

# GUNS, GANGS, AND PRESCHOOLS:

## Moving Beyond Conventional Solutions to Confront Juvenile Violence

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The evidence of a national crisis involving children and guns seems overwhelming:

- "Nearly 16 children a day died in 1997 as a result of a firearms homicide, suicide or unintentional shooting." [\[FN1\]](#)
- "Firearms are responsible for the deaths of 45,000 infants, children and adolescents per year." [\[FN2\]](#)
- "More than 135,000 children carry a gun to school every day." [\[FN3\]](#)
- "(A)n estimated 270,000 guns are brought to school each day in this country." [\[FN4\]](#)

These statistics are horrifying. Fortunately, they are all false. The correct statistics are presented later in this article. Unfortunately, the misleading factoids about "children and guns" invented by interest groups have distracted attention from the real, and terrible, problem of "children and guns:" namely the extremely high homicide rate of inner-city minority male teenagers. This article attempts to save lives by offering accurate information about these tragic deaths, and by presenting tested, effective solutions.

Part I of this article provides the factual foundation for serious inquiry into the problem of children and guns. It debunks various factoids, identifies the heart of the real problem, and explains why some teenagers--faced with very serious threats of criminal attack--sometimes carry firearms for protection.

Parts II and III address "gun control" as a solution to the problem of homicide perpetrated by teenagers. Part II explains the impact that firearms have on homicide rates, and explains why cliches about "increased availability of handguns" fail as explanations for the increase in juvenile

homicide rates. Part III analyzes several currently popular gun control proposals, and finds them to be ineffective at best, and potentially lethal at worst.

Many conservative Congress-people who oppose gun control propose "gang control" measures, which are the subject of part IV. Many of these measures are embodied in legislation pushed by Senate Judiciary Chairman Orrin Hatch (R- Utah). While gang violence is a very important cause of juvenile homicide, many of these gang control measures are overbroad, dangerous to civil liberties, and wholly inappropriate as a matter of federal law. Part IV concludes by explaining why "gun control" and "gang control" proposals both worsen the problem of juvenile homicide by allowing the substitution of ideological nostrums for measures to confront the real causes of juvenile homicide.

Both gun control and gang control are part of a "tough on crime" paradigm, but Part V argues that some of the most promising ways to reduce juvenile homicide lie outside the realm of criminal law. Fostering responsible attitudes about firearms by teenagers is a good starting point, but the most powerful solutions begin much earlier in life. Social science research shows that high- quality visiting nurse programs and special preschools (such as the famous Perry Preschool) have effectively reduced crime. Shifting resources--both financial and rhetorical-- away from gun control/gang control and towards better education for at-risk children may be the best way to save the lives of youths killed by other youths with guns.

## **I. The Scope and Nature of the Problem**

### **A. The Rise and Recent Decline in Juvenile Homicide**

In the 1950s, national panic over "juvenile delinquents" occurred even as the homicide rate for juveniles (persons under 18) remained at very low levels. Rates rose in the 1960s and continued to rise in the 1970s, although there were large year-to-year fluctuations. From the 1980 level, the rate of homicides perpetrated by juveniles fell sharply by mid-decade. Then, juvenile homicides began to rise quickly. [\[FN5\]](#) Some scholarship traces the initial cause of the rise to the Reagan/Bush "drug war," which destabilized drug markets, so that organized vendors were replaced by inexperienced, younger sellers who carried firearms for turf wars. [\[FN6\]](#) Experienced, older drug dealers with stable territories were removed (and imprisoned); they were replaced by younger, brasher dealers who took advantage of new opportunities for profit, but who lacked stable, reliable organizations for supply and distribution. [\[FN7\]](#) A study of 218 homicides in New York City classified as drug-related found that almost all of them were the result of turf wars, robberies, and other violence engendered by drug prohibition, just as alcohol prohibition caused violence in a previous era. [\[FN8\]](#)

Handguns figure prominently in changes in teenage homicide rates. In the decade from 1984 to 1994, the number of juveniles killed with firearms almost tripled, while the number of juveniles killed by other means stayed stable. [\[FN9\]](#) Of homicide victims aged fifteen to nineteen, 85% were killed with firearms in 1992 (compared to 68% of all homicide victims that year). [\[FN10\]](#) For homicide victims of all ages who were slain by juveniles, 79% were shot. [\[FN11\]](#) Conversely, since 1994, juvenile homicide has fallen sharply, and all of the decline is the result

of a decline in gun homicides. Because of the decline that began in 1995, two-thirds of the total increase in juvenile homicide since 1980 has now vanished. [\[FN12\]](#)

In 1998, 1354 persons under the age of eighteen were arrested for murder or non-negligent manslaughter. [\[FN13\]](#) That year, persons under the age of eighteen made up 10% of total homicide arrests. [\[FN14\]](#) Youth murderers are far more likely than older murderers to act as part of a group. In 1995, when a youth was arrested for homicide, someone else was also arrested in 51% of the cases; for adults, only 23% of homicide arrests were accompanied by a second arrest for someone else such as a second perpetrator. [\[FN15\]](#)

Among juvenile murderers, the older ages comprise almost all the killers. For juvenile homicide and non-negligent manslaughter arrests in 1995, seventeen- year-olds accounted for 40%, sixteen-year-olds for 30%, fifteen-year-olds for 18%, leaving only 11% for ages thirteen to fourteen, and 1% for ages ten to twelve. [\[FN16\]](#) The murder rate peaks, however, during the first year when a person is no longer legally a "juvenile." An eighteen-year-old is more likely to be arrested for homicide than is a person of any other age. [\[FN17\]](#)

## **B. The Inner City Disaster**

The youth homicide problem is overwhelmingly male. In 1998, ninety-two percent of homicide arrests for persons under eighteen were arrests of males. [\[FN18\]](#) The male-to-female arrest ratio for homicide offenders under the age of eighteen is 15:1. This is twice as high as the ratio of male-to-female homicide arrests of persons over twenty-one. [\[FN19\]](#) No sensible proposal to address the issue of murders perpetrated by people seventeen and under would pretend that females in this age group are just as likely to kill as males in this age group. Just as responsible scholarship must acknowledge the concentration of homicide among males, scholarship must acknowledge other ways in which homicide is concentrated.

Geographic concentration of juvenile homicide is strong. Fifty-six percent of the juvenile homicide arrests in the United States come from just six states; and thirty percent come from four large cities (which collectively have only five percent of the nation's population of juveniles). [\[FN20\]](#) Eighty-four percent of American counties had no juveniles murdered in 1995, and nine percent had one juvenile murdered. [\[FN21\]](#) Thus, when Fortune magazine touts handgun prohibition while warning its wealthy readership that "this onslaught of childhood violence knows no boundaries of race, geography, or class," [\[FN22\]](#) Fortune may be attempting to raise social consciousness, but the magazine is dead wrong, factually.

The tragedy is juvenile homicide is not only concentrated by sex and by geography, but also by race. To look simply at the category "youth" is to miss the real story. The white youth homicide arrest rate has remained relatively low, while the black rate has skyrocketed. For youths aged fourteen to seventeen, the homicide perpetration rate per 100,000 population for whites rose from 7.0 in 1984 to 15.6 in 1994; for blacks, the rate rose from 44.3 to 139.6. Blacks, who comprise about fourteen percent of the U.S. population, account for over half of all juvenile homicide arrests. A South Carolina homicide study found that 30% of the state's population is black but that 82% of juvenile homicide perpetrators were black. [\[FN23\]](#) Similarly, in Washington, D.C., blacks were 60% the total population but were charged with 98% of the four

most serious juvenile violent crimes; only one D.C. juvenile homicide victim for 1993 to 1995 was not black. [\[FN24\]](#) While black juveniles are perpetrators in numbers disproportionate to the general population, they also outnumber the white juvenile population as victims.

For inner-city Black teenagers, the homicide rate has risen to astronomical levels. The huge rise in homicide perpetrated by older urban teenagers has not been replicated in other areas. In the suburbs, small towns, and rural areas, where legal restrictions on guns are generally less severe, the firearms homicide rate has remained relatively low, although relatively rare crimes there attract disproportionate media coverage. [\[FN25\]](#)

In some major cities, the racial disparity is even worse. For example, a study of New York City homicides for 1990 and 1991 found that for black males aged fifteen to twenty-four, the homicide rate was 247 per 100,000. [\[FN26\]](#) For Hispanic males in the same age group, the rate was 157. For whites, the rate was 16. [\[FN27\]](#) Research which evaluated changing patterns in Philadelphia homicides in 1985 and 1990 found that "(t)he increase in the absolute number of homicides from 1985 through 1990 in this study was almost exclusively because of a rise in homicides involving young black males." [\[FN28\]](#)

Another way to understand the enormity of the black homicide crisis is to consider lifetime homicide risks. As of 1989, a white female faced a lifetime 1 in 496 risk of being murdered. In other words, about 495 of 496 white females would eventually die as a result of something other than homicide. A white male faced a 1 in 205 risk. A black female's risk was 1 in 117. A black male's risk was 1 in 27. The recent drops in juvenile homicide have followed the same pattern as the increase in preceding years: the decline is heavily concentrated among blacks, and firearms murders are falling, while others remain constant.

Of course, one can find isolated counter-examples to any large statistical fact. The 1998 school murders in Jonesboro, Arkansas, were perpetrated in a rural area by an eleven-year-old white male. But such shootings are the rare exception, not the rule. Generally, juvenile homicide rates, of both perpetrators and victims, are positively correlated to age, sex, race and geographical factors. Any serious effort to address the tragedy of juvenile homicide must recognize that the problem is much more serious among seventeen- year-olds than among eleven-year-olds, much more serious among males than among females, much more serious among blacks than among whites, and much more serious in the inner city than in suburban or rural areas.

These facts give no reason to be less concerned about the youth homicide problem. Indeed, they are reasons to be more concerned: since many problems, including violence, suffered by the urban black community are the long-term result of governmental and societal racism. Therefore, the moral obligation for Americans to respond to the crisis is all the greater. For America to ignore the teenage murder problem merely because most murders happen in the inner city would be callous and immoral. To respond effectively to the crisis, we must attempt to understand its nature; we must not be misled by the efforts of some gun prohibition advocates to distract attention from the most important factor in any homicide: the killer.

### **C. Homicide Perpetrators and Victims**

We have been told that: "in this country, nearly 16 children a day died by firearms." [\[FN29\]](#) More recently 12 or 13 "children a day" has become a popular figure. The image, of course, is of small children dying in gun accidents. But in truth, small children are rarely killed by guns.

Fatal firearms accidents involving children are far from common. In the United States, about half of all homes contain guns; the total gun supply is about 240 million, and there are tens of millions of children in the country. Yet according to the National Safety Council, in 1998, there were thirty fatal gun accidents involving children aged 0 to 4, and 80 such accidents for children aged 5 to 14. [\[FN30\]](#) This suggests that the overwhelming majority of families with firearms act responsibly.

Any parent knows that a single child's death is unspeakably tragic. Yet the number of toddlers who die from gun accidents is fewer than the number who die from drowning in swimming pools and bathtubs each year. [\[FN31\]](#) Despite these numbers, the President is not scoring political points inveighing against bucket manufacturers, or demanding federal laws against unfenced pools in private homes.

A closer look at the statistics belies the "13 children a day" factoid. According to the mortality tables published by the National Center for Health Statistics, in 1997, there were 1.68 gun deaths per day of persons aged 0 to 14. [\[FN32\]](#) While many persons would say that only people aged fourteen and under are really "children" (as opposed to "adolescents," "youths," or "young people"), "fewer than two children a day killed by guns" is not nearly as good a sound-bite as "thirteen children a day." For "children" under age 20, the real totals are 7 per day from homicide, including legal intervention, 3.5 from suicide, and .8 from accidents. [\[FN33\]](#)

To lump all these disparate circumstances of death into a category that includes a very small number of small children who die in gun accidents, and turn the whole conglomeration into "13 children a day killed by guns" is an ingenious exercise in propaganda and in promoting fear of guns. It is also irresponsible public policy. How to further reduce the number of gun accidents caused by nine-year-olds is a rather different problem than reducing the number of intentional homicides perpetrated by nineteen-year-olds.

Given the large number of juvenile (and adult) lives lost to homicides perpetrated by males aged 15 to 19, a significant reduction in the murder rate perpetrated by this group has more potential for saving lives than do other forms of reducing gun deaths among "children" under twenty years old. Before we start looking at solutions, we need a better idea of who is causing the problem.

## **1. Murderers are Bad People**

Under what circumstances do teenage handgun murders take place? "A common misperception is that teen homicides are largely related to crime, gang activity, or premeditated assault. The most common event precipitating a shooting is an argument, often over something later seen as trivial. Such shootings are usually impulsive, unplanned, and instantly regretted." [\[FN34\]](#)

The American Academy of Pediatrics made this assertion about the non-criminal nature of teenage homicide, citing only one study as support. That study, however, did not rule out "crime,

gang activity, or premeditated assault" as factors involved in teenage homicide. Nor did the cited study claim that teenage shootings were "impulsive, unplanned, and instantly regretted." The cited study only discussed the relationship between murderer and victim, and showed, not surprisingly, that murderers generally target people who have offended them, rather than total strangers. [\[FN35\]](#)

A Philadelphia Inquirer investigation of teenage murderers in Philadelphia casts some doubt on the proposition that homicides are "instantly regretted." Of the fifty-seven teenage murders studied, "(w)ith few exceptions, the teenagers felt little remorse or regret." More typical were stories such as these:

- Yerodeen Williams, seventeen, killed a man who resisted a robbery at an automatic teller machine. "He brung it on himself," Williams mused, blaming the victim for not submitting. "It must have been his time to go . . . I feel as though it wasn't my fault this thing happened. I ain't seen no blood or nothing."
- Kerry Marshall, seventeen, attempted to rob a woman and her four-year-old son. When the victim pulled out a gun of her own, he shot her dead. "I know the values," he said, blaming the victim for her death. "If somebody was threatening me, I'd give it up 'cause material things come and go." Marshall complained about his long sentence, because "I don't even think of myself as a criminal . . . Everybody is vulnerable for mistakes. Mistakes will happen."
- Richard Carabello, seventeen, took a taxi ride, but had no money to pay for it. When the driver grew angry, Carabello killed him. "I'm not a violent person," Carabello explained, "I didn't kill nobody. He killed himself."
- Kenyatta Miles, eighteen, shot a fifteen-year-old honor student, and took his new Air Jordan sneakers. "I killed him, but not in cold blood," Miles said. "I didn't shoot him two, three, four times. I shoot (sic) him once . . . I wouldn't call myself no murderer . . . I'm not violent. I'm the easiest person to get along with . . . I'm not really a violent person . . . I look at my right hand 'cause it pulled the trigger. I blame my right hand."
- Daniel Maurice White, sixteen, shot a stranger in a crack house who was resisting a robbery. Again, the victim was to blame: "If somebody see you with a gun, they gonna turn the other way--if not, they must want to get shot . . . It's not like I'm no serial killer. I didn't kill a lot of people." [\[FN36\]](#)

While there are a many innocent victims, there are not many innocent murderers. Although the American Academy of Pediatrics asserts that most teenage murders suffer or experience instant regret, in reality, the majority of teenage killers seem to have no remorse for actions, and are unhappy only because they were caught. [\[FN37\]](#) In Harlem, for example, murderous teenagers coldly refer to killing as "gettin' a body." [\[FN38\]](#) A survey of arrested juveniles found eighteen percent who agreed, "(I)t is okay to shoot someone who disrespected you." (Thirty-four percent of gang members agreed.) [\[FN39\]](#)

If murderers, teenage and adult, are just ordinary people unlucky enough to be near a gun, then the simple solution to homicide is to remove guns from society. In a society with an appallingly high level of homicide, such a simple solution may sound attractive. But if murderers are

different from most other people, then America faces the much more difficult task of dealing with the problems that turn people into murderers in the first place. A study of Minneapolis youths arrested for homicide found that seventy-five percent had been arrested at least once in Minneapolis (the mean number of arrests for this group was 7.8). A Los Angeles homicide study showed that gangs had a role in eighty percent of all adolescent homicides. [\[FN40\]](#) Fifty-nine percent of homicides perpetrated by youths are perpetrated by males committing other crime, such as robbery or rape. [\[FN41\]](#)

## **2. Many Murder Victims are Criminals**

It has long been recognized by criminologists that many murder victims, since they are friends, relatives, and "business" acquaintances of murderers, are themselves unsavory characters, and frequently criminals. The pattern for teenage homicides and other violent crimes is similar. The persons who are most likely to be killed by a teenager with a gun are gang members, gang hangers-on, and other teenage criminals. [\[FN42\]](#) In many killings of inner-city high school-age persons, the victim is a person who engaged in risky behaviors, such as selling drugs. [\[FN43\]](#) A study of teenage gunshot victims in New York City found that forty percent were shot during hours when they legally should have been in school. [\[FN44\]](#) Of the children and adolescents injured in drive-by shootings in Los Angeles, "seventy-one percent were gang members." [\[FN45\]](#) An in-depth study of juvenile delinquents in Philadelphia found that juvenile victims of violent crimes were often perpetrators of such crimes as well. [\[FN46\]](#) Nationally, a gang member's risk of getting killed is sixty times greater than the general population's risk. [\[FN47\]](#) The St. Louis youth gang homicide rate is 1,000 times the U.S. general population rate. [\[FN48\]](#) Although one teenage gang member killing another teenage gang member does account for a significant fraction of teenage homicides, there are many other victims of these criminals who have done nothing to put themselves at risk, except being born in a dangerous neighborhood.

