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**GUN CONTROL AND RACISM**  
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That all such free Mulattos, Negroes and Indians . . . shall appear without arms[1]

INTRODUCTION

The history of gun control in America possesses an ugly component: discrimination and oppression of blacks, other racial and ethnic minorities, immigrants, and other "unwanted elements," including union organizers and agrarian reformers. Firearms laws were often enacted to disarm and facilitate repressive action against these groups.

The first gun control laws were enacted in the ante-bellum South forbidding blacks, whether free or slave, to possess arms, in order to maintain blacks in their servile status. After the Civil War, the South continued to pass restrictive firearms laws in order to deprive the newly freed blacks from exercising their rights of citizenship. During the later part of the 19th century and the early part of the 20th century, gun control laws were passed in the South in order to disarm agrarian reformers and in the North to disarm union organizers. In the North, a strong xenophobic reaction to recent waves of immigrants added further fuel for gun control laws which were used to disarm such persons. Other firearms ownership restrictions were adopted in order to repress the incipient black civil rights movement.

Another old American prejudice supported such gun control efforts, then as it does now: the idea that poor people, and especially the black poor, are not to be trusted with firearms. Even now, in many jurisdictions in which police departments have wide discretion in issuing firearm permits, the effect is that permits are rarely issued to poor or minority citizens. [Page 68]

Blacks, and especially poor blacks, are disproportionately the victims of crime. Yet, these citizens are often not afforded the same police protections that other more affluent and less crime ridden neighborhoods or communities enjoy. This lack of protection is especially so in the inner city urban ghettos. Firearms prohibitions discriminate against those poor and minority citizens who must rely on such arms to defend themselves from criminal activity to a much greater degree than affluent citizens living in safer and better protected communities.

Prohibiting firearms ownership among law-abiding citizens will do nothing to reduce violent crime since such behavior is virtually nonexistent among persons without previous records of serious violence or criminal behavior. However, as many studies indicate, such firearms prohibitions may significantly reduce the deterrent effect of widespread civilian gun ownership on criminals, especially in regard to crimes such as residential burglaries and commercial robberies.

Further, statistics and past history show that many millions of otherwise law-abiding Americans would not heed any gun ban, either prohibiting semiautomatic firearms or handguns. This response should be expected given the traditional American attitude towards guns and the banning of any commodity deeply valued by a substantial portion of society.

Finally, constitutional protections, other than the right to keep and bear arms, have been violated and are threatened by the enforcement of restrictive firearms laws. Present enforcement of firearms statutes account for numerous illegal searches and seizures by the police. Most often these unconstitutional searches and seizures are directed against the poor and racial minorities. Violent crime, however serious, does not justify the wholesale violation of fundamental freedoms, such as the right to be secure in one's person and effects from unwanted government intrusion.

## I. GUN CONTROL MEASURES HAVE BEEN AND ARE USED TO DISARM AND OPPRESS BLACKS AND OTHER MINORITIES

The historical purpose of gun control laws in America has been one of discrimination and disenfranchisement of blacks, immigrants, and other minorities. American gun control laws have been enacted to disarm and facilitate repressive actions against union organizers, [Page 69] workers, the foreign-born and racial minorities.[2] Bans on particular types of firearms and firearms registration schemes have been enacted in many American jurisdictions for the alleged purpose of controlling crime. Often, however, the purpose or actual effect of such laws or regulations was to disarm and exert better control over the above-noted groups.[3] As Justice Buford of the Florida Supreme Court noted in his concurring opinion narrowly construing a Florida gun control statute:

I know something of the history of this legislation. The original Act of 1893 was passed when there was a great influx of negro laborers in this State drawn here for the purpose of working in turpentine and lumber camps. The same condition existed when the Act was amended in 1901 and the Act was passed for the purpose of disarming the negro laborers . . . . The statute was never intended to be applied to the white population and in practice has never been so applied. . . .[T]here has never been, within my knowledge, any effort to enforce the provisions of this statute as to

white people, because it has been generally conceded to be in contravention of the Constitution and non-enforceable if contested.[4]

Implicit in the message of such a law was the perceived threat that armed Negroes would pose to the white community. As applied, therefore, the statute sent a clear message: only whites could be trusted with guns, while Negroes could not.

#### *A. Gun Control in the South*

The development of racially based slavery in the seventeenth century American colonies was accompanied by the creation of laws meting out separate treatment and granting separate rights on the basis of race. An early sign of such emerging restrictions and one of the most important legal distinctions was the passing of laws denying free blacks the right to keep arms. "In 1640, the first recorded restrictive legislation passed concerning blacks in Virginia excluded them from owning a gun." [5]

Virginia law set Negroes apart from all other groups . . . by denying them the important right and obligation to bear arms. Few restraints could indicate [Page 70] more clearly the denial to Negroes of membership in the White community. This first foreshadowing of the slave codes came in 1640, at just the time when other indications first appeared that Negroes were subject to special treatment.[6]

In the later part of the 17th Century fear of slave uprisings in the South accelerated the passage of laws dealing with firearms possessions by blacks. In 1712, for instance, South Carolina passed "An act for the better ordering and governing of Negroes and Slaves" which included two articles particularly relating to firearms ownership and blacks.[7] Virginia passed a similar act entitled "An Act for Preventing Negroes Insurrections." [8]

Thus, in many of the ante-bellum states, free and/or slave blacks were legally forbidden to possess arms. State legislation which prohibited the bearing of arms by blacks was held to be constitutional due to the lack of citizen status of the Afro-American slaves. Legislators simply ignored the fact that the United States Constitution and most state constitutions referred to the right to keep and bear arms as a right of the "people" rather than of the "citizen". [9]

The Supreme Court of North Carolina upheld a law prohibiting free blacks from carrying firearms on the grounds that they were not citizens.[10] In the Georgia case of *Cooper v. Mayor of Savannah*, a similar provision passed constitutional muster on the grounds that "free persons of color have never been recognized here as citizens; they are not entitled to bear arms, vote for members of the legislature, or to hold any civil office." [11] Chief Justice Taney argued, in the infamous *Dred*

*Scott* case, that the Constitution could not have intended that free blacks be citizens:

For if they were so received, and entitled to the privileges and immunities of citizens, it would exempt them from the operations of the special laws and from the police regulations which they [the states] considered to be necessary for their own safety. It would give to persons of the Negro race, who [Page 71] were recognized as citizens in any one State of the Union, the right to enter every other State whenever they pleased, . . . [A]nd it would give them the full liberty of speech in public and in private upon all subjects upon which its own citizens might speak; to hold public meetings upon political affairs, and to keep and carry arms wherever they went.[12]

After the conclusion of the American Civil War, several southern legislatures adopted comprehensive regulations, Black Codes, by which the new freed men were denied many of the rights that white citizens enjoyed. The Special Report of the Antislavery Conference of 1867 noted with particular emphasis that under these Black Codes blacks were "forbidden to own or bear firearms, and thus were rendered defenseless against assaults." [13] Mississippi's Black Code included the following provision:

Be it enacted . . . [t]hat no freedman, free Negro or mulatto, not in the military . . . and not licensed so to do by the board of police of his or her county, shall keep or carry firearms of any kind, or any ammunition, . . . and all such arms or ammunition shall be forfeited to the informer . . . "[14]

The firearms confiscated would often be turned over to the Klan, the local (white) militia or law enforcement authorities which would then, safe in their monopoly of arms and under color of the Black Codes, further oppress and violate the civil rights of the disarmed freedmen.

