

**TEN MYTHS
ABOUT
GUN CONTROL**

HANDGUN IS TO KILL PEOPLE. THE MAJORITY OF AMERICANS FAVOR STRICTER FEDERAL GUN CONTROLS. ARMED CITIZENS ARE NOT A DETERRENT TO CRIME. A GUN IN THE HOME IS FIVE TIMES MORE LIKELY TO KILL A FAMILY MEMBER THAN IT IS A CRIMINAL. GUN REGISTRATION WILL NOT CURB CRIME BY DISARMING CRIMINALS. . . . ONE-TWO-THIRDS OF ALL MURDERS ARE COMMITTED AMONG FAMILY MEMBERS, FRIENDS, LOVERS OR ACQUAINTANCES. HANDGUNS ARE ACCIDENTS WAITING TO HAPPEN. . . . GUN CONTROL LAWS CAUSE LOW CRIME RATES IN ENGLAND AND JAPAN. . . . LAW-ABIDING CITIZENS HAVE NO REASON TO FEAR

TEN MYTHS ABOUT ‘‘GUN CONTROL’’

‘‘The only way to discourage the gun culture is to remove the guns from the hands and shoulders of people who are not in the law enforcement business.’’

— *The New York Times*, September 24, 1975

That editorial conclusion by the nation's most influential news journal, one noted for its advocacy of individual liberties, represents the absolute extreme in the firearms controversy—that no citizen can be trusted to own any kind of firearm. This expressed attitude is particularly ironic since the overwhelming majority of the 60 million American firearms owners have done nothing to deserve such a sweeping condemnation. It is the product of a series of myths which—through incessant repetition—has been mistaken for truth. These myths are being exploited to generate fear and mistrust of the decent and responsible Americans who own firearms. Yet, as this brochure proves, none of these myths will stand up under the cold light of fact.

MYTH: "The majority of Americans favor strict new additional Federal gun controls."

Until the fall of 1975, when Decision Making Information (DMI), a public opinion research firm of Santa Ana, California, completed a comprehensive survey of Americans' thinking on firearms control, virtually no in-depth public opinion research on the subject existed. That first effort showed indisputably that the American people strongly support the rights of private firearms ownership.

The second and most recent DMI poll, released in March 1979 reaffirms these early results. The DMI project, directed by Dr. Richard B. Wirthlin, was based on a scientifically selected sample of registered voters in 1,500 in-home interviews in May and June of 1978 and supported by in-depth telephone interviews of 1,010 registered voters in December.

Among these recent findings:

- 88 percent of registered voters believe they have an individual right to keep and bear arms.

- Gun ownership was acknowledged in 47 percent of voters' households, projected to 45 million gun owners with 23 percent of the total sample having one or more handguns in the home. In 14 percent of all voters' households, or 13 million households, a gun had been used in defense of self, family, or property. With many voters having a direct experience with firearms for self-defense, DMI finds that 83 percent feel "most people who have guns in their homes feel safer because of it."

- Crime is perceived as an increasing threat in the coming decade with the most feared crimes being crimes of violence committed by criminals, especially murder in the course of another crime and robbery/mugging. So-called "crimes of passion"—murder by a relative or friend—are of little concern, ranking with "white collar crimes" of fraud/embezzlement/forgery.

- 93 percent favor strict mandatory penalties for criminal misuse of firearms in commission of crime. According to DMI, "The electorate clearly sees steps to increase or hasten the punishment suffered by criminals, especially violent criminals, as the best way to fight crime."

- In an open-ended question on the best means to fight crime, only one percent suggest gun controls. DMI says that since its 1975 survey, "'gun control' has dropped almost completely out of the public mind—it does not spontaneously occur to voters as an anti-crime measure."

- 83 percent oppose a ban on handguns. 72 percent believe that domestic shootings do not justify a handgun ban. Over 80 percent reject the arguments that banning handguns would prevent assassination attempts on public officials.

- 88 percent agree that "registration of handguns will not prevent criminals from acquiring or using them for illegal purposes," and 61 percent oppose the federal government spending massive sums for a registration system. Furthermore, DMI finds that, "71 percent would be concerned about the loss of privacy entailed in computerized files virtually inherent in a nationwide registration system."

- 51 percent feel that national gun registration might well lead to confiscation.

The general consensus of the DMI survey finds that while most Americans see crime

as worsening, they do not view gun restrictions as effective measures for government to institute in fighting crime. Above all else, the DMI findings conclude that "Clearly, a majority of the American people want government to focus on tougher treatment of criminals before trying new social engineering as the treatment for crime."

