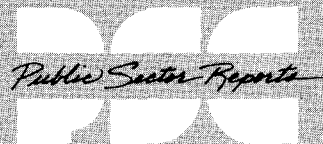


March 27, 1992



## Michigan COMMENTARY

### Americans and Guns: A Fatal Attraction

by Linda Headley and Gerald A. Faverman

*July 18, 1984: James Oliver Huberty kills twenty people and wounds fifteen others at a McDonald's restaurant in San Ysidro, California. He is armed with an Uzi semi-automatic rifle, a 12-gauge shotgun, and a semi-automatic pistol.*

*August 20, 1986: Patrick Henry Sherrill kills fifteen people and wounds six others at the U.S. Post Office in Edmond, Oklahoma. He is armed with two .45 caliber automatic pistols and one .22 caliber pistol.*

*May 20, 1988: Lori Wasserman kills one person and wounds five others at an elementary school in Winnetka, Illinois. She is armed with a .357 Magnum, a .22 caliber Baretta, and a .32 caliber pistol.*

*December 6, 1989: Marc Lepine kills fourteen people and wounds thirteen others at the University of Montreal in Montreal, Canada. He is armed with a Sturm Ruger semi-automatic hunting rifle.*

*September 25, 1989: Joseph Wesbecker kills seven people and wounds thirteen others at a printing plant in Louisville, Kentucky. He is armed with an AK-47 assault rifle, three semi-automatic pistols, and a .38 caliber Smith and Wesson.*

*January 17, 1989: Patrick West kills 5 people and wounds 29 others at an elementary school in Stockton, California. He is armed with a semi-automatic rifle and two handguns.*

*June 18, 1990: James Pough kills ten people and wounds seven others at a GMAC finance office in Jacksonville, Florida. He is armed with a .30 caliber semi-automatic clip-fed rifle, a .38 caliber revolver, a semi-automatic pistol, and a .357 Magnum.*

*October 16, 1991: George Hennard—in what is called the worst mass murder in U.S. history—kills 23 people and wounds 25 others at Luby's Cafeteria in Killeen, Texas. He is armed with two semi-automatic pistols.*

*November 1, 1991: Gang Lu kills five people and wounds one other at the University of Iowa in Iowa City, Iowa. He is armed with a .38 caliber revolver.*

*November 14, 1991: Tom McIlvane kills three people and wounds five others at a U.S. Post Office in Royal Oak, Michigan. He is armed with a Ruger .22 caliber carbine with the stock cut off.*

What do these startling incidents of death and destruction have in common? Gun control opponents would answer, "people killing people." Gun control advocates would answer, "people killing people with guns."

For many years scholars, judges, lawyers, politicians, law enforcement officers, and others have engaged in heated debates about how to deal with increasing violence and our society's continuing infatuation with guns. What cannot be debated, however, is the heavy toll firearms are taking on American lives. Each year



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in this country their use results in approximately 30,000 deaths and more than 200,000 injuries. Handguns alone are involved in 23,000 deaths, 12,700 suicides, and 1,200 fatal accidents.

These disturbing numbers are not part of a global trend: In 1988 handguns were used to kill 7 people in Great Britain, 19 in Sweden, 53 in Switzerland, 25 in Israel, 13 in Austria, and 8 in Canada. In the United States that year, 8,915 people died from handgun violence. It appears that this nation is alone in its lethal fondness for firearms.

There are many persuasive arguments on the most appropriate way to prevent violence and the misuse of guns. Opponents of firearms regulation—like the National Rifle Association (NRA)—contend that violence and crime are best dealt with through deterrence. If criminals know that they will be punished severely for using guns in the commission of a crime, the argument goes, they probably will not use them. All society has to do is to find the political will to “get tough” on crime.

Gun control opponents also contend that as long as crime rates are soaring and the current law enforcement system fails to protect people from harm, individuals have the right to use firearms to defend themselves and their families. In addition, opponents state that there are many purposes other than causing harm for which a person might own a gun—hunting, collecting, or recreational shooting, for example. Only a very small percentage of gun owners misuse their weapons, they explain, so why should the majority be punished?