The United States Congress overrode these Black Codes with the Civil Rights Act and the fourteenth amendment. The legislative histories of both the Civil Rights Act and the fourteenth amendment are replete with denunciations of those statutes denying blacks equal access to firearms for personal self-defense.[15]

In support of Senate Bill No. 9, which declared as void all laws in the former rebel states which recognized inequality of rights based on race, Senator Henry Wilson (R., Mass.) explained that: "In Mississippi rebel State forces, men who were in the rebel armies, are traversing the State, visiting the freedmen, disarming them, perpetrating murders and outrages upon them . . . "[16] [Page 72]

The framers of the Civil Rights Act of 1866 argued that the issue of the right to keep and bear arms by the newly freed slaves was of vital importance, since, as Senator Trimbull noted from a report from Vicksburg, Mississippi, "[n]early all the dissatisfaction that now exists among the freedmen is caused by the abusive conduct of this militia," meaning the white state militia. He continued, stating that rather than to restore order, the state militia would typically "hang some freedmen or search Negro houses for arms." [17] Representative Henry J. Raymond (R., N.Y.) explained that the rights of citizenship entitled the freedmen to all the rights of United States citizens: "He has a defined status: he has a country and a home; a right to defend himself and his wife and children; a right to bear arms ...." [18] Senator William Salisbury (D., Del.) added that " [i] n most of the southern States, there has existed a law of the State based upon and founded in its police power, which declares that free Negroes shall not have the possession of firearms or ammunition. This bill proposes to take away from the States this police power." [19]

Within three years of the adoption of the fourteenth amendment in 1868, Congress was considering legislation to suppress the Ku Klux Klan. In a report on violence in the South, Representative Benjamin F. Butler (R., Mass.) stated that the right to keep arms was necessary for protection not only against the state militia but also against local law enforcement agencies. He noted instances of "armed confederates" terrorizing the Negro, and "in many counties they have preceded their outrages upon him by disarming him, in violation of his right as a citizen to 'keep and bear arms' which the Constitution expressly says shall never be infringed." [20]

The anti-KKK bill, introduced as "an act to protect loyal and peaceful citizens in the South," was originally introduced to the House Judiciary Committee with the following provision:

That whoever shall, without due process of law, by violence, intimidation, or threats, take away or deprive any citizen of the United States of any arms or weapons he may have in his house or possession for the defense of his person, family, or property, shall be deemed guilty of a larceny thereof, and be punished as provided in this act for a felony. [21] [Page 73]

Representative Butler explained the purpose of this provision:

Section 8 is intended to enforce the well-known constitutional provision guaranteeing the right in the citizen to 'keep and bear arms,' . . . . This provision seemed to your committee to be necessary, because they had observed that, before these midnight marauders made attacks upon peaceful citizens, there were very many instances in the South where the sheriff of the county had preceded them and taken away the arms of their victims. This was

especially noticeable in Union County, where all the Negro population were disarmed by the sheriff only a few months ago under the order of the judge . . . ; and then, the sheriff having disarmed the citizens, the five hundred masked men rode at night and murdered and otherwise maltreated the ten persons who were there in jail in that county.[22]

When the Judiciary Committee later reported this bill as H.R. No. 320, the above section was deleted, apparently because the proscription extended to simple individual larceny over which Congress was perceived at that time to have no constitutional authority and because the conspiratorial action involved in the disarming of blacks would be covered by more general provisions of the bill.[23]

However, concern remained over the disarming of blacks in the South. Senator John Sherman (R., Ohio) stated that "[w]herever the Negro population preponderates, there they [the KKK] hold their sway, for a few determined men ... can carry terror among ignorant Negroes . . . without arms, equipment, or discipline." [24] Senator Adelbert Ames (R., Miss.) noted that the right to keep and bear arms was a necessary condition for the right of free speech, stating that "[i]n some counties it was impossible to advocate Republican principles, those attempting it being hunted like wild beasts; in others, the speakers had to be armed and supported by not a few friends." [25]

Even after the passage of the Civil Rights Act and the fourteenth amendment, Southern states continued in their effort to disarm blacks. Some Southern states reacted to the federal acts by conceiving a means to the same end: banning a particular class of firearms, in this case cheap handguns, which were the only firearms the poverty-stricken freedmen could afford. [Page 74]

Small pistols selling for as little as 50 or 60 cents became available in the 1870's and '80's, and since they could be afforded by recently emancipated blacks and poor whites (whom agrarian agitators of the time were encouraging to ally for economic and political purposes), these guns constituted a significant threat to a southern establishment interested in maintaining the traditional class structure.[26]

In the very first legislative session after white supremacists regained control of the Tennessee legislature in 1870, that state set the earliest Southern postwar pattern of legal restrictions by enacting a ban on the carrying, "publicly or privately," of, among other things, the "belt or pocket pistol or revolver." [27] In 1879, the General Assembly of Tennessee banned the sale of any pistols other than "army or navy" model revolvers.[28] This law effectively limited handgun ownership to whites, many of whom already possessed these Civil War service revolvers, or to those who could afford to purchase these more expensive firearms. These military firearms were among the best made and most expensive on the market, and were

beyond the means of most blacks and laboring white people. The Ku Klux Klan was not inconvenienced since its organization in Tennessee had long since acquired its guns, many of which were such surplus army/navy model revolvers. Neither were company strongmen and professional strike breakers disarmed, whose weapons were supplied by their corporate employers.[29]

In 1881, Arkansas followed Tennessee's law by enacting a virtually identical "Saturday Night Special Law,"[30] which again was used to disarm blacks. Instead of formal legislation, Mississippi, Florida and other deep South states simply continued to enforce the pre-emancipation statutes forbidding blacks to possess arms, in violation of the fourteenth amendment.[31]

A different route was taken in Alabama, Texas, and Virginia: there, exorbitant business or transaction taxes were imposed in order [Page 75] to price handguns out of the reach of blacks and poor whites. An article in Virginia's official university law review called for a "prohibitive tax . . . on the privilege" of selling handguns as a way of disarming "the son of Ham", whose

cowardly practice of 'toting' guns has been one of the most fruitful sources of crime . . . . Let a Negro board a railroad train with a quart of mean whiskey and a pistol in his grip and the chances are that there will be a murder, or at least a row, before he alights.[32]

Often systems were emplaced where retailers would report to local authorities whenever blacks purchased firearms or ammunition. The sheriff would then arrest the purchaser and confiscate the firearm, which would either be destroyed or turned over to the local Klan or a white militia.[33] Mississippi legislated this system by enacting the first registration law for retailers in 1906, requiring retailers to maintain records of all pistol and pistol ammunition sales, and to make such available for inspection on demand.[34]