These findings are supported by the findings of a Caddell poll [Cambridge Reports, Inc.] sponsored by Milton Eisenhower's Center for the Study and Prevention of Handgun Violence in 1978. Although that Center is on record favoring restrictive gun laws and the poll's question order and wording reflected this bias, the poll confirmed overwhelming opposition to a handgun ban and found that 78 percent of the American people believe that "Gun control laws affect only law-abiding citizens; criminals will always be able to find guns."

There have been four other measures of public opinion on firearms control. In 1975, when the Consumer Product Safety Commission asked for public comment on its proposal to ban handgun ammunition as a "hazardous substance," Americans sent CPSC an estimated 300,000 pieces of mail in opposition to the proposed bullet ban, and less than 300 in favor of the action.

In 1978, the U. S. Treasury Department attempted, by federal regulation, to mandate submission of quarterly reports on all firearms transactions for entry on a central computerized file in Washington, and to establish a so-called "unique" serial number stamped on all newly manufactured firearms. The end result of nearly 345,000 public comments ran 43-to-1 in opposition to the Treasury proposals. Even the responses from the law enforcement sector opposed the provisions 16-to-1. In the face of the largest volume of public comment ever logged against a pending Federal action, the Treasury Department withdrew its proposed firearms regulations in February 1979.

The best tests of public opinion occur at the polls. In April 1981, at the height of the anti-gun hostility raised by the media after the shooting of President Reagan, the voters of Emporia, Kansas, voted by a 2-to-1 margin against encouraging the state legislature to enact stricter "gun control" laws.

The ultimate test of public attitude on the "gun control" question came in November 1976 when Massachusetts voters faced a referendum question calling for the prohibition of all handguns. Although the DMI poll had found New England to be the region of the country most sympathetic to restrictive firearms legislation, the ban-the-handgun question was crushed by a margin of more than 2-to-1.

MYTH: "Since a gun in a home is six times more likely to kill a family member than to stop a criminal, armed citizens are not a deterrent to crime."

This myth, stemming from a superficial "study" of firearms accidents in the Cleveland, Ohio, area, merely represents a comparison of 148 accidental deaths (and some suicides) to the deaths of 23 intruders killed by homeowners over a 16-year period.¹

Gross errors in the "study" and in its citation by "gun control" advocates include: no distinction is made between handgun and long gun deaths; suicides were included as accidental deaths; all accidental firearm fatalities were counted whether the deceased was part of the "family" or not; and Cleveland's experience with crime and accidents during those years was atypical of the nation as a whole.

¹Rushforth, et al., "Accidental Firearm Fatalities in a Metropolitan County," 100 Am. Journal of Epidemiology 499 (1975).

Moreover, in a later study, the same researchers noted that roughly 10 percent of deaths classified as homicides are actually justifiable²—that means self-defense accounts nationally for over two thousand homicides annually. The most common weapon used is the firearm, especially the handgun.

But the value of firearms for self-defense cannot be measured simply by a "body count." The fact is, in many cases the armed citizen is able to avert criminal violence, and possible death or injury to himself and his family, without firing a shot—certainly without killing. Firearms often are used to drive off criminals by pointing the gun and perhaps issuing a warning shot, or holding them at bay until police arrive. Many criminals surely are deterred by the very knowledge that they may have to face an armed citizen. Actual killing or even wounding of an intruder occurs only infrequently.

There is ample evidence that armed citizens have a marked deterrent effect on crime. Where public programs emphasizing self-defense with firearms are instituted, crime rates decline. For example, after police trained some 6,000 Orlando, Florida, women in self-defense with firearms in 1966, the area's rape crimes were cut in half. The program also produced a decline in armed robbery and burglary, all of which gave Orlando the distinction of being the only U.S. city to show an overall crime decrease that year.

In Detroit in 1966, there was a record 1,037 chain store and grocery robberies in which many storekeepers were beaten and some murdered. As a result of an incident in which an elderly grocer and his wife were beaten to death after giving up their money, a grocery trade newspaper sponsored firearms self-defense clinics in early 1967. By the second

²Rushforth, et al., "Violent Death in a Metropolitan County," 297 N. Eng. Journal of Medicine 531, 533 (1977).

quarter of 1967, grocery store robberies had dropped to 10 per month from the previous year's 86 per month.

Again, in Highland Park, Michigan, store holdups dropped from 1½ per day to *no robberies* for more than four months from the day police began a well publicized firearms training class for merchants.

