guns," but, after reform, most states have licensed fewer than 2% (and in no state more than 4%) of qualified citizens.[49]

A recent flurry of pre-publication publicity highlighted an upcoming paper by critics of reform, David MacDowall, Colin Loftin, and Brian Wiersema of the University of Maryland Violence Research Group.[86] These researchers are best known for their 1989 paper in the New England Journal of Medicine[87] that, in the face of a tripled homicide rate, claimed that Washington DC's 1976 handgun freeze had lowered homicide.[4] In the face of data showing statewide reductions in homicide rates in many states that have adopted reforms (particularly impressive when compared to concurrent national trends),[49] these researchers now claim that reform of concealed weapons laws has raised homicide rates. To contrive such a "day is night" conclusion, they ignored national trends and rejected the statewide benefits of statewide laws without credible analysis. Instead they simply selected the few exceptions, the few urban areas and irregular, shifting time periods that could be contrived to show a homicide increase. Furthermore, if FBI data is used instead of the researchers' National Center for Health Statistics data (FBI data culls at least a fraction of lawful self-defense homicides), MacDowall et al.'s claim collapses.

The anti-self-defense lobby has claimed that violent crime rose 19% in Florida following reform, but they fail to note that violent crime rose 23% nationally. Additionally, the data became more difficult to interpret because the accounting of violent crimes except homicide changed during

this period. So, the observed homicide rate reductions are the best available indicator of the effectiveness of reform. Following reform, Florida's homicide rate fell from 36% above the national average to 4% below the national average and remains below the national average to this day.[49]

Notwithstanding gun control extremists' politicized research, histrionics, and unprophetic imagery, the observed reality was that most crime fell, in part, because vicious predators fear an unpredictable encounter with an armed citizen even more than they fear apprehension by police[12] or fear our timid and porous criminal justice system. It is no mystery why Florida's tourists are targeted by predators - predators are guaranteed that, unlike Florida's citizens, tourists are unarmed. Those who advocate restricting gun rights often justify their proposals "if it saves only one lifeI." There have been matched state pair analyses, crime trend studies, and county-by-county research[49] demonstrating that licensing good, mentally-competent adults to carry concealed weapons for protection _outside_ their homes saves _many_ lives, so gun prohibitionists should support such reforms, _if_ saving lives is truly their motivation.

Conclusion

Insisting that a frog is a cow will not give us milk. Neither will insisting a social problem is a medical problem give us a solution to violence. If medical researchers want to investigate violence, they must learn the methods of social science research and familiarize themselves with the social science literature. Predatory criminals are neither microbes nor automobiles.

We, too, call for better data collection, but then, on the basis of existing data, we part company with our colleagues who call for broad-based gun controls and bans. As we have discussed, guns in the hands of good, mentally competent adults offer a net benefit to society - whether measured in human or economic terms. Until such time as we eliminate violence from society, we believe that good people should have available the safest and most effective means of protection, guns. The rights of good and moral people, the overwhelming majority of America's citizens, are inherent rights that are not forfeit as a result of the heinous actions of predatory aberrants.

The predominance of data show that over 20,000 American gun laws, including national gun laws, have done virtually nothing to reduce violence or to reduce availability of guns to criminals. Expectedly so! Vicious predators who ignore laws against murder, mayhem, and drug trafficking routinely ignore those existent American gun laws. No amount of well-meaning, wishful thinking will cause these criminals to honor additional gun laws. If "better" data are forthcoming, we are ready to reassess the public policy implications. Until such time, the data suggest that victim disarmament is not a policy that saves lives.

Proposals

We note that public health efforts combating AIDS and tuberculosis are most effective when high-risk populations are targeted. If there is any kernel of truth in the "public health" model of violence, it is that high-risk populations should be addressed, specifically, broken, impoverished, young families in the inner cities. Though we offer proposals to reduce violence in our society, we have realistic expectations. We know that utopia is not an available alternative. It may take a generation or more to obtain even incremental reductions in violence. A social problem that has taken generations to develop, will not disappear quickly or cheaply. We must

replace today's rhetoric of entitlement with values of family life, individual rights, and individual responsibilities. We must avoid the tempting mirage, the false promises of gun control. We encourage the following research and policy agenda:

1) Oversight of the competence and integrity of further tax-funded research - Politicized science costs lives because it leads us down a literal dead-end, the unilateral disarmament of innocent victims. Of additional importance, politicized science wastes resources and time that might be spent productively. Editorial censorship, histrionics, and medical "mob journalism" are equally unsuited to the development of sound public policy.