In *United States v. Cruikshank*,[35] a case often cited as controlling law by Handgun Control, Incorporated and other anti-gun organizations,[36] the United States Supreme Court upheld the Klan's repressive actions against blacks in the South. The case involved two men "of African descent and persons of color" who had their weapons confiscated by more than 100 Klansmen in Louisiana. The indictment in *Cruikshank* charged, *inter alia*, a conspiracy by Klansmen to prevent blacks from exercising their civil rights, including the right of assembly and the right to keep and bear arms for lawful purposes. The Court held that because such rights, including free speech and the right to keep and bear arms, existed independently of the Constitution, and the first and second amendments guaranteed only that such rights shall not be infringed by the federal government, the federal government had no power to punish a violation of such rights by private individuals or the states. The fourteenth amendment offered no relief, the Court held, because the case involved a private conspiracy and not state action. The Court stated that the aggrieved citizens could seek [Page 76] protection and

redress only from the state government of Louisiana and not from the federal government.[37]

The *Cruikshank* decision signaled the end of reconstruction. "Firearms in the Reconstruction South provided a means of political power for many. They were the symbols of the new freedom for blacks . . . In the end, white southerners triumphed and the blacks were effectually disarmed." [38]

It was not just the newly freed blacks in the South who were disarmed through discriminatory legislation which denied them the ability to defend their life and property, and kept them in a servile position, but also other "undesirable" white elements which were targeted by gun control laws.

At the end of the 19th century, Southern states began formalizing firearms restrictions in response to an increased concern about firearms ownership by certain whites, such as agrarian agitators and labor organizers. In 1893, Alabama, and in 1907, Texas, began imposing extremely heavy business and/or transaction taxes on handgun sales in order to resurrect economic barriers to ownership. South Carolina, in 1902, banned all pistol sales except to sheriffs and their special deputies, which included company strongmen and the KKK.[39]

The Supreme Court of North Carolina, in striking down a local statute which prohibited the open carrying of firearms without a permit in Forsyth County, stated:

To exclude all pistols, however, is not a regulation, but a prohibition, of arms which come under the designation of arms which the people are entitled to bear. This is not an idle or an obsolete guaranty, for there are still localities, not necessary to mention, where great corporations, under the guise of detective agents or private police, terrorize their employees by armed force. If the people are forbidden to carry the only arms within their means, among them pistols, they will be completely at the mercy of these great plutocratic organizations.[40]

### *B. Gun Control in the North*

In the Northeast, the period from the 1870's to the mid-1930's was characterized by strong xenophobic reactions to Eastern and [Page 77] Southern European immigrants. Armed robbery in particular was associated with the racial stereotype in the public mind of the East and South European immigrant as lazy and inclined to violence. Furthermore, these immigrants were associated with the concept of the foreign-born anarchist. The fear and suspicion of these "undesirable" immigrants, together with a desire to disarm labor organizers, led to a concerted campaign by local and national business associations and organizations such as the Immigration Restriction League and the American Protective Association, for

the enactment of a flat ban on the ownership of firearms, or at least handguns, by aliens.[41] In 1911, New York enacted the Sullivan law.[42] "Of proven success in dealing with political dissidents in Central European countries, this system made handgun ownership illegal for anyone without a police permit." [43] The New York City Police Department thereby acquired the official and wholly arbitrary authority to deny or permit the possession of handguns; which the department used in its effort to disarm the city's Italian population. The Sullivan law was designed to

strike hardest at the foreign-born element . . . . As early as 1903 the authorities had begun to cancel pistol permits in the Italian sections of the city. This was followed by a state law of 1905 which made it illegal for aliens to possess firearms 'in any public place'. This provision was retained in the Sullivan law.[44]

Conservative business associations, through a nationwide handgun prohibition campaign endorsing the Sullivan-type law concept, were responsible for enacting police permit requirements in Arkansas, Hawaii, Michigan, Missouri, New Jersey, North Carolina and Oregon, between 1911 and 1934. The then conservative institutions of the New York Times and the American Bar Association supported this campaign. By fueling a spreading fear of armed robbery, these business interests were able to push for restrictive gun laws that were really aimed at the disarmament of labor organizations and agrarian agitators. (Of course, in the Northeast, it was commonly supposed that such groups were, in any event, largely composed of, or led by foreigners of alien political persuasions.)[45] [Page 78]

Canada also adopted a handgun permit law in 1919, partly in response to a recently crushed general strike which was erroneously believed to have been engineered and led by foreigners. Legislators remarked about the absurdity of allowing firearms ownership to those who "bring their bad habits, notions, and vicious practices into this country." [46]

Most of the American handgun ownership restrictions adopted between 1901 and 1934 followed on the heels of highly publicized incidents involving the incipient black civil rights movement, foreign-born radicals or labor agitators. In 1934, Hawaii, and in 1930 Oregon, passed gun control statutes in response to labor organizing efforts in the Port of Honolulu and the Oregon lumber mills. Michigan's version of the Sullivan law was enacted in the aftermath of the trial of Dr. Ossian Sweet, a black civil rights leader. Dr. Sweet, had moved into an all white neighborhood and had been indicted for murder for shooting one of a white mob that had attacked his house while Detroit police looked on. A Missouri permit law was enacted in the aftermath of a highly publicized St. Louis race riot.[47]

After World War I, a generation of young blacks, often led by veterans familiar with firearms and willing to fight for the equal treatment that they had received in

other lands, began to assert their civil rights. In reaction, the Klan again became a major force in the South in the 1910's and 1920's. Often public authorities stood by while murders, beatings and lynchings were openly perpetrated upon helpless black citizens. And once again, firearms legislation in Alabama, Arkansas, Mississippi, Missouri, Tennessee and Texas made sure that the victims of the Klan's violence were unarmed and did not possess the ability to defend themselves, while at the same time cloaking the specially deputized Klansmen in the safety of their monopoly of arms.

The resurgence of the Klan was neither limited to the South geographically, nor to blacks racially. The Klan was present in force in southern New Jersey, Illinois, Indiana, Michigan and Oregon. All of these states enacted either handgun permit laws or laws barring alien handgun possession between 1913 and 1934. The Klan targeted not only blacks, but also Catholics, Jews, labor radicals, and the foreign-born; and these people also ran the risk of falling victim to lynch mobs [Page 79] or other more clandestine attacks, often after the victims had been disarmed by state or local authorities.[48]

Furthermore, such violence against political, racial, religious or alien minorities was not perpetrated by the Klan alone. As noted, national and local business associations campaigned for the Sullivan law while also taking part in a concerted effort to destroy emerging labor unions. These associations engaged in a systematic campaign of drastic wage decreases, lockouts, imported strike breakers, surveillance, harassment, blacklisting, and physical attacks upon trade unionists, often carried out with the acquiescence or active support of political authorities. For instance, in Bixby, Arizona, 221 alleged labor radicals were rounded up by a posse and forcefully deported from the state. A 1901 Arizona law barred the carrying of handguns within city limits. That carrying ban was enforced to disarm the deportees but was not applied to the posse.[49]

