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Harper, Robert Berkley

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CONTROLLING AND REGULATING HANDGUNS— A WAY TO SAVE BLACK LIVES

Robert Berkley Harper*

INTRODUCTION

Violence in the form of carnage by firearms continues to be an integral part of the lives of the American people.¹ Since 1900, over 800,000 lives in the nation have been sacrificed as a result of our permissive misuse of guns. The recorded incidence of death shows that gun killings have resulted in a greater death toll than all American deaths from wars dating from the Revolution up to our recent military action in Lebanon.² Well over one million Americans have been killed by handguns in domestic violence, twice the number killed in the four wars this nation has been involved in during this century.³ This violence has resulted in citizens securing their homes and being afraid to walk the streets at night. Their fears are grounded in harsh reality, for every twenty-six seconds a violent crime is committed and every twenty-seven minutes someone in the United States is murdered.⁴ Added to the murder figures are the nearly 3,000 fatal domestic firearm accidents and 10,500 firearm suicides, making a total gun fatality count in this country of about 23,000 per year.

Most murders involve victims and offenders who know one another—an outgrowth of quarrels between spouses, lovers, relatives, neighbors, and

* B.S., University of Pittsburgh, 1962; J.D., University of Pittsburgh School of Law, 1971; former Assistant Dean, University of Pittsburgh School of Law; former Police Legal Advisor, City of Pittsburgh; presently Associate Professor of Law, University of Pittsburgh School of Law.

1. Americans have a greater chance of becoming victims of violent crime than being injured in an automobile accident. FBI UNIFORM CRIME REPORTS, 3-YEAR AVERAGE, 1978-80; REPORT TO THE NATION ON CRIME AND JUSTICE, BUREAU OF JUSTICE STATISTICS [hereinafter cited as Report to the Nation].

2. J. ROSENBERG, OUR CRIME RIDDLED SOCIETY 75 (1978). Added to these figures should be the over two hundred lives lost in Lebanon.

3. Field, *Opening Statement, Proceedings of the Foundation for Handgun Education Conference on "Firearm Litigation in the Eighties,"* 6 HAMLINE L. REV. 281 (1983). During the peak years of the Vietnam conflict, 1966-1971, a total of 43,990 casualties were recorded by the United States military forces. During that same period, a total of 49,273 persons were murdered by firearms within the United States. Kennedy, *The Handgun Crime Control Act of 1981*, 10 N. KY. L. REV. 1, n.30 at 6 (1982). See also N.Y. TIMES, Dec. 12, 1980, at 27, col. 2, stating:

Someone is murdered with a handgun in the United States every 50 minutes In 1979, handgun fire caused 10,728 American deaths. During the seven peak years of the war in Vietnam, for example, 40,000 Americans were killed in action; during the same years, 50,000 Americans were killed with handguns in the nation's streets, barrooms, households and public places.

4. Turley, *Manufacturers' and Suppliers' Liability to Handgun Victims*, 10 N. KY. L.R. 41 (1982). In 1983, 18,673 homicides victims were reported. U.S. DEPT. OF JUSTICE, FED. BUREAU OF INVESTIGATION, UNIFORM CRIME REPORTS FOR THE UNITED STATES 8 (1983) [hereinafter cited as CRIME REPORTS].

friends. However, since the early 1960's, murder by strangers has increased nearly twice as fast as murder by relatives, friends, and acquaintances.⁵ The victims of crime and the offenders are surprisingly alike. It has long been known that the race of victims and offenders are likely to be the same.⁶ In addition, it has been found that the victims of assaultive violence generally are male, young, poor, black, and unmarried.⁷

According to the National Center for Health Statistics, the murder rate of blacks by blacks for males age 15 to 24 is 73 per 100,000 population—compared with 12.5 per 100,000 for the same age group of white males.⁸ In August 1984, the National Institute of Mental Health (NIMH) stated that black-on-black killing has become a national epidemic. According to the most recent survey of the Bureau of Justice Statistics, there is one chance in twenty-one that a black American male will be murdered. These odds are about six times greater than those confronting white men.⁹

Dr. James Ralph, a black psychiatrist and chief of NIMH's Center for Minority Group Mental Health recently said, "The killing has to stop."¹⁰ It is only hoped that this sentiment is shared by all Americans both black and white.¹¹ Our nation should be stunned by these appalling statistics, and make a national commitment to bring about a significant change.

Measured by any yardstick—law and order, human tragedy, finance—the easy access to private ownership and the use of guns has become a menace to our society.¹² A sampling of the tangible and intangible tragedies interwoven in the handgun menace indicates that over \$500 million is spent annually in hospital care nationwide for handgun wounds.¹³ Annually, handguns take the lives of over twenty thousand individuals, many of whom are black and have potential average lifetime earnings of \$116,000.¹⁴ Thousands of families thereby reduced to welfare for want of a breadwinner. The needless death of so many black young men has increased the hardships that already face the black community.

5. Homicide is still the least occurring violent crime committed by strangers. But since the early 1960's murder at the hand of a stranger has increased nearly twice as rapidly as murder by relatives, friends, and acquaintances. C. SILBERMAN, *CRIMINAL VIOLENCE, CRIMINAL JUSTICE* 4 (1978). The number of homicides in 1965 to 1974 in which victims and offenders did not know each other increased dramatically, in fact, the most common offender is one whose identity remains unknown to the police. R. BLOCK, *VIOLENT CRIME: ENVIRONMENT, INTERACTION, AND DEATH* (1977). Whereas most homicides used to be crimes of passion usually among friends or family members, today violence has become more random. In New York City, a third of the homicides are classified as "murder by stranger"; in the city of Los Angeles in 1980, more than half the 1,028 murders were said by police to be the work of strangers. K. AULETTA, *THE UNDERCLASS* 44 (1982).

6. K. BARNHART, *A STUDY OF HOMICIDE IN THE UNITED STATES* 33 (1932).

7. REPORT TO THE NATION, *supra* note 1. Violent offenders, like their victims, tend to be low-income youths with poor prospects for employment. In addition, in three of four crimes, the offender and victim are the same race: black. THE WASH. POST, Dec. 12, 1983, at A-2, col. 1.

8. National Center for Health Statistics (1983).

9. L.A. Times, May 6, 1985, at col. 1.

10. THE PITTSBURGH PRESS, Aug. 27, 1984, at A-6, col. 1.

11. Not all people believe that handguns are detrimental to the black community. As one National Rifle Association life member said: "It sure does keep unemployment figures down." This remark was made to Mr. Sam Field, Field Director of the National Coalition to Ban Handguns. Field, *Handgun Prohibition and Social Necessity*, 23 ST. LOUIS U.L.J. 35, 58-59 (1979).

12. Although handguns comprise only thirty percent of the firearms in public hands, they produce ninety percent of the firearm misuse.

13. Field, *supra* note 11, at 1.

14. *Id.*

There are numerous reasons for the extremely high murder rate among black Americans, many of which are within the control of the members of the community. Thus it is the purpose of this paper to suggest ways of lowering the murder rate of black victims by black perpetrators. It is not the purpose of this article to suggest a prohibition of all guns at the state and federal level,¹⁵ but to suggest ways that current gun laws can be enforced so that the number of black Americans killed each year will be drastically reduced. It is the author's view that limiting access to guns combined with affirmative community action, will enable us to follow the admonishment of Dr. Ralph and stop the killings.

I. VIOLENCE IN THE UNITED STATES

A. *Violence as Part of American Life*

The use of guns in movies, American fictional literature, television programs, and childrens' programs, has for years deeply engrained into the minds of our nation's citizens, especially children, the idea that the use of guns is a socially acceptable method of problem solving. Many children today have a diminished capacity to understand the irreversibility of death, and to appreciate the consequences of pulling a trigger.¹⁶ It has been estimated that between the ages of five and fifteen, the average American child will view on his/her television set the killing of more than 13,000 persons.¹⁷ Given this bombardment, it is understandable that children have little, if any, appreciation for the true danger inherent in a handgun, yet have extensive knowledge of how to point a gun and pull the trigger.¹⁸

Americans have had a long tradition with handguns. The American em-

15. Just what the Constitution does and does not allow the federal government to do in this area is, of course, a hotly contested issue about which I claim no expertise. Certainly, state firearms regulations pose no constitutional issue and for this reason, state (and local) regulations frequently are more strict by far than the corresponding federal regulations. There arises a constitutional question concerning the banning of all handguns and this is not the subject of this article. The issue is hotly contested. In terms of generalized arguments for handgun confiscation, the literature is so immense that it must suffice simply to mention a representative standpoint. See e.g., Beard, *Show-down With the Gun Gang at Gun Control Corral*, 23 BUS. AND SOC. REV. 67 (1977); Browning, *Handguns and Homicide: A Public Health Problem*, 236 J. OF AM. MED. A. 2198 (1976); Riley, *Shooting to Kill the Handgun: Time to Martyr Another American 'Hero'*, 49 J. OF URBAN L. 51 (1974); Edwards, *Commentary: Murder and Gun Control*, 128 AM. J. OF PSYCHIATRY 811 (1972); Hofstadter, *America as a Gun Culture*, AMERICAN HERITAGE, October 1970.