Much of the shoddy research has been funded by taxpayers through the Centers for Disease Control and legitimate concern has been raised about the politicization of that research.[4-9] While we fully support the First Amendment rights of advocates at both poles of the debate, we do not believe that it is appropriate for tax-payers to foot the bill for polemics from either pole. There must be Congressional oversight of tax-funded research to ensure the integrity and competence of tax-funded studies and steps must be taken to improve the peer review process. Editorial privilege should entail responsibility and accountability. Editorial license should end far short of the threshold of carelessness, abuse, and censorship.

2) Enforce existent laws against violent crime - No additional laws or sentence enhancements are necessary. There are no violent crimes that are "missed" by criminal codes. If applied, existent sentences prescribed for violent crimes are already far from trivial, so we support "Truth in Sentencing," rather than early release of or plea bargaining by violent criminals. If applied, existent sentences prescribed for violent crimes make inflexible "Three Strikes, You're Out" proposals completely unnecessary. "The most effective prison reform would be to return prisons to their primary mission of incapacitating violent criminals." [88]

President Clinton and his administration have spotlighted violent crime and demanded draconian gun restrictions as a "solution." The administration's lack of action, however, belies its rhetoric. Senators Orrin Hatch and Robert Dole have inquired of Attorney General Janet Reno why, according to the Administrative Office of the US Courts, prosecutions have actually declined 5% overall and, in the case of gun crimes, prosecutions have declined 23%, under the Clinton-Reno administration). [89]

3) Enforce existent laws against the true sources of criminals' guns - The enforcement of existent gun laws and the enforceability of proposed gun laws are rarely discussed. High rates of gun ban non-compliance and the police state tactics necessary for enforcement are rarely discussed.[10] The Clinton administration and many politicians, including the "public health" advocates of gun prohibition, call for more draconian gun laws when existent laws are poorly enforced. Of how little benefit to public safety can symbolic gestures be? Of what possible benefit can their more draconian proposals be if those proposals are not - or cannot be - enforced?

Only 7% of criminals' handguns are obtained from retail sources,[13] so controls on retail gun sales cannot be expected to reduce criminals' access to guns much, if at all. Despite exaggerated claims of the success of the Brady Law,[90] the Bureau of Alcohol, Tobacco and Firearms (BATF) has acknowledged that the little existent evidence is only anecdotal.[91] If fact, almost all of Brady Law background check discoveries of "thousands of possible felons" are false positives. Many are innocents whose names are

similar to felons. Misdemeanor traffic convictions, citations for fishing without a license, and failure to license dogs are the types of trivial crimes that resulted in a computer tag that labeled the others as "potential" felons.[92] Of the minuscule number of actual felons identified by Brady Law background checks, not one has been prosecuted.[93] Instead, those felons are merely displaced into the "black market." In such circumstance, the minimal expected benefit of the Brady Law diminishes to no benefit at all.

Instead of heaping more onerous restrictions upon good citizens or law-abiding gun dealers who are not the source of crime guns, is it not more reasonable - though admittedly more difficult - to target the real source of crime guns? It is time to admit the futility of attacking the supply of legal guns to interdict the less than 1% of the American gun stock that is used criminally. Instead, we believe enforcement effort should focus on targeting the long illegal "black market" in stolen guns. It is equally important to reduce the demand for illicit guns and drugs, most particularly by presenting attractive life opportunities and career alternatives to the inner-city youth that are overwhelmingly and disproportionately the perpetrators[94] and victims[95] of violence in our society.

4) Treat guns like cars, completely, consistently, and constitutionally - Specifically, enact legislation to license good citizens - mentally competent, law-abiding adults - to carry concealed firearms for protection in public. No "need" must be demonstrated. Self-protection is a universally applicable need. Of course, there should be no licensing or registration of any kind of firearm used on private property. We believe this is the reasonable compromise, the reasonable gun control this country needs.