# **II. Facts about Firearms**

## **A. Teenagers Carrying Guns**

### **1. Teenagers as Crime Victims**

When news programs and elected officials talk about the "juvenile crime problem," it is likely that they are talking about the problem of crimes committed by juveniles. But as society considers ways to solve this problem, it is important to recognize that there is another juvenile crime problem. Persons age twelve to seventeen are more likely than adults to be the victims of violent crime. [\[FN49\]](#) In 1992, one out of thirteen juveniles was the victim of a violent crime. [\[FN50\]](#) "In 1991, a twelve-year-old was at greater risk of being a victim of violent crime (i.e., murder, forcible rape, robbery, aggravated assault, or simple assault) than anyone above the age of twenty- three. The risk of violent victimization for a seventeen-year-old in 1991 was about double that faced by a twenty-nine-year-old." [\[FN51\]](#) There are sixty- two violent victimizations annually per thousand persons for people aged twelve to fifteen; seventy-two victimizations annually for persons aged sixteen to nineteen, but only twenty-six victimizations for persons twenty and over. [\[FN52\]](#) A twelve-state study found that more than half of female rape victims are under the age of eighteen. [\[FN53\]](#)

While most schools are safe, some are not, particularly in the inner city. Data from 1996 show that there were 671,000 serious violent crimes perpetrated against students age twelve to eighteen while away from school, and 255,000 such crimes at school. [\[FN54\]](#) A Washington, D.C., study found that violent victimization of juveniles "showed a clear association with schools. (There) is a disproportionate share of juvenile victimizations that occur in or near schools." [\[FN55\]](#)

## **2. Many Teenagers who Carry Firearms are Victims, not Criminals**

Although teenagers are more likely to be crime victims, they carry firearms for protection at only about one-third the rate of older, less-victimized population groups. [\[FN56\]](#) Next to teenagers, the age group which is at highest risk of being violently attacked is persons aged twenty to twenty-nine. [\[FN57\]](#) Some persons in this age group choose to carry firearms for protection. Some of these persons are able to obtain permits, or live in jurisdictions which do not require permits. Other persons, knowing they cannot obtain a permit to carry, choose to carry anyway, reasoning that it is better to risk being caught breaking the law than to risk being maimed, raped, robbed, or murdered. A very large number of teenagers who carry guns appear to have the same protective motives as persons in older age groups who carry firearms.

"A lot of parents in my district are telling their children to carry weapons," observed the superintendent of a Brooklyn public school. "They give their children weapons to protect themselves when they leave the tenements." [\[FN58\]](#) As one student wrote to the Washington Post:

To put it bluntly, I think students bring weapons to school to save their own lives. They have a constant fear of being attacked, whether for money, for drugs, or for some other reason. They feel they need to bring a weapon with them to school. To the outsider, this information may seem all blown out of proportion, or just a plain lie. The truth is that there are drugs in the schools. There are kids robbing other kids of their money and personal belongings. And these kids who are committing these crimes also carry weapons such as knives and handguns and they are not afraid to use them.

There's no doubt that we have a serious problem on our hands. I just hope we can find some way to solve it. [\[FN59\]](#)

"Good kids have guns," acknowledges John Silva, the safety and security director of the Cambridge, Massachusetts government schools. "From a district attorney's perspective, a good kid would never carry a gun, but the DAs don't live in the projects. There's so much fear. Good kids who want to go to school and do the right thing--they're afraid of the gangs and the drug dealers; they want to protect themselves and their families." [\[FN60\]](#) Nine percent of male seniors and three percent of female seniors carried a weapon to school at least one day out of previous four weeks. [\[FN61\]](#)

It is hardly a sign of a healthy society that any teenagers feel a need to carry a handgun for protection. It is a sign of advanced social pathology that teenagers are so often attacked by violent criminals. Yet we are hardly going to make society better if we refuse to attempt to

understand its problems. And we are not going to understand the problem of violence and guns at school if we refuse to admit that many of the students with guns are victims, not perpetrators.

A national study of tenth and eleventh grade boys, which, unlike most other studies of youths and handguns, did not focus mainly on criminal or "at-risk" youths, found that forty-three percent of self-reported carrying of weapons was for protection. The rest of the surveyed boys who carried weapons did so for plainly illegitimate purposes such as status enhancement or crime. [\[FN62\]](#) Studies have repeatedly found that past victimization is closely associated with gun carrying by juveniles. [\[FN63\]](#)

And just how often are guns carried at school? The popular factoid is that every day 135,000 children carry guns to school. [\[FN64\]](#) Others raise the numbers to 270,000. [\[FN65\]](#) Frightening numbers to be sure, but, completely untrue.

The 135,000 figure appears to be very loosely extrapolated from Centers for Disease Control and Prevention (CDC) surveys asking teenagers in grades nine through twelve: "During the last 30 days, how many times have you carried a weapon, such as a gun, knife, or club, for self-protection or because you thought you might need it in a fight?" [\[FN66\]](#) The 135,000 factoid assumes that every respondent who carried a gun at least once carried a gun to school every day. In fact, the data suggested that most of the students did not carry a gun every day, but only occasionally. [\[FN67\]](#) And the students were not asked if they carried a weapon at school. [\[FN68\]](#) Thus, the "yes" answers applied to occasional carrying anywhere, such as in an automobile when driving at night in dangerous neighborhoods.

Accordingly, Florida State University criminologist Gary Kleck estimates that, about 16,000 to 17,000 students carry a gun to school on a given day. [\[FN69\]](#) The figure translates into about one in every 800 high school students. Common sense suggests that the one in 800 will not be evenly distributed; an inner-city school may have more than one in 800 students carrying a handgun on a given day, and a different school might have none at all. [\[FN70\]](#)

### **3. Juveniles Carrying Weapons: Differences between Criminals and Victims**

The most in-depth study of the weapons-carrying behavior of male students was a National Institute of Justice-funded study of students in inner-city schools in California, Illinois, Louisiana, and New Jersey. [\[FN71\]](#) The study also surveyed incarcerated juvenile males in those states. [\[FN72\]](#) For both the schoolchildren and the teenagers in jail, the study found that "(c)arrying a gun has become strictly functional behavior meant to support survival." [\[FN73\]](#) Defensive carrying of firearms (by both young people and adults) appeared to have some impact: seventy percent of the inmates admitted that they had been "scared off, shot at, wounded or captured" by an armed victim at least once. [\[FN74\]](#) One reason that gun carrying is so common among juvenile criminals is that the criminals are serious threat to each other.

As researchers Joseph Sheley and James D. Wright put it: "Much of the self-protection they sought, in short, was protection against one another." The social implications of juvenile criminals protecting themselves against other criminals are different from the implications of non-criminal juveniles carrying for protection. The former are much more likely to use their

protection guns offensively than are the latter.

There were important differences between the students and criminal sample of the boys surveyed. For example, when asked, "(d)o you carry a gun all/most of the time," fifty-five percent of the inmates but only twelve percent of the students answered in the affirmative. For both groups, obtaining a firearm was seen as easy. Only thirteen percent of the inmates and thirty-five percent of the students said that obtaining a gun on the street is difficult. Asked if they could "get a gun with little/no trouble," eighty-seven percent of the inmates, and sixty-five percent of the students, said yes. [\[FN75\]](#)

While it is sometimes asserted that the reason so many teenagers have access to firearms is that their parents leave guns unlocked, the study found that parents, gun stores, and other sources subject to law enforcement controls did not appear to be major sources of the firearms. [\[FN76\]](#) One researcher noted, "(t)hey told us with humor how easy it was to steal a gun." Many of the guns were obtained for far less than their retail price, indicating that they were stolen. It was considered easy to steal a gun out of a car. [\[FN77\]](#)

These results are consistent with a study of gun acquisition by youthful offenders in Michigan. There, only 7.4 of the juveniles had obtained their last gun from a legal source such as a gun store, pawnshop, or gun show. [\[FN78\]](#) (Of course some of those purchases might have been carried out with straw purchasers, rather than direct purchase by the juvenile.)

Contrary to the hypothesis that small, inexpensive handguns (so-called "Saturday Night Specials") are responsible for modern youth being armed, the researchers found that among the criminals, "(t)he preference, clearly, was for high-powered hand weapons that are well-made, accurate, easy to shoot and not easily traced--guns suitable for serious work against well-armed adversaries." [\[FN79\]](#) Another study found that ninety percent of gang members report that they prefer large, powerful handguns--as opposed to the small, inexpensive, more readily concealable guns which are sometimes called "junk guns" or "Saturday Night Specials." [\[FN80\]](#) For both students and inmates, protection was the leading reason for obtaining a gun, "easily outpacing all other motivations." [\[FN81\]](#) Even for juvenile criminals who used guns in crime, self-protection (rather than peer status) was the dominant reason for carrying a gun. The authors of the study concluded that legal controls were unlikely to deter gun carrying, since persons carrying for protection are much less likely to be deterred than are persons carrying for less important reasons. [\[FN82\]](#)

After presenting the above findings about violence involving inner-city high school students, Joseph Sheley and his co-authors wrote in the American Journal of Diseases of Children:

It is clear that the problem of violence in inner city schools cannot be isolated from the problems of violence in larger society; violent neighborhoods and violent communities will produce violent schools, whatever measures the schools themselves adopt. It is equally clear that this "larger" problem will not yield to simplistic, uncausal solutions. In this connection, it is useful to point out that everything that leads to gun-related violence is already against the law. What is needed are not new and more stringent gun laws but rather a concerted effort to rebuild the social structure of inner cities. [\[FN83\]](#)

In short, to turn the quest for safety into a war on every teenager who feels a need to carry a gun is to increase, not reduce, the victimization. It is awful that any juveniles feel a need to arm for protection. The first step to a solution is not to disarm the victims who are trying to protect themselves, but to act against the violent aggressors who threaten the students and the conditions that breed the violent aggressors. If the cities were made safe, then teenagers would not feel a need to carry a gun for protection.

A seventeen-year-old female has just as much moral right to use a firearm to resist a rapist as does a forty-year-old female. A sixteen-year-old male has the same right to escape crippling assault by a gang of thugs as does a sixty-year-old male. The students who carry weapons are simply coping with a terrible situation with which they do not have any other way to cope.

It is irresponsible, indeed childish, for adults who fixate on guns to say, in effect, "We haven't got any solution for your problems, so we are just going to take away the only solution you could figure out and leave you on your own to figure out some other solution." It is also hopelessly impractical. A society which cannot protect children from rampant crime is also unlikely to be able to disarm them. Moreover, one result of disarming students while failing to offer alternative means of protection would be to drive students into gangs for protection. The result of that will be contrary to what is desired; they will not eschew guns, but rather, they will be exposed to guns and drugs together by their peers. It is especially unjust for the state to force a child into peril, and then prevent the child from protecting himself. This is exactly what the state does when it compels a student to attend school, fails to provide a safe environment at school or on the way to school, assumes no legal liability for injury to the student, [\[FN84\]](#) and then prohibits the student from protecting himself or herself. [\[FN85\]](#) In Lafayette, Illinois, a fourteen-year-old boy who carried a gun to protect himself from gang members was criminally prosecuted for violating the state's law on guns at school. [\[FN86\]](#) Rather than using the criminal law to "crack down" on people who are trying to protect themselves, a more humane approach would be to protect them better, so that they no longer need to carry a weapon.

## **B. Guns in Criminal Hands Make Crime Significantly More Dangerous to the Victim, and Increase the Murder Rate**

There are some homicides for which other weapons, or bare hands, could be substituted if guns were not available; the murder of wives by husbands is one example. But for other killings, including those in which teenagers often are perpetrators, if there were no guns, there would be no murder. For example, guns allow killing to be done at a distance; drive-by homicides are never perpetrated with kitchen knives.

In addition, guns, as "equalizers," overcome physical differences between the gun-wielder and the target. When a woman defends herself against a male stalker, guns are beneficial equalizers; when a scrawny sixteen-year-old shoots a larger man during the course of a robbery, guns are harmful equalizers. Thus, if criminal teenagers were deprived of firearms, there would probably be a great deal less homicide.

One study, by John Donohue and Steven Levitt, finds that the main mechanism by which firearms increase deaths is not their lethality but the unpredictability of firearm users. When two

people are contemplating fighting, if the two people could assess who would probably win the fight, the fight would likely not occur; the weaker would give way to the stronger. In a potential fistfight, for example, it is relatively easy to see beforehand which fighter is bigger and stronger. Now suppose that fistfights were somehow changed so as to become 100% deadly; after every fistfight, the loser would be instantly executed. Then, fistfights would be more deadly than guns (since less than 100% of gunfights result in a fatality). Even then, Donohue and Levitt find, guns have resulted in a higher death rate than would be expected from 100% fatal fistfights. Why? Because guns make it difficult for fights to be settled "in advance" by assessment of the potential fighters' chance of winning. The "factors that predict victory" in a gun fight are not strength, but include "lack of respect for human life," and low "disutility for going to prison." And skill factors that matter--such as coordination, speed, and experience--are much more difficult for a stranger to observe than is physical strength or size. [\[FN87\]](#)

Firearms are much less of an issue in other violent crimes involving youth. In contrast to youth homicide victims, youth victims of robbery and assault are less likely to have a gun used against them than adults, and most of these crimes do not involve guns anyway. [\[FN88\]](#)

### **C. Higher Gun Density Does Not Cause More Gun Crime**

Most gun-control advocates would agree with the analysis in the section above. They would conclude that if gun density were reduced, homicide would also be reduced. They do not argue for reducing gun density among (potential) homicide perpetrators; they assert that reducing gun density on a nationwide basis would necessarily lead to a reduction in national homicide. But actually, if there is a statistical relationship between gun density and homicide in the United States, it is often an inverse one. In other words, the regions with the most guns are the regions with the lowest homicide rates. [\[FN89\]](#) And while whites have a higher rate of gun ownership than blacks, they have a much lower homicide rate. [\[FN90\]](#) Time periods in which gun ownership increases heavily are not necessarily periods when homicide rates increase; conversely, periods of increasing homicide are not necessarily periods of increasing gun ownership. For example, homicide rates rose in the late 1980s, a time when firearm purchases were stagnant. [\[FN91\]](#) A 1997 federal study, Homicide in Eight U.S. Cities, found that "gun ownership rates among arrestees and homicide rates appear to be uncorrelated across cities . . . ." [\[FN92\]](#) Conversely, homicide rates appear to have leveled out or declined slightly in 1993-94, a period when the gun industry (thanks to President Clinton's advocacy of gun control) enjoyed record sales. More specifically, the Tulane University National Youth Study of male tenth and eleventh graders in 1996 found:

Recreational use of firearms among the present sample was associated at statistically significant levels with possession of every type of firearm of interest in this study and with carrying firearms outside the home. Importantly, however, the recreational firearm score was unrelated to any of the criminality measures (crime-, drug-, and gang-related activity) employed in this study, to measures of status enhancement involving weapons (e.g., carrying guns to gain respect from peers), and to indicators of high levels of exposure to dangerous environments (where gun carrying could be motivated by perceived need for self protection). [\[FN93\]](#)

The fact that American homicide rates are often lowest among regions and population groups where gun ownership is highest should at least give pause to theorists who insist that gun prohibition or other severe gun controls are the only rational response to rising murder rates. In the late 1960s, the Eisenhower Commission investigated the causes and cures of American Violence. Professor Hans Toch, of the State University of New York's School of Criminology, served on the commission and fully endorsed its conclusion that "reducing the availability of the handgun will reduce firearms violence." [\[FN94\]](#) But based on modern research, Professor Toch concludes:

(W)hen used for protection, firearms can seriously inhibit aggression and can provide a psychological buffer against the fear of crime. Furthermore, the fact that national patterns show little violent crime where guns are most dense implies that guns do not elicit aggression in any meaningful way. Quite the contrary, these findings suggest that high saturations of guns in places, or something correlated with that condition, inhibit illegal aggression. [\[FN95\]](#)

One way in which a high density of guns can be associated with lower levels of violence is that armed citizens successfully resist and deter criminals.