Clearly, the announced presence of firearms in the hands of citizens has deterred crime. In general, FBI crime data and polling data on gun ownership suggest that widespread gun ownership serves to deter robbery and burglary. Areas where gun ownership is most widespread report lower levels of robbery and burglary—crimes most feared by a majority of Americans.

Two 1978 national opinion surveys suggest that guns, and particularly handguns, have been used quite frequently and advantageously for defense of person and property. A Caddell poll [Cambridge Reports, Inc.] found that 3 percent of the adult population, or 4.8 million adult Americans, own a handgun for self-defense and have used it for defense. That figure is supported by the Decision Making Information (DMI) poll, which found that 14 percent, or 13 million Americans, live in households in which a family member had used a firearm for protection. Additional questions on handgun ownership and type of defensive use results in a projected 6.6 million Americans using a firearm for protection from another person and about 4.8 million handgun owners—almost exactly the same as the Caddell survey. Those surveys suggest that at least 200,000 times per year, at least 600 times per day, at least 25 times every hour, a handgun is used for protection from a criminal by a law-abiding American citizen.

The only meaningful measure of the successful use of firearms for self-defense is in terms of lives and property protected from criminal acts. Unfortunately, there is no way

to count the number of citizens who did not become "statistics" because they had firearms which they knew how to use without endangering themselves and their families.

MYTH: "The only purpose of a handgun is to kill people."

This often repeated statement is patently untrue, but to those Americans whose only knowledge of firearms is the nightly carnage and bloody violence of television, it might seem believable. But when anti-gun scholar James Wright of the University of Massachusetts read some sportsmen's publications, he reached a different conclusion: "Even the most casual and passing familiarity with this literature is therefore sufficient to belie the contention that handguns have 'no legitimate sport or recreational use.' "

There are an estimated 50 to 60 million privately owned handguns in the United States. They are used for hunting, target shooting, protection of families and businesses, and numerous other legitimate and lawful purposes. Only an infinitesimal percent ever are used by criminals in criminal conduct. In 1980, for example, the FBI reported fewer than 12,000 murders in which handguns were used. That amounts to less than .02 percent (two hundredths of one percent) of the privately owned handguns being used to kill. That fact alone renders the myth about the "only purpose" of handguns absurd, for more than 99 percent of all handguns are used neither to murder nor for any other unlawful purpose.

But why do so many Americans wish to own handguns? Many people hunt with handguns each year. Still more target shoot either in formal competition or as a weekend hobby. Millions of Americans are collectors who appreciate handguns for design, workmanship, or historic qualities.

But by far the most commonly cited reason for owning a handgun is self-defense. At least one-sixth of the families in America own handguns for protection and security.

The purpose of a handgun in the home is to preserve life and to discourage acts of violence. It is the immediate means a family has to thwart ultimate criminal force. A handgun's function is one of insurance as well as defense. A handgun in the home is a contingency, based on the knowledge that if there ever comes a time when it is needed, no substitute will do. Certainly no violent intent is implied, any more than a purchaser of life insurance intends to die soon.

MYTH: "Gun registration will curb crime by disarming criminals."

Under existing Federal law and under most state and local laws (some 20,000 gun laws are in effect throughout the United States), anyone convicted of a felony is prohibited from buying, possessing, or owning a firearm of any kind. Studies indicate the effect of these laws on crime is negligible or nonexistent. Criminals with prior felony convictions have ready access to firearms through illegal sources.

In addition, ordinary gun registration requirements cannot constitutionally be used to track down felons with firearms. To require ex-felons to register their weapons—with the registration information usable against them in criminal cases—or to face punishment for not registering their firearms, violates the Fifth Amendment's protection against compulsory self-incrimination. Logic dictates that criminals will not register illegal weapons; the Supreme Court has said they do not have to.

In order to retain some registration without violating the constitutional rights of criminals, Congress has legislated that the information provided for registration may neither be used for the prosecution of crimes up to the time of registration, nor be provided to other federal or state law enforcement authorities.

To further meet that constitutional problem, some gun registration laws have been written to exclude ex-cons from registration requirements. Only the law-abiding would be required to comply with registration requirements.

Without knowing the constitutional problem involved in asking criminals to register their illegally possessed firearms, only 12 percent of Americans expect gun registration laws to curb crime, according to the 1978 DMI findings. Very few think that even an outright ban on gun ownership can reduce crime.

MYTH: "Most murders are argument-related 'crimes of passion' against a relative, neighbor, friend or acquaintance, committed by previously law-abiding individuals with no prior criminal records."