Like for automobiles and prospective drivers, we believe guns should be kept out of the hands of the mentally incompetent, the criminal, and the irresponsible - adult or child - and we advocate voluntary safety training programs. We recommend that every prospective gun owner carefully weigh the responsibility of gun ownership and, upon purchase, to be certain that gun safety is paramount. It is encouraging to note that National Safety Council data show that accidental gun deaths have been falling steadily since the beginning of this century and now hover at an all time low.[96]

5) Welfare reform - End government policy that destroys families and, in turn, destroys the fabric of society. The "War on Poverty" is another war lost by America. Welfare aid has climbed from 1.5% of the Gross National Product when Lyndon Johnson's "Great Society" initiated the "War on Poverty" to 5% of the Gross National Product (\$305 billion) in 1992, yet we have seen crime, substance abuse, divorce, illegitimacy, and resultant single-parent families skyrocket and the work ethic, family stability, and educational aspiration erode. To reduce violence, welfare reform must discourage dependency, encourage responsible, constructive behavior, reduce illegitimacy and single-parent families, and entail a system of mutual responsibility in which welfare recipients are expected to contribute to society in return for the aid they receive.[97]

6) Improve life and career opportunities for the poor - A corollary of welfare reform, this is certainly the most difficult, the most expensive, and the most important of our proposals. Violent drug crime has been described as a rational career choice for those so impoverished that their job choices are virtually non-existent.[98] There must be attractive and positive alternatives for the poor. Such alternatives are more likely to be realized through the private sector, than through typically wasteful and inefficient government programs. Government may best serve us all by

getting out of our way and by letting families, not politicians and bureaucrats, decide how to spend their earnings.

Of course, the communities most afflicted by poverty and violence, the inner cities, must begin, through home, church, and school, to promote values that mitigate violence - among such values, the work ethic, educational aspiration, delayed gratification, respect for individual and property rights, love of self, family, and community, and the sanctity of life. Where public schools have brought valueless bureaucracy, school vouchers hold promise of a renaissance of inner city private and parochial schools, offering parents a choice, cost effective educational opportunities that promote values beneficial to society.[97]

To make the alternatives more attractive, it may be helpful to remove profit from the illicit drug trade. While the decriminalization of personal drug use by adults is controversial, we believe that we must study such proposals.

7) Mitigate media violence - The role of media violence in exacerbating violence in society is well documented.[55-57] Rather than unconstitutional infringements of First Amendment rights, it is parents who must exercise control over children's viewing habits and who must influence the media. Parents should make their views known to producers and advertisers when they are offended by sensationalized newscasting and gratuitous violence in entertainment media.

8) Promote conflict resolution training - To offset the deleterious effects of violence promoted in the media, we believe that early in life children must learn the non-violent means of conflict resolution.

9) End the scapegoating of guns and gun owners - It is divisive and counter-productive to vilify America's innocent gun owners. Those who abhor guns must be reminded that half of American households find legitimate reasons to own and enjoy firearms, some for protection, some for recreation.[11] Clearly, the abhorrence of guns (or gun owners) is not the dominant American paradigm. The vogue of describing gun ownership as a pathology should pass, since gun ownership is, in fact, a neutral or positive social phenomenon of half of American households.

Guns are not charms that impel evil, neither are they magically protective talismans. Guns are only powerful tools. Fortunately, most citizens of our distressed society are moral and responsible people in whose hands guns are the safest and most effective means of protection against criminals, crazies, and tyrants. The future will shine more brightly if compassionate and thoughtful individuals join to promote individual responsibility, personal freedom, and to develop effective, long-term solutions to reduce violence in America.

References

- 1 Kopel DB. Guns, germs, and science: public health approaches to gun control. Presentation to the College of Public Health, University of Oklahoma, Health Sciences Center, Oklahoma City, OK. October 14, 1994.
- 2 Christoffel KK. quoted in: Somerville J. Gun control as immunization. American Medical News. January 3, 1994. p 9.
- 3 Adelson L. The gun and the sanctity of human life; or the bullet as pathogen. Archives of Surgery June 1992; 127: 659-664.
- 4 Suter EA. Guns in the medical literature - a failure of peer review.

Journal of the Medical Association of Georgia. March 1994; 83: 133-48.

5 Kates DB, Lattimer JK, Murray GB, Cassem EH, Schaffer HE, and Southwick L. Gun control: epidemic of violence or pandemic of propaganda. University of Tennessee Law Review. Spring 1995.

6 Kates DB, Lattimer JK, and Cottrol RJ. Public health literature on firearms - a critique of overt mendacity. a paper presented to the American Society of Criminology annual meeting. New Orleans, LA. November 5, 1992.

7 Blackman PH. The federal factoid factory on firearms and violence: a review of CDC research and politics. a paper presented to the Academy of Criminal Justice Sciences. Chicago IL. March 8-12, 1994.

8 Blackman PH. Criminology's astrology: the Center for Disease Control approach to public health research on firearms and violence.. a paper presented to the American Society of Criminology. Baltimore, MD November 7-10, 1990.