The argument put forth most often by opponents of firearms regulation is that the Second Amendment to the U.S. Constitution guarantees people the “right to keep and bear arms.” To tamper with this basic right, they argue, is tantamount to prohibiting freedom of speech, the right to legal counsel, or the right to assemble. In a pamphlet published by the NRA, David Caplan, a member of the organization’s board of directors, writes: “Those who cherish liberty under the Constitution must oppose any restrictive gun control legislation—whether past, present, or future—as well as any other legislation encroaching on constitutional rights.”

Besides, gun control opponents maintain, controlling the sale and distribution of guns will not stop violent deaths. People did not stop drinking during prohibition nor have they stopped using drugs even though they are illegal; therefore, it follows that people who want to buy a gun badly enough will find a gun for sale.

All of these arguments have merit and, in different times, their logic might be sufficient to persuade reasonable people to oppose efforts to control the sale of firearms. Times are not different, however. The escalation of violence and the senseless taking of human lives have reached catastrophic proportions. Even children have not been spared: Every day ten children under age 18 are killed by handguns; every three hours a teenager in America commits suicide with a handgun; and each year one in 32 urban black males aged 16–24 is victimized by a criminal bearing a handgun.

Gun control advocates argue that one way to put a halt to this meaningless destruction is to impose limits on the purchase of certain firearms and ammunition. For example, a bill that was introduced in Michigan two years ago would have prohibited the manufacture, sale, distribution, or possession of shotguns capable of holding six or more rounds of ammunition; the bill did not pass. In 1990 a bill was passed that prohibited the manufacture, sale, or possession of armor-piercing ammunition, or “cop killers” as they are called on the streets. This ammunition is so powerful and destructive that it can easily penetrate the bulletproof vests worn for protection by police officers.

But what about the arguments gun control opponents raise against firearms regulation? Is deterrence a more effective way to reduce violent crimes than limiting access to guns and ammunition? Should not citizens have the opportunity to protect themselves and their families? Does not the U.S. Constitution guarantee the right of people to “keep and bear arms”?

With regard to deterrence, there is considerable evidence that it does not effectively reduce violent crimes. For example, between 1980 and 1988 the Michigan prison population grew more than 90 percent; the state was locking up more prisoners for longer periods than ever before. Despite this effort to “get tough on crime,”

the number of murders in Michigan *increased* 9.4 percent (between 1983 and 1988). Thus, it appears that showing criminals that they will be punished severely for their actions has not brought about a reduction in violent crimes.

Questions about deterrence also are raised frequently in discussions of capital punishment. Supporters of the death penalty assert that the potential for such severe punishment deters violent crimes. The data, however, do not support that assertion. Studies comparing Michigan (which does not have the death penalty) to its neighbors, Ohio and Indiana (both of which have the death penalty), show that from 1920 to 1974 Michigan's homicide rate was as low or lower than that of either state—despite the fact that those states put 302 people to death during that period.

People who question the efficacy of deterrence also point out that murder, in the vast majority of cases, is a crime of passion against relatives, friends, or acquaintances. Because of the highly emotional nature of these crimes, it is unlikely that they could be deterred by any threat of punitive measures. This argument is particularly compelling when one considers that in every mass murder case listed at the beginning of this document the murderer killed him- or herself after the murderous rampage. Thus, if the person wielding the gun commits suicide after committing a crime, the potential for swift and severe punishment is irrelevant.

With regard to self-protection, it is interesting that only about 150 deaths that are a result of defending one's person or property are reported nationally each year. The chances are much greater that the handgun will be used for suicide or cause an accidental death. As mentioned earlier, about 12,700 people use handguns each year to commit suicide, and 1,200 people die each year in accidental shootings.

The most controversial and highly debated issue in the argument over gun control is whether the Second Amendment to the U.S. Constitution guarantees Americans the unrestricted right to "keep and bear arms." It is important when debating this question to refer to the document itself. What the Second Amendment says is: "A well-regulated militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."

As is true of the entire U.S. Constitution, this phrase is open to interpretation, and the debate over the correct interpretation continues today. Gun control opponents have chosen to base their interpretation narrowly on the words "the right to keep and bear arms shall not be infringed." Gun control advocates, however, ask: "What about the well-regulated militia and the security of a free state? Can one in good conscience take the right to keep and bear arms out of context and disregard the conditions under which the right originally was granted?"