In contrast, the following include most of the academically serious articles opposing handgun confiscation: Kates, *Handgun Control: Prohibition Revisited*, INQUIRY, December 5, 1977; Drooz, *Handguns and Hokum: A Methodological Problem*, 238 J. OF THE AM. MED. A. 43 (1977); Hardy and Stompoli, *Of Arms and the Law*; Benson, *A Controlled Look at Gun Controls*, 14 N.Y. L. F. 718 (1968).

16. See generally Berkowitz, *Reactions of Juvenile Delinquents to "Justified" and "Less Justified" Movie Violence*, J. OF RESEARCH IN CRIME AND DELINQUENCY 16 (1974); D. KRECH, R. CRUTCHFIELD & N. LIVSON, *ELEMENTS OF PSYCHOLOGY* (2d ed. 1969); Parke, *Some Effects of Violent and Non-violent Movies on the Behavior of Juvenile Delinquents*, 10 ADVANCES IN EXPERIMENTAL SOC. PSYCHOLOGY 135 (1977); Newberger, *Child Health in America: Toward a National Public Policy*, M.M.F.Q. HEALTH AND SOC. 249 (Summer, 1976).

17. Newberger, *supra* note 16, at 257.

18. Research has shown repeated and prolonged exposure to murder tends to condition some people to become insensitive to real violent acts. Youths are particularly susceptible because they do not consistently distinguish between media portrayal of fictional violence and real violence. N. ALLEN, *HOMICIDE PERSPECTIVE ON PREVENTION* 43-44 (1980).

phasis on equality has often led the powerless to try to lower the powerful to their level. Guns have been used when barriers of race, ethnicity, or class prevented citizens from achieving equality. Since the time of Cain and Abel, violence has been an effective leveler; nowhere was it more clearly recognized as such than in the American West, where the Colt six-shooter was lovingly referred to as "the great equalizer."¹⁹ God created men, frontier Americans liked to say, but "Colonel Colt made them equal." Colonel Colt and his numerous successors still make people equal—or, more precisely, still help the powerless "feel" equal.

The terminology of American culture is interwoven with firearm expressions: the coward is gun-shy, the forthright man is a straight shooter, and the methodical person makes every shot count. While the impulsive person shoots from the hip and the impatient goes off half-cocked, the prudent man keeps his powder dry.²⁰ Ironically, only a relative handful of Americans have ever had any direct contact with the frontier. But the frontier ethos has had a profound effect on American consciousness, and the metaphors of the West retain their curious hold on the American imagination.

The level of crime has always been high in the United States as compared with other nations. The trend from the turn of the century until the early 1930's was unmistakably upward. Judging by the homicide rate—the only crime for which reasonably accurate long-term statistics are available—the first three decades of the twentieth century evidenced an explosive increase in violent crimes. The murder rate, which only ran slightly above one per 100,000 persons in 1900, rose to five per 100,000 in 1910, and seven per 100,000 in 1920. In 1920, Cleveland had a population which was one-tenth that of London, but had six times as many murders and seventeen times as many robberies. Chicago, with a population one-third the size of London, had twelve times as many murders and twenty-two times as many robberies; and that was before the infamous "Roaring Twenties." By 1933, the homicide rate had climbed to 9.7 per 100,000.²¹

As a result of our easy access to and permissiveness with guns, today the United States has a higher gun-homicide rate than any other advanced nation.²² Americans own between 90 and 200 million firearms of which about 25 million are concealable handguns—the highest per capita ratio on earth.²³ On March 31, 1981, in a hotel ballroom President Reagan addressed the members of the building trades. In his speech the president related how "violent crime has surged—making neighborhood streets unsafe and families fearful in their homes."²⁴ Ironically, as President Reagan proceeded from the meeting he was

19. C. SILBERMAN, *supra* note 5, at 36.

20. *Id.* at 37.

21. R. BLOCK, *supra* note 5, at 28.

22. No other Western democracy has such high rates of killings by handguns as does the United States. For example, Great Britain, a country with one-quarter of our population, had 55 handgun murders in 1979. There were 52 handgun murders in Canada. Japan, with one-half our population, suffered 171 handgun-related crimes in 1979. The United States recorded 13,040 handgun murders and 147,360 handgun related crimes.

23. At least half of the households in the country possess a firearm and the total weaponry in private hands is in the vicinity of 120,000,000 guns. N. ALLEN, *supra* note 18.

24. *President's Message to the Building and Construction Trades Department, AFL-CIO*, 17 WEEKLY COMP. PRES. DOC. 368 (Mar. 30, 1981).

shot on one of the unsafe streets of our nation's capital. Such a scene is becoming all too familiar to the American public.

Over the past two decades, we have witnessed the murder by firearms of one American president,²⁵ a United States senator,²⁶ a Noble Prize winner,²⁷ a mayor of a major city,²⁸ a United States representative,²⁹ a rock music star,³⁰ and countless other Americans. We have seen an attack on three separate occasions on presidents of the United States,³¹ a governor,³² and the former president of the National Urban League.³³ All of this violence is the result of the use of guns, most often handguns. Clearly, guns play a crucial role in homicides and society should have an interest in controlling this mode of violence. One way a government might control or limit this illegal violence would be to use existing laws to limit the access to handguns, thus restricting the most potent means of violence to the public.

B. *Violence Against Black Citizens*

Violence in America is an outgrowth of the greatest strengths and virtues of our society (its openness, ethos of equality, and heterogeneity) as well as of its greatest vices (its long heritage of racial hatred and oppression). Slavery began in violence. The uprooting of Africans from their homes and the transportation of them, first to the African coast, then to the New World, was the beginning of a long history of violent acts against blacks. Slaves were transported across the sea at a ghastly cost in human lives.³⁴ Moreover, slavery was maintained by violence, as was the racial caste system that was erected after Emancipation and which in some forms endures even today. Violence was used after slavery officially ended to keep blacks "in their place."³⁵

For most of their history in this country, blacks were victims, not initiators, of violence. In the old South, violence against blacks was omnipresent—sanctioned both by custom and law.³⁶ Whites were free to use any method, up

25. President John F. Kennedy was shot and killed while riding in a motorcade in Dallas, Texas, on November 22, 1963. His accused assailant was later shot and killed two days later in a Dallas police station by a bystander. 37 CONG. Q. ALMANAC 7 (1981).

26. Senator Robert F. Kennedy was shot and killed in a Los Angeles hotel the night of the 1968 California presidential primary. Kennedy, *supra* note 3, at 9.

27. Dr. Martin Luther King, Jr. the Nobel Prize-winning civil rights leader was fatally shot in Memphis, Tennessee on April 4, 1968. N.Y. Times, Apr. 5, 1968, at A-1, col. 1.

28. George Moscone, the mayor of San Francisco was killed in his office on November 27, 1978. Kennedy, *supra* note 3, at 10.

29. Allard K. Lowenstein, a former United States representative, was shot and killed on March 13, 1980 in New York City. N.Y. TIMES, Mar. 14, 1980, at A-1, col. 1.

30. John Lennon, a member of Britain's most successful rock group, the Beatles, was shot and killed on December 12, 1980. N.Y. TIMES, Dec. 9, 1981, at A-1, col. 1.

31. Gerald R. Ford escaped would-be assassins' bullets twice in one month during 1975 and President Reagan on March 31, 1981. Kennedy, *supra* note 4, at 10-11.

32. Alabama Governor George C. Wallace was shot in Laurel, Maryland May 15, 1972. Kennedy, *supra* note 3, at 10.

33. On May 29, 1980, Vernon E. Jordan, former president of the National Urban League, was shot in Fort Wayne, Indiana. *Id.*

34. Africans were transported in chains and two Africans in three died en route. C. SILBERMAN, *supra* note 5, at 123.

35. *Id.* at 123.

36. As a black farmer observed "If a [n]igger had anything a white man wanted, the white man took it. . . ." *Id.* at 124.

to and including murder to control "their Negroes."³⁷ In the late nineteenth century, after federal troops were withdrawn from the South, the white leadership made vigilante violence against blacks an integral part of the system of white supremacy which was erected. Between 1882 and 1903, no fewer than 1,985 blacks were killed by southern lynch mobs.³⁸ Violence against blacks was not limited to mob action; individual acts of violence and terror became an accepted part of the resulting caste system.