9 Blackman PH. Children and firearms: lies the CDC loves.. a paper presented to the American Society of Criminology. New Orleans, LA. November 4-7, 1992.

10 Suter E. 'Assault weapons' revisited - an analysis of the AMA report. Journal of the Medical Association of Georgia. May1994; 83: 281-89.

11 Kleck G. Point blank: guns and violence in america. New York: Aldine de Gruyter. 1991.

12 Wright JD. and Rossi PH. Weapons, crime, and violence in America: executive summary. Washington, DC: US Dept. of Justice, National Institute of Justice. 1981.

13 Wright JD and Rossi PH. Armed and considered dangerous: a survey of felons and their firearms. Hawthorne, NY: Aldine de Gruyter. 1986.

14 Kopel DB. The samurai, the mountie, and the cowboy: should America adopt the gun controls of other democracies? New York: Prometheus Press. 1992.

15 Kates DB. Guns, murders, and the constitution: a realistic assessment of gun control. San Francisco: Pacific Research Institute for Public Policy. 1990.

16 Hemenway D, Sooinick SJ, and Azrael DR. Firearms training and storage. JAMA. 1995; 273(1):46-50.

17 Kassirer JP. Correspondence. N Engl J. Med 1992; 326:1159-60.

18 Adler KP, Barondess JA, Cohen JJ, Farber SJ, et al. Firearm violence and public health: limiting the availability of guns. JAMA. 1994; 271(16): 1281-83.

19 Mock C, Pilcher S, and Maier R. Comparison of the costs of acute treatment for gunshot and stab wounds: further evidence of the need for firearms control. J. Trauma. 1994; 36(4):516-21.

20 Harvard Medical Practice Study. Report to the State of New York. Cambridge MA: Harvard Medical School. 1990.

21 Leape LL. Error in medicine. JAMA. 1994; 272(23): 1851-57.

- 22 Kleck G and Gertz M. Armed resistance to crime: the prevalence and nature of self-defense with a gun. *Journal of Criminal Law & Criminology*. Summer 1995; 86. forthcoming.
- 23 Kellermann A, Kleck G, and Suter E. Letters to the Editor. *Journal of the Medical Association of Georgia*. June 1994; 83: 42-47.
- 24 Webster D, Chaulk, Teret S, and Wintemute G. Reducing firearm injuries. *Issues in Science and Technology*. Spring 1991: 73-9.
- 25 Christoffel KK. Towards reducing pediatric injuries from firearms: charting a legislative and regulatory course. *Pediatrics*. 1992; 88:294-300.
- 26 Federal Bureau of Investigation, US Department of Justice. Uniform crime reports: crime in the United States 1993. Washington DC: US Government Printing Office. 1994. Table 5.
- 27 Dawson JB and Langan PA, US Bureau of Justice Statistics statisticians. Murder in families. Washington DC: Bureau of Justice Statistics, US Department of Justice. 1994. p. 5, Table 7.
- 28 US Bureau of Justice Statistics. Murder in large urban counties, 1988. Washington DC: US Department of Justice. 1993.
- 29 Narloch R. Criminal homicide in California. Sacramento CA: California Bureau of Criminal Statistics. 1973. pp 53-4.
- 30 Mulvihill D et al. Crimes of violence: report of the task force on individual acts of violence. Washington DC: US Government Printing Office. 1969. p 532.
- 31 Wheeler ED and Baron SA. Violence in our schools, hospitals and public places: a prevention and management guide. Ventura CA: Pathfinder. 1993.
- 32 Max W and Rice DP. Shooting in the dark: estimating the cost of firearm injuries. *Health Affairs*. 1993; 12(4): 171-85.
- 33 Nieto M, Dunstan R, and Koehler GA. Firearm-related violence in California: incidence and economic costs. Sacramento CA: California Research Bureau, California State Library. October 1994.
- 34 McGonigal MD, Cole J, Schwab W, Kauder DR, Rotondo MF, and Angood PB. Urban firearms deaths: a five-year perspective. *J Trauma*. 1993; 35(4): 532-36.
- 35 Hutson HR, Anglin D, and Pratss MJ. Adolescents and children injured or killed in drive-by shootings in Los Angeles. *N Engl J Med*. 1994; 330: 324-27.
- 36 Zedlewski EW. Making confinement decisions - research in brief. Washington DC: National Institute of Justice, U.S. Department of Justice. July 1987.
- 37 Sugarmann J and Rand K. Cease Fire - A comprehensive strategy to reduce violence. Washington DC: Violence Policy Center. 1993.
- 38 Morgan EC and Kopel DB. The 'assault weapon' panic - political correctness takes aim at the Constitution. Golden CO: Independence Institute. 1993.