Another, more important factor in the association of high gun ownership rates with low crime rates is that areas in America with the highest rate of gun ownership tend to be rural and small-town. In rural and small-town America communities, are often more stable and unified. Thus, the problem of violence in American inner cities may have less to do with the fact that guns are available there (as they are everywhere else) than with the fact that so many families are dysfunctional, and that so little sense of community can be found.

#### **D. Guns are Not More Available to Youth than in the Past, Nor are They More Lethal**

Much literature on youth violence repeats the mantra that rising rates of juvenile gun crime are due to "the increased availability and lethality of firearms." [\[FN96\]](#) The claim is wrong in every respect.

The assumption that firearms are more available to young people is not true. As noted above, homicide by youths reached a relatively low rate in 1984-85, then sharply rose through 1994, and has since declined significantly. Almost all of the increase, and almost all of the recent decline, has been with firearms. Murders with other weapons remained stable. Franklin Zimring observes, "(t)he proportion of homicides committed with guns did not increase among adults, so no general increase in handgun availability seems to explain the sharp increase in youth shootings." [\[FN97\]](#)

American youths have had ready access to deadly weapons from the first day that Indian settlers crossed the Bering Strait. Easy access to firearms has been a constant since the first day that white settlers landed on the Atlantic Coast. During the nineteenth century, New York City's juvenile street gangs (e.g., the Bowery Boys, Fly Boys, Smith's Fly Gang) carried pistols--but rarely used them. [\[FN98\]](#) A 1958 study of youth gangs found that street gangs were regularly

offered guns for sale by persons specializing in selling guns to such groups; a revolver could be bought for \$10, an inferior gun for less. [\[FN99\]](#) But the guns that were owned by the gangs were rarely used, and when used, were used almost exclusively for threats, and rarely fired. [\[FN100\]](#)

Before 1968 (a period when youth gun violence was much lower), there was no federal law (and in most states, no state law) against children buying guns in gun stores. The 1990s mark a period when legal restrictions related to youth acquisition of guns (such as laws banning even parental gifts of handguns to children, and laws requiring that guns in homes with children be locked-up) is at a record high; it is the same period in which youth firearms violence is at record highs.

Firearms are not more lethal than in the past. Semiautomatic firearms were invented over a century ago and have been common ever since the introduction of the Colt .45 pistol in 1911. For all the excitement over 9mm semiautomatic pistols (which predate World War One), these pistols remain inferior in stopping power to the venerable Colt. Moreover, there has been an important shift in the last fifty years by American gun-owners away from rifles and shotguns, and towards handguns, at least for home protection. [\[FN101\]](#) Rifles and shotguns are much more lethal than handguns, so the most important change in gun-owning patterns has been a trend towards less lethal firearms.

Although legal controls on firearms for adults and juveniles have increased significantly in the last twenty-five years, so has the number of guns. Gun density could be said to make guns more available to juveniles, in that more guns owned means more guns available to be stolen. Yet more guns available to be taken surreptitiously by juveniles does not seem like a net increase in "easy access" compared to the pre-1968 ability of juveniles in almost all states to buy guns.

There is one way, however, in which "easy access" of youths to firearms really has increased. Youth today, even youths in very poor areas, are much wealthier than their counterparts in previous generations. An average teenager today can probably afford a low-quality handgun (even if he has to buy the handgun on the black market, rather than in a gun store), whereas a teenager in the 1930s would have a harder time finding enough money for a gun, even if he could buy it in a hardware store. Although I am not aware of any study of gun price levels, cursory analysis of gun prices compared to wages levels shows that guns (like many other consumer goods) have become much more affordable over the last six decades. In other words, the only meaningful way in which "easy access" to guns by youth has increased is as a by-product of the growth of the American economy.

## **E. International Comparisons**

Whatever may be said about rates of gun ownership in America, it is obvious that America has more guns, and more gun murders, than other industrial democracies. As a widely-reported study by the federal Centers for Disease Control and Prevention (CDC) noted, the American murder rate for teenagers is much higher than the rate in most industrial countries, where gun-control laws are generally stricter. [\[FN102\]](#) The CDC researchers concluded that the United States needs tougher gun laws. [\[FN103\]](#)

While the authors of the study did an excellent job of compiling data, their conclusion that the international data proved that America's gun laws were the cause of its high teenage homicide rate was perhaps overstated. For example, England has harsh gun laws and a lower homicide rate than the U.S., but the historical evidence seems to show no cause and effect between British gun controls and homicide. The lowest rates of violent crime and homicide in England did not occur in the period with the strongest gun laws (the late 1980s and 1990s), but in the era with the weakest gun laws. [\[FN104\]](#) At the turn of the twentieth century, there was virtually no violent crime in England, and virtually no gun control. Anyone (children included) could buy any type of gun, no questions asked. [\[FN105\]](#) There were no background checks, no forms to fill out, and no safety training. All that was needed was ready cash. Yet gun homicide and other crime was tiny compared to current British rates. At the turn of the century, Victorian morality was strong; it was a more effective check on British criminal impulses than are the rigid gun laws of today. [\[FN106\]](#)

Overall, comparative data shows little relation between the severity of gun laws and the homicide rate. Scotland has rigorous gun laws, and its murder rate for males aged fifteen to twenty-four is over three times as high as the rate in Switzerland. [\[FN107\]](#) In Switzerland, the government issues every adult male a fully automatic SIG assault rifle to keep at home and trains him to use it. [\[FN108\]](#) Switzerland, much more than Scotland, still retains the strong families and shared code of behavior similar to that enjoyed by Great Britain at the turn of the century.

By looking only at firearms, the CDC study did not consider other factors that might explain why American males aged fifteen to twenty-four are so much more likely to kill each other than their counterparts in other nations. One possible reason for the disparity is the fact that America is the only country studied that has a three-and-a-half-century history of enslaving and degrading a major part of its population.

### **III. Gun Control Laws**

The ploy of insisting that we curtail the rights of adults in order to protect children has at various times in American history brought success to campaigns to outlaw alcohol, marijuana, sexually explicit literature, homosexual behavior, lawn darts, and just about everything else that prohibitionists have wanted to prohibit. Gun control strategists recognize that children are their most effective issue, even for controls that would apply to adults. The following examines a variety of gun control laws which have been proffered as remedies to the problem of youth firearms homicide. Whatever may be the merits of these proposals in regards to adult gun misuse, the programs will take our society no further to resolving the real problems of children and guns, but will instead offer legislators a convenient stratagem for avoiding real solutions.

#### **A. Banning Handguns**

Young people consistently report that gun control laws do little to reduce gun availability. According to the Colorado Trust's interviews with Colorado teenagers (both law-abiding and criminal):

The most interesting response to questions about access to handguns clearly came from the youth focus groups. Unanimously, they said that nothing can be done to prevent access. Their view is

that there are so many handguns in circulation (each with a useful life of 20-100 years) that access is easy. One youth put it this way: "If you can't stop drugs and they are illegal, what makes think you can stop guns when they are legal for anyone over 18?" [\[FN109\]](#)

A Massachusetts research project interviewed forty at-risk youths (who already had criminal justice encounters or school expulsions):

Interviews with juveniles, both males and females, overwhelmingly revealed that laws aimed at controlling the illegal possession of guns by youth will not cure violence involving guns. In the words of one interviewee, a 17 year old black male, "there isn't (sic) any laws (that) will stop violence, it is up to the people." This theme was echoed by each of the 40 respondents who suggested that guns are only a small part (of) the problem; the reasons juveniles feel they need guns, other than for sport or recreation is the larger issue. [\[FN110\]](#)

In a survey in Washington, D.C., violent criminals, most of them under thirty, confined at the Lorton, Virginia, prison did not seem to be influenced by gun-control laws. Seventy-seven percent of them had acquired a handgun in the District, where handgun sales are illegal and handgun possession is almost entirely outlawed. Two out of three agreed that gun-control would not reduce D.C.'s violence. [\[FN111\]](#)

A Los Angeles study of youths in high-risk neighborhoods found that seventy percent of youths who owned guns had gotten the gun from a friend (a completely illegal transaction in California, where all gun transfers must be routed through an arms dealer). [\[FN112\]](#) This suggests that controls on legal markets may do little to influence the ability of juvenile criminals to obtain firearms.

Still, the American Academy of Pediatrics proposes that handguns be outlawed for the entire population, because (according to the AAP) it is not suitable for children to ever possess handguns. [\[FN113\]](#) The Constitution has long been clear that the rights of adults may not be constricted to what is suitable for children. As Justice Frankfurter put it, allowing adults to possess only what is suitable for children, "is to burn down the house to roast a pig." [\[FN114\]](#) Or as Justice White wrote, "(t)he government may not reduce the adult population . . . to . . . only what is fit for children." [\[FN115\]](#)

Alcohol and tobacco are not suitable for children, but these products remain legal. Despite the fact that these products are associated with tens of thousands of deaths or crimes annually, and that they have no capacity to save lives by providing protection against crime, alcohol and tobacco are not prohibited by law.

Handgun prohibitionist Katherine Christoffel of the American Academy of Pediatrics argues that the Second Amendment is obsolete. "No one can believe that our Founding Fathers, in crafting the Second Amendment, intended to leave American children as vulnerable to firearms violence as they are today." [\[FN116\]](#) But guns in the late eighteenth century and early nineteenth century were actually more prone to accidental discharge than they are today; guns were owned by a

higher percentage of the population, and guns were more likely to be kept loaded than they are today. [\[FN117\]](#)

The eagerness of gun prohibitionists to outlaw handguns is based in part on a determination that handguns are worthless. The American Academy of Pediatrics claims that a ban on handguns would be appropriate "because of their very limited ability to provide personal protection." [\[FN118\]](#) But in fact, handguns provide an enormous public safety benefit, because they are used so often to prevent crime. [\[FN119\]](#)

Handgun prohibition will also lead to a sharp increase in the firearms death rate. Some gun misusers would switch to knives (not much less deadly than small handguns), while others would switch to rifles and shotguns (much more likely to kill than handguns). [\[FN120\]](#) Thus, if at least forty-four percent of misusers switched from handguns to long guns, the death toll would increase, even if the other fifty-six percent gave up crime entirely. [\[FN121\]](#) The Wright-Rossi National Institute of Justice study of felons in state prisons found that seventy-two percent of the criminals who used handguns frequently said they would switch to sawed-off shotguns if handguns became unavailable. [\[FN122\]](#)

## **B. Buy-back programs**

Government or private programs to buy guns from citizens willing to turn them in do have the advantage of not violating anyone's constitutional rights. The buy-backs are well-intentioned, but they are a waste of taxpayer or corporate money. Buy-backs give professional gun thieves a market for selling their stolen goods with no questions asked. [\[FN123\]](#) The non-thieving people who turn in firearms are often the widows of hunters, or are other older people, rather than teenage gang members who have suddenly decided to abandon a life of violence. [\[FN124\]](#) A study of a 1992 gun buy-back program in Seattle found that only five percent of surrendered guns came from minors. [\[FN125\]](#)

Because most persons surrendering their guns are very unlikely to commit a violent gun crime, the safety benefit, if any, must lie in reducing the supply of guns which can be stolen, or in removing a potential suicide instrument. How much disarmament is actually accomplished may be questionable; the Seattle study reported that sixty-six percent of sellers had another gun that they did not surrender. [\[FN126\]](#)

Sensibly, the authors of the Seattle buy-back study suggested that future buy-backs focus more narrowly on higher-risk gun owning groups, such as minors. [\[FN127\]](#) But as long as American cities remain dangerous places, the need to carry firearms for protection will persist. Thus, even carefully-targeted gun buy-backs may not make a dent in the number of youths carrying guns.

## **C. Banning Gun Possession by Minors or Banning Guns at School**

Some politicians have proposed laws to more or less outlaw the possession of firearms by persons under eighteen. Often, the laws are badly drafted and outlaw activity that cannot rationally be considered illegitimate. It is already illegal nationwide for minors to buy guns in stores. These laws regarding gun possession by minors, therefore, make it unlawful for adults to

give or loan guns to minors. This is often counter-productive since being taught about guns by adults is the best way for minors to learn responsible attitudes about guns.

In 1994 in Tulsa, four brothers were home alone while their step-father was running an errand, and their mother was at work. An intruder broke into the house, and the oldest boy, thirteen, grabbed his stepfather's .357 magnum revolver. Although the boy (who had taken gun safety classes) pointed the gun at the intruder, the criminal kept coming. The boy shot him, fatally, and the prosecutor determined that shooting was legally justified self-defense. [\[FN128\]](#) Sensibly, the federal juvenile handgun law, unlike some state or local proposals, includes an exemption for juveniles using firearms against an intruder. [\[FN129\]](#)

A few weeks after the Columbine High School murders, another juvenile with a gun killed someone. This juvenile was a twelve-year-old boy in Compton, California, who shot a criminal robbing his grandmother's convenience store. [\[FN130\]](#) When laws fail to distinguish heroic children like the Compton boy from the evil predators like the Columbine murderers, then laws lose moral legitimacy.

Because minors are not necessarily as responsible as adults, it might be constitutional for laws to require that minors with guns be subjected to restrictions that could not constitutionally be applied to adults. Arguably, a law could require that minors only carry guns if they have permission from their parents, or if they have passed a safety training class. On the other hand, many anti-minor laws strip young people of their right to lawful self-defense. Does it really enhance public safety to enact laws which command that a sixteen-year-old female driving home from the library at night may not possess a handgun to shoot a rapist, or that a seventeen-year-old male who works the sales counter at his father's store may not exercise the right to resist a robbery with a shotgun?

While minors generally are not accorded the entire range of constitutional rights applicable to adults, the constitutional rights of minors may not be wholly abridged. For example, while school newspapers may be subject to certain controls not applicable to independently-owned newspapers (because school papers are part of the school curriculum), juvenile students have free speech rights, even on school property. [\[FN131\]](#) Similarly, while lockers of juveniles in public schools can be searched under a "reasonable suspicion" standard rather than the "probable cause" standard that applies to adults, juveniles may not be stripped of Fourth Amendment protections and searched at will. [\[FN132\]](#) Students who are suspended from public school have constitutional due process rights to a fair hearing, albeit not a full-blown adversarial hearing with a right to counsel. [\[FN133\]](#)

Although a constitutional argument could be made in favor of some restrictions on juveniles carrying firearms, there can be no constitutional argument for completely abrogating the self-defense rights of minors. As part of the 1994 federal crime bill, all handgun transfers to minors are now illegal. It is now a federal crime for a father to give a handgun to his seventeen-year-old daughter, even if she has her own job and her own apartment. [\[FN134\]](#) Minors may temporarily possess handguns for sporting purposes, but only when carrying written permission from their parents. In other words, if a father takes his son target shooting and supervises while the son fires

the father's handgun at a target range, a federal crime has been committed, unless the son is also carrying a written note from the father.