### *C. Gun Control and Native Americans*

The history of firearms prohibitions in regard to native Americans presents a parallel example of the use of gun control to oppress and, in this case, to exterminate a non-white ethnic group. Though many legal restrictions against blacks in respect to firearms were abolished, at least racially, during Reconstruction, the sale of firearms to Indians often remained prohibited. Federal law prohibited the sale of arms and munitions to "hostile" Indians.[50] Idaho prohibited the sale or provision of firearms and ammunition to "any Indian." [51]

Usually the disarmament of Indians was quickly followed by the imposition of oppressive measures or even murder and wholesale massacres. "Since the Army had taken from the Sioux their weapons and horses, the alternative to capitulation to the government's demands was starvation." [52]

On December 28, 1890, the 7th Cavalry was escorting this group [350 Indians] to the government headquarters on the Pine Ridge reservation. After [Page 80] camping overnight along Wounded Knee creek about 15 miles from the headquarters, the Indians were called together on the morning of December 29th, surrounded by troops and told to surrender their rifles. Gun and cannon fire broke out, and many fleeing Indians died huddling in a ravine.[53]

Federal government restrictions on the sale of firearms to Indians were only abolished in 1979.[54]

## II. CURRENT GUN CONTROL EFFORTS: A LEGACY OF RACISM

Behind current gun control efforts often lurks the remnant of an old American prejudice, that the lower classes and minorities are not to be trusted with firearms. The bias originated in the post-antebellum South for political reasons and may have changed its form, but it still exists. Today the thought remains: if you let the poor, and especially the black poor, have guns, they will commit crimes with them. Even noted anti-gun activists have admitted this. In his book *The Saturday Night Special*, anti-gun journalist Robert Sherrill frankly admitted that the Gun Control Act of 1968 was "passed not to control guns but to control Blacks." [55] Barry Bruce-Briggs, in *The Public Interest*, stated that "it is difficult to escape the conclusion that the 'Saturday Night Special' is emphasized because it is cheap and it is being sold to a particular class of people. The name is sufficient evidence. The reference is to 'Niggertown Saturday Night.'"[56]

Even today firearms regulations target minorities or other unpopular groups. For instance, present Massachusetts law still makes possession of guns by aliens a criminal offense.[57] Present federal statutes make it a felony for one dishonorably discharged, or having renounced American citizenship to purchase or possess a firearm.[58] This federal statute is surely a punitive measure against those who have trespassed certain norms of acceptable behavior even though there is no indication of violent criminal tendencies.

The worst abuses at present occur under the mantle of racially neutral laws that are, however, enforced in a discriminatory manner. [Page 81]

In many jurisdictions which require a discretionary gun permit, police departments have wide discretion in issuing a permit, and those departments unfavorable to gun ownership, or to the race, politics, or appearance of a particular applicant frequently maximize obstructions to such persons while favored individuals and groups experience no difficulty in the granting of a permit.[59] In St. Louis

permits are automatically denied . . . to wives who don't have their husband's permission, homosexuals, and non-voters . . . As one of my students recently learned, a personal 'interview' is now required for every St. Louis application. After many delays, he finally got to see the sheriff - who looked at him only long enough to see that he wasn't black, yelled 'he's alright' to the permit secretary, and left.[60]

Although legislatures insist that permits are necessary for a variety of reasons, such arbitrary issuance of gun licenses should not be tolerated.

Permit systems which vest wide discretion in public or police officials have been used on numerous occasions to stymie civil rights efforts. In 1969, the U.S. Supreme Court held unconstitutional a provision in the General Code of Birmingham which made it an offense to participate in any "parade or procession or other public demonstration" without first obtaining a permit from the City Commission.[61] The case arose out of a march in Birmingham by "52 people, all Negroes . . . led . . . by three Negro ministers . . . to protest the alleged denial of civil rights to Negroes in the City of Birmingham." [62] The marchers were arrested by the Birmingham Police for violating the above- noted law. Not surprisingly, the record revealed that this racially neutral law "had been applied in a discriminatory fashion" by the authorities.[63] Petitioner had in fact attempted to acquire a permit on a number of occasions which had been refused each and every time. "The petitioner was clearly given to understand that under no circumstances would he and his group be permitted to demonstrate in Birmingham." [64] [Page 82]

New York's infamous Sullivan law, originally enacted to disarm Southern and Eastern European immigrants who were considered racially inferior and religiously and ideologically suspect, continues to be enforced in a racist and elitist fashion "as the police seldom grant hand gun permits to any but the wealthy or politically influential." [65]

New York City permits are issued only to the very wealthy, the politically powerful, and the socially elite. Permits are also issued to: private guard services employed by the very wealthy, the banks, and the great corporations; to ward heelers and political influence peddlers; and (on payment of a suitable sum) to reputable 'soldiers' of the Mafia . . . [66]

If such permit schemes are to be employed at all, they should be implemented on a non-discriminatory basis.

Although it may seem ironic, New York's leading handgun prohibitionists, extremely well-off people who live and work in high security communities and receive the best police protection possible, lecture those citizens in high crime

areas to give up the means to protect their family on the grounds that handguns are useless and dangerous; useless and dangerous except, of course, to people like themselves who have the political influence to secure a permit.

A beautiful example of this hypocritical elitism is the fact that while the New York Times often editorializes against the private possession of handguns, the publisher of that newspaper, Arthur Ochs Sulzberger, has a hard-to-get permit to own and carry a handgun. Another such permit is held by the husband of Dr. Joyce Brothers, the pop psychologist who has claimed that firearms ownership is indicative of male sexual inadequacy.[67]

Thus, while the New York Times has editorialized that "the urban handgun offers no benefits,"[68] its publisher, apparently deserving of more rights and protection than other citizens,

is among the few privileged to possess a New York City permit to carry one at all times . . . . Although such permits are officially available only on a showing of 'unique need' to carry a defensive weapon, the list of permit [Page 83] holders is composed of people noted more for their political influence than for their residence in high crime areas.[69]

Other well-known gun prohibition advocates with such permits included Nelson Rockefeller and John Lindsey.[70]

This dichotomy has, however, become the hallmark of the gun prohibition movement. The most dedicated and vociferous gun prohibition proponents are urban or suburban, upper-middle-class whites who know little or nothing about firearms and their legitimate uses. These elitists are often motivated in their gun control effort by the perceived need to save those less educated and affluent urban dwellers on the other side of town from themselves, as the "uneducated" latter are, in the "educated" former's mind, incapable of the same level of responsibility. Many of these elitists also show a class-based disdain towards those whom they view as the main defenders of the right to possess firearms for legitimate purposes. Governor Cuomo, for instance, attacked those opposed to New York's mandatory seat belt law as "NRA hunters who drink beer, don't vote, and lie to their wives about where they were all weekend." [71]