39 Fackler ML, Malinowski JA, Hoxie SW, and Jason A. Wounding effects of the AK-47 rifle used by Patrick Purdy in the Stockton, California, schoolyard shooting of January 17, 1989. Am J Forensic Medicine and Path. 1990; 11(3): 185-90.

40 Fackler ML. Wound Ballistics: a review of common misconceptions. JAMA. 1988; 259: 2730-6.

41 Fackler ML. Wound ballistics. in Trunkey DD and Lewis FR, editors. Current therapy of trauma, vol 2. Philadelphia: BC Decker Inc. 1986. pp. 94-101.

42 Pinkney DS. ERs seeing more 'war wounds' caused by assault weapons. American Medical News. April 14, 1989; 3: 42-5. cited in: American Medical Association Council on Scientific Affairs. Assault weapons as a public health hazard in the United States. JAMA 1992; 267: 3070.

43 Suter E. Testimony before the Pennsylvania State Senate Select Committee on the Use of Full- and Semi-Automatic Firearms in Crime. Pittsburgh, PA. August 16, 1994.

44 Hartzler v. City of San Jose, App., 120 Cal. Rptr. 5 (1975).

45 Warren v. District of Columbia, D.C. App., 444 A.2d. 1 (1981).

46 South v. Maryland, 59 U.S. (HOW) 396, 15 L.Ed., 433 (1856).

47 Bowers v. DeVito, U.S. Court of Appeals, Seventh Circuit, 686F.2d. 616 (1982).

48 Besides case law, statutes relieve the police of any responsibility to provide protection to individual citizens, for example, California Government Code Section 845. Failure to provide police protectionJ-

Neither a public entity nor a public employee is liable for failure to establish a police department or otherwise provide police protection service or, if police protection service is provided, for failure to provide sufficient police protection service.

49 Cramer C and Kopel D. Shall issue: the new wave of concealed handgun permit laws. Golden CO: Independence Institute Issue Paper. October 17, 1994.

50 Hernandez M. US orders in troops to quell island violence. Los Angeles Times. September 21, 1989. p. 1.

51 Cottrol RJ and Diamond RT. The second amendment: toward an Afro-Americanist reconsideration. The Georgetown Law Journal. December 1991: 80; 309-61.

52 Kates DB. Toward a history of handgun prohibition in the United States. in Kates, DB, Editor. Restricting handguns: the liberal skeptics speak out. North River Press. 1979.

53 Kessler RG. Gun control and political power. Law & Policy Quarterly. July 1983: Vol. 5, #3; 381-400.

54 Simkin J, Zelman A, and Rice A. Lethal laws. Milwaukee WI: Jews for the Preservation of Firearms Ownership. 1994.

- 55 Centerwall BS. "Television and violence: the scale of the problem and where to go from here." JAMA. 1992; 267: 3059-63.
- 56 Centerwall BS. "Exposure to television as a risk factor for violence." Am. J. Epidemiology. 1989; 129: 643-52.
- 57 Centerwall BS "Young adult suicide and exposure to television." Soc. Psy. and Psychiatric Epid. 1990; 25:121.
- 58 Vernick JS and Teret SP. Firearms and health: the right to be armed with accurate information about the second amendment. Am. J. Public Health. 1993; 83(12):1773-77.
- 59 Henigan DA. Arms, anarchy and the second amendment. Valparaiso U. Law Review. Fall 1991; 26: 107-129.
- 60 Ehrman K and Henigan D. The second amendment in the 20th century: have you seen your militia lately? Univ. Dayton LawJReview. 1989; 15:5-58.;
- 61 Van Alstyne W. The second amendment and the personal right to arms. Duke Law Journal. 1994; 43(6): 1236-55.
- 62 Kates D. Handgun prohibition and the original meaning of the second amendment. Michigan Law Review. 1983; 82:203-73.
- 63 U.S. Senate Subcommittee on the Constitution. The right to keep and bear arms: report of the Subcommittee on the Constitution of the Committee on the Judiciary. United States Congress. 97th. Congress. 2nd. Session. February 1982.
- 64 Malcolm JL. To keep and bear arms: the origins of an Anglo-American right. Cambridge MA: Harvard U. Press. 1994.
- 65 Halbrook SP. That every man be armed - the evolution of a constitutional right. Albuquerque NM: University of New Mexico Press. 1984.
- 66 Cramer CE. For the defense of themselves and the state: the original intent and judicial interpretation of the right to keep and bear arms. Westport CT & London, England: Praeger. 1994.
- 67 Presser v. Illinois. 116 U.S. 252 (1886). at 265.
- 68 U.S. v. Cruickshank. 92 U.S. 542 (1876).
- 69 Miller v. Texas 153 U.S. 535 (1894).
- 70 Roberston v. Baldwin 165 U.S. 275 (1897).
- 71 Miller v. U.S.. 307 U.S. 174 (1938).
- 72 Reynolds GH and Kates DB. The second amendment and states rights: a thought experiment. College of William and Mary Law Review. Summer 1995.
- 73 Nunn v. State. 1Ga. 243 (1846).
- 74 in re: Brickey. 8 Idaho 597, 70 P. 609 (1902).
- 75 Articles supportive of the individual rights view include:
- Van Alstyne W. The second amendment and the personal right to arms. Duke