In the federal law, there are some exceptions allowing juveniles to possess handguns while ranching or farming, or engaged in lawful target shooting or hunting. But even then, the juvenile must have prior written permission from her parents, and she must carry that permission with her at all times while in possession of the handgun.

It would be a mistake to think that teenagers helping on their parents' ranches and farms are actually complying with this silly statute. On the ranch, they do not carry around prior written permission. Off the ranch, they may carry a handgun in their pickup truck for protection while driving on isolated rural roads at night, as people in their family have for many generations. It is doubtful that most farmers and ranchers even know of the federal statute.

Currently, federal law provides a penalty up to one year for an adult who violates the statute, and no penalty for the juvenile. A bill sponsored by Senators Orin Hatch (R-Utah) and Diane Feinstein (D-Calif.) in the 105 th Congress would have imposed a mandatory sentence of at least one year on adults and on juveniles aged fourteen or older. [\[FN135\]](#) If there is something to be gained by sending teenage farmers/ranchers and their parents to federal prison for a year, it is hard to discern. If there is no intent to imprison farm and ranch children, then there is no justification for a mandatory prison sentence.

Fortunately, the federal law regarding juvenile handgun possession has rarely been enforced, so far. Likewise, a federal law that bans gun possession (with some exceptions) within a thousand feet of a school has been unenforced. Through 1996, there were prosecutions of only eighteen juveniles and nine adults for violating this law. [\[FN136\]](#) The absence of federal prosecution is welcome, because the law makes no distinction between a teenager in Wyoming who leaves an unloaded squirrel rifle in the trunk of his car so he can go hunting after school, and a drop-out in Philadelphia who brings a handgun to his former school so he can terrorize a personal enemy. Guns at school are properly a state issue; and most state laws about guns at school draw better distinctions between criminal and innocent gun possession than does the overbroad federal law. For example, Colorado's law contains no provision regarding permission slips, and allows property owners full discretion regarding juvenile possession on the property. [\[FN137\]](#)

#### **D. Locks and Similar Devices**

Within hours of the Jonesboro, Arkansas school murders, then-Rep. Charles Schumer demanded new federal legislation to mandate that every firearm be sold with a lock. How this would have prevented the Jonesboro murders is unclear, given that the murderers stole guns by breaking into a home with a crowbar and a torch, tools that are more than sufficient to remove any gun lock in the world.

Extravagant claims about gunlocks are commonplace, however. New York City Councilman Sheldon Leffler claimed that a new law requiring locks on handguns sold in New York City "can easily save some 1,500 young lives." [\[FN138\]](#) In the entire United States in a whole year, there are fewer than 1500 gun accidents involving people of all ages. [\[FN139\]](#) That the Councilman

could think that there are 1500 fatal gun accidents involving children in New York City shows how severe the misunderstanding of the gun accident problem really is.

Many gun owners do voluntarily store their gun with a trigger lock, a device that prevents the trigger from being pressed until the lock is removed with a key or combination. Other gun owners store their guns in safes, or in "quick-lock" safety boxes that pop open when a combination of buttons is pressed. Some gun owners store their gun separately from their ammunition, or with an essential component (such as the bolt) removed. Any of these steps may be a sensible way to deal with the presence of guns and children in the same house. NRA safety training strongly urges that any gun kept only for sporting purposes be stored in a condition so that it cannot be readily fired.

It does not make sense legally to mandate such storage conditions. The United States Constitution and most state Constitutions guarantee the right to own a gun for defense, and mandatory trigger locks nullify that right. [\[FN140\]](#) A gun which must be locked up may not be readily available in an emergency. A blanket policy of making guns difficult to access by people who are under attack will harm, not enhance, public safety.

Moreover, the circumstances of protection in each individual home are too varied to mandate any one policy. A mother of a three-month-old baby, who lives in a dangerous neighborhood, could safely keep a loaded gun in a bedside drawer. When the child grew older, she might store the gun's magazine (the device containing the ammunition) on a high closet shelf, with the hope that she could retrieve and insert the magazine if she heard someone breaking into her home. If an ex-boyfriend started harassing her by phone and threatened to come over that night and kill her, it would be sensible for her to keep the loaded gun on top of her bedside table while she slept, and even to carry the gun in holster when she was awake. No single safety rule, written in the crime-free confines of a legislative chamber, can determine what the best practices for gun storage will be in all situations. In addition, safe storage laws are often vague, and gun-owners may have difficulty discerning what kind of storage, short of a safe, will satisfy the requirements.

Besides disabling firearms for self-defense, over-reliance on gunlocks can prove fatal in another way. A modern firearm that is accidentally dropped on the floor will not discharge, even if it is loaded. But with certain types of gunlocks, the locking mechanism is so close to the trigger that it can make the gun fire. [\[FN141\]](#) Thus, gun locks (if forced on the public by legislative fiat) may engender a false sense of security, by encouraging people to leave loaded guns within easy reach of children.

Interestingly, people who advocate requiring that all firearms be locked up do not propose that parents be forced to lock up, or otherwise render inaccessible to children, substances such as liquor, household cleansers, or automobile keys. Every year children die from the poisonous effects of rapid ingestion of hard liquor and household cleansers, or from attempting to "drive" their parents' car. Certainly no adult has a self-defense "need" for rapid access to unlocked liquor cabinets, cleansers, or car keys.

## IV. Gang Control and other "Conservative" Proposals to Federalize Juvenile Crime

Some conservatives make the same mistake with gangs that liberals make with guns. The Senate Republicans have offered a series of gang control proposals. The particular language discussed in this article is from S. 54, a gang control bill in the 105 th Congress sponsored by Senator Orin Hatch, chairman of the Senate Judiciary Committee. Many of these same proposals appeared in S. 10, Senator Hatch's juvenile crime bill of the same year. Most of these same provisions, or variations thereof are likewise contained in S. 254, the mammoth juvenile crime bill passed by the Senate in May 1999, after the Columbine High School murders. I focus on the language from S. 54 because it is the foundation for similar language in other bills, and because some version of this language will probably be pushed very strongly in every Congress for the foreseeable future. As with the habeas corpus restrictions which came Congressional perennials in the late 1980s, until being enacted in 1996, it is very possible that S. 54's language will eventually become the law of the land. [\[FN142\]](#) The first section in this Part discusses some of the flaws inherent in anti-gang law-making. Then, this Part analyzes particular elements of the anti-gang bills. The concluding section suggests that the entire anti-gang approach is counterproductive, particularly at the federal level.

### A. Why anti-gang laws are unneeded

Gang legislation is often passed in an overheated emotional atmosphere that is not appropriate to sound policy-making. Criminologists who have studied gang policy as a political phenomenon have described the gang issue as a form of "moral panic." [\[FN143\]](#) First, the gang issue arises in a community not necessarily because gangs have become a major problem, but because "claims-makers" (typically, law enforcement agencies seeking increased funding, and media seeking increased attention) create a wave of hysteria. Repressive legislation is imposed, and law enforcement budgets increased. After a while, the panic subsides, and attention shifts to new issues. Forgotten in all the fury is how small a role that gangs (especially the highly-publicized "supergangs" like the Bloods and the Crips) actually play in drug sales or violence. [\[FN144\]](#) When the gang panic is over, the legacy of repressive laws, and larger law enforcement budgets (to the detriment of other needs of government or the taxpayers) remains securely in place. [\[FN145\]](#)

The Jonesboro and Columbine school shootings provided a textbook opportunity for exploitation of a moral panic. After Jonesboro, Senator Hatch said, "if we don't pass a juvenile crime bill, the country's going to see more and more of these things." [\[FN146\]](#) But none of the provisions in Senator Hatch's bill would have applied to the Jonesboro murderers. After Columbine, similar claims were made on behalf of the anti-gun and anti-gang proposals in S. 254, although nothing in the bill would have made a difference at Columbine.

While gangs are a serious problem, they are not cause for panic. Youth gangs in the United States first appeared around 1783. [\[FN147\]](#) Youth gang activity in the United States has had four major peaks: the late 1800s; the 1920s; the 1960s; and the 1990s. [\[FN148\]](#) It is only in the 1990s that Congress has decided that the gang problem must be addressed through Congress intruding itself on the traditional state function of criminal justice.

Everything gangs do, such as sell controlled substances, kill rival gang members, and steal property, is already illegal under state and federal law. But because the enactment of legislation is often confused with genuine action, enacting "anti-gang" legislation may have a strong political appeal, even when the criminal law has already covered everything that gangs do. When there are no substantive laws that can be added (e.g., since murder and drug dealing are already illegal), legislatures are tempted to create what might be called "second order laws." That is, laws which take existing laws, and arrange them into new combinations, to create new "crimes" from the new combinations. These laws are superfluous and misleading, because they give the public the impression that something is being done, when actually the legislature is doing little more than stamping its feet, and saying that something illegal is illegal again.

## **B. Increased Federal Sentencing Offense Level for "Gang" Membership**

One of the second-order laws proposed to deal with gangs is to make crimes subject to extra punishment if they are committed as part of gang activity. For example, S. 54 would require a six-level sentencing enhancement under the federal sentencing guidelines for various offenses which are claimed to be "gang crimes." The enhancement is mandatory, and, like many other federal sentencing enhancements, can apply even when a defendant is acquitted of the relevant charge. [\[FN149\]](#) The "gang crime" enhancement can result in brutally unjust results. Suppose, for instance, that a gun store owner is charged with various paperwork violations under the federal Gun Control Act. Under S. 54, these violations (e.g., not keeping proper inventory records) are "criminal street gang" predicate crimes; the owner and his employees are charged with violating S. 54. [\[FN150\]](#) The owner and employees are acquitted of three charges related to paperwork, convicted of one paperwork charge, and acquitted of the "criminal street gang" charge. But federal judges are required to sentence defendants under "real offense" sentencing, which means that defendants are not sentenced only for the crimes for which they have been found guilty. [\[FN151\]](#) At the sentencing phase for the single paperwork violation, the judge will be required to make his own determination of what crimes the defendants committed. If he finds by a preponderance of the evidence (fifty-one percent) that the defendant committed a particular act (even if the jury specifically acquitted the defendant of that act), the defendant must be sentenced for that act. [\[FN152\]](#) In the case of a S. 54 violation, the defendant's sentence for the single paperwork violation would be raised six steps, based on the judge's finding that the defendant's gun store fell under S. 54's definition. A six step increase in the sentencing level can take a crime for which no prison time might be imposed (a presumptive sentence of 0 to 6 months) into a range requiring a year or more of prison (a presumptive range of 12 to 18 months). [\[FN153\]](#)

## **C. Enhanced Penalties for Criminal Street Gangs**

### **1. Definition of a "gang"**

Under S. 54, a "criminal street gang" is defined as a "formal or informal" "ongoing group, club, organization, or association of 3 or more persons" who meet certain requirements. [\[FN154\]](#)

There is a difference between a genuine gang, such as the Crips, which typically has dozens or thousands of members, and a mere group of friends. Three juvenile delinquents may spend a lot

of time together, and even commit various crimes together, but they are not a real gang. The three juveniles may still be criminals, and can be punished for whatever laws they violate.

It is notable that this broad definition of a "criminal street gang" has nothing to do with committing gang crimes in the street. A group of agoraphobics who stayed indoors for twenty years could still qualify as a "criminal street gang." It is reasonable for legislators to address both indoor and outdoor crimes. It is not reasonable for legislation to label people with damning terms like "criminal street gang" if the people are not street gangsters.

The "informal" "association" of "3 or more persons" must meet the following requirements to be a "criminal street gang:" [\[FN155\]](#)

(A) "a primary activity" is the commission of predicate gang crimes. [\[FN156\]](#)

This provision refers to "a primary activity," rather than "the primary activity." Logically, only one item in any set can be "primary." But the language about "a" primary activity implies that the group could have "several" primary activities. Apparently the bill means to use "primary" in the sense of "important" rather than in the sense of "primary." The language obviously raises problems of vagueness, but one thing is certain: "a primary activity" need not be the group's main reason for existence. Thus, a prosecutor could readily argue that while a gun store's most important activity was selling guns, the store's violations of federal paperwork laws were "a" primary activity at the store. Throughout the discussion of gang control laws, several of the examples used will illustrate the laws' unfairness to firearms owners or sellers. The examples are especially telling, because the main proponents of federal gang control laws are "pro-gun" elected officials (such as Senator Hatch) who generally oppose gun control, and who offer gang control legislation as an alternative. As the examples will show, the gang control laws have the unintended consequence of imposing severe punishments on gun owners who do not belong to gangs. The vast, overbroad sweep of the gang control laws is subject to precisely the same criticism which pro-gun conservatives level at the gun control laws: the laws fail to distinguish between dangerous predators and the rest of the population.

(B) The second requirement for being a "criminal street gang" is that one member must engage in a "pattern of criminal gang activity." [\[FN157\]](#)

To the ordinary speaker of English, the word "pattern" implies many instances of the activity. [\[FN158\]](#) But in S. 54, a "pattern" is defined as two or more crimes, from a very broad list, committed within a five-year period. [\[FN159\]](#) The "pattern of criminal gang activity" could be satisfied by a man who punched someone during an argument in 1994, and then ran a football betting pool in 1998.

(C) The third requirement is that the activities of the gang "affect interstate or foreign commerce." [\[FN160\]](#)

This requirement is trivial, because prosecutors can argue that any activity has at least a minor effect on the economy, any economic effect can be construed as somehow affecting interstate commerce. The very broad definition of "criminal street gang" makes it very easy for almost any

association of three people to be labeled a "criminal street gang." This definition requires that only one person in the group commit two "predicate gang crimes" in a five year period, and that the offenses are in some way "committed in connection with, or in furtherance of" the group.

## 2. Predicate Gang Crimes

Most people who hear the phrase "predicate gang crimes" would think of drive-by shootings, fencing stolen property, first degree assault, and a few other major violent felonies. But S. 54 defines "predicate gang crimes" to include a vast number of minor or non-violent crimes, many of which are paperwork offenses, that real gang members--generally illiterate--would never commit. [\[FN161\]](#) Let us examine each of the five subsections listing a "predicate gang crime":

(i). Any crime of violence. [\[FN162\]](#)

This section is an excellent illustration of the problem with second order legislation. While the text of the bill lists a few particularly serious types of violent crime associated with gangs (e.g., "drive-by-shooting"), the bill makes any "crime of violence" into a "criminal street gang" predicate. Many legislators will simply read "crime of violence," never check the reference to another part of the U.S. Code, and will assume that other crimes covered by (i) are also major interpersonal felonies. But in fact, the bill references [18 U.S.C. section 16](#) for its definition of "crime of violence"; this section includes any unlawful use or attempted use of physical force (i.e., shoving someone during a loud argument) or any use of physical force against property (e.g., snapping a pencil) into a "crime of violence." [\[FN163\]](#) The point is not that shoving someone or breaking his pencil should be considered all right. Such offenses are properly covered by existing criminal codes. The question is whether every crime involving even the most trivial use of physical force should be considered a predicate activity proving membership in a "criminal street gang."

(ii). Any controlled substance offense for which there is a five year minimum penalty. [\[FN164\]](#)

Notably, this provision does not require any sale of a controlled substance. Again, the point is not to criticize the underlying drug laws. Those laws are on the books, and will stay on the books, whether or not new "anti-gang" laws are enacted. The point is that the penalties for the underlying offense are already quite severe, and it is wrong to make these penalties even more draconian by artificially labeling non-gang crimes as "predicate gang crimes."

(iii). Any federal firearms offense; any federal gambling offense; defaming the dead. [\[FN165\]](#)

The entire federal Gun Control Act is thrown in as a predicate gang offense. Notably, the Gun Control Act does not define any violent crimes. Rather, the act defines possession of a gun under various conditions as a crime, bans some guns, and establishes a complex regulatory system for licensed firearms dealers. [\[FN166\]](#) To state the obvious, a federally-licensed firearms dealer is a not a "criminal street gang." He operates out of a storefront, not on a street. But the kinds of

paperwork offenses, generally misdemeanors, that a storeowner might commit are labeled "gang" crimes.