#### *A. By Prohibiting the Possession of Firearms, the State Discriminates Against Minority and Poor Citizens*

The obvious effect of gun bans and prohibitions is to deny law-abiding citizens access to firearms for the defense of themselves and their families. That effect is doubly discriminatory because the poor, and especially the black poor, are the

primary victims of crime and in many areas lack the political power to command as much police protection as richer neighborhoods. Of course, present gun prohibitions make possession of firearms illegal in the hands of the entire population of the affected political subdivision, for all races and religions, and the rich and the poor alike. Yes - and the law, in its majestic equality, "forbids rich and poor alike to sleep under bridges, to beg in the streets, and to steal bread." [72] Those living in well-off, police protected neighborhoods are less likely to "sleep under bridges, to beg in the streets" or to need a firearm for self-protection. [Page 84]

As noted, blacks, especially poor blacks, are disproportionately the victims of crime, and the situation for households headed by black women is particularly difficult. In 1977, more than half of black families had a woman head of household. A 1983 report by the U.S. Department of Labor states that

among families maintained by a woman, the poverty rate for blacks was 51%, compared with 24% for their white counterparts in 1977 . . . . Families maintained by a woman with no husband present have compromised an increasing proportion of both black families and white families in poverty; however, families maintained by a woman have become an overwhelming majority only among poor black families . . . . About 60% of the 7.7 million blacks below the poverty line in 1977 were living in families maintained by a black woman. [73]

The problems of these women are far more than merely economic. National figures indicate that a black female in the median female age range of 25-34, is about twice as likely to be robbed or raped as her white counterpart. She is also three times as likely to be the victim of an aggravated assault. [74]

In the final analysis, victims must protect themselves and their families or property from criminal attack at the moment the criminal strikes. The need for the ability to defend oneself, family and property, is much more critical in the poor and minority neighborhoods ravaged by crime and without adequate police protection. [75]

However, these citizens who are most likely to be victims have no right to demand or even expect police protection. Courts have consistently ruled "that there is no constitutional right to be protected by the state against being murdered by criminals or madmen." [76] Furthermore, courts have ruled that the police have no duty to protect the individual citizen, absent facts establishing a special relationship between the authority and the person assaulted. [77] [Page 85]

The fundamental civil rights regarding the enjoyment of life, liberty and property, the right of self-defense and the right to keep and bear arms, are merely empty promises if a legislature is allowed to restrict the means by which one can protect

oneself and one's family. Furthermore, this constitutional deprivation discriminates against the poor and minority citizen who is more exposed to the acts of criminal violence and who is less protected by the state.

### *B. Civilian Ownership of Firearms is an Important Deterrent to Criminal Activity*

The role of the armed private citizens in deterring crime is significant. Firearms are frequently used against criminals by civilians. In fact, civilians shoot many more criminals than police do. In 1981, there were an estimated 1,266 excusable self-defense or justifiable homicides by civilians using guns against criminals. Furthermore, estimates show that there were approximately 8,600 non-fatal justifiable or excusable woundings of criminals by armed civilians during the same year.[78] By comparison, police officers nationwide killed only 388 felons in 1981.[79]

However, the shooting of criminals represents only a small minority of the defensive uses of firearms by civilians. Most civilian defensive uses involve only the use of a gun to threaten, apprehend, fire a warning shot, or shoot at a criminal without the actual killing or wounding of the felon. A 1978 national survey found that seven percent of the households in the United States reported that a member of the household had at one time or another used a gun of some kind for self-protection against another person, excluding military or police experiences.[80] In other words, out of the 77 million U.S. households in 1978, over five million households reported having used a firearm [Page 86] for self-defense purposes at one time or another. A 1986 poll sponsored by the now defunct National Alliance Against Violence, an anti-gun organization, found that six percent of the adults interviewed replied "yes" to the question of whether in the past five years they, or a member of their household, had used a *handgun*, even if it was not fired, for self-protection or for the protection of property at home, work, or elsewhere, excluding military service or police work.[81] It is estimated that between 1976 and 1981 there occurred *per year* 645,000 defensive uses of handguns alone by civilians.[82] Firearms of all types are estimated to have been used by civilians for defensive purposes about 1,000,000 times a year during that time period.[83]

Victimization surveys indicate that for both robbery and assaults, the crime was less likely to be completed against victims, and victims were less likely to be injured, when such victims resisted with a gun, compared to victims who did not resist.[84] A study compiled by the U.S. Department of Justice, noted that where guns or knives are used for protection by potential rape victims, the rape was completed only three percent of the time as opposed to a completion rate of thirty-two percent for rapes where no guns or knives were used by the victim.[85]

The use of firearms by civilians to defend themselves, their families and their property, against criminals is very well-known to criminals and profoundly affects criminals' behavior, often deterring them from committing certain crimes. In a

1983 study of criminals and firearms sponsored by the U.S. Department of Justice, Professors James D. Wright and Peter H. Rossi interviewed over 1800 prison inmates in ten states. Fifty-seven percent of those felons agreed that "most criminals are more worried about meeting an armed victim than they are about running into the police"; fifty-six percent agreed that "a criminal is not going to mess around with a victim he knows is armed with a gun;" seventy-four percent agreed that "one reason burglars avoid houses when people are at home is that they fear being shot"; and fifty-eight percent agreed that "a store owner who is known to [Page 87] keep a gun on the premises is not going to get robbed very often." [86]

The Justice Department study on felons confirmed the results of the general population surveys regarding the frequent defensive use of firearms by civilians against criminals. The study's findings indicate that thirty-seven percent of criminals admitted to being personally confronted by civilian victims armed with guns and thirty-four percent admitted to having personally been scared off, shot at, wounded or captured by an armed civilian victim. [87]

The felon's perception of the risk of encountering an armed civilian affects the felon's criminal behavior. The Justice Department survey found that forty percent of felons admitted that they had at one time or another decided not to commit a crime because they knew or believed that the intended civilian victim carried a gun. [88]

Furthermore, an analysis of highly publicized incidents of gun training programs or of an armed populous, also suggests that civilian gun ownership can affect the frequency of various crimes. In response to an increase in rapes, the Orlando City Police Department introduced a gun training program for women in 1966. The city experienced an eighty-eight percent drop in the rape rate the following year, even though rape had been on the increase in Orlando, in Florida, and in the United States as a whole at the time the program was introduced. However, there were no similar drops in rape rates in the surrounding areas and the drop in Orlando was far in excess of any one year changes in previous rape rates. [89] Similar results have occurred in regard to other gun training programs; producing a decrease of armed robbery in Hyland Park, Michigan, of drug store robberies in New Orleans, Louisiana, and of grocery store robberies in Detroit, Michigan. In Kennesaw, Georgia, as a result of a highly publicized city ordinance requiring household gun ownership, burglaries dropped eighty-nine percent in the seven months immediately after passage of such ordinance, compared to the same period in the previous year. [90] To the extent the homeowners of a neighborhood or community are known to be well-armed, the presence of firearms will deter crime. [91] [Page 88]

Reducing gun ownership among law-abiding citizens will do almost nothing to reduce violent crime directly, since such behavior is virtually nonexistent among persons without previous records of serious violence and criminal behavior. The

assumption of many middle and upper class whites that the common murderer is the common poor and minority citizen (especially the poor black citizen) is false. The Eisenhower Commission determined that 74.7% of those persons arrested between 1964 and 1967 for criminal homicide had a record of previous arrests for "a major violent crime or burglary." [92]

Reducing gun ownership among law-abiding citizens may significantly reduce the deterrent effect of widespread civilian gun ownership on criminals, particularly in regards to such crimes as residential burglaries and commercial robberies. Of course, this effect will be most widely felt among the poor and minority citizens who live in crime-ridden areas without adequate police protection. It must also be noted that in many instances in the past, and even at this time, the security forces of the state not only fail to provide protection to these deprived citizens but are, in fact, used to oppress those citizens.