Law Journal. 1994; 43(6): 1236-55.; Amar AR. The bill of rights and the fourteenth amendment. Yale Law Journal. 1992; 101: 1193-1284.; Winter 1992; 9: 87-104.; Scarry E. War and the social contract: the right to bear arms. Univ. Penn. Law Rev. 1991; 139(5): 1257-1316.; Williams DL. Civic republicanism and the citizen militia: the terrifying second amendment. Yale Law Journal. 1991; 101:551-616.; Cottrol RJ and Diamond RT. The second amendment: toward an Afro-Americanist reconsideration. The Georgetown Law Journal. December 1991: 80; 309-61.; Amar AR. The bill of rights as a constitution Yale Law Journal. 1991; 100 (5): 1131-1210.; Levinson S. The embarrassing second amendment. Yale Law Journal. 1989; 99:637-659.; Kates D. The second amendment: a dialogue. Law and Contemporary Problems. 1986; 49:143.; Malcolm JL. Essay review. George Washington U. Law Review. 1986; 54: 452-464.; Fussner FS. Essay review. Constitutional Commentary. 1986; 3: 582-8.; Shalhope RE. The armed citizen in the early republic. Law and Contemporary Problems. 1986; 49:125-141.; Halbrook S. What the framers intended: a linguistic interpretation of the second amendment. Law and Contemporary Problems. 1986; 49:151-162.; Kates D. Handgun prohibition and the original meaning of the second amendment. Michigan Law Review. 1983; 82:203-73. Halbrook S. The right to bear arms in the first state Bills of Rights: Pennsylvania, North Carolina, Vermont, and Massachusetts. Vermont Law Review 1985; 10: 255-320.; Halbrook S. The right of the people or the power of the state: bearing arms, arming militias, and the second amendment. Valparaiso Law Review. 1991; 26:131-207.; Tahmassebi SB. Gun control and racism. George Mason Univ. Civil Rights Law Journal. Winter 1991; 2(1):67-99.; Reynolds GH. The right to keep and bear arms under the Tennessee Constitution. Tennessee Law Review. Winter 1994; 61:2. Bordenet TM. The right to possess arms: the intent of the Framers of the second amendment. U.W.L.A. L. Review. 1990; 21:1.-30.; Moncure T. Who is the militia - the Virginia ratifying convention and the right to bear arms. Lincoln Law Review. 1990; 19:1-25.; Lund N. The second amendment, political liberty and the right to self-preservation. Alabama Law Review 1987; 39:103.-130.; Morgan E. Assault rifle legislation: unwise and unconstitutional. American Journal of Criminal Law. 1990; 17:143-174.; Dowlut, R. Federal and state constitutional guarantees to arms. Univ. Dayton Law Review. 1989.; 15(1):59-89.; Halbrook SP. Encroachments of the crown on the liberty of the subject: pre-revolutionary origins of the second amendment. Univ. Dayton Law Review. 1989; 15(1):91-124.; Hardy DT. The second amendment and the historiography of the Bill of Rights. Journal of Law and Politics. Summer 1987; 4(1):1-62.; Hardy DT. Armed citizens, citizen armies: toward a jurisprudence of the second amendment. Harvard Journal of Law and Public Policy. 1986; 9:559-638.; Dowlut R. The current relevancy of keeping and bearing arms. Univ. Baltimore Law Forum. 1984; 15:30-32.; Malcolm JL. The right of the people to keep and bear arms: The Common Law Tradition. Hastings Constitutional Law Quarterly. Winter 1983; 10(2):285-314.; Dowlut R. The right to arms: does the Constitution or the predilection of judges reign? Oklahoma Law Review. 1983; 36:65-105.; Caplan DI. The right of the individual to keep and bear arms: a recent judicial trend. Detroit College of Law Review. 1982; 789-823.; Halbrook SP. To keep and bear 'their private arms' Northern Kentucky Law Review. 1982; 10(1):13-39.; Gottlieb A. Gun ownership: a constitutional right. Northern Kentucky Law Review 1982; 10:113-40.; Gardiner R. To preserve liberty -- a look at the right to keep and bear arms. Northern Kentucky Law Review. 1982; 10(1):63-96.; Kluin KF. Note. Gun control: is it a legal and effective means of controlling firearms in the United States? Washburn Law Journal 1982; 21:244-264.; Halbrook S. The jurisprudence of the second and fourteenth amendments. George Mason U. Civil Rights Law Review. 1981; 4:1-69. Wagner JR. Comment: gun control legislation and the intent of the second amendment: to what extent is there an individual right to keep and bear arms? Villanova Law Review. 1992; 37:1407-1459.