Many other minor firearms offenses would be turned into "predicate gang crimes." For example, it is illegal (and it would therefore be a "predicate gang offense") to put certain accessories, such as a folding stock or a bayonet lug, on an imported gun. [\[FN167\]](#) It is illegal to take your own children target shooting with a handgun unless the children carry a permission note from you at all times. [\[FN168\]](#) Even if the children are carrying the note, it is illegal if they transport the unloaded handgun to a target range in a case, and they do not lock the case. [\[FN169\]](#)

It is illegal even to hold a gun in your hands if you were once convicted of a domestic violence misdemeanor, or if you have used drugs within the last year. [\[FN170\]](#) It is illegal to have a gun in your car for protection if your car comes within a thousand feet of a school. It is no defense to this crime to point out that your state's laws specifically authorize carrying a gun in a car for protection, and no permit is needed to so carry. [\[FN171\]](#)

Simply put, this clause amounts to a sub rosa repeal of the Firearm Owners Protection Act of 1986. [\[FN172\]](#) Enacted in response to copious testimony about abusive prosecution, the bill lowered the penalties for various paperwork offenses. [\[FN173\]](#) This clause turns all those minor offenses into "predicate gang crimes" carrying a ten-year mandatory minimum. Besides all firearms offenses, subsection (iii) also references the federal explosives statute, the federal arson statute, and the federal extortion statute. Many of the crimes in subsection (iii) are serious violent felonies, and already severely punished under federal law. Other crimes are not as serious, such as threatening to injure the reputation of a dead person, which carries a two-year maximum sentence. [\[FN174\]](#) But all these crimes, major and minor alike, are swept into the definition of "predicate gang crimes" of "criminal street gangs," as if America's cities were threatened by teenagers driving through neighborhoods and shouting libels about persons who have passed away.

Significantly, the "predicate gang crime" can also include any gambling offense. It is a federal crime for a person "engaged in the business" of betting (this could include a professional gambler, as well as a bookie) to transmit information by telephone. The offense includes using a telephone (including a modem) to receive information about sporting events.

In the context of federal gun laws, being "engaged in the business" of firearms sales can include a part-time activity, if the activity is for profit and regular. [\[FN175\]](#) Thus, it is certainly plausible that the "commissioner" of a weekly football pool, who makes a profit on the bets, would violate this statute. Congress has set a two-year maximum penalty for violation of the gambling law. But S. 54 raises the penalty to ten years, and turns every office participant into a member of a "criminal street gang." [\[FN176\]](#)

(iv). Alien offenses.

It is currently illegal to knowingly hire an alien who is not eligible to legally work in the United States. [\[FN177\]](#) There is a civil penalty of up to \$2,000 for violation of this provision. [\[FN178\]](#) A person engaged in "a pattern" of violating the law may be imprisoned for up to six months for

the entire pattern. [\[FN179\]](#) S. 54 turns a single violation into a "predicate gang crime," with a mandatory sentence of at least ten years in prison. [\[FN180\]](#)

S. 54 also makes smuggling of certain aliens into a predicate gang crime. [\[FN181\]](#) Alien smuggling is, under certain circumstances, something that gangs actually do. But there are already strict laws against alien smuggling. Existing sentencing guidelines already impose extra penalties for smuggling aliens in connection with other crimes, as part of a conspiracy. To the extent that there are problems with those laws, the problems should be addressed directly, though the alien laws themselves.

#### (B) State offenses.

This subparagraph is short, but it is startling. Having turned a litany of federal offenses into predicate federal gang crimes, the bill then does the same for state offenses. A "predicate gang offense" can include "a state offense involving conduct that would constitute an offense under subparagraph (A) (the list of federal offenses) if Federal jurisdiction existed or had been exercised."

All of the federal crimes discussed so far have some kind of jurisdictional limit. These limits reflect Congressional recognition that the Constitution does not grant Congress unlimited power over criminal law. Further, respect for federalism requires Congress not to intrude itself too far into state criminal law. [\[FN182\]](#) Yet S. 54 ignores these jurisdictional limits.

#### (C) Conspiracy or solicitation.

Finally, S. 54 makes any conspiracy or solicitation to commit any of the "predicate gang crimes" into a "predicate gang crime" itself. Thus, saying "Son, let's just go target shooting without that stupid note" becomes a "predicate gang crime"--even if the father and son never go shooting.

### **3. Penalties**

The penalties under section 3 of S. 54 are draconian. Anyone engaging in "a pattern of criminal gang activity" (two "predicate gang crimes" in a five year period) is to be imprisoned for ten years to life. [\[FN183\]](#) Trivial firearms offenses, minor gambling crimes, petty assaults, and many other crimes for which the current penalty is usually probation or a few months of prison are turned into ten-year crimes. By converting Gun Control Act violations into "gang" crimes, S. 54 turns misdemeanors into ten-year felonies and makes operation of a firearms store legally perilous.

In addition to the ten year prison term, a person convicted under S. 54 is subject to the draconian federal forfeiture laws. [\[FN184\]](#) This statute provides insufficient due process, and allows forfeiture of almost all property in some way associated with the crime. While the Firearms Owners Protection Act imposed some limitations on the forfeiture of firearms for Gun Control Act regulatory offenses, S. 54 would allow forfeiture of an entire gun store and its entire inventory.

## **D. Penalties for Use of Any Facility in Interstate or Foreign Commerce for Gang Crimes**

This section modifies an existing statute, which makes it illegal to use interstate commerce facilities for certain crimes. The statute applies to anyone who "travels in interstate or foreign commerce" or who uses "the mail or any facility in interstate or foreign commerce" to commit "an unlawful activity." [\[FN185\]](#) One need not actually cross state lines to commit the offense; a bus station is a "facility" in interstate commerce, even if one just takes the bus cross-town. S. 54 adds "predicate gang crime"--as broadly defined by section 3 of S. 54--to the list of covered offenses. S. 54 adds other offenses to the list of "unlawful activities" covered by the statute. These activities include a variety of ordinary local crimes (such as robbery, burglary, and possession of stolen property) as well as "illegally trafficking in firearms," an offense for which gun store owners who have acted in good faith are sometimes convicted. The offense also includes giving a .22 rifle to your sister-in-law for Christmas, if you know she smoked marijuana on Halloween. The offenses specifically added by S. 54 need not be "predicate gang crimes." A single offense will suffice.

## **E. Penalties for Recruitment of Gang Members**

Having defined "criminal street gang" broadly enough to include an office football pool, a gun store, or a hunting club, S. 54 then adds a four year mandatory sentence for recruiting a minor into a "criminal street gang," and a one year mandatory sentence for recruiting an adult. [\[FN186\]](#) The section imposes a poorly drafted federal solution onto something which is a state and local, not a federal, issue. To whatever extent actual gang recruitment is a legitimate subject of federal legislation, the topic can be adequately addressed through existing conspiracy and solicitation laws, or refinement of those laws. In other words, recruiting someone into an organization for criminal purposes is already a crime. Merely recruiting someone into an organization for non-criminal purposes should not be a crime. Creating such a crime might well be found to violate the First Amendment's guarantee of freedom of association.

Moreover, even "gangs" that are real gangs are not all equally dangerous. One study found that twenty-five percent of gangs were primarily social, with low rates of delinquency and low drug use. Another ten percent used drugs more often, but did not commit other crimes. Another forty percent were mainly involved in selling drugs. Only twenty-five percent of gangs had high rates of involvement in interpersonal crime. [\[FN187\]](#)

The 1999 version of the anti-gang legislation, embodied in S. 254, fixed some but not all of the statutory language problems identified previously. Even in the unlikely event that a future bill will fix all of the problems discussed above, that bill would be misguided and harmful.

## **F. Amendment of Sentencing Guidelines with Respect to Body Armor**

This section requires at least a two-level increase in sentencing levels for any crime in which the defendant used body armor. Many gun store owners and employees wear body armor to protect themselves from robbery. Thus, they are "using" (wearing) body armor when they "perpetrate" any of the many possible paperwork violations of the federal gun laws. The two-level sentence

enhancement could easily take a gun store owner's paperwork violation from a sentencing range in which prison is optional into a range requiring a year or more in prison.

There is also no requirement that the defendant actually wear the body armor; simple "use" is sufficient. A divided Supreme Court has ruled that the federal sentence enhancement (thirty years) for "use" of a machine gun in a crime can include "using" the gun by trading it for contraband. [\[FN188\]](#) Similarly, non-clothing "use" of body armor--such as using it to pay a gambling debt-- would trigger the sentence enhancement.

Reflecting a view of law enforcement that would have horrified the framers of the Constitution, the bill grants a special exemption from the body armor sentencing enhancement: the exemption applies only to law enforcement officers who while "acting under color of the authority" of law "violate the civil rights of a person." In other words, police officers who wear body armor while robbing drug dealers, prostitutes, and gambling operations are immune from the sentencing enhancement. So are police officers who rape, rob, or murder while on the job.

The idea that deliberate violations of civil rights--including the perpetration of major violent felonies--by law enforcement officers ought to receive a special immunity from prosecution would have appalled the Congresses that voted for the Bill of Rights and the Fourteenth Amendment. Of course, law enforcement officers often have a serious need to wear body armor. But so do other persons, such as security guards, or persons who live in dangerous neighborhoods. Law enforcement officers--like security officers and persons who live in dangerous neighborhoods--are not supposed to use their body armor to assist the perpetration of violent crimes. Law enforcement is supposed to uphold the rule of law, not to be exempt from the law. The special exemption for crimes perpetrated by law enforcement personnel is an insult to the rule of law.

## **G. Why Gun Control and Gang Control Inhibit Crime Control**

One co-author of the most extensive study of the gun-carrying habits of modern juvenile felons (many of them gang members) found the juveniles to be:

(B)etter armed, more criminally active, and more violent than were the adult felons of a decade ago. Even at that, one is struck less by the armament than by the evident willingness to pull the trigger.

From the viewpoint of public policy, it matters less, perhaps, where these juveniles get their guns than where they get the idea that it is acceptable to kill. It may be convenient to think that the problems of juvenile violence could be magically solved by cracking down or getting tough, but this is unlikely. The problem before us is not so much getting guns out of the hands of juveniles as it is reducing the motivations for juveniles to arm themselves in the first place. Convincing inner-city juveniles, or adults, not to own, carry, and use guns requires convincing them that they can survive in their neighborhoods without being armed . . . that the customary agents of social control can be relied upon to provide for personal security. So long as this is not believed to be the case, gun ownership and carrying in the city will remain widespread. [\[FN189\]](#)

To the enormous crisis of the inner city, many liberals and conservatives offer the same, seemingly easy solution: use government coercion to remove the evil thing that is the cause of violence. Many liberals look to guns as the cause of the inner-city's social pathologies. They fail to recognize that the willingness of many criminals to use guns, and the necessity for law-abiding residents of the inner-city to carry guns for protection, are symptoms of deeper afflictions. No set of criminal justice approaches focused on gun- control is likely to reduce the inner-city problems regarding guns.

Criminologist Gary Kleck summarizes:

Fixating on guns seems to be, for many people, a fetish which allows them to ignore the more intransigent causes of American violence, including its dying cities, inequality, deteriorating family structure, and the all-pervasive economic and social consequences of a history of slavery and racism. And just as gun control serves this purpose for liberals, equally useless "get tough" proposals, like longer prison terms, mandatory sentencing (e.g., "three strikes and you're out" proposals), and more use of the death penalty serve the purpose for conservatives. All parties to the crime control debate would do well to give more concentrated attention to more difficult, but far more relevant, issues like how to generate more stable, good-paying jobs for the underclass, an issue which is at the heart of the violence problem. [\[FN190\]](#)

There are more than enough guns in the United States to supply a black-market gun to anyone who wants one, no matter how severely prohibition and confiscation were enforced.

Some inner-city youth are attracted to gangs because, "(t)hey give estranged youth something meaningful to which they can belong, an identity otherwise lacking. Gangs express the pathology of inner-city life and the new urban culture of violence, but are the consequence of these developments, not the cause." [\[FN191\]](#) The criminal justice system can continue to incarcerate gang members, but gangs will remain attractive until better alternatives for identity appear. Thus, gang control laws--besides being grossly overbroad, and not a proper subject for federal legislation--obscure the underlying issues of why youths join gangs in the first place.

As long as the debate over the decay of inner-city America focuses only on symptoms like guns and gangs, there will never be a solution. As Professors Wright and Sheley put it:

(U)ntil we rectify the conditions that breed hostility, estrangement, futility and hopelessness, whatever else we do will come to little or nothing . . . . Widespread joblessness and few opportunities for upward mobility are the heart of the problem. Stricter gun-control laws, more aggressive enforcement of existing laws, a crack-down on drug traffic, police task forces directed at juvenile gangs, metal detectors at the doors of schools, periodic searches of lockers and shake-downs of students, and other similar measures are inconsequential compared to the true need: the economic, social and moral resurrection of the inner city. Just how this might be accomplished and at what cost can be debated; the urgent need to do so cannot. [\[FN192\]](#)

As Yepheth Copeland, a former member of the Hoover Street Crips in Los Angeles, put it, "(w)e need better schools and jobs. That's the way you stop the killing. You have to offer hope. If there's no hope, the killing will go on-- gun ban or not." [\[FN193\]](#)

How to resurrect the inner-city? Do we need a massive government jobs programs, or urban enterprise zones? Should we increase funding for government schools, or should we end-run the government school bureaucracy through charter schools and education vouchers? Are welfare payments insufficiently generous, or is welfare itself a cause of social pathologies? All of these difficult questions must come to the center of the public debate on the inner-city and the disastrous condition of so many inner-city youth.

Every day that the public allows legislatures to waste their collective breath with symbolic laws that merely address the symptoms of social pathology--gang control laws that restate a legislator's opposition to gang crime by making new crimes out of existing crimes, or gun control laws which supposedly will disarm teenagers who are already forbidden to own guns--is another day wasted, another day in which the problem festers. Gang control and gun control are not merely phony solutions to inner-city youth violence. They are formidable political obstacles to genuine solutions, because gang control and gun control offer political officials a high-profile but empty way to tell the public that the legislature is "doing something." Every gang control and gun control bill that is introduced, and every editorial demanding that we "do something about guns and gangs," makes it that much harder to force the political system to do something real about the desperate conditions of the inner-city.

It is long past time to stop fixating on the gun supply. Instead, legislators should start dealing with the persons who misuse guns and the social conditions under which innocent babies grow in less than two decades into callous murderers.

## **V. Education and Socialization**

Part of the solution to juvenile crime is to find alternatives to the repressive gun control/gang control approach to youth violence. After first analyzing the narrow issue of instilling responsible attitudes towards guns, the broader topic of early childhood education, and its role in preventing children from growing into criminals is addressed.

### **A. Socialization for Responsible Firearms Attitudes**

The most important factor affecting how young people deal with guns is how they are taught about them. A study of 675 Rochester, New York ninth and tenth graders contrasted children who had been socialized into gun use by their family with children who had been socialized into gun use by peers. [\[FN194\]](#) For the children whose families had taught them about lawful gun use, the children were at no greater risk of becoming involved in crime, gangs, or drugs than were children with no exposure to guns. [\[FN195\]](#) These youths tended to own rifles and shotguns. [\[FN196\]](#) But the children who were taught about guns by their peers were at high risk of all types of crime and improper behavior, including gun crime. These youths tended to own handguns, sawed-off rifles, and sawed-off shotguns. [\[FN197\]](#) The latter two types of weapons are generally illegal, even for adults. Notably, the first group of youths, who owned firearms

legally for participation in the shooting sports with their parents, were less likely to commit delinquent acts than youths who did not have any firearms at all. [\[FN198\]](#)

A survey of felony prisoners in Western Australia seems to validate the hypothesis that use of firearms in crime depends less on the availability of guns than on the social conditioning towards them. [\[FN199\]](#) Rural Aborigines in northwest Australia grow up in a culture where they are surrounded by guns; yet those Aborigines who become criminals are far less likely to perpetrate armed crimes than are their white counterparts. [\[FN200\]](#) As one Aborigine prisoner put it, "(g)uns are for shooting tucker (food), not people." [\[FN201\]](#) Likewise, Aborigine criminals who had been introduced to firearms by authority figures, such as fathers or grandfathers, were less likely to commit armed offenses than were criminals who had been introduced to guns by peers, such as brothers or friends. [\[FN202\]](#)

The repressive gun laws of cities such as Chicago, Washington, and New York are not merely ineffective; they are themselves a cause of gun violence. By making gun ownership either illegal, or possible only for wealthy persons with the clout to move through numerous bureaucratic obstacles, the antigun laws drive most legitimate gun owners underground.