Scholars generally agree that when the fathers of this country wrote the Second Amendment, their primary concern was that states have the ability to protect themselves from a potentially totalitarian federal government. By allowing them to create a "well-regulated militia" and allowing the members of that militia to "keep and bear arms," it was believed that states would not fall prey to the unreasonable and unfair dictums of the national government. When the context within which the right was granted is examined, it seems clear that individuals, separate from their involvement in a militia, were not guaranteed "the right to the keep and bear arms."

In addition, several long-established judicial precedents provide additional clarification on the necessity of a connection with the militia. For example, in *U.S. v. Cruikshank*, 1876, the ruling established that the Second Amendment does not give an individual the right to bear arms (that is, outside of a collective body or militia) and, while the power of Congress is restricted with relation to regulating firearms, the power of the states is not. In *U.S. v. Miller*, 1939, the court decided that Congress, not just state legislatures, could regulate guns as long as the regulations they imposed did not interfere in any way with the efficiency and effectiveness of the militia.

When these court decisions are cited, it is common for gun control opponents to point out that militias no longer exist and, therefore, that portion of the amendment is not applicable. They seem to forget, however,

about an important change in the law. In 1916 the National Defense Act was passed; that act supplanted the citizen militia with the National Guard, which does exist today. Thus, to separate the "right to keep and bear arms" from the "militia" because militias technically no longer exist is shaky logic at best.

As to the extent to which individual states can control firearms, two court cases have given some guidance. In *Presser v. Illinois*, 1886, the Supreme Court fully endorsed a state's right to regulate firearms by upholding a state statute banning the formation and parading of armed groups of men. In more recent history, Morton Grove, Illinois, passed an ordinance in 1981 banning handgun ownership for all but members of gun clubs, collectors, and police and security personnel. When the case was brought to the U.S. Supreme Court, the justices declined to hear it, thus implicitly upholding a city's right not only to regulate but to ban handgun use.

Given these court cases and the original intent of the Second Amendment to the U.S. Constitution, it seems clear that individuals are not guaranteed an unrestricted right to possess and use firearms. U.S. Supreme Court Justice Hugo Black wrote in the *New York Times* (February 26, 1971): "The layman's constitutional view is that what he likes is constitutional and that which he doesn't like is unconstitutional." When gun control opponents pull "the right to keep and bear arms" out of context and use it to justify the right of any individual to own any gun, regardless of the damage it can cause, it appears that they are interpreting the Constitution on the grounds of what they like and not what it says and means.

While gun control advocates recognize that limiting access to certain types of firearms and ammunition will not stop all people from using guns (just as prohibition did not stop all people from drinking and making drugs illegal did not stop all people from using them), there is no reason why it should not be part of a larger package of measures used to reduce violent crimes. As former Chief Justice Warren E. Burger said, there is no reason why society cannot protect the rights of hunters, sports enthusiasts, and collectors to own and keep sporting guns at the same time that it regulates "Saturday night specials," machine guns, assault rifles, and other nonrecreational weapons that "surely are as much in need of regulation as motor vehicles."

There also is no reason why a short waiting period between the time a person tries to purchase a gun and when s/he takes possession of it should not be implemented. (The "Brady Bill," which would have imposed such a measure, was defeated last year in the U.S. Senate; that body killed a similar bill this month.) A waiting period would allow time for background checks to be conducted to determine if purchasers have a criminal record or have been committed to a mental institution. (At present, purchasers, on the honor system, only have to answer "yes" or "no" to questions about their personal history on a short, informal questionnaire.) A waiting period also would provide time for people likely to commit crimes of passion to "cool off." Given the highly emotional nature of such crimes, a waiting period is likely to be a much more effective deterrent than the potential for swift and severe punishment.

If we have learned anything from the controversy over firearms regulation, it is that for every argument put forth by gun control opponents, an equally compelling argument is introduced by gun control advocates. And while the rhetoric is interesting and the debate engaging, lack of gun control is costing thousands of human lives. After each mass killing citizens should ask themselves the following question: How violent does our society have to become and how many innocent victims have to suffer before we are willing to focus on practical measures to preserve the right not to be threatened or killed with a gun? It is perplexing that on numerous fronts our society is willing to challenge whether the rights of individuals should, in all cases, take precedence over the health and safety of the greater public; why do we still lack the political will to do so on the issue of gun control?

*Research assistance on this Commentary was provided by Kurt Mulder.*

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