One should not forget that the National Guard was used by Governor Faubus of Arkansas in an attempt to prevent the desegregation of public schools. Notably, Little Rock's Central High School was placed "off limits" to black students. [93] In September of 1989, Hurricane Hugo hit the U.S. Virgin Islands. Because of restrictive gun control laws the law-abiding citizens of the various islands were unable to protect themselves and their property from looters in the aftermath of the damage done by Hurricane Hugo. In fact, among the few non-military/police who were able to protect their property were certain shopping malls who posted guards with firearms on their roofs. As the local police refused to stop looting and even took part in the looting, National Guard troops were mobilized in the area, including the island of St. Croix. However, such troops, instead of restoring order, reportedly joined police and others in the looting of homes and private property. Those later arrested for looting included a police captain and a bank vice-president. [94] [Page 89]

The fact is that in an imperfect world the servants of the state, including law enforcement authorities and the military, have also committed outrages. For instance, on May 13, 1985 Philadelphia police, in a violent confrontation with an extremist group in a residential area, fired 10,000 rounds of heavy caliber ammunition, dropped a bomb from a helicopter, killed eleven people, including five children, and destroyed an entire neighborhood, making 250 or so persons homeless. [95] Another example is the My Lai massacre, committed by American troops, of unarmed Vietnamese villagers including women and children. [96] Even our highest guardians of justice are not immune from corruption; Chicago's Operation Greylord resulted in the conviction of fifteen judges on corruption charges which included the taking of bribes to throw cases before such judges. [97] Most recently, this country has been stunned by the videotaped beating of an unarmed, subdued and handcuffed black motorist by a group of Los Angeles Police Department officers. This incident seems to be an aberration only in that it was recorded on videotape. In fact, police misconduct is so common as to warrant the existence of a specialized law reporter. [98] Nevertheless, the

military, police and security forces of the state are always exempted from gun control laws which are designed to disarm the citizen.

In striking down a gun control law, the Supreme Court of North Carolina, in *State v. Kerner*, referred to the right to keep and bear arms as "a sacred right based upon the experience of the ages in order that the people may be accustomed to bear arms and ready to use them for protection of their liberties or their country when occasion serves." [99] This was a right of "the ordinary private citizen" as it was "the common people, . . . accustomed to the use of arms" who had fought and won the revolution. [100] Such right did not depend on the organized militia but, in fact, existed in part to provide people a defense against such organized militias: "In our own state, in 1870, when Kirk's militia was turned loose and the writ of habeas corpus was suspended, it would have been fatal if our people had been deprived of the right [Page 90] to bear arms and had been unable to oppose an effective front to the usurpation." [101]

The disarmament of citizens by the Nazis both in Germany and in occupied territories, of Palestinian citizens by the Israeli military in Gaza and the West Bank, of black South Africans by the apartheid government of South Africa, of East European citizens after World War II by the newly installed communist governments and recently of Lithuanian and Georgian citizens by the Soviet central government, were, among many others, the first steps on a road to oppression.

For instance, after their takeover of the German government, the Nazis acted vigorously to confiscate "weapons still remaining in the hands of people inimical to the state." [102] The 1938 "Law of Weapons" denied firearms licenses to gypsies, persons deprived of their civil rights, under police surveillance, or otherwise politically suspect. [103] Unarmed Jews, specifically forbidden to possess firearms and not benefited by governmental protection, were left defenseless against official and unofficial violence against them. Subsequently, when German and other Jews in occupied territories were forced into ghettos, intense individual and collective punishment was meted out when a Jew was found in possession of firearms. [104] Nazi occupation forces ordered the submission of privately owned firearms to authorities and carried out confiscation searches. [105]

South Africa has a long history of racially directed gun control laws. [106] In present-day South Africa, the Arms and Ammunition Act of 1937 has been used to restrict the ownership of firearms to whites. [107] In fact, South Africa can be credited with having run "one of the world's most effective gun control campaigns." [108] The list of gun control efforts and laws used to oppress certain ethnic or minority groups [Page 91] or entire peoples by occupying powers or their own despotic governments is too long to recount here. Further, testimony provided by the Library of Congress concluded that a "totalitarian society, and

particularly a totalitarian society occupying a country against its will, simply cannot permit the private possession of weapons to any great extent . . . "[109]

It need not necessarily be the state that actively oppresses a minority or those expressing diverse political or social views; often state authorities need only to refuse protection to such groups, thus allowing vigilantes to perform the actual violence and oppression against these groups. Although governmental officials may be politically unable to oppress controversial political or social views, covert withdrawal of police protection could expose such groups to a violent response by such organizations as the KKK.

Civil rights attorney Don B. Kates noted:

As a civil rights worker in a Southern state during the early 1960's, I found that the possession of firearms for self-defense was almost universally endorsed by the black community, for it could not depend on police protection from the KKK . . . . The black lawyer for whom I principally worked . . . attributed the relative quiescence of the Klan to the fact that the black community was so heavily armed . . . .

What might have happened to civil rights workers if there had been strict gun control in the South is exemplified in the 1969 machine gunning of several hundred marchers by right wing extremists in Mexico City. Both the possession of automatic weapons and the act of murder are as strictly forbidden by law in Mexico as they are in the U.S. Nevertheless, the police made no arrests - either on the scene or when the attackers later invaded the hospitals to finish off the wounded . . . .

During the civil rights turmoil in the South, Klan violence was bad enough; it would have been worse with gun control. It was only because black neighborhoods were full of people who had guns and could fight back that the Klan didn't shoot up civil rights meetings or terrorize blacks by shooting at random from cars. Moreover, civil rights workers' access to firearms for self-defense often caused Southern police to preserve the peace as they would not have done if only the Ku Kluxers had been armed . . . .

In the 1950's and early 1960's . . . over a hundred civil rights workers were murdered while the federal government would do nothing to offend [Page 92] the South's all-white electorate. Under strict gun control the slaughter would have been immeasurably worse, since we could not have defended ourselves. The movement would have collapsed, just as it did during Reconstruction when

the army was withdrawn, leaving the blacks (who had no firearms) to the mercy of the Klan.