While a man who operates a small grocery store on the Lower East Side of New York City might keep a pistol hidden under the counter in case of a robbery, the man will likely not take the illegal gun out for practice at a target range. Even if he acquired a gun license, he could not take his teenage son to a target range to teach him responsible gun use. For the teenager to hold the gun in his hand under immediate adult supervision at a licensed target range would require the teenager to acquire his own (expensive) handgun license.

Having driven responsible gun owners into the suburbs or into hiding, New York, Chicago, and Washington are raising a generation of children whose only major role models of gun ownership are criminals and violent television characters. In the city where no child can legally shoot a BB gun with his father, children learn about guns on the street and shoot each other with 9mm pistols. [\[FN203\]](#)

In a society with over 200 million guns, it is childish to imagine that gun-control laws will prevent teenagers from having access to guns. To fail to teach America's young people responsible gun use, under the supervision of responsible adults, to is to create a public health disaster. American city governments have created the murder epidemic themselves.

One place where young people can be exposed to responsible approaches towards firearms is school sports. In deference to curricular autonomy, schools should not be required to conduct gun sports programs. The decision should be made on a school-by-school basis, but some state laws, such as those in Illinois, make it difficult for high schools or colleges to offer target shooting as an option for student athletes. [\[FN204\]](#)

At school or in non-school programs, recreational target shooting can develop character. The sport builds mental discipline and concentration; some parents report that concentration skills developed in target shooting have made their children into better students. [\[FN205\]](#) Target shooting is non-sexist. Females play on the same teams as males, and regularly defeat them.

Many physically-challenged students, such as those in wheelchairs, can compete on equal terms with everyone else.

The only facility needed is a twenty by fifty foot room. A student who has been the worst player on the junior high basketball team can take up marksmanship for the first time in high school and win awards.

While high school or college football players do not learn an activity that they can enjoy for the rest of their lives, target shooting, like golf, is a lifetime sport. Target shooting has a lower injury rate than any other sport, and fights between competitors are nonexistent. There has never been an incident of one competitor deliberately harming another in a sanctioned match. In baseball, intentional violence, such as spiking the second baseman and throwing bean-balls, are traditional parts of the game. Hockey, boxing, and football all involve the intentional infliction of physical suffering on the opponent. According to the National Athletic Trainers Association, about forty percent of American high school football players every year will sustain an injury that will "require the player to suspend activity for at least the remainder of the day on which the injury occurred." [\[FN206\]](#) Nine thousand three hundred players will require knee surgery. [\[FN207\]](#) Every year, about twenty-four student football players are killed or catastrophically injured. [\[FN208\]](#) Thomas Jefferson advised his nephew: "(a)s to the species of exercise, I advise the gun . . . games played with ball, and others of that nature, are too violent for the body and stamp no character on the mind." [\[FN209\]](#)

Other than hatred of guns, there is no strong argument against schools being allowed to offer target shooting as a sport, nor is there an argument against teenagers being encouraged to learn responsible attitudes toward firearms through participation in shooting sports. Some of opposition to sports seems to stem from a visceral antipathy toward guns, rather than logic. For example, the Center to Prevent Handgun Violence (an affiliate of Handgun Control, Incorporated) and the American Academy of Pediatrics distribute a brochure which warns parents of preteens and teenagers to "(b)e extremely cautious about allowing children to participate in shooting activities." [\[FN210\]](#) The brochure offers no evidence that the shooting sports are dangerous and, of course, does not disclose that school shooting programs are safer than all other school sports. [\[FN211\]](#)

Nothing could be more politically incorrect than putting guns into the hands of at-risk youths, but that is precisely what an innovative Orlando, Florida program does. Police Lieutenant Angel Rodriguez encourages youths living in Orlando Housing Authority apartments to join him as participants in Civil War reenactments.

The teenage boys wear Union uniforms, participate in battle reenactments with thousands of adults, and, like the adults, carry and use the military rifles of the Civil War. Some participants shoot cannons. A younger auxiliary, consisting of boys eleven to thirteen, is not allowed to shoot the rifles, but still participates in the program. The program helps the teenagers build relationships with adult males and learn "teamwork, discipline, sensitivity, heartbreak, and concern for one another." Since the program began, only one participant has been arrested or even questioned for illegal activity. [\[FN212\]](#) The promotion of responsible gun habits through school sports programs will not turn every hardcore gang member into a law-abiding citizen, any

more than the Police Athletic League programs turn all gang members into law-abiding football players. However, sports programs can reach the large segment of the teen population that is susceptible to influence from responsible adults.

## **B. Expensive Early Childhood Programs**

A large number of little children in America lead miserable lives. Within less than two decades, many of these children become the core group of high- rate violent criminals. A crime control strategy that relies exclusively on punishing criminals and puts no effort into helping children is shortsighted both practically and morally. Empirical evidence strongly suggests that heavy spending on high-quality early childhood education is cost-effective and crime- reductive.

Cheaper preschool programs, such as Head Start, generally raise a child's IQ, but the gains are not sustained unless supplementary programs continue beyond pre-school. [\[FN213\]](#) There is no evidence that the cheap programs have any crime reductive effect. [\[FN214\]](#)

In contrast, lasting results were achieved by the Perry Preschool Project, a first-rate program in Ypsilanti, Michigan, that enrolled 123 low IQ children from low-income black families in 1962-67. [\[FN215\]](#) The Perry program was based on Piagetian theory, which is premised on respect for children, recognizes that children's cognition is different from that of adults and emphasizes developmentally appropriate mastery of tasks, rather than rewards and punishments. For one or two years each, the preschoolers attended 12.5 hours per week of classes. Each week during the school year, every participating family received a ninety-minute home visit from a teacher. The in-class student-teacher ratio was 6:1, and the teachers were public school teachers who had additional training in early childhood development. [\[FN216\]](#) As of age nineteen, thirty-one percent of the Perry students and fifty-one percent of the control group had been arrested. [\[FN217\]](#) Twelve percent of the Perry graduates, compared to twenty-four percent of the controls, had more than three arrests. [\[FN218\]](#) At age twenty-seven, the Perry graduates had only half as many felony arrests as the control group. [\[FN219\]](#)

The Syracuse Family Development program went even further. Economically deprived families with poorly educated parents were given a five year program that began with prenatal care and continued through preschool. [\[FN220\]](#) The families were visited weekly by highly skilled child development trainers to help improve parenting techniques and to address other problems. The children were also placed in high-quality preschool programs. A follow-up fifteen years later found that only six percent of children from those families ended up with a probation record, compared to twenty-two percent from a control group, and the offenses perpetrated by the latter group were much more serious than the offenses of the former. [\[FN221\]](#)

By age twenty-five, the graduates of the Syracuse program had only .01 felony convictions per capita, compared to .18 for the controls. The Syracuse program was expensive; the cost in 1997 dollars was \$18,037. But in the long run, the government criminal justice costs avoided amounted to \$13,442; and there were \$16,717 in crime victim costs avoided. [\[FN222\]](#) Thus, even if we do not count the improved quality of life for the children, as well as their greater economic productivity, the Syracuse program, despite its great expense, created net savings through reducing crime.

John Donohue and Peter Siegelman have evaluated the comparative benefits of increased spending on incarceration versus increased spending on early childhood programs. They point out that marginal dollars spent on prisons are less cost-effective than average prison spending: because the worst criminals are already in prison, marginal increases in prison spending allow incarceration only of less dangerous or less active criminals. Donohue and Siegelman show that if an early-childhood program can be at least half as effective as the Perry program, then reducing prison construction spending in order to spend more on early childhood education may be more cost effective. Donohue and Siegelman caution that simply throwing money at early childhood programs is no solution; the failed Head Start program (which yields no observable long-term benefits for its participants) was inspired by the Perry Preschool success. Moreover, early childhood dollars should be concentrated on the children most at risk (particularly inner-city males without two parents), but the authors warn that political needs might force too much money to be spent on groups with much lower risks of future violent delinquency (e.g., middle-class females from two-parent homes). [\[FN223\]](#)

Political correctness notwithstanding, budget constraints suggest that early childhood programs be directed at boys. Serious crime, including gun crime, is overwhelmingly male. Ninety-two percent of people in prison are male, [\[FN224\]](#) and ninety-percent of juvenile gun offenders are male. [\[FN225\]](#)

Donahue and Siegelman point out that six percent of males perpetrate the majority of all crimes. [\[FN226\]](#)

Therefore, if high-quality early education programs could reach just one percent of America's boys (who comprise one-sixth of the future high-activity criminal cohort), tremendous progress could be made in reducing violent crime. If six percent of males perpetrate half the crimes, then helping one percent of males early in life (so that their later crime rate is only half what it would otherwise be) would reduce total crime by approximately five percent.

If there were the will, the financial resources for Perry/Syracuse programs are available. Head Start currently amounts to little more than government-funded day care, and has no proven long-term benefits. Thus Head Start could be eliminated; and the funds could be used for smaller, better programs aimed at the neediest boys.

Tens of millions of dollars are wasted every year on programs like DARE, an anti-drug propaganda program for schoolchildren. The follow-up research shows that participation in the DARE program leads to no long-term reduction in drug use. [\[FN227\]](#) Even more money is wasted on misnamed "bilingual" education programs which keep Hispanic children in segregated classrooms year after year and prevent them from learning English. And more money still is consumed by America's prison-industrial complex, which now houses many more drug criminals than violent criminals. Scrapping DARE and long-term Spanish-only classes in the schools, and imposing a moratorium on new prison construction would free up hundreds of millions of dollars that could be used to fund a Perry or Syracuse type program in every school district with a large at-risk population.

There is much that remains uncertain about programs to help young children. However, investing social resources in a variety of experimental programs, no matter how expensive they are, is

likely to bear better fruit than proven failures such as gun control and gang control. [\[FN228\]](#) Incarcerating criminals is not a proven failure, since incarceration at least keeps the particular criminal from harming anyone except fellow prisoners. But does it not make more sense to help parents and children today, knowing that a child who can enjoy a better childhood is much less likely to need incarceration, at great taxpayer expense, when he becomes a teenager?

## Conclusion

America's terrible problem of teenage gun crime is not uniform throughout America. The problem is very heavily concentrated among older adolescent males in large metropolitan areas, and within that group heavily concentrated among low-income blacks. [\[FN229\]](#) In this population, the rate of gun-related death is appallingly high and calls for immediate action.

Addressing the social pathologies that beset inner-city minorities is the most realistic approach to dealing with the group's very high homicide rate. Since drugs are readily available in the inner city, despite extremely severe national prohibition, it is foolish to expect that gun controls will take guns out of the inner cities. Nor is it realistic to expect that calling three delinquent friends who use drugs and rob people "a criminal street gang" and imposing a federal prison sentence (as opposed to the severe state prison sentence which would be imposed anyway for the robberies) will end the existence of gangs. The longer that the debate focuses narrowly only on the symptoms of social decay--gangs and guns--the longer elected officials and American society will postpone the difficult work of restoring hope to the underclass.

At the 1966 Senate hearings dealing with the problem of "juvenile delinquents" using guns, Senators Edward Kennedy, Thomas Dodd, and others wrote a report which promised, "(b)y prohibiting the mail-order traffic in concealable firearms entirely and restricting the over-the-counter purchase of concealable firearms by nonresidents, and by regulating the mail-order traffic in shotguns and rifles, the problem will be substantially alleviated." [\[FN230\]](#) Every one of Senator Kennedy's proposals (and then some) became federal law in the Gun Control Act of 1968. Three decades later, there is no reputable criminological evidence that theto restrictions have "substantially alleviated" the problem of juvenile delinquents carrying guns. Rather than concede that the Gun Control Act of 1968 is a failure and should be repealed, gun-control advocates call for more and more restrictive legislation, which they promise--this time for sure--will take guns away from juveniles.

The conservative response, unfortunately, is to criticize the failure of gun control, and then proceed down an opposite--but equally futile path--by making activities which are already illegal, illegal another time, under the rubric of gang control.

Will elected officials continue to offer the public only the empty promises of gun control and gang control, or will they begin the hard work of combating the true causes of American violence? The answer may determine whether the adult Americans of today will bequeath to twenty-first century Americans a society with more violence and less freedom, or a society that finally started to reverse the blight of its inner cities.

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## Endnotes

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[FN2]. Marc B. Goldstein, How Guns Don't Kill But They Sure Make It Easier, Hartford Courant, July 5, 1992, at 14, quoted in David B. Kopel, Guns: Who Should Have Them? 309 (1995).

[FN3]. Ceasefire, Inc., Mission Statement, (visited 3/17/00) <http://www.ceasefire.org/html/pec2a.html>>.

[FN4]. Margaret A. Hamburg, Youth Violence in a Public Health Concern, in Violence in American Schools 47 (Delbert S. Elliot et al. eds., 1998), citing Delbert S. Elliot, Youth Violence: An Overview (Univ. of Colo. Center for the Study & Prevention of Violence) (1994).

[FN5]. See Off. of Juv. Just. & Delinq. Prev., Known Juvenile Homicide Offenders by Firearm, 1980-1997 (visited June 5, 2000) < <http://www.ojjdp.ncjrs.org/ojstatbb/qa139.html> >

[FN6]. Alfred Blumstein, Youth Violence, Guns, and the Illicit Drug Industry, 86 J. Crim. L. & Criminol. 10 (1995).

[FN7]. See David W. Rasmussen & Bruce L. Benson, The Economic Anatomy of a Drug War: Criminal Justice in the Commons (1994).

[FN8]. P.J. Goldstein et al., Drug Related Homicide in New York: 1984 and 1988, 38 Crime & Delinq. 459 (1992) (twenty-one homicides were caused by the effect of alcohol; five by the effect of crack; the remaining 92 homicides were related to drugs); P.J. Goldstein et al., Crack and Homicide in New York City, 1988: A Conceptually Based Event Analysis, 16 Contemporary Drug Problems 651 (1989).

[FN9]. Off. of Juv. Just. & Delinq. Prev, supra note 5.

[FN10]. Id.

[FN11]. Melissa Sickmund et al., Juvenile Offenders and Victims: 1997 Update on Violence (Off. of Juv. Just. & Delinq. Prev., 1997), at 12.

[FN12]. Franklin E. Zimring, American Youth Violence 183 (1998); H. Snyder, Juvenile Arrests 1996, Off. of Juv. Just. & Delinq. Prev. (Nov. 1997).

[FN13]. FBI, Crime in the United States, 1998, at table 32.

[FN14]. Id.

[FN15]. Zimring, supra note 12, at 152, citing Crime in the United States, supra note 13.

[FN16]. Id. at 147.

[FN17]. Id. at 22.

[FN18]. FBI, supra note 13, at table 33.

[FN19]. Zimring, supra note 12, at 23, citing Crime in the United States, supra note 13.

[FN20]. E. Lotke & V. Schiraldi, An Analysis of Juvenile Homicides, 1 Natl. Ctr. on Institutions & Alternatives (July 16, 1996).

[FN21]. Sickmund et al., *supra* note 11, at 2.

[FN22]. See Ronald Henkoff, Kids are Killing, Dying, Bleeding, *Fortune*, Aug. 10, 1992.

[FN23]. See Off. of Juv. Just. & Delinq. Prev., Report to Congress on Juvenile Violence Research 6 (July 1999) <<http://www.ojjdp.ncjrs.org/pubs/jvr/contents.html>>.

[FN24]. *Id.*

[FN25]. Lois A. Fingerhut et al., Firearm and Nonfirearm Homicide Among Persons 15 through 19 Years of Age: Differences by Level of Urbanization, United States, 1979 through 1989, 267 *JAMA* 3048 (1992).