America's slavocracy developed a number of methods of control, one of which was to keep guns away from blacks. An intense fear of slave revolts throughout the South resulted in legislation restricting the access by slaves to firearms.³⁹ In fact, the first recorded legislation concerning blacks in Virginia excluded blacks from owning guns.⁴⁰ The political functions of these laws were often indicated in their title, e.g., "an Addition Act for Better Preventing Insurrections by Negroes."⁴¹

Immediately after the Civil War some southern provisional governments set up militia organizations which not only excluded freedmen but which were used to disarm them. Blacks were generally forbidden to possess firearms and thus were rendered substantially defenseless against assault. This was a way to intimidate blacks into political impotence.⁴² From the 1870's until well into this century, many southern gun laws deprived black victims of this means of self-defense, while "cloaking the specially deputized Klansmen in the safety of their monopoly of arms."⁴³ As Raymond Fosdick learned when he studied American police methods shortly before the country's entry into World War I, southern police departments had three classes of homicide. "If a nigger kills a white man, that's murder," one official told Fosdick. "If a white man kills a nigger, that's justifiable homicide. If a nigger kills another nigger, that's one less nigger."⁴⁴ A quarter of a century later, Gunnar Myrdal found little had changed: "Any white man can strike or beat a Negro, steal or destroy his property, cheat him in a transaction and even take his life without fear of legal reprisal."⁴⁵

A propensity to violence was not part of the cultural baggage black Americans carried with them from Africa. Indeed, black Americans learned violence in this country. They had many teachers; violence has been an intrinsic part of the black American experience from the outset. Our present state shows that we have learned our lesson well. The perplexing question remains: Why is black violence directed against blacks, thus in many ways accomplishing what the Klan could not accomplish?

C. *Violence in the Black Community*

Recognizing the existence of violence as a part of American society af-

37. *Id.* at 123.

38. *Id.* at 24.

39. L. KENNETT & J. ANDERSON, *THE GUN IN AMERICA: THE ORIGINS OF A NATIONAL DILEMMA* 50 (1975).

40. *Id.*

41. H. APTHEKER, *AMERICAN NEGRO SLAVE REVOLTS* 71 (1963).

42. Kessler, *Gun Control and Political Power*, 5 *LAW & POL. Q.* 391 (1983).

43. D. KATES, *RESTRICTING HANDGUNS: THE LIBERAL SKEPTICS SPEAK OUT* 19 (1979).

44. C. SILBERMAN, *supra* note 5, at 124.

45. *Id.*

fords only a partial understanding of why homicide occurs the way it does within the black community. The perceived oppression by white society and its agents would seem to cause movements like those present in the 1960's—the beginnings of the militant "Black Power" movement and the Black Panther Party. The Black Panther Party sought to obtain firearms as a self-defense action for protection against white society.⁴⁶ However, the opposite has occurred; weapons within the black community are not used for self-defense, but for self-destruction.

Research data indicate that the actual risk of criminal victimization is different for blacks than for whites. Blacks are eight times more likely to be victims of homicide and two and one-half times more likely to be victims of rape than are whites.⁴⁷ For robbery, the black victimization rate is three times that of whites, and the rate of aggravated assault among blacks is one and one-half times of that among whites.⁴⁸ Within the black community, perhaps because of a preoccupation with perceived racism, assaults and homicides on blacks are not widely condemned, but are often given tacit approval. It seems we are within a subculture of society where overt physical violence is the accepted, if not expected, response to certain interpersonal situations.

The significance of a jostle, a slightly derogatory remark, or a weapon in the hands of an adversary are stimuli differentially perceived and interpreted by blacks and whites.⁴⁹ A black male is usually expected to defend the name and honor of his mother and the virtue of womanhood in general (even though his female companion for the evening may be an entirely new acquaintance. He is also expected to accept no derogation about his race (even from a member of his own race), his age, or his masculinity. Quick resort to physical combat as a measure of daring, courage, or defense of status appears to be a cultural expectation within the black community.⁵⁰

When such a cultural norm response is elicited from an individual engaged in social interplay with others who harbor the same response mechanism, physical assaults, altercations, and violent domestic quarrels resulting in homicide are likely to be relatively common. The black subculture not only provides values which support violence—by implication, values disregarding the importance of human life—but also generates situations that spark tempers to the point of overt aggression.⁵¹

Where do black Americans learn such values? Perhaps we teach such value in the early school years when we urge our boys to "hit back." Should we try to teach black children to adhere more to middle class values and use the legal system for redress? It is not the purpose of this article to impose middle class values on black Americans, but to commend universal values relating to the importance of human life. We do our society and our race, a disservice by committing the black-on-black violence which has resulted in so

46. Kessler, *supra* note 42, at 392.

47. Rose, *The Changing Spatial Demisions of Black Homicide in Selected American Cities*, 11 J. OF ENVTL. SYS. 57-80 (1981).

48. M. WOLFGANG, *PATTERNS IN CRIMINAL HOMICIDE* 188-89 (1958).

49. *Id.*

50. "Crimes of violence are more likely when subcultures favor such reactions in quarrels." E. JOHNSON, *CRIME, CORRECTION, AND SOCIETY* 271 (1974).

51. *Id.*

many needless deaths. We must no longer foster behavior which reflects the notions that life is cheap and aggression is acceptable conduct.

Many homicides can be prevented by recognizing causes of the homicidal event and correcting these causes through changes in attitudes, behavior and environment.⁵² Might not some of our resources and energies be better spent in preventing the homicidal event from taking place than in the expense of the criminal justice system imposed after the fact? Education is needed at all levels. We must educate children as to the importance of human life, educate victims as to an awareness of perpetrators and community resources available to handle aggressions, and educate the community as to its responsibility.

II. HANDGUNS IN THE UNITED STATES

A. *The Utility of Handguns*

Many Americans believe that the possession of handguns is useful for "self-protection."⁵³ This view is held by black and white men at the same ratio, but to a greater degree by black females than white females.⁵⁴ Records show, however, that at best, a handgun creates only an illusion of safety and at worst, it endangers the life of its owner and those around him.⁵⁵

Handguns are the weapons most used in crime or involved in accidents.⁵⁶ The mistaken, but understandable conclusion is that the handgun must be the most commonly owned firearm. In fact, handguns represent no more than twenty-five to thirty percent of the firearms owned yet they account for ninety percent of criminal and accidental firearms misuse.⁵⁷ The mere presence of handguns in the home makes them more detrimental than beneficial to the occupants.

The possession of handguns by the general public has resulted in an aver-

52. Allen, *supra* note 18, at 50.

53. The term "self-defense" also includes the right to defend another person against what is reasonably perceived as immediate danger of death or grievous bodily harm to the person from his assailant, 40 AM. JUR. 2d §§ 170-171 (1968).

54. McClain, *Firearms Ownership, Gun Control Attitudes, and Neighborhood Environment*, 5 LAW & POL. Q. 299 (1983).

55. Turley, *supra* note 4, at 59. That virtually all gun-owning households are *not* involved in a gun incident in any typical year, of course, is not proof that guns are *not* a cause of crime. Anti-control advocates often argue the contrary, namely, that private weaponry cannot be a serious cause of criminal violence because the vast bulk of privately owned weapons are never involved in a violent or criminal incident. But by the same token, the vast bulk of all cigarette smokers die of causes other than cancer of the lung. From this it cannot be inferred that smoking is not a cause of lung cancer. While most smokers die from other causes, the odds of dying from lung cancer are several times higher if one smokes than if not. By analogy, even though most (nearly all) guns are never involved in a violent or criminal incident, the odds of perpetrating such an incident are higher among persons possessing a gun than among those who do not. WRIGHT, ROSSI, DALY & WEBER-BURDIN, U.S. DEPT. OF JUSTICE, NATIONAL INSTITUTE OF JUSTICE: WEAPONS, CRIME, AND *Violence in America*, U.S. GOVERNMENT PRINTING OFFICE 257 n.2 (1981).

56. We further estimate, for the same year, that there were approximately 900,000 additional "incidents" where firearms were *either* present, brandished, or fired in criminal incidents, *or* where firearms were involved in injury-producing accidents, *or* where firearms were used in attempted suicides, *or* where firearms were involved in citizen-police encounters. We thus estimate, as a reasonable first approximation to the correct order of magnitude, an annual total of roughly one million "gun" incidents—i.e., incidents where a firearm of some sort was involved in some kind of violent or criminal incident (whether intentional or accidental, whether fired or unfired, whether fatal or not). Turley, *supra* note 4, at 29.