The truth is that the vast majority of murders are committed by persons with long-established patterns of violent criminal behavior. Numerous studies—by the Senate Subcommittee on Juvenile Delinquency, by the FBI, and by several big city police departments—clearly substantiate this fact.

The average murderer—according to the Senate study of the 120 largest metropolitan areas—had committed six violent criminal

offenses before committing murder. And most studies indicate that 65-75 percent of persons arrested for murder have prior records—as do 40-50 percent of murder victims.

The 1980 FBI data showing that 51 percent of the murderers were well-known to the victims is not so surprising. Violent criminals compete with other criminals, with whom they are acquainted. And they have fallings out with erstwhile associates: addicts with pushers, pimps with prostitutes, burglars with fences, and so forth.

Clearly, murderers are not average, hard-working, law-abiding citizens—except that, like the law-abiding citizens, they have friends and relatives who may become the victims of their violent behavior.

Other felons, too, are seldom first-time offenders committing unpremeditated crimes.

In a study of recidivist felons in a California prison, conducted by the Rand Corporation for the Law Enforcement Assistance Administration (LEAA) and released in August 1977, researchers found 75 percent of their sample had on the average served slightly more than two prior prison terms, yet the entire sample of 49 habitual offenders interviewed self-reported more than 10,500 felonies during an average 20-year criminal period. Rand recommendations included extended prison sentences for those offenders "whose prior record and current charges reflect serious and sustained criminal activity... at the earliest time such offenders have been identified."

Going into further detail in a 1977 study of "What Happens After Arrest," the Institute for Law & Social Research found that only 30 percent of all persons arrested during the period 1971-75 in Washington, D.C. "accounted for 56 percent of all arrests brought to the Superior Court during that period," yet more than half of all arrests never got past the prosecutor's office. More frightening, one-third of all those arrested for murder or

robbery were out on some form of early or conditional release at the time of the offense.

MYTH: "Stiff gun control laws work as evidenced by the low crime rates in England and Japan."

Low crime rates in England and Japan cannot be attributed to their gun laws. Both nations have homogeneous, closely-knit societies with long traditions of cultural restraint on violent crime. And, in Japan, the efficiency of the criminal justice system is an important factor as well. While only 19 percent of the serious crime in the United States is cleared by arrest, Japan solves nearly 60 percent of its serious crime. In Tokyo, there is a 90 percent likelihood that arrestees will be convicted, while recent studies show that in Washington, D.C., less than 30 percent of arrestees are convicted.

Part of Japan's low crime rate can be explained by the sheer efficiency of its criminal justice system—an efficiency aided by having fewer protections of the right to privacy than exist in the United States. The most basic reason, however, is wide respect for law and order so deeply ingrained in the Japanese citizenry. This cultural factor has been passed along to their descendants in the United States, and the murder rate for Japanese Americans—who have access to firearms—is even lower than the murder rate in Japan itself.

Prior to 1920, anyone in England, including criminals, lunatics, drunkards, or law-abiding citizens could freely possess firearms. Since 1920, when the first British gun laws went into effect, England's rate of armed robbery

and robberies involving the use of firearms has increased one-hundredfold. In 1972, Chief Inspector Colin Greenwood, a British police officer, in a study of English firearms laws for the University of Cambridge Institute of Criminology, concluded that English gun laws had no effect on serious armed crime and had not reduced the number of illegal firearms in the country.

In Britain, violent crime has increased fifteenfold since it stiffened its restrictive gun law in 1957. The number of crimes in which firearms were used for all of England and Wales more than doubled between 1971 and 1979, compared to a 20 percent increase during the same period in the U.S. Total violent crime in London increased 23 percent over the period 1976-77, with an increase in muggings of 25 percent during that one-year time frame.

Interestingly, advocates of stricter gun curbs who claim that British gun laws are effective, avoid mention of Northern Ireland. The gun laws there are even stricter than in the rest of the United Kingdom, and there are even fewer limitations on police enforcement techniques. Nonetheless, the murder rate there exceeds that in the United States.

The "availability" of firearms does not cause crime. If gun availability were a factor in crime rates, the world's highest crime rate would be in Switzerland where every able-bodied man between the ages of 18 and 60 has a machine gun and ammunition readily available in his home. Yet Switzerland has a lower crime rate than either Japan or England, where private ownership of firearms is virtually prohibited.

MYTH: "Law-abiding citizens have no reason to fear licensing and registration laws."