[FN26]. Kenneth Tardiff et al., Homicide in New York City, 272 *JAMA* 44 (July 6, 1994)

[FN27]. *Id.* As is typical in the public health literature relating to guns, the authors present useful statistical information. But having shown that many murder victims in New York City are cocaine users and/or are killed with a firearm, the authors conclude that more controls should be imposed on cocaine and on firearms. After noting that research is divided on whether gun controls would be effective, the authors simply assert "Strict legislation must be implemented at the national level." In regards to cocaine, the authors announce the need "to decrease cocaine use," but do not consider whether laws criminalizing the sale of cocaine are responsible for many cocaine-related deaths. *Id.*, at 46.

[FN28]. Michael D. McGonigal, et al, Urban Firearm Deaths, 35 *J. Trauma* 532 (1993), quoted in Kopel, *supra* note 2 at 304, n.182.

[FN29]. Character Counts, *supra*, note 1.

[FN30]. National Safety Council, Injury Facts: Deaths Due to Unintentional Injuries, 1998. (visited 6/5/00) <<http://www.ncs.org/lrs/statinfo/99008.htm>>.

[FN31]. *Id.*

[FN32]. Nat'l Ctr. Health Stat., GMWK I, tbls. 922, 955, 965, 970, 985 (1998) (visited 7/11/00) <[http://www.cdc.gov/nchs/gmwki\\_97.pdf](http://www.cdc.gov/nchs/gmwki_97.pdf)>.

[FN33]. *Id.*

[FN34]. American Academy of Pediatrics, Firearms and Adolescents, no date at 20-21. Also blaming the gun rather than the gun criminal, Richard Kuh, chair of the American Bar Association's Criminal Justice section, called for a broad range of new gun laws to end the "ready access to guns that criminalizes so many young people." NRA, ABA Debating Gun-control, *Las Vegas Rev.J.*, June 25, 1994, at 8A.

[FN35]. American Academy of Pediatrics, *supra* note 34, at 20-21.

[FN36]. Dianna Marder, A New Generation of Killers: Feeling No Blame and No Shame, *Phil. Inq.*, Dec. 6, 1992, at 1. It is disturbing to consider how frequently the comments of the killers, blaming the victims for resisting, echo the insistent advice of gun-control organizations and some law enforcement administrators that victims of a criminal attack should never do anything but passively submit. Could the advice, repeated frequently and unquestioningly by the media, have provided the killers with a perceived legitimization of killing victims who resist?

[FN37]. Interviews with young inmates in Lorton prison, which houses Washington, D.C., felons, in Pressley & Harrison, A Crazy Fascination with Guns, *Wash. Post*, Feb. 2, 1992, available in 1992 WL 2963405.

[FN38]. Eric Pooley, Kids with Guns, *New York Magazine*, Aug. 5, 1991, at 25.

[FN39]. Sickmund et al., *supra* note 11, at 27.

[FN40]. Off. of Juv. Just. & Delinq. Prev., supra note 23, at 14.

[FN41]. A.B. Loper & D.G. Cornell, Homicide by Juvenile Girls, 5 J. Child & Fam. Stud. 323 (1996).

[FN42]. Joseph F. Sheley et al., Gun-related Violence in and Around Inner-City Schools, 146 Am. J. of Diseases of Children 677 (1992); see also Janet L. Lauritsen et al., The Link between Offending and Victimization among Adolescents, 29 Criminology 265 (1991).

[FN43]. Sheley, supra note 42.

[FN44]. Around the Nation, Law Enforcement News, Oct. 31, 1994, at 2.

[FN45]. H. Range Hutson et al., Adolescents and Children Injured or Killed in Drive-By Shootings in Los Angeles, 330 New Eng. J. Med. 325-27 (1994).

[FN46]. Simon I. Singer, Victims in a Birth Cohort, in Marvin E. Wolfgang et al., From Boy to Man, from Delinquency To Crime 163, 169, 171-79 (1987).

[FN47]. A. Morales, A Clinical Model for the Prevention of Gang Violence and Homicide, in Substance Abuse and Gang Violence 105, 111 (R.C. Cervantes, ed., 1992).

[FN48]. Scott H. Decker & B. Van Winkle, Life in the Gang: Family, Friends, and Violence 173 (1996).

[FN49]. Sickmund et al., supra note 11.

[FN50]. Barbara Allen-Hagen et al., U.S. Dep't of Just., Juveniles and Violence: Juvenile Offending and Victimization 2 (Nov. 1994).

[FN51]. See id. at 2. (parenthesis in original).

[FN52]. Id.

[FN53]. Id.

[FN54]. Philip Kaufman et al., Indicators School Crime and Safety 1998, Bureau of Just. Stats., (Oct. 1998), at 4, available in <<http://www.ojp.usdoj.gov/bjs/abstract/iscs98.htm>>.

[FN55]. Off. of Juv. Just. & Delinq. Prev., supra note 23, at 13.

[FN56]. Gary Kleck, Point Blank 117 (1991) (for adult carry rate, citing Feb. 1985 Roper poll).

[FN57]. Allen-Hagen et al., supra note 50.

[FN58]. Joanne Wassermann, Kids on Defense, (New York) Daily News, quoted in Kopel, supra note 2 at 324, n.83.

[FN59]. Students Speak Out: Why Do Some Students Bring Weapons to School? Wash. Post, Dec. 1, 1988, at M15.

[FN60]. Wendy Kaminer, Crime and Community, The Atlantic, May 1994, at 120.

[FN61]. Philip Kaufman, supra note 54, at 6.

[FN62]. Joseph F. Sheley & James D. Wright, High School Youths, Weapons and Violence: A National Survey Nat'l. Inst. Just. (Oct. 1998), at 5-6.

[FN63]. P.M. Kingery et al., A Profile of Rural Texas and Adolescents who Carry Handguns to Schools, 66 J. Sch.

Health 18, 18 (1996); W.B. Van Kammen & Rolf Loeber, *Adolescents and Their Guns: Relationship to Delinquency and Victimization* (reporting results of Pittsburgh Youth Study), paper presented at the annual meeting of the American Society of Criminology, Boston, Nov. 1995, cited in Rolf Loeber & Magda Stouthamer-Loeber, *Juvenile Aggression at Home at School*, in *Violence in American Schools*, at 96.

[FN64]. Ceasefire, *supra*, note 3.

[FN65]. Louie Palmer, *America's Children Crying Out*, States News Service, July 23, 1992.

[FN66]. Centers for Disease Control, *Weapon-carrying among High School Students--United States, 1990*, 40 *Morbidity and Mortality Weekly Report* 681 (Oct. 11, 1991).

[FN67]. *Id.*

[FN68]. *Id.* A survey the next year about various risky behaviors found similar levels of weapons-carrying. Again, the survey did not ask about carrying at school. See Centers for Disease Control, *Behaviors Related to Unintentional and Intentional Injuries Among High School Students--United States, 1991*, 41 *Morbidity and Mortality Weekly Report* 760 (Oct. 16, 1992).

[FN69]. Gary Kleck, *Targeting Guns* (1998).

[FN70]. A study of students at two inner-city junior high schools found 32% of the males reporting having carried a gun. See Daniel W. Webster et al., *Weapon Carrying Among Inner-City Junior High School Students: Defensive Behavior vs. Aggressive Delinquency*, 83 *Am. J. Public Health* 1604, 1605 (1993).

[FN71]. James D. Wright et al., *Kids, Guns and Killing Fields*, 30 *Society* 84 (1992).

[FN72]. *Id.*

[FN73]. Michael Perlstein, *Guns are Protection, Teens Explain*, (New Orleans) *Times-Picayune*, Nov. 6, 1992, at A1.

A smaller study of inner-city students found that carrying of handguns was statistically associated with aggressive and delinquent behaviors. See Webster et al., *supra* note 70, at 1604. Webster's results are not inconsistent with the fact that a large number of students who carry firearms do so for innocent, protective purposes. Because many delinquents carry guns nearly all the time, while many teenagers carrying for non-aggressive purposes will carry only occasionally, the gun-carrying population will include a large number of delinquents whose actions will create a statistical association between gun carrying and delinquency. Webster and his co-authors conclude that teenage gun carrying does not appear to be "a purely defensive behavior." *Id.* Since some students who carry guns are aggressive criminals, and some are not, it is correct to conclude that not all gun carrying is purely defensive. *Id.* Likewise, a study of suburban students found that involvement in violent crime or drugs increased the likelihood of gun carrying. Joseph F. Sheley, *Possession and Carrying of Firearms Among Suburban Youth*, 110 *Pub. Health Rep.* 18, 24- 25 (1995).

A study of New York City high school students found that students who carried weapons were more likely than other students to believe that carrying or threatening to use a weapon was an effective way to avoid a physical fight. Centers for Disease Control, *Violence-Related Attitudes and Behaviors of High Schools Students--New York City, 1992*, 270 *JAMA* 2032 (Nov. 3, 1993). Whether or not the students were right, the findings suggest that at least some weapons carrying may be for defensive, non-aggressive purposes.

[FN74]. Wright et al., *supra* note 71, at 88.

[FN75]. Other questions: "Have you ever owned a gun?" 86% inmates; 30% students. "If you've owned a gun recently, was it automatic/semi-automatic?" 57% inmates; 49% students. *Id.*

[FN76]. Sheley & Wright, *supra* note 62.

[FN77]. Joseph F. Sheley & James D. Wright, Motivations for Gun Possession and Carrying Among Serious Juvenile Offenders, 11 *Behav. Sci. & the Law* 375 (1993).

[FN78]. Timothy S. Bynum et al., Patterns in Gun Acquisition and Use by Youthful Offenders in Michigan 9 (paper presented at the annual meeting of the American Society of Criminology, Wash., D.C., Nov. 11-14, 1998) (manuscript in progress, on file with author).

[FN79]. Sheley & Wright, *supra* note 77 at 88.

[FN80]. C. Ronald Huff, Comparing the Criminal Behavior of Youth Gangs and At-Risk Youths 5 (Nat. Inst. Just., NCJ 172852, Research in Brief, Oct. 1998).

[FN81]. Wright et al., *supra* note 71, at 88.

[FN82]. Sheley & Wright, *supra* note 77.

[FN83]. Sheley et al., *supra* note 42, at 682.

[FN84]. See, e.g., *Johnson v. Dallas Independent School District*, 38 F.3d 198 (5th Cir. Tex. 1994).

[FN85]. A. Mackay-Smith, Should Schools Permit Searching Students for Weapons, Drugs? *Wall St. J.*, May 30, 1984, at A1. Mackay-Smith discussed policy in Detroit, where police searches looked for knives and chemical defense sprays carried by girls to protect themselves from rapists.

[FN86]. *Around the Nation*, *Law Enf. News*, May 31, 1994, at 3.

[FN87]. John J. Donohue III & Steven Levitt, Guns, Violence, and the Efficiency of Illegal Markets, 88 *AEA Papers and Proceedings* 463 (1998).

[FN88]. Catherine J. Whitaker and Lisa Bastian, U.S. Dep't of Just., Teenage Victims: A National Crime Survey Report 4 (May 1991). Based on data from 1985- 88, guns are used in 6% of robberies and 16% of aggravated assaults against persons aged 12 to 15, in 16% of robberies and 31% of aggravated assaults against persons aged 16 to 19, and 21% of robberies and 33% of aggravated assaults against persons 20 or more.

[FN89]. Kleck, *supra* note 56, at 191-201. (study of 170 cities finds that increasing homicide leads to increasing gun density; increasing gun density is associated with lower homicide rates).

[FN90]. *Id.* at 21-25, 185-203; see also Yvonne D. Senturia et al., Children's Household Exposure to Guns: A Pediatric Practice-Based Survey, 93 *Pediatrics* 469, 470-72 (1994) (survey of patients at twenty-nine pediatric practices in seven states finds gun ownership higher in households with white parents, and lowest in homes of poorly-educated minority single mothers in inner cities).

[FN91]. See generally Walter J. Howe, Firearm Production, Imports, and Exports, *Shooting Industry*, Dec. 1, 1991, at 90 (only 4% change in the three most recent years).

[FN92]. Pamela K. Lattimore et al., Homicide in Eight U.S. Cities: Trends, Context, and Policy Implications 101 (Nat. Inst. Just., NCJ 167262, 1997).

[FN93]. Sheley & Wright *supra* note 62, at 4.

[FN94]. Hans Toch & Alan Lizotte, Research & Policy: The Case of Gun- control, in *Psychology and Social Policy* 234, n.10 (Peter Suedfeld & Philip E. Tetlock eds., 1992) (emphasis in original).

[FN95]. *Id.*

[\[FN96\]](#). E.g., Tardiff et al., *supra* note 26, at 43.

[\[FN97\]](#). Zimring, *supra* note 12, at 35.

[\[FN98\]](#). See Luc Sante, *Low Life* (1991).

[\[FN99\]](#). W. Bernstein, *The Cherubs are Rumbling*, in *Gang Delinquency and Delinquent Subcultures* 22 (J.F. Short, Jr. ed., 1958), cited in Jeffrey Fagan & Deanna L. Wilkinson, *Firearms and Youth Violence* 553 in *Handbook of Antisocial Behavior* (David M. Stoff et al., eds., 1997).

[\[FN100\]](#). *Id.*

[\[FN101\]](#). Kopel, *supra* note 2, at 259.

[\[FN102\]](#). Lois A. Fingerhut & Joel C. Kleinman, *International and Interstate Comparisons of Homicide Among Young Males*, 263 *JAMA* 3292 (June 27, 1990).

[\[FN103\]](#). *Id.*

[\[FN104\]](#). David B. Kopel, *The Samurai, the Mountie, and the Cowboy: Should America Adopt the Gun-controls of Other Democracies?* 59, 70-71 (1992).

[\[FN105\]](#). *Id.*

[\[FN106\]](#). *Id.*

[\[FN107\]](#). Fingerhut & Kleinman, *supra* note 102, at 3923 (the rates were 1.4 in Switzerland and 5.0 in Scotland for 1987).

[\[FN108\]](#). Kopel, *supra* note 104, at 282-84.

[\[FN109\]](#). Sabrina Arredondo et al., *Univ. of Colorado, A Study of Youth Handgun Violence* 22 (1998).

[\[FN110\]](#). Nanette Graham & Darrin Greeley, *Measuring the Impact of the Massachusetts Juvenile Gun Law*, Paper presented at the annual meeting of the American Society of Criminology, San Diego, CA. (Nov. 19-22, 1997) at 11-12.

[\[FN111\]](#). Pressley & Harrison, *supra* note 37.

[\[FN112\]](#). *Off. of Juv. Just. & Delinq. Prev.*, *supra* note 23, at 11.

[\[FN113\]](#). American Academy of Pediatrics, *supra* note 34.

[\[FN114\]](#). *Butler v. Michigan*, 352 U.S. 380, 383 (1957).

[\[FN115\]](#). *Sable Communications v. F.C.C.*, 492 U.S. 115, 131 (1989) (unanimous opinion).

[\[FN116\]](#). House Select Committee on Children, Youth and Families (June 15, 1989) (testimony of Dr. Katherine Christoffel, American Academy of Pediatrics, on *Children and Guns*, at 40, quoted in David B. Kopel, *Guns - Who Should Have Them?* 375 (1995).

Dr. Christoffel's response to the practical difficulties of removing handguns from American society is to point to Japan's successful experience in disarming its population, as detailed in Noel Perrin's excellent book *Giving Up the Gun: Japan's Reversion to the Sword, 1543-1879* (1979). Several factors which were crucial to the Japanese disarmament may not be present in the modern United States: the gun ban was implemented and enforced by a

totalitarian government; people voluntarily surrendered their guns because the government successfully convinced them that the guns would be melted to build a giant temple to the Buddha (the melted guns were actually used to build a monument to the current dictator, Hidéyoshi); there was little gun ownership to begin with by anyone outside the military; guns had only existed in Japan for about half a century, and had acquired little popularity outside of military use; there were no elements in Japanese culture with any affection for the symbolic value of firearms; and there was little violent crime, so ordinary persons had little need to consider individual protection. The contrast of all the above factors with the modern United States is stark. See David B. Kopel, *The Samurai, the Mountie, and the Cowboy: Should America Adopt the Gun-controls of Other Democracies?* 20 (1992).