Nor is police refusal to protect the unpopular confined to the South. The inaction of New York State Police when Paul Robeson's Peekskill concert was mobbed, and of the New York City, Boston, and Oakland (California) police when hardhats and Hell's Angels attacked peace marchers, are only the most famous examples. Any reader of black newspapers knows how Northern police react when mobs attack blacks who move into all-white neighborhoods.[110]

It is folly and arrogant to believe that government in America has always been and will always be the benign protector of civil rights. The history of the treatment of blacks, Indians and other minorities substantiates this assertion. To believe that unjust governmental actions may never occur again in the future is the height of folly. Who can assure what American government will be like 50, 100 or 200 years from now, what powers it will have amassed, who will control it, and what its aims will be. At the beginning of the 20th century, few people would have suspected that a nation considered by many to be the most cultured, advanced and civilized would elect to power a homicidal maniac and allow him to seize total control of every institution in the country and every facet of the community; a man who maltreated, gassed and otherwise murdered millions of people based on their racial and ethnic background. Furthermore, if it is contended that because of some quality in the American citizen and his/her government such events could never take place in this country (an arrogant assumption at best, and a patently false assumption in light of past treatment of blacks, Indians and other minorities), then the contention that we must guard our other civil rights against possible abuse by this "forever benign" government rings false.

How can it be asserted that there is a real need to guard against governmental infringements regarding the first amendment, because any infringement, even one merely prohibiting the burning of the American flag, can lead down a slippery slope at the bottom of which [Page 93] our free speech rights may be entirely muzzled, and then, on the other hand, dismiss out of hand the possibility that government may at some point become authoritarian and use its monopoly of force to oppress its citizens.

### III. THE ENFORCEMENT OF GUN PROHIBITIONS SPUR INCREASED CIVIL LIBERTIES VIOLATIONS, ESPECIALLY IN REGARD TO BLACKS AND OTHER MINORITIES.

Constitutional protections, other than those afforded by the right to keep and bear arms, have been and are threatened by the enforcement of restrictive firearms

laws. The enforcement of present firearms controls accounts for a large number of citizen and police interactions, particularly in those jurisdictions in which the purchase or possession of certain firearms are prohibited. In 1976, American police forces made no less than 121,722 arrests for the illegal carrying or possession of weapons.[111] In 1988, 144,568 such arrests were made nationwide.[112]

The most common and, perhaps, the primary means of enforcing present firearms laws are illegal searches by the police. A former Ohio prosecutor has stated that in his opinion fifty to seventy-five percent of all weapon arrests resulted from questionable, if not clearly illegal, searches.[113] A study of Detroit criminal cases found that eighty-five percent of concealed weapons carrying cases that were dismissed, were dismissed due to the illegality of the search. This number far exceeded even the fifty-seven percent for narcotics dismissals, in which illegal searches are frequent.[114] A study of Chicago criminal cases found that motions to suppress for illegal evidence were filed in thirty-six percent of all weapons charges; sixty-two percent of such motions were granted by the court.[115] A Chicago judge presiding over a court devoted solely to gun law violations has stated:

The primary area of contest in most gun cases is in the area of search and seizure . . . . Constitutional search and seizure issues are probably more regularly [Page 94] argued in this court than anywhere in America .... More than half these contested cases begin with the motion to suppress . . . these arguments dispose of more contested matters than any other.[116]

Therefore, in efforts to curb the number of concealed weapons and the amount of drug trafficking, fourth amendment rights were frequently violated.

These suppression hearing figures represent only a tiny fraction of the actual number of illegal searches that take place in the enforcement of current gun laws. It must be noted that a suppression hearing occurs only when the illegal search has actually produced a firearm, and the citizen has been charged for some offense based on such evidence. If the illegal search did not turn up a firearm, no criminal case would have resulted in which a suppression motion would have been filed by the defendant. However, an illegal search and the violation of the constitutional rights of a completely innocent person would have occurred nonetheless. The American Civil Liberties Union has noted that the St. Louis police department, in the mid-1970's, made more than 25,000 illegal searches "on the theory that any black, driving a late model car has an illegal gun." However, these searches produced only 117 firearms.[117]

In light of these facts, many of the proponents of gun control have commented on the need to restrict other constitutionally guaranteed rights in order to enforce gun control or prohibition laws. Federal Appellate Judge

Malcolm Wilkey published an editorial in the Wall Street Journal in 1977, urging that the Supreme Court abandon the exclusionary rule. "The exclusionary rule has made unenforceable the gun control laws we have and will make ineffective any stricter controls which might be devised . . . Unless a police officer has 'probable cause' to make a reasonable search, nothing found during the search . . . can be introduced as evidence." [118] That same year, Police Inspector John Domm published a guest editorial in the Detroit Free Press, calling for a "reinterpretation" of the fourth amendment to allow police to assault strategically located streets, round up pedestrians en masse, and herd them through portable, airport-type gun detection machines. [119] In a book by two prominent gun prohibitionists, [Page 95] published in 1970, Norville Morris and Gordon Hawkins stated flatly that "there can be no right to privacy in regard to armament." [120]

However, statistics and past history show that many millions of otherwise law-abiding Americans would not heed any gun ban, either prohibiting semiautomatic firearms or handguns. This should be plain to anyone who considers it in light of the traditional American attitude towards guns and traditional American reactions to the banning of any commodity deeply valued by a substantial portion of the public. One should consider America's past experience with liquor prohibition and the present experience with drug prohibition. Furthermore, in many urban neighborhoods, especially those of poor blacks and other minorities, the possession of a firearm for self-defense is a necessity in light of the fact that adequate police protection is rarely if ever provided for these citizens.

Federal and state authorities in 1975 estimated that there were two million illegal handguns among the population of New York City. This number amounted to only 500,000 less handguns than the estimated number of legally owned handguns in California at that time and represented a significantly higher rate of handgun ownership than existed in the nation as a whole in 1975. [121] In a 1975 national poll, some ninety-two percent of the respondents estimated that fifty percent or more of handgun owners would defy a confiscation law. [122]

Even registration laws as opposed to outright bans, measure a high percentage of noncompliance among the citizenry. In 1968, Illinois passed a firearm owner registration law. The Chicago Police estimated the rate of noncompliance at over two thirds. Statewide noncompliance was estimated at three fourths. In 1976, Cleveland city authorities estimated the rate of compliance with Cleveland's new handgun registration law at less than twelve percent. [123] Considering the fact that eighty-eight percent of handgun owners in Cleveland would not comply even with a registration law, the effectiveness of the "assault" gun ban ordinance enacted on February 17, 1989 must be seriously questioned. Regarding that law (which actually banned no assault guns, such as fully automatic firearms, but did ban virtually [Page 96] all semiautomatic firearms), Lt. Martin Flass of the Cleveland Police Department stated in August of 1990 that "to the best of our knowledge, no assault weapon was voluntarily turned over to the the Cleveland

Police Department . . . considering the value that these weapons have, it certainly was doubtful individuals would willingly relinquish one."[124]