In Massachusetts, firearms control proponents, including Senator Edward M. Kennedy

(who has consistently claimed registration would not be used to take guns), pushed for a \$200 million effort to confiscate all legally owned handguns in that state—an effort that was ultimately rejected. Middlesex County Sheriff John Buckley, one of the kingpins in that attempt (which would have disarmed off-duty police as well as all private citizens), wrote of the confiscation question: “Banning handguns is not a device for fighting crime.” But clearly, it was a device for forcibly taking guns from the law-abiding. And how did the proponents of the ban-the-handgun referendum plan to locate those firearms? From the existing registration and handgun owner licensing lists.

Voters in Massachusetts were appalled. In rejecting the handgun ban referendum, they confirmed that “law-abiding citizens have every reason to fear licensing and registration laws.”

As stated by Charles Morgan, avowed handgun prohibitionist and director of the ACLU’s Washington office, in an October 1, 1975, hearing of the House Subcommittee on Crime: “I have not one doubt, even if I am in agreement with the National Rifle Association, that that kind of a record-keeping procedure is the first step to eventual confiscation under one administration or another.”

The City of Cleveland provides another example of the relationship between firearms registration and firearms confiscation. In 1975, the Cleveland City Council enacted a “Saturday Night Special” ban, which was subsequently challenged and held unconstitutional in the Municipal Court. In 1976, the Council enacted a handgun registration ordinance, under which 11,000 citizens duly registered their handguns. In August 1977 the 8th District Court of Appeals reversed the 1975 Municipal Court decision—thereby reenacting the “SNS” ban. Persons who previously registered handguns termed “Saturday Night Specials” were thus identified and

notified that ownership of those guns was illegal and subject to confiscation under the “SNS” law.

The local reaction to the quick change from registration to confiscation forced the police to postpone the confiscation. But the threat was very real, and was felt by citizens who had given up their guns before the grace period was indefinitely extended.

Such threats continue. In 1981, Hawaii, New Jersey, Illinois, and Massachusetts all faced legislative proposals to ban handguns. Registration rolls would be used either to confiscate guns immediately or as soon as the current permits—or their owners—expired. California voters may soon face a handgun ban referendum, similar to Massachusetts’ 1976 referendum, with decades of registration rolls to serve as the basis for finding handguns.

Given these threats, a majority of Americans (51 percent) believe, according to the DMI survey, that national gun registration might well lead to confiscation of registered firearms. Foreign examples, in both tyrannical and democratic regimes, further support that contention. The Nazis used registration lists to confiscate firearms in Czechoslovakia and Denmark. With the coming to power of Communist regimes, confiscation has occurred in Hungary and Cuba. Former Ugandan President Idi Amin called for the confiscation of registered firearms in 1978. And a few terrorist attacks led to confiscation of registered firearms in the more benevolent jurisdictions of Ireland and Bermuda.

While the supposed objective of registration laws is to keep guns out of the hands of criminals, common sense says that the criminal won’t register his guns. And yet it is the law-abiding citizens who will be made to pay the price for such schemes.

Total registration would require a computer system second only to the Social Security System. Still additional costs would

be incurred by police investigating and processing legitimate citizens, rather than doing their usual jobs of investigating crimes. Indirect costs to a national registration system would include increases in crime, as well as a federally-mandated increase in the size, hence the cost, of state and local police departments.

These are only a few points illustrating the gun owner's opposition to registration, national or state.

MYTH: "The right guaranteed under the Second Amendment is limited specifically to the arming of a 'well-regulated Militia' that can be compared today to the National Guard."

The Second Amendment reads: "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."

In contrast to other portions of the Constitution, this Amendment contains no qualifiers, no "buts," or "excepts." It is a straightforward statement affirming the people's right to possess firearms.

The perception that the Second Amendment guarantees a collective rather than an individual right is totally inaccurate. The term "militia" historically refers to the people at large, armed and ready to defend their homeland and their freedom with weapons supplied by themselves. Title 10, Section 311 of the U.S. Code states: "The militia of the United States consists of all able-bodied males at least 17 years of age" Moreover, historical records, including Constitutional Convention debates and the Federalist

Papers, clearly indicate that the purpose of the Second Amendment was not to create a standing army, but to guard against the tyranny that the framers of the Constitution feared could be perpetrated by any professional armed body of government. It should be noted here that the arms, records, and ultimate control of the National Guard today lies with the Federal Government. This is the very condition the founding fathers warned against.

In Federalist Paper No. 29, for example, Alexander Hamilton assured the people that the army could always be a "select corps of moderate size" and that the "people at large [were] properly armed" in order to serve as fundamental checks and balances against the standing army, the most dreaded of institutions. James Madison, in Federalist Paper No. 46, further promised the American people that, unlike the governments of Europe which were "afraid to trust the people with arms," the American people were to continue under the new Constitution to possess "the advantage of being armed" and thereby continually able to form the militia when needed as a "barrier against the enterprises of despotic ambition."