[\[FN117\]](#). The majority of guns today are owned for recreation or for collecting, and thus are kept unloaded almost all the time. Gun ownership in the early American republic was more likely to be for self-protection, or for hunting to put food on the table that night--both uses requiring a gun to be loaded almost all the time.

[\[FN118\]](#). American Academy of Pediatrics, *supra* note 34.

[\[FN119\]](#). John Lott, Jr., *More Guns Less Crime* (1997); Gary Kleck, *Targeting Guns* (1998).

[\[FN120\]](#). While handgun wounds are usually survivable, especially if the victim gets medical attention quickly, shotgun blasts at close range are much more likely to be fatal. The shotgun fires a large slug, or from six to more than sixty pellets, with one trigger squeeze. A single shotgun pellet, because it may be of a diameter equal to a small handgun bullet, can inflict nearly as much damage as a small handgun bullet. At short range, a shotgun is by far the deadliest weapon. See generally Tony Lesce, *The Shotgun in Combat* (1984); Vincent J.M. DiMaio, *Gunshot Wounds: Practical Aspects of Firearms, Ballistics, and Forensic Techniques* 182-83 (1985) ("At close range, the shotgun is the most formidable and destructive of all arms . . . Unlike bullets, shotgun pellets rarely exit the body. Therefore, the kinetic energy of wounding in shotguns is usually equal to the striking energy . . . all the kinetic energy is transferred to the body as wounding effects."); R. Taylor, *Gunshot Wounds of the Abdomen*, 177 *Annals of Surgery* 174-75 (1973) ("Shotgun injuries have not been compared with other bullet wounds of the abdomen as they are a thing apart . . . at close range, they are as deadly as a cannon.").

[\[FN121\]](#). Kleck, *supra* note 56, at 91-94.

[\[FN122\]](#). See, James D. Wright & Peter H. Rossi, *Armed & Considered Dangerous* (1986).

[\[FN123\]](#). A study of a 1992 gun buy-back in Seattle found that 1.8% of the guns had been reported stolen. See Charles M. Callahan, et al., *Money for Guns: Evaluation of the Seattle Gun Buy-Back Program*, 84 *Pub. Health Rep.* 474 (1994). Because many gun-owners do not report the theft of a gun, the actual number of stolen guns may have been higher.

[\[FN124\]](#). *Id.* at 476.

[\[FN125\]](#). *Id.*

[\[FN126\]](#). *Id.* at 474. Three percent of gun sellers said they would use the money to buy another gun, or donate the proceeds to the National Rifle Association. *Id.*, at 475. The guns sold at buy-backs are often old or defective. See Richard Rosenfeld, *Gun Buy-back: Crime Control or Community Mobilization in Under Fire: Gun Buy Backs, Exchanges and Amnesty Programs* 1, 17 (A. Platkin ed. 1996).

[\[FN127\]](#). Callahan et al., *supra* note 123, at 477.

[\[FN128\]](#). Ted Bridis, *Family, Community Defend Teen Who Fatally Shot Intruder*, *Buff. News*, July 21, 1994, at A5.

[\[FN129\]](#). The exception apparently does not apply unless there is an actual intrusion, so leaving an older teenager in charge of the gun while the parents temporarily leave would still, inappropriately, be illegal. 18 U.S.C. § 922 (x) (1994).

[FN130]. Robert Jablon, Store Killing May Be Justified, Assoc. Press, Mar. 31, 1999, available in 1999 WL 14516170.

[FN131]. Tinker v. Des Moines School Dist., 393 U.S. 503 (1969).

[FN132]. New Jersey v. T.L.O., 468 U.S. 1214 (1984).

[FN133]. Goss v. Lopez, 419 U.S. 565 (1975).

[FN134]. 18 U.S.C. § 922 (x) (1994).

[FN135]. S. 54, 105th Congress, Federal Gang Violence Act (January 21, 1997) (visited 6/5/00) <<http://thomas.loc.gov/cgi-bin/query>>.

[FN136]. National Rifle Association, Federal Prosecutions Take a Nosedive (visited 6/5/00) <<http://www.nraila.org/research/19990706-Crime&CriminalJustice-001.html>>.

[FN137]. Colo .Rev. Stat. S18-12-105.5 (1999)

[FN138]. See Maureen Fan, Rudy Makes Gun Safety Locks Law, New York Daily News, May 19, 1998, available in 1998 WL 11033400.

[FN139]. National Safety Council, supra note 30.

[FN140]. U. § .Const., Amend II; David B. Kopel, [Treating Gun Laws Like Consumer Products](#), 148 U. Penn. L. Rev. 1213, 1245 n.109 (2000) (listing state constitution citations).

[FN141]. Woody Anderson, Aiming at a Scholarship, Hartford Courant, Mar. 4, 1994, at D-9, quoted in D. Kopel, supra note 2, at 368, n.290.

[FN142]. S. 54, supra note 135.

[FN143]. See, e.g., Richard C. McCorkle & Terance D. Miethe, The Political and Organizational Response to Gangs: An Examination of a "Moral Panic" in Nevada, 15 Just. Q. 41 (1998) (studying Las Vegas, and citing studies in other jurisdictions).

[FN144]. Id.

[FN145]. Id.

[FN146]. Jonathan Weisman, Shooting Revives Drive to Toughen Juvenile Justice, Balt. Sun, Mar. 25, 1998, at 1A.

[FN147]. James C. Howell, Youth Gangs: An Overview, Juv. Just. Bull. (Aug. 1998) at 2, citing L. Sante, Low Life: Lures and Snares of Old New York (1991) (history of gangs); H.D. Sheldon, The Institutional Activities of American Children, 9 Am. J. Psychol. 424 (1898) (history of gangs); G.D. Curry & S.H. Decker, Confronting Gangs: Crime and Community (1998).

[FN148]. Id.

[FN149]. S. 54, supra note 135.

[FN150]. Id.

[FN151]. Kevin Reitz, Sentencing Facts: Travesties of Real Offense Sentencing, 45 Stanford L. Rev. 523 (1995); Elizabeth T. Lear, Is Conviction Irrelevant?, 40 UCLA L. Rev. 40 (1993).

[\[FN152\]](#). Id.

[\[FN153\]](#). S. 54, supra note 135.

[\[FN154\]](#). Id.

[\[FN155\]](#). Id.

[\[FN156\]](#). Id.

[\[FN157\]](#). Id.

[\[FN158\]](#). E.g. "George Steinbrenner has a pattern of personal conflicts with the managers of the New York Yankees."

[\[FN159\]](#). S. 54, supra note 135.

[\[FN160\]](#). Id.

[\[FN161\]](#). Id.

[\[FN162\]](#). Id.

[\[FN163\]](#). 18 U.S.C. § 16 (1999).

[\[FN164\]](#). S. 54, supra note 135.

[\[FN165\]](#). Id.

[\[FN166\]](#). 18 U.S.C. § 921 et seq., (1994).

[\[FN167\]](#). 18 U.S.C. § 922(r) (1994).

[\[FN168\]](#). 18 U.S.C. § 922(x) (1994).

[\[FN169\]](#). Id.

[\[FN170\]](#). 18 U.S.C. § 922(g) (1994).

[\[FN171\]](#). Gun Free School Zones Act of 1996, 18 U.S.C. § 922(q) (1994).

[\[FN172\]](#). Firearm Owners' Protection Act, Pub. L. No. 99-308, 100 Stat. 449.

[\[FN173\]](#). Id.

[\[FN174\]](#). 18 U.S.C. § 875(d) (1995).

[\[FN175\]](#). 18 U.S.C. § 921(a)(21) (1995).

[\[FN176\]](#). S. 54, supra note 135.

[\[FN177\]](#). 18 U.S.C. § 1324(a) (1996).

[\[FN178\]](#). Id.

[\[FN179\]](#). Id.

[\[FN180\]](#). S. 54, supra note 135.

[\[FN181\]](#). Id.

[\[FN182\]](#). William H. Rehnquist, Speech to the American Law Institute, May 11, 1998, reprinted in part in *The Question which Should be Asked*, *The Champion*, July 1998, at 16 (criticizing congressional proposals to allow federal prosecution of violent or drug crimes committed by juveniles).

[\[FN183\]](#). S. 54, supra note 135.

[\[FN184\]](#). 21 U.S.C. § 853 (1995).

[\[FN185\]](#). 18 U.S.C. § 1952 (1995).

[\[FN186\]](#). Id.

[\[FN187\]](#). Jeffrey Fagan, *The Social Organization of Drug Use and Drug Dealing Among Urban Gangs*, 27 *Criminology* 633, 647 (1989).

[\[FN188\]](#). *Smith v. United States*, 508 U.S. 223 (1993).

[\[FN189\]](#). James D. Wright, *Ten Essential Observations on Guns in America*, *Society* (March-April 1995), at 88-89.

[\[FN190\]](#). Gary Kleck, *Guns and Violence: An Interpretive Review of the Field*, 1 *Soc. Pathology* 34, 37 (1995).

[\[FN191\]](#). James D. Wright & Joseph Sheley, *Teenage Violence and the Underclass*, *Peace Rev.*, Fall 1992, at 34.

[\[FN192\]](#). Id. at 35.

[\[FN193\]](#). Platform: *The Right to Bear Arms is Outdated*, *Los Angeles Times*, Jan. 18, 1993, at B4.

[\[FN194\]](#). Alan J. Lizotte et al., *Patterns of Adolescent Firearms Ownership and Use*, 11 *Just. Q.* 51 (1994).

[\[FN195\]](#). Id.

[\[FN196\]](#). Id.

[\[FN197\]](#). Id.

[\[FN198\]](#). Id.

[\[FN199\]](#). Richard W. Harding & Ann Blake (University of Western Australia, Crime Research Centre, n.d.), *Weapons Choice by Violent Officers in Western Australia: A Pilot Study*, Research Report no. 1, at 16-17.

[\[FN200\]](#). Id.

[\[FN201\]](#). Id.

[\[FN202\]](#). Id. at 20-21.

[\[FN203\]](#). Commenting on Maryland law that bans weapons at school in such a sweeping manner that hunter safety classes are felonies, Hap Baker Hampstead, of the Carroll County Sportsmen's Association, noted, "They're teaching them that knives are made for stabbing people and guns are made for shooting people, and what are they (students) doing? By golly, they're shooting and stabbing people." Janet Naylor, *School Rules Duel with Living History*, *Wash. Times*, Feb. 17, 1994, at C10 (alteration in original).

[\[FN204\]](#). Ill. Comp. Stat. Ann. chap. 38, sect. 87-2 (1998) (prohibition on possessing handgun without a license, with no exception for school sports).

[\[FN205\]](#). Woody Anderson, Aiming at a Scholarship, Hartford Courant, Mar. 4, 1994, at D-9, quoted in Kopel, *supra* note 2, at 368, n.290; see also Cate Terwilliger, Kids and Hunting: Targeting Tradition - Incentives Take Aim on Decline of Youthful Hunters, Denver Post, Nov. 6, 1997, at E-01.

[\[FN206\]](#). The October Almanac, Atlantic Monthly, Oct. 1988, at 16.

[\[FN207\]](#). *Id.*

[\[FN208\]](#). National Athletic Trainer's Assoc., cited in Stu Durando, A Disaster Waiting to Happen?, Las Vegas Sun, Jan. 22, 1995, at 4D.

[\[FN209\]](#). 1 The Jefferson Cyclopeda 318 (John Foley ed., Antheneum House, Inc. 1967) (1900).

[\[FN210\]](#). American Academy of Pediatrics and Center to Prevent Handgun Violence, Keep Your Family Safe from Firearm Injury (1994) at 7.

[\[FN211\]](#). *Id.*

[\[FN212\]](#). Patricia A. Parker, In the Heat of the Battle: Orlando Youths Gain Life Skills on a Battlefield, Police, March 1995, at 17-18.

[\[FN213\]](#). Nina Shokraii & Patrick Fagan, After 33 Years and \$30 Billion, Time to Find Out if Head Start Produces Results, Heritage Foundation Backgrounder, no. 1202 (1998) (visited 7/15/00) <<http://www.heritage.org/library/backgrounder/bg1202.html>>.

[\[FN214\]](#). Ron Haskins, Beyond Metaphor: The Efficacy of Early Childhood Education, 44 Am. Psychologist 274, 278 (1989), citing M.S. McDonald & E. Monroe, A Follow-up Study of the 1966 Head Start Program (unpublished manuscript, Rome, Ga., Public Schools, no date).

[\[FN215\]](#). Lynn A. Karoly et al., Investing in Our Children: What We Know and Don't Know about the Costs and Benefits of Early Childhood Interventions 35 (1998). Each child had a test IQ below 85. *Id.*

[\[FN216\]](#). *Id.* at 35; John J. Donohue III & Peter Siegelman, Allocating Resources among Prisons and Social Programs in the Battle against Crime, 27 J. Leg. Stud. 1,16 (1998).

[\[FN217\]](#). Donohue III & Siegelman, *supra* note 216, at 16.

[\[FN218\]](#). *Id.*

[\[FN219\]](#). At age 27, there were 1.75 arrests per person for the controls, and .90 for the Perry graduates. Steve Aos et al., Preventive Programs for Young Offenders Effective and Cost-Effective, Overcrowded Times, Apr. 1998, at 10.

[\[FN220\]](#). Donohue III & Siegelman, *supra* note 216, at 16.

[\[FN221\]](#). Karoly, *supra* note 215, at 49-51; J.R. Lally et al., The Syracuse University Family Development Research Project: Long Range Impact of an Early Intervention with Low Income Children and Their Families, in Annual Advances in Applied Developmental Psychology: Parent Education as Early Childhood Intervention 59 (D.R. Powell ed. 1988). Attrition of members in the intervention group and the control group reduce the confidence with which conclusions can be drawn from the Syracuse study.

[\[FN222\]](#). Steve Aos et al., Preventive Programs for Young Offenders Effective and Cost-Effective, Overcrowded Times, Apr. 1998, at 1, 10 tbl.2.

[\[FN223\]](#). See Donohue III & Siegelman, *supra* note 216, Allocating Resources among Prisons and Social Programs in the Battle against Crime, 27 J. Leg. Stud. 1 (1998).

[\[FN224\]](#). Bureau of Justice Statistics, U.S. Dep't. of Just., Sourcebook on Criminal Justice Statistics 1999, at 480, table 6.24 (1999).

[\[FN225\]](#). Off. of Juv. Just. & Delinq. Prev., U.S. Dep't. of Just., Promising Strategies to Reduce Gun Violence 161 (Feb. 1999).

[\[FN226\]](#). Marvin Wolfgang et al., Delinquency in a Birth Cohort (1987).

[\[FN227\]](#). E.g., S. Ennett et al., How Effective is Drug Abuse Resistance Education? A Meta-analysis of Project DARE Outcome Evaluations, 84 Am. J. Pub. Health 1394, 1398 (1994). There are many well-intentioned, good police officers participating in DARE, but the data suggest that assigning those officers to any other task would be a better use of resources.

[\[FN228\]](#). See P.W. Greenwood et al., The Cost-Effectiveness of Early Intervention as a Strategy for Reducing Violent Crime, (DRU-1163-UCB/RC), prepared for U. Cal. Berkeley, Sept. 1995.

[\[FN229\]](#). Newsweek magazine's coverage of the children and guns issue is typical of how gun-control advocates may claim insistently that there is a universal problem of children committing crimes with guns, but produce no evidence for the claim. In a March 9, 1992 cover story, Kids and Guns: A Report from America's Classroom Killing Grounds, the magazine claimed that "gun violence is on the rise in schools all over America," but provides no evidence except for a lurid discussion of particular incidents of violence at a few schools. Rod Norland, Kids and Guns, Newsweek, Mar. 9, 1992, at 22. For a detailed analysis of the Newsweek issue, see Lee Nisbet (Medaille College, Buffalo, New York), How a Media Giant Covers Gun Violence in America's Public Schools, paper presented at the annual meeting of the American Society of Criminology, New Orleans, Nov. 1992.

[\[FN230\]](#). S. Rep. No. 1866, at 60 (1966).

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