57. *Id.* at 40-41.

age of 1,400 accidental handgun deaths per year for the past ten years, as well as a very large number of injuries.⁵⁸ The handgun has long been seen and associated with aggressive behavior in our society. It is the most frequent instrumentality with which a spouse, parent, child, or acquaintance is killed or injured during a heated argument.⁵⁹ More than half the deaths classified as *homicides* are the result of quarrels which have led to spontaneous or impulsive shootings,⁶⁰ in which most victims are killed by people who knew or were related to them.⁶¹

Moreover, a handgun is of almost no utility in defending one's home against burglars.⁶² Since ninety percent of all residential burglaries are committed when no one is home, the homeowner's life is rarely endangered by burglars. A Case Western Reserve University study showed that a handgun brought into the home for the purposes of self-protection is six times more likely to kill a relative or acquaintance than to repel a burglar.⁶³

The handgun is also of questionable utility in protecting against robbery or assault. In one survey of robbery and attempted robbery, when the victim responded with a weapon, the robbery was completed four out of ten times, and victims who responded with weapons were injured twice as often as those who did not.⁶⁴ A 1975 survey of Chicago robberies revealed that the probability of death of those victims taking no resistance measures was 7.67 per 1,000 robbery incidents, while the death rate among those who did resist was 64.29 per 1,000 robbery incidents.⁶⁵ In other words, a victim was eight times more likely to be killed when using a self-protective measure than when not.

Of the 27,000 suicides that occur every year in this country, approximately forty percent of the victims use a handgun.⁶⁶ Handguns are clearly the weapon of choice among persons ending their own lives. There is no close second. The other leading methods of suicide are poisoning and hanging, each of which comprises about thirteen percent of all suicides.⁶⁷ Given the availability of handguns in the United States,⁶⁸ the likelihood that the mere access to a handgun constitutes part of the causal chain leading to a suicide seems clear. The correlation between the sharp increase in the rate of suicide by handguns and the availability of handguns has been well documented. From 1970 to 1977, the average number of annual suicides increased by 5,200, and eighty-three percent of the increase was suicide by firearms.⁶⁹

The cost handguns exact from society is staggering. At Huron Road

58. *Id.* at 56.

59. *See, e.g.*, CRIME REPORT, *supra* note 4, at 10-12.

60. Zimring, *Is Gun Control Likely To Reduce Violent Killings?* 35 U. CHI. L. REV. 721, 723 (1968). The author states that alcohol is often involved. *Id.*

61. *See, e.g.*, F.B.I. UNIFORM CRIME REPORT, *supra* note 4, at 10-12.

62. G. NEWTON & F. ZIMRING, FIREARMS AND VIOLENCE IN AMERICAN LIFE 62-68 (1970), asserts that a gun owner rarely has the opportunity to defend his home or business against burglars because they generally take pains to strike only at unoccupied premises.

63. Rushforth, Hirsch, Ford & Adelson, *Accidental Firearm Fatalities in a Metropolitan County* (1958-1973), 100 AM. J. EPIDEMIOLOGY 499 (1975).

64. Turley, *supra* note 4, at 60.

65. *Id.*

66. *Id.* at 55.

67. *Id.*

68. *Id.* at 55-56.

69. *Id.*

Hospital in Cleveland, the cost of treatment of gunshot wounds alone amounted to nearly \$250,000 a year in the mid-1970's. The cost expended for handgun injury treatment at the other major hospitals in Cleveland alone was \$1.5 million annually for treatment of gunshot injuries. An estimated \$500 million is spent nationwide. While the annual share of the nation's gross national product (GNP) has not been precisely determined, studies such as that from Huron Road Hospital yield conservative estimates exceeding \$20 billion a year as a direct national cost.⁷⁰

The ineffectiveness of handguns as self-defense weapons and the cost to the nation are not the only problems caused by handguns. Another major problem is that of handgun thefts. In exact numbers, how many and what kinds of guns are stolen is a matter of dispute. By any standard, the number is great. No other item commonly found in the home has a higher marketability than a handgun.⁷¹ In 1975, the director of the Bureau of Alcohol, Tobacco and Firearms disclosed the following statistics: 153,812 firearms were entered into the National Crime Information Center computer as stolen. Of this number seventy percent or 107,668, were handguns.⁷² Thus, the possession of handguns by citizens supplies criminals with their largest source of weapons.

The possession of handguns by citizens in many ways causes more danger to society than protection. On a balance sheet we see that handguns are annually involved in thousands of murders and accidental deaths, in over 150,000 gunshot wounds, and ultimately in resupplying the criminal element with 200,000 weapons tailored to crime. The cost-benefit ratio is heavily weighed on the side of control.

B. *The Availability of Guns*

As previously noted, the presence of a weapon is an important component in homicide incidents. The weapon's importance is clear from the statistics: ninety-one percent of all murders in 1980 involved some weapon other than one's hands or feet.⁷³ Almost all law enforcement officers who have been murdered in recent years were shot by firearms.⁷⁴ The widespread civilian possession of guns, designed specifically to kill humans, reflects the easy availability of lethal weapons in America.

There are an estimated 50 million handguns in the United States today;⁷⁵ twice as many as there were in 1968,⁷⁶ and 2.5 million are sold each year.⁷⁷ At the current rate of handgun acquisition, there will be 100 million in our society by the year 2000. A new handgun is sold in this country every thirteen

70. *Id.* at 43.

71. Fields, *supra* note 11, at 47-48.

72. *Id.* The figure 107,668, of course, represents only the handguns reported stolen. It may prove to be just the tip of the iceberg; studies by the Law Enforcement Assistance Administration show that as much as forty-eight percent of burglaries and seventy-seven percent of larcenies go unreported.

73. FEDERAL BUREAU OF INVESTIGATION, U.S. DEPT. OF JUST., UNIFORM CRIME REPORTS FOR THE UNITED STATES 10 (1981).

74. Cook, *The Effect of Gun Availability on Violent Crime Patterns*, 455 ANNALS 63, 66 (May 1981).

75. BUREAU OF ALCOHOL, TOBACCO AND FIREARMS STATISTICS (1980) *cited in* FEDERAL REGULATION OF FIREARMS, REPORT TO THE SENATE JUDICIARY COMM. at 2 (1982).

76. *Id.*

77. *Id.* at 6.

seconds,⁷⁸ and someone is injured every 2½ minutes.⁷⁹

A 1969 recent study concluded in part that increasing handgun ownership increased firearms violence.⁸⁰ Data from this source documents that the proportion of gun use in violence rises and falls with gun ownership. Statistics from Detroit demonstrate that firearm violence increased with the increase in handgun acquisitions. More evidence is found in regional comparisons which show that the percentage of gun use in violent attacks parallels rates of gun acquisition."⁸¹

Handguns, unlike rifles, are seldom intended for sport. Their purpose is starkly simple; that is, to maim or kill a human being. This is particularly the case for the so-called Saturday Night Special. This type of weapon received its name from Detroit police in the late 1950's.⁸² Detroiters who found it difficult to purchase a gun in their city drove to Toledo where cheap guns were sold almost anywhere: in grocery stores, gas stations, flower shops and candy stores. Because these sales usually were made on the weekends, the name Saturday Night Special was born. Today, the term generally refers to any cheap handgun with a short barrel. These weapons have no safety features, no engineering quality, and little accuracy.⁸³

The advantage of the handgun is that it is concealable and it is easier to use on a target at very close range. Approximately thirty-four percent of homicides occur in the home,⁸⁴ where the ability to transport the weapon to the scene of the crime is unimportant. Another thirty-seven percent of homicides occur outdoors⁸⁵ where the ranges are likely to be longer and there is the increased danger to bystanders. This leaves only the twenty-six percent of homicides which occur outside the home but indoors,⁸⁶ where a pistol is likely to prove more useful to a murderer than a long arm gun or other weapon. The availability of small, convenient handguns will thus have an impact on the sixty-three percent of homicides that occur outside of the home, as well as those occurring in the home. Consider the following experience witnessed by Mr. Fields:

Ten gentlemen were involved in a heated street basketball game. During the entire game, center A had been taking considerable physical abuse from center B. In response to a viciously thrown elbow, A came up outraged, with a knife in hand. B beat a hasty retreat with A in pursuit. Thirty seconds later both players had cooled their tempers and the game resumed. Replace that knife with a handgun and, in all likelihood, the outcome would have been quite different.⁸⁷

The extent to which whites and blacks either own guns or oppose gun control has long been a matter of controversy, with various polls reporting

78. *Id.*, obtained by dividing the number of seconds in one year by the number of handguns provided in a year.