The case of *United States v. Miller* is frequently cited as a definite ruling that the right to keep and bear arms is a collective right, protecting the organized state militia—now the National Guard—rather than the individual right to own guns. But that was not the issue in *United States v. Miller* and no such ruling was made.

While such a decision was sought by the Justice Department, which was the *only* party presenting an argument in the case, the Court decided only that the National Firearms Act of 1934 was constitutional *absent the presentation of evidence to the contrary*. The case hinged on the narrow question of whether a sawed-off shotgun was suitable for militia use, and its owner-

ship by individuals thus protected by the Second Amendment. The Court ruled that: "In the absence of [the presentation of] any evidence tending to show that possession of or use of a 'shotgun having a barrel of less than eighteen inches in length' at this time has some reasonable relationship to the preservation of efficiency of a well regulated militia, we cannot say that the Second Amendment guarantees the right to keep and bear *such an instrument*. [Emphasis added.] Certainly it is not within judicial notice that this weapon is any part of the military equipment or that its use could contribute to the common defense."

Because no evidence or argument was presented by other than the Justice Department, the Court was not made aware that some 30,000 short-barreled shotguns were used as "trench guns" during World War I, nor could it have known that similar guns would be used in World War II and Viet Nam.

However, just three years later, in *Cases v. U.S.*, a case which the Supreme Court chose not to review, a U.S. Circuit Court of Appeals said: "The rule of the *Miller* case, if intended to be comprehensive and complete would seem already outdated...because of the well-known fact in the so-called 'Commando Units' some sort of military use seems to have been found for almost any modern lethal weapon."

The Supreme Court has ruled on only three other Second Amendment cases—all during the last half of the nineteenth century. In one of these cases, the First Amendment guarantee of freedom of assembly was raised; in another, the Fourth Amendment guarantee against unreasonable searches and seizures was raised. The Court held that the Second Amendment, as well as the other Constitutional amendments, were limitations solely on the powers of Congress, and not upon the powers of the States. It was not until two generations later that the Court

began to rule, under the Fourteenth Amendment, that the First, Fourth, and various other portions of the Constitution and Bill of Rights limited both Congress and State legislatures. No similar decision concerning the Second Amendment has since been made—the Court has remained silent.

However, it is quite strange that advocates of prohibitive Federal law would cite *U.S. v. Cruikshank* (1876) and *Presser v. Illinois* (1886), for in each case the Court held that the Second Amendment right to keep and bear arms "shall not be infringed by Congress."

MYTH: "A person in a public place with a gun and without a permit is looking for trouble."

Gun prohibitionists have seized on this myth to back legislative/administrative proposals to penalize and discourage gun ownership by imposing a mandatory prison term on persons carrying or possessing firearms without proper authorization. Massachusetts' Bartley-Fox Law and New York's Koch-Carey Law are premier examples of the current "gun control" strategy. Such legislation is detrimental only to peaceful citizens, not criminals.

By the terms of such a mandatory or increased sentence proposal, the unlicensed carrying of a firearm—no matter how innocent the circumstances—is penalized by a six to twelve month jail sentence. It would be imposed on citizens although in many areas it is virtually impossible for persons to obtain a carry permit. Thus it is not difficult to contemplate circumstances which would exten-

uate such a sentence: fear of crime, arbitrary denial of authorization and red-tape delay in obtaining official permission to carry a firearm, or misunderstanding of the numerous and vague laws governing the transportation of firearms.

The potential for unknowingly or unwittingly committing a technical violation of a licensing law is enormous. Myriad legal definitions of "carrying" vary from state to state, and city to city, including most transportation of firearms—accessible or not, loaded or not, in a trunk or case. And out-of-state travellers are exceedingly vulnerable because of these various definitions.

It is necessary only to look at the first persons arrested under the Massachusetts and New York "mandatory penalty" laws for proof that such laws are misdirected: an elderly woman passing out religious pamphlets in a dangerous section of Boston, and an Ohio truck driver coming to the aid of a woman apparently being kidnapped in New York City.

In New York City—prior to the enactment of the Koch-Carey mandatory sentence for possession law—the bureaucratic logjam in the licensing division, combined with a soaring crime rate, forced law-abiding citizens to obtain a gun illegally for self-protection. In effect, citizens admitted that they would rather risk a mandatory penalty for illegally owning a firearm than risk their lives and property at the hands of New York's violent, uncontrolled criminals. Literally, honest citizens feared the streets more than the courtroom.