In response to New Jersey's "assault weapon" ban, prohibiting the mere possession of many semiautomatic firearms, only eighty-eight of the 300,000 or more affected weapons in New Jersey had been registered as of November, 1990. No weapons had been surrendered to the police and only seven had been rendered inoperable.[125] As of November 28, 1990, only 5,150 guns of the estimated 300,000 semiautomatic firearms banned by the May 1989 California "Assault Gun" law had been registered as required with the California State Department of Justice.[126] These results suggest that the majority of otherwise law-abiding citizens will not obey a gun prohibition law; much less criminals, who will disregard such laws anyway. It is ludicrous to believe that those who will rob, rape and murder will turn in their firearms or any other weapons they may possess to the police or be deterred from using them again by the addition of yet another gun control law to the 20,000 plus that are already in effect in the United States.[127]

Average citizens will generally keep their firearm in their home or business. Very few citizens habitually carry firearms. Clearly neither stop and frisk laws, streetside general searches, nor gun detection devices as advocated by the prohibitionists, would be able to enforce any gun prohibition. A serious attempt to enforce a gun prohibition would require an immense number of searches of residential and business premises. Thus, necessity would dictate that enforcement must involve intrusions into residences where firearms ownership is suspected. Furthermore, the bulk of these intrusions will be directed against racial minorities, whose possession of arms the enforcing authorities may view as far more dangerous than illegal arms possession by other groups. As civil liberties attorney Kates has observed, [Page 97]

when laws are difficult to enforce, 'enforcement becomes progressively haphazard until the last of the laws are used only against those who are unpopular with the police.' Of course minorities, especially minorities who don't 'know their place', aren't likely to be popular with the police, and those very minorities, in the face of police indifference or perhaps even antagonism, may be the most inclined to look to guns for protection - guns that they can't acquire legally and that place them in jeopardy if possessed illegally. While the intent of such laws may not be racist, their effect most certainly is.[128]

Given the potential discriminatory application of gun bans, and the grave consequences of such enforcement schemes, legislatures should not pass such statutes.

Civil rights standards are already bearing the repercussions of the actions of overzealous gun prohibitionists. Take for instance the development of a new and lesser standard of constitutional protection in regard to tenants in public housing facilities.

Recently the U.S. District Court for the Eastern District of Virginia upheld a ban imposed by the Richmond Housing Authority on the possession of all firearms, whether operable or not, in public housing projects.[129] The Richmond Tenants Organization had challenged the ban, arguing that such requirement had made the city's 14,000 public housing residents second-class citizens. The judge did strike a lease provision banning "weapons of any type" because such could include kitchen knives or anything else that could be used as a weapon. (Also struck from the lease were provisions that caused tenants to lose the lease if they committed misdemeanor drug or alcohol violations away from the public housing area.)[130] Richard Gentry, Executive Director of the Richmond Redevelopment and Housing Authority stated that "it has never been our intent nor will it ever be to conduct raids on residents or to hassle our residents." Mr. Gentry also noted that firearms are banned in public housing projects in Chicago.[131]

Starting in late 1988, the Chicago Housing Authority (CHA) and the Chicago Police Department (CPD) enacted and enforced an official policy, Operation Clean Sweep, which applied to all housing units owned and operated by the CHA. The purpose of Operation [Page 98] Clean Sweep was the confiscation of firearms and illegal narcotics. Operation Clean Sweep consisted of an official policy of systematic, warrantless searches of all CHA housing units in Chicago, and also of a visitor exclusion policy severely limiting the right of CHA tenants to associate in their residence with family members and other guests.[132]

The warrantless search policy consisted of indiscriminate random sweep searches of the CHA tenants' residences, any furniture and personal effects found therein, and searches of any residents and guests in the CHA buildings. Such searches were conducted on a building by building basis, without a warning and without probable cause or reasonable articulate suspicion of any crime by any specific person in any specific home. The homes of the CHA tenants were entered whether or not they were present. Persons found on such premises were detained and searched, while the apartment was searched, including all enclosed areas, personal effects, bureau drawers, clothes, closets, mattresses, kitchen cabinets, refrigerators, freezers, and medicine cabinets. The CPD officers and CHA officials used metal detectors in order to discover firearms. CHA tenants who objected or attempted to interfere with these warrantless searches were arrested.[133]

While such searches were occurring, all persons who were not on the lease were ejected from the building. Following the search of each building, the police closed the unit to all visitors for forty-eight hours. After the initial forty-eight hour period passed, tenants were allowed to have visitors only from the morning until 12:00

a.m. and were not allowed to have overnight guests. Tenants were forced to sign in and out of the building and, upon entering the building, had to produce to the police officers or CHA officials photograph identification. Relatives, including children and grandchildren, were not allowed to stay over, even on holidays.[134]

Of course all of the CHA tenants were poor, and the vast majority of them were Hispanic or black. Once again, the very same police and [Page 99] security forces that were supposedly in existence to protect citizens were used to harass, intimidate, and deprive the residents of CHA of their constitutional rights. And once again, oppressive firearms laws were used to facilitate the deprivation of the constitutional rights of those minorities.

## CONCLUSION

The history of gun control in the United States has been one of discrimination, oppression, and arbitrary enforcement. Although the purported legislative intent behind gun control statutes was to decrease crime and violence and thereby ensure public safety, the primary purpose was to keep blacks, immigrants, and native Americans in check. If, as the white establishment believed, blacks and other minorities generally could not be trusted, they certainly could not be trusted with arms and ammunition. Those in power wielded gun control laws in efforts to preserve their monopoly on the instruments of force.

To argue against gun control, such as discriminatory permit schemes, is not to assert that every man and woman should arm themselves before leaving for work in the morning. However, if citizens decide to purchase a gun for whatever reasons and continue to be subjected to permit laws, they have the right to be treated in a nondiscriminatory manner.

By prohibiting the possession of firearms, the state discriminates against minority and poor citizens. In the final analysis, citizens must protect themselves and their families and homes. The need for self-defense is far more critical in the poor and minority neighborhoods ravaged by crime and without adequate police protection. Enforcing gun prohibitions, furthermore, will only lead to vast increases in civil liberties violations, including illegal searches and seizures. Unfortunately, the tenants of the Richmond and Chicago housing projects have become second class citizens; their rights to defend themselves and to be free from warrantless searches have been circumscribed. These excesses and other policies and statutes which unduly infringe upon second and fourth amendment rights should not be tolerated by courts or a free citizenry.

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128. Tonso, *supra* note 26, at 25.

129. *Richmond Tenants Org. v. Richmond Dev. & Hous. Auth.*, No. C.A. 3:90CV00576 (E.D.Va. Dec. 3, 1990).

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132. The ACLU filed a lawsuit seeking declaratory and injunctive relief on behalf of the CHA tenants against the enforcement of Operation Clean Sweep. The complaint was filed in the United States District Court for the Northern District of Illinois, Eastern Division, on December 16, 1988 as Case No. 88C10566 and is styled as *Rose Summeries, et al. v. Chicago Housing Authority, et al.* A consent decree was entered on November 30, 1989 in which the CHA and CPD agreed to abide by certain standards and in which the scope and purposes of such "emergency housing inspections" were limited.

133. Complaint, *Summeries v. Chicago Hous. Auth.*, at 7-8.

134. *Id.*