The following treatments in book form also conclude that the individual

right position is correct:

Malcolm JL. To keep and bear arms: the origins of an Anglo-American right. Cambridge MA: Harvard U. Press. 1994.; Cottrol R. Gun control and the Constitution (3 volume set). New York City: Garland. 1993.; Cramer CE. For the defense of themselves and the state: the original intent and judicial interpretation of the right to keep and bear arms. Westport CT: Praeger Publishers. 1994. Cottrol R and Diamond R. Public safety and the right to bear arms. in Bodenhamer D and Ely J. After 200 years; the Bill of Rights in modern America. Indiana U. Press. 1993.; Oxford Companion to the United States Supreme Court. Oxford U. Press. 1992. (entry on the Second Amendment); Foner E and Garrity J. Reader's companion to American history. Houghton Mifflin. 1991. 477-78. (entry on "Guns and Gun Control"); Kates D. "Minimalist interpretation of the second amendment" in E. Hickok, editor. The Bill of Rights: original meaning and current understanding. Charlottesville: U. Press of Virginia. 1991.; Halbrook S. The original understanding of the second amendment. in E. Hickok, editor. The Bill of Rights: original meaning and current understanding. Charlottesville: U. Press of Virginia. 1991.; Young DE. The origin of the second amendment. Golden Oak Books. 1991.; Halbrook S. A right to bear arms: state and federal Bills of Rights and constitutional guarantees. Greenwood. 1989.; Levy LW. Original intent and the Framers' constitution. Macmillan. 1988.; Hardy D. Origins and development of the second amendment. Blacksmith. 1986.; Levy LW, Karst KL, and Mahoney DJ. Encyclopedia of the American Constitution. New York: Macmillan. 1986. (entry on the Second Amendment); Halbrook S. That every man be armed: the evolution of a constitutional right. Albuquerque, NM: U. New Mexico Press. 1984.; Marina. Weapons, technology and legitimacy: The second amendment in global perspective. and Halbrook S. The second amendment as a phenomenon of classical political philosophy. -- both in Kates D (ed.). Firearms and violence. San Francisco: Pacific Research Institute. 1984.; U.S. Senate Subcommittee on the Constitution. The right to keep and bear arms: report of the Subcommittee on the Constitution of the Committee on the Judiciary. United States Congress. 97th. Congress. 2nd. Session. February 1982.

regarding incorporation of the Second Amendment:

Aynes RL. On misreading John Bingham and the fourteenth amendment. Yale Law Journal. 1993; 103:57-104.;

76 The minority supporting a collective right only view:

Ehrman K and Henigan D. The second amendment in the 20th century: have you seen your militia lately? Univ. Dayton LawJReview. 1989; 15:5-58.; Henigan DA. Arms, anarchy and the second amendment. Valparaiso U. Law Review. Fall 1991; 26: 107-129.; Fields S. Guns, crime and the negligent gun owner. Northern Kentucky Law Review. 1982; 10(1): 141-162.; and Spannaus W. State firearms regulation and the second amendment. Hamline Law Review. 1983; 6:383-408.

In addition, see:

Beschle. Reconsidering the second amendment: constitutional protection for a right of security. Hamline Law Review. 1986; 9:69. (conceding that the Amendment does guarantee a right of personal security, but arguing that personal security can constitutionally be implemented by banning and confiscating all guns).