79. REPORT OF THE U.S. ATTORNEY GENERAL'S TASK FORCE ON VIOLENT CRIME (1979).

80. NATIONAL COMMISSION ON CAUSES AND PREVENTION OF VIOLENCE, FIREARMS AND VIOLENCE IN AMERICAN LIFE 78 (1969).

81. *Id.*

82. R. SHERRILL, THE SATURDAY NIGHT SPECIAL 98 (1973).

83. Kennedy, *supra* note 3, at 7. Saturday night specials are not accurate beyond a range of ten or fifteen feet.

84. Hardy & Stompoly, *Of Arms and the Law*, 51 CHI-KENT L. REV. 111 (1974).

85. *Id.*

86. *Id.*

87. Field, *supra* note 11, at 47.

disparate results. One thing is certain, most blacks support gun control. Paula McClain's extensive and detailed survey of Detroit census tracts found that blacks seem to have more confidence in the capacity of severe gun laws to reduce violence and are more likely to support such laws than are whites.⁸⁸ Does this mean that most citizens do not want stricter gun controls? The evidence is that they do, but the lack of such legislation is a classic example of special interest group conflict in which the majority does not necessarily prevail.⁸⁹

III. LAWS REGULATING AND CONTROLLING HANDGUNS

Contrary to popular belief, concern for the regulation or even the banning of handguns is not a twentieth century phenomena. Public concern was evidenced as early as 1363, when "hand cannons" about nine inches long were manufactured and used.⁹⁰ The handgun problem became so acute that in the sixteenth century the Austrian emperor Maximillian, noting complaints against individuals who "carry guns secretly under clothing," banned the making and carrying of "hand cannons that ignite themselves."⁹¹ The actions of Emperor Maximillian did not lead to great public debate or criticism, due to the absence of constitutional and other rights of citizens.

Nor is regulation of weapons new to the United States. Weapon regulation has been widespread throughout the United States even before the founding of the nation. When British General George Gage compelled Bostonians to surrender their firearms in 1776, they relinquished more than 1800 muskets and 634 pistols.⁹² After independence there were several attempts to regulate and/or ban guns. These attempts were first begun in the then frontier states of Kentucky (1813), Indiana (1819), and Arkansas and Georgia (1837).⁹³ The Georgia enactment was later struck down as an infringement of the constitutional right to keep and bear arms.⁹⁴ Although complete prohibition of handguns has been held to be unconstitutional, regulation of guns has been upheld as part of the state's police power.⁹⁵

As the crime problem in the United States has intensified, there has been an increased interest in gun control laws as an effective way of reducing violent crime. It appears that many people believe that there is an individual right to own a weapon guaranteed by the second amendment of the United States Constitution. However, many people also believe that regulation of

88. McClain, *supra* note 54, at 299.

89. *Id.*

90. H. POLLARD, A HISTORY OF FIREARMS 28-29 (1936).

91. Blair, *Further Notes on the Origins of the Wheellock*, 1 ARM AND ARMOR ANNUAL 38-39 (1938).

92. J. FROTHINGHAM, A HISTORY OF THE SEIGE OF BOSTON 95 (1903); J. ALDEN, GENERAL GAGE IN AMERICA 225 (1948).

93. D. KATES, *supra* note 43, at 11.

94. *Nunn v. State*, 1 Ga. 243 (1846).

95. *E.g.*, *Galvan v. Superior Court*, 70 Cal. 2d 851, 860 (1969); *State v. Robinson*, 251 A.2d 552, 555 (Del. 1969); *People v. Brown*, 253 Mich. 537, 235 N.W. 245, 246 (1931).

In *Presser v. Illinois*, 116 U.S. 252 (1886) The Supreme Court unequivocally held that the second amendment does not reach state and local governments, either directly or through the fourteenth amendment where the state or local government bans private military drills.

handgun ownership does not violate these same constitutional provisions.⁹⁶ In fact, there is a substantial segment of the population that favors handgun control and regulation.⁹⁷

An important question still remains to be answered: Will gun regulation and control result in the saving of lives? A number of studies have attempted to assess the impact of gun control laws on the incidence of firearm-related crime and violence.⁹⁸ The pro-controllers claim that gun laws reduce accidental and criminal misuse of firearms.⁹⁹ The anti-controllers assert that gun laws have no appreciable effect on firearm-related crime and accidents.¹⁰⁰ There is no consensus among researchers about what causes crime and violence, but common sense tells us that an effective gun control law will reduce the number of firearm-related crimes and accidents. Considering the complexity of the issue, it seems doubtful whether a definite answer is possible, but it is the author's firm belief that the control and regulation of handguns is an important way to save many American lives, especially in the black community.

There are at least five major ways in which laws have been used to control and regulate handguns: (1) prohibition of certain types of handguns and other weapons; (2) registration and licensing; (3) control over carrying concealed weapons; (4) control and regulation of the sale of weapons; and (5) mandatory minimum sentencing for handgun crimes. The following is a survey of these five methods.

A. *Prohibition of Certain Types of Weapons*

This paper does not address the issue of banning all types of firearms as stated earlier.¹⁰¹ There are certain types of weapons that are presently prohibited throughout the United States, and other types of weapons that are prohibited only in certain locations. Among the first group are machine guns¹⁰² and switchblade knives.¹⁰³ Statutes making it unlawful to possess a machine gun do not violate the constitutional right of citizens to keep and bear arms in lawful defense found in the second amendment of the Constitution.¹⁰⁴ Weapons which pose a great danger to society and which at the same time do not grant a comparative benefit may be banned altogether.

96. Wright, *Public Opinion And Gun Control: A Comparison of Results From Two Recent National Surveys*, 445 ANNALS 24, 37 (1981).

97. *Id.* at 38.

98. See C. GREENWOOD, FIREARMS CONTROL (1972); D. KATES, *supra* note 43; Cook, *The Effect of Gun Availability on Violent Crime Patterns*, 455 ANNALS 63 (1981); Kaplan, *Controlling Firearms*, 29 CLEV. ST. L. REV. 1 (1979); King, *Firearms and Crime*, 8 CRIMINOLOGIST 50 (1973); Zimring, *Firearms and Federal Law: The Gun Control Act of 1968*, 4 J. LEGAL STUD. 133 (1975); Zimring, *Is Gun Control Likely to Reduce Violent Killings?*, 35 U. CHI. L. REV. 721 (1968). See also G. NEWTON & F. ZIMRING, *supra* note 62.

99. See G. NEWTON & F. ZIMRING, *supra* note 62, at 123-28.

100. See Ashbrook, *Against Comprehensive Gun Control*, 71 CURRENT HIS. 23 (1976); King, *supra* note 98, at 50-58; Murray, *Handguns, Gun Control Laws and Firearm Violence*, 23 SOC. PROB. 81-91 (1975). Although Murray arguably cannot be classified as an anti-controller, his results support the anti-control position.

101. See *supra* note 15 and accompanying text.

102. *Rinzler v. Carson*, 262 So. 2d 661, 665 (Fla. 1972); *Morrison v. State*, 170 Tex. Crim. App. 218, 339 S.W. 2d 529, 532 (1960).

103. *Fall v. Esso Standard Oil Co.*, 297 F.2d 411 (5th Cir. 1961), *cert. denied*, 371 U.S. 814 (1962).

104. *Morrison v. State*, 170 Tex. Crim. App. 218, 339 S.W. 2d 529 (1960).

There are at least two additional items that are often listed as prohibited weapons that have arisen in recent years: the sawed-off rifle or shotgun and the fully automatic weapon. These weapons are being brought into the prohibited category because they have no legitimate use by private citizens. They are virtually never used for target shooting and apparently all hunters agree that they should not be used for hunting.¹⁰⁵ In addition to prohibiting the weapons mentioned above, it is common to find statutes which prohibit the use of silencing devices attached to weapons.

In the past twenty years legislative steps have been taken to attempt to ban the Saturday Night Special, that is, cheap foreign handguns.¹⁰⁶ The Saturday Night Special has been criticized because of the poor quality of construction and the lack of safety features. The Gun Control Act of 1968¹⁰⁷ banned the interstate and mail order shipment as well as the importation of the cheap snub-nosed foreign handguns that come within this category.

Currently three states and three cities—Illinois, Minnesota, South Carolina, Miami, Denver, and Cleveland—have provisions which forbid the manufacture, transfer, or possession of low-quality, inexpensive handguns.¹⁰⁸ An experimental buy-back program was conducted in Baltimore in which they offered \$50 per operable handgun, a cost considerably above average for those weapons. The program managed to recover 8,400 handguns in a period of almost a year.¹⁰⁹ According to one source, the Treasury Department's Bureau of Alcohol and Firearms conducted a sixteen-city study of the handguns seized and traced in connection with street crimes and found that forty-seven percent were Saturday Night Specials.¹¹⁰ Thus, there seems to be a valid reason for banning these guns.

One major problem with the banning of the Saturday Night Special is that the term is ambiguous. A common definition is that of a handgun that costs less than \$50, is .32 caliber or less, and has a barrel of three inches or less.¹¹¹ But once it is defined, manufacturers could easily produce gun barrels of 6½ inches to circumvent the law. However, the addition of safety features to these new weapons would give society the much needed protection that is not now offered. By banning the Saturday Night Special a much safer weapon will be produced.