In contrast, the city's criminal element faces no similar threat of punishment. A report carried in the January 4, 1981, issue of the *New York Times* says it all: From 104,413 felony arrests in 1978, there were 88,095 cases dismissed by district attorneys or treated as misdemeanors. Of the 16,318 resulting in indictment, 56 percent resulted in felony pleas, 16 percent in misdemeanor pleas, 13 percent in trials to verdict, 12 per-

cent in dismissals and 3 percent in other dispositions.

Yet, under a mandatory or increased penalty for carrying law, gun owners are treated separately and distinctly as being more dangerous and more of a threat to society than perpetrators of violent crimes—simply for possessing or carrying a firearm without the requisite papers. In championing New York's tough Koch-Carey law, Mayor Ed Koch said contemptuously of gun owners, "Nice guys who own guns aren't nice guys." No such rancor was expressed about the city's criminal justice system where the chances of hardened criminals being arrested on felony charges are one in one hundred. And the chance of any given felony arrest ending in a prison sentence is one out of 108, according to the *New York Times* article.

In essence, a mandatory or increased sentence for firearms carrying convolutes the criminal justice system by making gun owners "criminals" subject to a severe, fixed jail sentence while murderers, robbers, rapists, drug pushers, and "white collar" or corporate thieves often go free. It reflects a world turned upside down, where criminals break laws with impunity and ordinary citizens face harsh punishment. Regrettably, such schemes divert scarce law enforcement resources from pursuing and apprehending violent criminals to surveilling citizens who have no violent intentions.

Such legislation invites police routinely to stop-and-frisk people randomly on the street on suspicion of firearms possession. In fact, the Police Foundation has called for the random use of metal detectors on the streets to apprehend people carrying firearms without authorization. In waiving the constitutionally guaranteed right to privacy, police would be empowered under the Police Foundation's blueprint for disarmament to "systematically stop a certain percentage of people on the streets...in business neighborhoods and run the detectors by them, just as you do at the

airport. If the detectors produce some noise then that might establish probable cause for a search."

While admitting that such "police state" tactics would require "methods...that liberals instinctively dislike," government researchers James Q. Wilson and Mark H. Moore called for more aggressive police patrolling in public places, saying: "To inhibit the carrying of handguns, the police should become more aggressive in stopping suspicious people and, where they have reasonable grounds for their suspicions, frisking (i.e., patting down) those stopped to obtain guns. Hand-held magnet meters, of the sort used by airport security guards, might make the street frisks easier and less obtrusive. All this can be done without changing the law." (*The Washington Post*, April 1, 1981) Note, they said "people," not criminals.

In conclusion, mandatory or increased penalties for possession laws can only have the effect of creating scores of artificial gun-law criminals without disarming roughly 50,000 gun-wielding criminals who are terrorizing society. And its enforcement requires draconian punishment, a massive increase in the number of police, judges and prisons, violations of constitutional rights to privacy and against unreasonable searches and seizures, or more likely, a combination of all three.

Clearly, instead of imposing further penalties upon the law-abiding gun owner and gun purchaser, the proper approach is to impose mandatory punishment for the use of deadly weapons in the commission of violent crime. Instead of "taking guns off the streets," criminals must be removed from society.

The remedy, or any appropriate penalty, must be after the commission of an offense if the presumption of innocence is to be preserved.

THE GREATEST MYTH

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The greatest myth perpetrated by the advocates of repressive gun laws is that such laws reduce crime. They do not.

No empirical study of the effectiveness of gun laws has shown any positive effect—although, to the dismay of the prohibitionists, such studies have shown a negative effect. That is, in areas having lower levels of private firearms ownership, the robbery rates are almost invariably higher, presumably because criminals are aware that their intended victims are less likely to have the means with which to defend themselves.

Further, of all the gun laws enacted in the past 10 to 15 years—each promised by its advocates to result in a reduction of crime—not one city, not one state, has experienced a reduction in crime rates, nor even a reduced rate of crime growth in comparison to its neighboring cities and states without such laws.