77 Kates D. The second amendment and the ideology of self-protection. Constitutional Commentary. Winter 1992; 9: 87-104.

78 Johnson NJ. Beyond the second amendment: an individual right to arms viewed through the ninth amendment. Rutgers Law Journal. Fall 1992; 24 (1): 1-81.

79 Curtis M. No state shall abridge. Durham NC: Duke. 1986. pp. 52, 53, 56, 72, 88, 140-1 and 164.

80 Amar AR. The Bill of Rights and the fourteenth amendment. The Yale Law Journal. 1992; 101: 1193-1284.

81 Aynes RL. On misreading John Bingham and the fourteenth amendment. Yale Law Journal. 1993; 103:57-104.

82 Halbrook S. Freedmen, firearms, and the fourteenth amendment. in That every man be armed: the evolution of a constitutional right. Albuquerque, NM: U. of New Mexico Press. 1984. Chap. 5.

83 New York v. United States. 112 Sup.Ct.Rptr. 2408 (1992).

84 18 USC Section 922(s) (2), the portion of the Brady Law that orders State-created chief law enforcement officers to search available records and to ascertain the legality of handgun transactions, has been held unconstitutional in *Printz v. United States*, 854 F. Supp. 1503 (D. Mont.) 1994), appeal pending (9th Cir. No. 94-36193); *Mack v. United States*, 856 F. Supp. 1372 (D. Ariz.), appeal pending (9th Cir. No. 94-16940); *McGee v. United States*, 863 F. Supp. 321 (S.D. Miss. 1994), appeal pending (5th Cir No. 94-60518); *Frank v. United States*, 860 F. Supp. 1030 (D. Vt. 1994); *Romero v. United States*; *Romero v. United States* No. 94-0419, W. D. La. (Dec. 8, 1994). *Romero* also held that Section 922(s) (6) (B) and (C), which require chief law enforcement officers to destroy records of handgun transactions and to write letters explaining denials, unconstitutional under the Tenth Amendment.

Koog v. United States, 852 F. Supp. 1376 (W.D. Tex. 1994), appeal pending (5th Cir. No. 94-50562), the only district court opinion to uphold all of Section 922(s), argues that the latest US Supreme Court precedent on the Tenth Amendment is contradictionary and makes logical leap[s]. *Id.* at 1381, 1386 n. 20.

85 Cramer C and Kopel D. Concealed handgun permits for licensed trained citizens: a policy that is saving lives. Golden CO: Independence Institute Issue Paper #14-93. 1993.

86 McDowall D, Loftin C, and Wiersema B. "Easing Concealer Firearm Laws: Effects on Homicide in Three States." Discussion Paper 15. College Park MD: University of Maryland Violence Research Group. January 1995. - also forthcoming in *Journal of Criminal Law & Criminology*. June 1995.

87 Loftin C, McDowall D, Wiersema B, and Cottey TJ. Effects of Restrictive Licensing of Handguns on Homicide and Suicide in the District of Columbia. *N. Engl J Med* 1991; 325:1615-20.

88 Kopel DB. Prison blues: how America's foolish sentencing policies endanger public safety, Washington DC: Cato Institute. Policy Analysis No. 208. May 17, 1994.

89 Hatch O and Dole R, US Senators. letter to US Attorney General Janet Reno. November 3, 1994.

90 Aborn R, President of Handgun Control Inc. Letter to the editor. *Washington Post*. September 30, 1994.

91 Howlett D. Jury still out on success of the Brady Law. USA Today. December 28, 1994. p A-2.

92 Halbrook SP. Another look at the Brady Law. Washington Post. October 8, 1994. p A-18.

93 Harris J, Assistant Attorney General, US Department of Justice. Statement to the Subcommittee on Crime and Criminal Justice, Committee on the Judiciary, US House of Representatives concerning federal firearms prosecutions. September 20, 1994.

94 Bureau of Justice Statistics, US Department of Justice. Guns and crime. Washington DC: US Government Printing Office. April 1994; NCJ-147003.

95 Federal Bureau of Investigation, US Department of Justice. Uniform crime reports: crime in the United States 1992. Washington DC: US Government Printing Office. 1993.

96 National Safety Council. Accident facts 1992. Chicago: National Safety Council. 1993.

97 Rector R. Combatting family disintegration, crime and dependence: welfare reform and beyond. Washington DC: Heritage Foundation. April 8, 1994.

98 Polsby D. The false promises of gun control. The Atlantic Monthly. March 1994. 57-70.