B. *Licensing and Registration of Handguns*

Almost all states have some form of firearm control legislation.¹¹² One of

105. Cook, *The "Saturday Night Special": An Assessment of Alternative Definitions From a Policy Perspective*, 72 J. OF CRIM. L. AND CRIMINOLOGY 1735, 1738-41 (1981).

106. *Id.* at 1736. Wright, *Public Opinion and Gun Control: A Comparison of Results From Two Recent National Surveys*, 445 ANNALS 24, 34 (1981), states that seventy percent of the adult population favor a ban on "Saturday Night Specials."

107. 18 U.S.C. 921-928 (1968).

108. U.S. DEPARTMENT OF JUSTICE, NATIONAL INSTITUTE OF JUSTICE, "WEAPONS, CRIME, AND VIOLENCE IN AMERICA," WASHINGTON, D.C. (1983) [hereinafter cited as "JUSTICE REPORT"].

109. Kaplan, *The Wisdom of Gun Prohibition*, 445 ANNALS, 11, 19 (May 1981).

110. U.S. NEWS & WORLD REPORT, Nov. 10, 1975, at 51.

111. *Id.*

112. State regulation of firearms focus more commonly on handguns than long guns, concentrating on the control of handgun acquisition, transfer, and possession, and providing for the place and manner of legally carrying them. This section topic deals with materials that will also be covered in Section D as it relates to handgun acquisition.

the primary types of legislation is registration and licensing. These types of control systems enjoyed popularity in the late 1960's. The rationale for these systems was that by requiring that all restricted weapons be registered, a central registry of all restricted weapons would result. Under this system, registration certificates would be granted to anyone who wished to have a handgun in his or her home or business unless, as will be later pointed out, the law otherwise forbids these persons from owning a firearm. However, because these systems were not conducted on a national level, most have not been entirely successful.

Washington, D.C. is a good example of a jurisdiction requiring gun registration. The District of Columbia statute became effective in 1976.¹¹³ Possession of a pistol within the scope of the District's law requires the possessor to have registered the weapon under the prior existing registration law.¹¹⁴ As a result of this law, the sale of handguns has been virtually prohibited in the District.¹¹⁵ Furthermore, once the requirement of registration is met, the pistol may only be possessed in a dwelling, place of business, or on the land of the owner, unless he is a law enforcement officer or member of the armed forces in the actual performance of official duties.¹¹⁶ The purpose of the District's strict gun control law is to promote health, safety, and welfare of the community.¹¹⁷ Because of the high crime rate in the District of Columbia, one may question the effectiveness of gun registration legislation.

New York has had strict handgun control legislation for nearly seventy years.¹¹⁸ Legally, to possess a handgun in New York one must first obtain a license by meeting several requirements. The applicant must (1) have a good moral character; (2) not be a convicted felon; (3) never have suffered from mental illness; and (4) have exhibited no good cause for denial of the license.¹¹⁹ The applicant must not only apply to the local police in order to obtain a license, but he must also pass an investigation by the local police force as well as the Federal Bureau of Investigation.¹²⁰ The licensing scheme permits possession of guns by homeowners in their dwelling, by a businessperson at his/her place of business, by a bank messenger, by a jailor, and by an antique pistol collector. Concealed carrying is also permitted if sufficient cause

113. See D.C. CODE ANN. § 6-2301 (1981). The first handgun control statute in the District was codified in 1892, see *McIntosh v. Washington*, 395 A.2d 744, 752 n.18 (D.C. 1978).

114. See D.C. CODE ANN. § 6-2313 (1981). To receive a license the applicant must (1) be twenty-one years old; (2) never have been convicted of any violent crime or weapons offense; (3) not have been convicted within the last five years of any narcotics violations, making threats or bodily assaults; (4) not have been judged insane or placed in a mental institution within the last five years; (5) not have any physical defects making handgun possession dangerous; (6) never have been adjudicated negligent in any firearm mishap causing death or bodily injury; (7) know the District's firearms laws; and (8) have good vision. *Id.*

115. See *Fesjian v. Jefferson*, 399 A.2d 861, 864 (D.C. 1979); Jones, *The District of Columbia's "Firearms Control Regulations Act of 1975": The Toughest Handgun Control Law in the United States—Or is It?* 455 ANNALS 138, 139 (1981).

116. See *United States v. Shannon*, 144 A.2d 267, 267 (D.C. 1958); D.C. CODE ANN. §§ 6-2311, 22-3204 (1981); 79 AM. JUR. 2d § 8, p. 13 (1975).

117. See D.C. CODE ANN. § 6-2301 (1981).

118. See N.Y. PENAL LAW § 400 (McKinney 1980); Kates, *Reflections on the Relevancy of Gun Control*, 13 CRIM. L. BULL. 119, 121 (1977).

119. See *Archibald v. Codd*, 399 N.Y.S.2d 235, 236 (N.Y. Sup. Ct. 1977); N.Y. PENAL LAW § 400(1) (McKinney 1980).

120. See *Klapper v. Codd*, 356 N.Y.S.2d 431, 431-32 (N.Y. Sup. Ct. 1974); N.Y. PENAL LAW § 400(4) (McKinney 1980).

exists.¹²¹

Today, many of the proposals for registration and licensing have been abandoned even by groups which had advocated them. In 1975, Handgun Control, Inc.¹²² testified before a House subcommittee that it is doubtful that registration would act as a sufficient deterrent for criminal use of guns. Criminals do not leave their guns behind to be traced, nor would they register them in the first place.¹²³ Also, they testified that there is a handicap placed on the most stringent state and local firearms laws by the uncontrolled interstate movement of firearms, in particular handguns.¹²⁴

C. Carrying Concealed Weapons

Federal and state regulations concerning the carrying of concealed weapons has been widespread throughout the United States since the nation's infancy. In the seventeenth century Massachusetts prohibited the carrying of defensive firearms in public places.¹²⁵ Kentucky in 1813, Indiana in 1819, Arkansas and Georgia in 1837, passed laws prohibiting the carrying of concealed weapons.¹²⁶ Most states and cities today have laws attempting to regulate the carrying of handguns, concealed or openly, on the person or in motor vehicles. The object of concealed weapons statutes is clearly to protect the public by preventing individuals from having on hand a weapon of which the public is unaware, and which might be used by the individual in a fit of passion.¹²⁷

Some classes of individuals are exempted from carrying restrictions of weapons in all jurisdictions.¹²⁸ Most people will be included in classes regulated by statutes. Although there are many kinds of carrying regulations, they can be grouped under two general headings: (1) those prohibiting the carrying of handguns on or about the person, with exceptions, and (2) those requiring that persons wanting to carry handguns be licensed by state or local authorities.¹²⁹ Most states require that persons applying for licenses to carry concealed handguns show a need for the weapon in the course of employment.

Under most concealed weapons acts, obtaining a conviction is quite easy because it is not necessary to show intent.¹³⁰ The government need merely show a violation of the act: that the defendant had a firearm which he was using or which he had concealed upon his person or his car without a license.

121. See N.Y. PENAL LAW § 400(2) (McKinney 1980).

122. Formerly known as The National Council to Control Handguns. See Hardy, *Legal Protection of Firearm Ownership as an Answer to Violent Crime: What Was the Question?* 6 HAMLIN L. REV. 391, 401 (1983).

123. *Id.*

124. *Id.*

125. Concealed weapons, as defined by statute, included such items as knives, blackjacks, sling-shots and brass knuckles as well as handguns. Forty-nine states have statutory or constitutional prohibitions of concealed weapons or require a permit to carry a concealed weapon. A. GOTTLIEB, *THE RIGHTS OF GUN OWNERS* 72-142 (1981).

126. G. NEWTON & F. ZIMRING, *supra* note 62, at 87.

127. In *State v. Blazovitch*, 88 W. Va. 612 (1921), the Court stated: "The manifest purpose of the statute preventing the carrying of deadly weapons is to thwart the temptation and power to employ such weapons in assaults upon other, which may be prompted by anger or evil designs, and to free citizens from the terror of the brandishment of such weapons and to preserve life and limb."

128. See *infra* note 175 and accompanying text.

129. JUSTICE REPORT, *supra* note 108, at 492.

130. See 79 Am. Jur. 2d weapons and firearms § 9 and § 15 (1975).

There is wide variation in the fee for a concealed weapons license. Michigan's fee for a three-year license is \$3.00, while Florida's annual license fee to carry a handgun openly or concealed is set by local authorities. In Miami, the initial fee is \$300 and is \$150 for each year thereafter; in addition, individuals issued the license must post a \$100 bond conditioned upon the lawful use of the weapon.¹³¹

When criminals commit crimes with firearms, not only may they be found guilty of carrying concealed weapons, but also of other sections of a state criminal code.¹³² In addition, many states have increased penalties for those individuals who commit crimes while using firearms.¹³³

In 1967 the President's Commission recommended that each state require the registration of all handguns and require a person to obtain a permit before he can either possess or carry a handgun.¹³⁴ All states now require a permit to carry a concealed weapon, but over twenty states permit open- holstered gun carrying without a permit.¹³⁵ The danger created by the carrying of weapons in public should lead to greater restrictions upon citizens in engaging in such activity.