If gun laws worked, the proponents of such laws would gleefully cite examples of lessened crime. Instead, they uniformly blame the absence of tougher or wider spread measures for the failures of the laws they advocated, and they cite two jurisdictions' gun laws as "working"—Massachusetts and the District of Columbia. Yet crime has risen dramatically in the District of Columbia (the murder rate alone rising 17 percent), and not as much in the suburbs and neighboring cities. Indeed, handgun homicides have decreased more in Baltimore, without a handgun ban, than in Washington, D.C., attesting to the failure of the D.C. gun-ban legislation. In Massachusetts, violent crime

state's stringent gun laws and the much-vaunted murder-rate simply mirrored that in the other New England states. Washington and Boston were, respectively, the seventh and fifth most violent big cities (pop. over 500,000) when their laws were passed. The 1980 data reveal they have moved into fourth and first places. Statewide, Massachusetts moved from 19th to 12th most violent.



The major visible effect of gun laws is an obvious burden upon the law-abiding, who pay for the follies of their lawmakers by spending time, money and effort to overcome bureaucratic red tape in order to continue owning and enjoying their guns. Needless to say, the criminal does not bother with the niceties of obeying the law—for a criminal is by definition someone who disobeys laws.

There is another visible effect of gun laws, one that burdens the tax-paying public, for gun laws must be administered by bureaucrats who provide nothing productive while draining the public treasury. Further, such laws are implemented and enforced by law enforcement officers who could far better spend their time and talents in the pursuit of criminals rather than investigations of the law-abiding and prosecution for victimless crimes such as simple possession or carrying of a firearm.

But there is an invisible effect of gun laws that may prove far more important than the visible, direct costs—that is, the social costs of increasing numbers of normally law-abiding citizens disobeying unpopular, irritating, or expensive gun laws. Such high social cost was paid during the era of the prohibition of alcohol, when a significant portion, if not the majority, of drinkers simply ignored Federal law. That era produced a generation of scofflaws, and provided fertile ground for the growth of organized crime syndicates that plague the nation a half-century later.

The evidence that gun laws are creating scofflaws is evident to anyone willing to look. In New York City, police estimate that there are two million illegal guns. In Washington, D.C., a recent mandatory re-registration law resulted in compliance by only a fraction of those who had previously registered their guns. The same massive noncompliance—not by criminals, whom no one expects will comply, but by the particular minority groups fearful of repression—is evident wherever stringent gun laws are enacted.

In exchange for such high costs, what have the nation's lawmakers achieved? Not an instance of a reduction in crimes of violence. There is evidence of increases in robberies and other offenses where potential victims are disarmed by governmental fiat.

Gun laws fail because they do not address the issue. The issue is not possession of firearms, but misuse of firearms.

And laws addressed directly to the question of misuse do work. When stiff, certain punishment is levied upon those who misuse firearms—and even when it is merely threatened—crime rates go down.

After adopting a mandatory penalty for using a firearm in the commission of a violent crime in 1975, Virginia's violent crime rate fell 19 percent in five years, murder fell 25 percent, and robbery declined 13 percent. South Carolina recorded a 19 percent decline in murder between 1975 and 1980, following passage of its 1976 mandatory penalty law, and Michigan's "use of a gun, go to jail" law has been credited by Detroit General Hospital doctors with a 50 percent drop in the number of gunshot wounds treated. The hospital study's statistics coincided with police figures—all showing reductions in the use of guns in homicide, rape and robbery, as those crimes fell dramatically in the state of Michigan and particularly in the city of Detroit. The murder rate, for example, fell 8 percent in the state and 10 percent in the city between 1976 and 1980, and robbery fell 8 percent statewide and 31 percent in Detroit itself during those years.

Yet in none of these areas has the mandatory sentencing been fully implemented, due to the reluctance of prosecutors and judges to give up their discretionary authority. Thus far, such astounding reductions in crime are due mainly to the threat of punishment—once the criminals become convinced that they need have no more fear of committing crimes with a gun than any other weapon, crime will again climb.

There is ample evidence that there is a solution to the crime problem, and a solution to the problem of criminal misuse of guns. That solution lies in the *promise*, not the mere threat, of swift, certain punishment. So

long as the lawmakers refuse to apply that solution, and instead attempt to control crime by controlling law-abiding gun owners, the nation's problems with crime and criminals will only increase.

Our challenge: To reform and strengthen our federal and state criminal justice systems. We must bring about a sharp reversal in the trend toward undue leniency and "revolving door justice." We must insist upon speedier trials and upon punishments which are commensurate with the crimes. Rehabilitation should be tempered with a realization that not all can be rehabilitated.

The job ahead will not be an easy one. The longer gun control advocates distract the nation from this task by embracing that single siren song, the longer it will take and the more difficult will be our job. Beginning is the hardest step, and the NRA Institute has taken it. Join NRA. Support ILA. Work with us. We need your help.

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