D. *Limitation on Persons Who are Permitted to Own Weapons*

As a group, violent criminals differ in a number of respects from the population at large. Most robbers and murderers are young (age 15-30) and male.¹³⁶ To a vastly disproportionate extent they live in large cities and have serious criminal records.¹³⁷ A 20-year-old male felon from Detroit is more likely, by several orders of magnitude, to use a gun in violent crime than a 50-year-old farmer from a mid-western state.

All but five states prohibit certain categories of individuals from possessing handguns.¹³⁸ Persons excluded from possession include minors, felons, aliens, fugitives from justice, persons of unsound mind, narcotics violators, and drunkards.¹³⁹ Seldom does one state prohibit all or nearly all of these categories of persons from having handguns, but there is usually some combination of the groups listed. One very serious problem which arises where state law limits the possession of handguns to certain groups is that there is no effective deterrent. Individuals are often able to obtain handguns by signing false statements pertaining to their eligibility. Or a person may go outside the jurisdiction and obtain weapons. Guns are often purchased from a nondealer, thus circumventing the statute.

Twenty three states have now addressed this problem by requiring permits even for private transactions. In addition, the police must be notified and

131. JUSTICE REPORT, *supra* note 108, at 492.

132. Most states have sections in their criminal code covering possession of instruments of crime. See, e.g., 18 Pa. C.S.A. § 907 (Purdon 1973).

133. See *infra* notes 148-159 and accompanying text.

134. *The Challenge of Crime in a Free Society, A Report by the President's Commission on Law Enforcement and Administration of Justice*, UNITED STATES GOVERNMENT PRINTING OFFICE, Feb. 1967, at 239.

135. GOTTLIEB, *supra* note 125, at 135.

136. Cook & Blose, *State Programs for Screening Handgun Buyers*, 445 ANNALS 80, 83 (1981).

137. *Id.*

138. *Id.* at 86.

139. 79 AM. JUR. 2d weapons and firearms § 24 (1975).

time given for an investigation of handgun purchasers before the transfer takes place.¹⁴⁰ In two states this investigation takes place immediately after the transfer. This transfer investigation policy affects almost two thirds—sixty four percent—of the United States population.¹⁴¹

Six states and the Commonwealth of Puerto Rico require a police permit before a citizen can buy a handgun.¹⁴² These jurisdictions are extremely restrictive in granting such permits and they are issued only upon showing a "unique need" on the part of the applicant. New York conducts an extensive investigation of the applicant before granting a permit to purchase.¹⁴³ A license is granted if the person is permitted to purchase a weapon and a second license must be granted for the person to carry the weapon in public.¹⁴⁴

Most Americans are in favor of the permit system. A standard question regarding police permits has been asked regularly in national polls since 1959:¹⁴⁵ Would you favor or oppose a law which requires a person to obtain a police permit before he or she buys a gun?¹⁴⁶ In response to this question, a clear and nearly constant majority of about three fourths of the population has favored a permit requirement over the past two decades.¹⁴⁷

Due to the danger to society that results from the widespread proliferation of handguns, it should be the policy of the law to limit the possession of handguns to those cases where ownership is clearly necessary. To achieve this objective, the permit system that requires prior approval before the purchase of a handgun seems to be a realistic approach. The system identifies legitimate users of handguns and ties ownership to those uses. In the future there should be a combination of permit and licensing systems in the United States to effectively control handguns.

E. *Mandatory Minimum Sentences for Crimes Committed With Handguns*

In the area of handgun policy, no measure has received more legislative attention than mandatory minimum sentences for crimes committed with a gun.¹⁴⁸ The goal of these statutes is to dissuade criminals from taking a gun with them when they commit, or attempt to commit a crime.¹⁴⁹ The argument is made that guns are inanimate objects that are neither good nor bad and that a gun can be used properly or improperly and only improper use should be subject to legislative sanctions.¹⁵⁰ This argument is the basis for demands for mandatory, additional prison sentences for the commission of a felony with a gun, and for tightening the criminal justice system, including the penal system.

140. JUSTICE REPORT, *supra* note 108, at 490.

141. Cook & Blöse, *supra* note 136, at 85.

142. Kates, *Some Remarks on the Prohibition of Handguns*, 23 ST. LOUIS U. L.J. 11 (1979).

143. *Id.*

144. *See supra* notes 128-29 and accompanying text.

145. Wright, *supra* note 96, at 31.

146. *Id.*

147. *Id.*

148. JUSTICE REPORT, *supra* note 108, at 493.

149. Note, *California's "Use a Gun—Go to Prison" Laws and Their Relationship to the Determinate Sentencing Scheme*, 5 CRIM. JUST. J. 297, 298 (1982).

150. These laws penalize criminal use of firearms and do not infringe upon the rights of the 99% of firearm owners who do not misuse firearms. Kates, *supra* note 142, at 21 (only one half of one percent of the handgun owners commit crimes with their handguns).

"Use a gun—go to prison" laws, as mandatory minimum sentencing laws have been popularly named, have gained mass public support.¹⁵¹ It seems that regardless of an individual's position on gun control, most favor laws which impose extra punishment on those who use or carry a gun in the commission of a crime. There are many reasons for the popularity of these laws, but one of its more important attractions is the expectation that mandatory minimum sentences will reduce gun-related crime without imposing additional constraints on the behavior of "law-abiding" citizens who wish to own guns.¹⁵²

In 1981, the Attorney General's Task Force on Violent Crime included a recommendation for minimum sentencing for federal crimes committed with firearms.¹⁵³ Prior to action by the federal government, many states enacted in the mid-1970's laws designed to deter criminals' use of guns. In 1974, for example, the states of Arizona and South Carolina adopted such statutes.¹⁵⁴ Most states enacted laws relying on the deterrent aspect of sentencing and simply enhanced the penalty for the underlying crime when a gun is used or carried in committing that crime.¹⁵⁵ Other jurisdictions indirectly increased the punishment for such violations by providing that the use of a gun increases the degree of felony under which the crime is labeled, such as elevating third degree robbery to second degree robbery.¹⁵⁶ Some states have a combination of sentencing techniques with the basic methods discussed above.

It is important to distinguish between the two different approaches in mandatory minimum sentences. The first type of sentencing procedure limits its application to specific acts involving the use of firearms or other weapons in designated violent crimes.¹⁵⁷ The second type seeks to impose mandatory sentences upon *any* individual who violates a regulation, such as a regulation requiring a permit for carrying a firearm on one's person or in an auto, regardless of whether a violent criminal use was involved or not.¹⁵⁸ The first type of statute, involving a mandatory minimum sentence for use of a firearm in a violent crime, appears uniformly to have had positive results.¹⁵⁹

IV. RECOMMENDATIONS FOR CHANGE

A. *Community Action*

Guns and violence have been partners in the tradition of American life. The frontier which required guns has long disappeared, but the American love for guns has remained and even intensified. Violence is clearly rejected by most Americans as a part of our expressed system of values. But so great has been our involvement with violence over the long sweep of our history that

151. See Note, *supra* note 149.

152. Loftin, Heuman & McDowall, *Mandatory Sentencing and Firearms Violence: Evaluating An Alternative to Gun Control*, 17 LAW & SOC'Y REV. 287, 312 (1983).

153. The Gun Control Act of 1968 provided an additional punishment for crimes involving firearms. 18 U.S.C. § 924(c) (1979).

154. Hardy, *Legal Restriction of Firearm Ownership as an Answer to Violent Crime: What was the Question?* 6 HAMLINE L. REV. 391, 404 (1983).

155. Note, *supra* note 149, at 298-99.

156. *Id.*

157. Hardy, *supra* note 84, at 404.

158. *Id.*

159. *Id.*

violence has become part of our unacknowledged (or underground) value structure.¹⁶⁰ Too many Americans do not truly realize that guns are designed specifically for one purpose: to kill and maim. Children at an early age are given guns as toys and are permitted to watch hundreds of programs glorifying the use of firearms. The real danger of firearms, as well as the irreversibility of the harm it causes, must be brought to the attention of all Americans.

It would do our society well to follow the advice found in a recent article in *The New York Times Magazine*¹⁶¹ which recommended that children visit an emergency ward of a big city hospital. Seeing the results of violence might serve as an antidote for the unreal violence on our television and movie screens. An educational program of this type should not only be directed at children, but adult community education programs should be implemented to emphasize respect for human life.

Recently, community action groups have developed community action programs to make the public aware of this national epidemic.¹⁶² Through these community programs, the black community and the community at large are sensitized to the enormity of the problem. Alternatives to violence are discussed and "love not kill" is being presented as the watchword of the community.¹⁶³ Because family homicides are dominant,¹⁶⁴ citizens are instructed as to other community resources available in solving domestic disputes. They learn of more constructive alternatives to gun use. With community awareness and involvement, the number of black-on-black homicides should decrease. The development of programs that address the immediate impact of crime on the black community is an issue of first priority for black citizens.¹⁶⁵

Because of the illusion of utility guns have for self-protection¹⁶⁶ in the home, there should be an allocation of resources to improve crime detection equipment. Citizens should be educated in ways of self-protection without arming themselves. People must be made to understand that human life is more important than the value of any personal property.

B. *Enforcement of Current Laws*

Research suggests that blacks perceive the police as providing only limited protection to the black community, whereas whites have a more positive perception of police protection.¹⁶⁷ Through effective law enforcement, there may develop a greater respect for police and other authority. Citizens may more readily seek community resources rather than seeking self-help in the form of handguns.

160. R. BROWN, *STRAIN OF VIOLENCE: HISTORICAL STUDIES OF AMERICAN VIOLENCE AND VIGILANTISM* (1975).

161. Kaufman, *Facing Violence*, *THE NEW YORK TIMES MAGAZINE*, May 13, 1984, at 70.

162. The black community of Columbus, Georgia recently had a community program to make its citizens aware of the black-on-black homicide problem.

163. "Black on Black Love" is being spearheaded in Black neighborhoods throughout the nation by American Health and Beauty Aids Institution (AHABAI) of Chicago, Illinois. They are also sponsoring "No Crime Day" in many parts of the country.

164. It has been found that 42.9% of all homicides in 1983 were the result of family arguments. "Crime Report 1983," *supra* note 4, at 12.

165. *THE CRISES*, Vol. 91, No. 6 June/July 1984, *Charge to Task Force on Crime, Violence and Black Family*, 28, at 30.

166. *See supra* note 53.

167. McClain, *supra* note 54, at 310.

Current laws and regulations relating to firearms must be enforced. The effectiveness of such laws depends greatly upon the actions of the police, prosecutors, and judges. From some reports there is evidence suggesting that police are reluctant to enforce current gun control laws, prosecutors do not always press charges, and judges are unlikely to fully sentence individuals guilty of such crimes.¹⁶⁸ Laws must be enforced to impress upon our citizens (especially those in the black community) that conduct involving the misuse of firearms will not be tolerated.

Individuals breaking gun control laws must be punished to the full extent of the law. The punishment of such individuals will dissuade others from engaging in this type of conduct.¹⁶⁹ Also, the educational function¹⁷⁰ of punishment will be satisfied in that the need for the public to know and reaffirm that this type of conduct is criminal will be met. Too long have we in the black community condoned this type of behavior.

Police officers should not only diligently enforce gun laws, but all laws, thereby giving the black community some feeling that they are receiving as complete protection as any other community. There should be greater communication between the police and the community. Through community relations units¹⁷¹ in police departments, contact should be made with community groups to establish crime watch units within the community. If those in the community feel safer, there will be less reason to resort to firearms.

C. *Reducing the Availability of Handguns*

Gun prohibition may be unconstitutional;¹⁷² however, gun regulation and control enforcement exists in many sections of our country.¹⁷³ Enforcement of current gun laws on our books will reduce the number of guns available for violent use. The debate continues regarding the effectiveness of gun control laws to reduce gun violence,¹⁷⁴ and many say that we may not reach that elusive panacea by this route. However, an affirmative start in enforcement seems a good route.

A current hand gun law in force in all U.S. jurisdictions regulates the carrying of concealed weapons.¹⁷⁵ Since many firearm incidents occur outside of the home¹⁷⁶ and occur with the use of handguns,¹⁷⁷ keeping the streets free

168. DeZee, *Gun Control Legislation*, 5 LAW & POL'Y Q. 374-75 (1983).

169. See W. LAFAYE & A. SCOTT, CRIMINAL LAW 21-25 (1972).

170. *Id.*

171. PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND THE ADMINISTRATION OF JUSTICE, TASK FORCE REPORT: THE POLICE 3-7 (1967).

172. See *supra* note 15.

173. See *supra* notes 90-147 and accompanying text.

174. In two articles in PSYCHOLOGY TODAY, Leonard Berkowitz's articulation of the argument has since been repeated by others: "Guns not only permit violence, they can stimulate it as well. The finger pulls the trigger, but the trigger may also be pulling the finger." Berkowitz, *How Guns Control Us*, PSYCHOLOGY TODAY 11-12 (June 1981). Berkowitz, *Impulse, Aggression and the Gun*, PSYCHOLOGY TODAY 19-22 (Sept. 1968).

175. 18 Pa. C.S.A. § 6106 (Purdon 1973) is typical of state statutes pertaining to the carrying of firearms.

§ 6106. Firearms not to be carried without a license.

(a) Offense defined.—No person shall carry a firearm in any vehicle or concealed on or about his person, except in his place of abode or fixed place of business, without a license therefore

176. See *supra* notes 56-60.

from handguns should reduce the homicide rate to a large degree. Since many of these same crimes are crimes of passion or emotion,¹⁷⁸ reducing the availability of weapons should reduce the overall number of homicides.

A strict permit system a ban on private possession of handguns would significantly alter the firearms habits of law-abiding citizens, who would then turn to safer, long guns for self-protection. Hence, the twenty-five hundred handgun deaths and 100,000 accidental handgun woundings that take place every year cannot be excluded from measurement.¹⁷⁹ Cheap handguns, commonly categorized as a "Saturday night special"¹⁸⁰ should be banned altogether. This would deny many people access to a common source of an instrument of violence,¹⁸¹ the most common weapon obtained and found in the streets of our community. Cutting off this major supply of handguns should bring about a reduction in the number of gun homicides in our nation.

Enforcing and modifying our current gun laws will not completely alleviate the societal detriment caused by their presence, but it is undoubtedly a viable method destined for use in efforts to rectify the problems permeating our social structure. We must stop the killing, and the banning of cheap guns and the enforcement of current gun laws seems to be an appropriate beginning.

V. PROGNOSIS

Columnist William Raspberry succinctly summarized the issue as follows: "It would be nice to live in a society which is both free and gunless, but I'm not sure how you can get there from here."¹⁸² The author does not claim to be any wiser than Mr. Raspberry, but has attempted to suggest several positive steps that we as a society can take to reduce the violence that is caused by black-on-black killings. Most, if not all, of the answers to the problem are within the black community. As Reverend Jesse Jackson, the civil rights leader and recent Democratic presidential candidate, has put the matter: "Nobody will save us from us—but us."

The lingering question still arises as to why this violence is so prevalent within the black community. The answer lies not in the genes, but in the nature of the lives we lead and of the communities in which we reside. We are both black and American; we have fused American culture with the culture we brought with us from Africa. We have created "our culture" with our own music and dance, vocabulary and rhythm of speech, religious denominations and life style. But violence was not brought by us to these shores, it is something that that has been acquired since our arrival here.¹⁸³ And, it is some-

177. See *supra* note 3.

178. See *supra* note 5.

179. See *supra* note 3.

180. See *supra* note 154. The Saturday Night specials were responsible, according to the National Commission on Violence, for fifty percent of crimes committed with firearms.

President Reagan was fired upon and shot with a .22 caliber pistol of the Saturday Night special type in 1981. The pistol had a retail price of \$47.50, making it one of the cheapest handguns that can be purchased in the United States. N.Y. TIMES, April 1, 1981, § A at 11.

181. *Id.*

182. Raspberry, *The Good, the Bad and the Gun*, WASH. POST, May 28, 1975, at A-19, col. 1.

183. P. BOHANNAN, PATTERNS OF MURDER AND SUICIDE, AFRICAN HOMICIDE AND SUICIDE 236-38 (P. Bohannan ed. 1969).

thing that we must learn to cast off if we are to continue to exist.¹⁸⁴

The purpose of this paper is not to paint a grim picture of the state of black America, but to extend a bit of hope for the immediate future. The deaths resulting from black-on-black killings occur in epidemic proportion. United action by all Americans is needed to attempt to implement the meager recommendations stated here. With their implementation, this national problem will be lessened to the status of a lingering disease. It will take many great minds within our society to face and study this problem before a complete cure can be found.

184. The handgun epidemic is so severe in the black community that Professor Reynolds Farley of the University of Michigan reported to the annual meeting of the Population Association of America that handgun homicides reduce the average life expectancy of non-white males by 1.2 years. DETROIT NEWS, Apr. 15, 1978 at 3a, col. 2, 3.