

by DAVID B. KOPEL



A CAPITAL CRIME

The District of Columbia's institutionalized history of incompetence, corruption and bigotry is the very reason for its prohibition of Second Amendment rights—and for its status as the murder capital of the United States.

As the fight over the Washington, D.C., handgun ban makes its way toward the Supreme Court, pro-Constitution citizens should understand that *Parker v. District of Columbia* does not involve a conflict between constitutional rights and public safety. Instead, the D.C. bans on handguns and armed self-defense are the products of extremism and bigotry that have been harming the good citizens of the District of Columbia for decades.

The District's gun laws are by far the most severe of any city in the United States. Why? There are two key reasons: first, the city of D.C. is not part of a state, and second, the amazing corruption and incompetence of the D.C. city government have resulted in the suspension of residents' Second Amendment rights.

Anti-Second Amendment politicians can be found in many American cities;

but in most states, their prejudices may be tempered by working with legislators from suburban or rural areas. An urban legislator may, at least, get to know a rural colleague who can explain the constructive parts of the hunting culture.

One of the greatest aspects of American state legislatures is that they bring together public servants with tremendous diversity in their backgrounds. The D.C. city council, however, often displays an obvious lack of experience with intellectual and social diversity. In such a homogeneous and intellectually sterile atmosphere, anti-gun-owner prejudice thrives.

Most states have pre-emption laws that restrain the prejudiced or destructive excesses of local

governments on topics such as gun rights, property rights, contract rights and other rights. Unfortunately for the citizens of the District of Columbia, there is no state legislature to protect them from anti-freedom local politicians.

The Constitution (Article I, Section 8) grants Congress total authority over D.C., so theoretically, Congress could pass legislation to protect the constitutional rights of D.C. residents. Indeed, protective legislation has long been an NRA priority and even if the Supreme Court upholds the Court of Appeals decision in *Parker*, D.C. citizens will still have many terrible rights-infringing laws that Congress can and should repeal.

Yet so far, the District's lobbyists have prevented the passage of reform legislation. This March, Congress was considering legislation that would have given D.C.'s U.S. House delegate (gun prohibitionist Eleanor Holmes Norton) full voting rights in the House. During the debate, the U.S. House of Representatives voted to attach an amendment to restore Second Amendment rights for D.C. residents. Incredibly, the D.C. government lobbyists then asked for the entire bill to be withdrawn.

In other words, the D.C. government is so prejudiced against gun owners that the government would sacrifice the voting rights of D.C. citizens rather than permit those citizens to exercise their Second Amendment rights.

The D.C. government is pretty good at lobbying, but at almost nothing else. D.C.'s city government is perhaps the most dysfunctional of any large American city.

Unlike former Mayor (and current D.C. Councilman) Marion Barry, current Mayor Adrian Fenty does not appear to be personally corrupt, but the D.C. city government suffers from endemic corruption and waste. Among the prime victims are the

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children of Washington, D.C. The D.C. school system spends almost \$13,000 per pupil—more than any state except New York and New Jersey—yet much of the “per pupil” spending is consumed by administrative waste and fraud.

Many school buildings are falling apart due to years of maintenance neglect. From time to time the government “discovers” deficits of several tens of millions of dollars in the schools budget. In *City Journal* magazine, an idealistic young teacher named Joshua Kaplowitz details how he became a D.C. teacher in order to help inner-city children achieve the American dream, but was thwarted at every turn by an administrative bureaucracy which is content with out-of-control classrooms, incompetent teachers and worthless principals—so long as the tax money keeps rolling in. (www.city-journal.org/html/13_1_how_i_joined.html)

The District's police department is often not much better. Tucker Carlson, in two articles in *Policy Review* in 1993, reported that many D.C. officers are so illiterate that they cannot fill out a simple police report, and so apathetic that they skip court appearances.

Have things improved since then? Consider the following report from a D.C. resident, written on July 8, 2007:

“Yesterday, two men tried to break into my friend's home while she was inside. One man attempted to pry the door open and the other tried to get in the window. She called the police and, because the men were still milling around in a nearby alley, she was able to identify the perpetrators.

One of them had just been released that morning; he had been either charged or convicted (not sure on details) for robbery.

“The police told her that ‘D.C. doesn't have an attempted burglary statute’ and so they could not arrest the men. They let them go, although now they know who my friend is, where she lives and that she fingered them to the cops.” (bamber.blogspot.com)

Actually, D.C. does have an attempted burglary statute, so the police officers were either incompetent or making up an excuse for their inaction.

The District government refuses to assume any responsibility for compensating crime victims who suffer because of the District's incompetence. The leading case (but hardly the only one) is *Warren v. District of Columbia* (The case can be found in volume 444 of *Atlantic Reporter*, 2d Series, page 1 (1982).)

In the *Warren* case, three women lived together in a house. Two of the women were upstairs when they heard their roommate downstairs being attacked by some men who had broken in. The women called the police. After half an hour, the woman downstairs had stopped screaming. So the two upstairs women, believing that the police had finally arrived, went downstairs. In fact, police never did come.

The downstairs woman had been beaten into silence. The intruders then grabbed the two women who had just come downstairs. As the court later wrote: “For the next fourteen hours the women were held captive, raped, robbed, beaten, forced to commit sexual acts upon

each other and made to submit to the sexual demands” of the criminals.

The D.C. city government ruled that the rape and assault victims could not even recover their medical expenses from the D.C. city government, because the government has no legal obligation to protect anyone.

Even if the women had owned a rifle or shotgun, it would have been illegal for them to use it against the gang of rapists. According to D.C. Code § 7-2507.02, every rifle and shotgun must be “unloaded and disassembled or bound by a trigger lock or similar device unless such firearm is kept at his place of business, or while being used for lawful recreational purposes within the District of Columbia.”

In other words, the D.C. “safe storage” law requiring that guns be locked and unusable at all times has no exception for defensive gun use in the home against a violent attacker. In the *Parker* case, the federal appellate court found that the long gun self-defense ban was a violation of the Second Amendment (as was the ban on handgun possession). Yet the odious pro-criminal, anti-defense law remains on the books in D.C. while the city appeals the case to the U.S. Supreme Court.

So in a political sense, gun prohibition makes a lot of sense for the D.C. city government. Unable or unwilling to provide effective police protection, and determined not to compensate the crime victims who suffer because of the government’s own failures, D.C. politicians need a scapegoat for the city’s crime disaster. Rather than crack down on criminals, the D.C. government cracks down on law-abiding gun owners.

The viciousness of the crackdown—particularly the prohibition of the use of any firearm for self-defense—may have the same root as Great Britain’s similar ban on armed self-defense in the home. To acknowledge the legitimacy of armed

defense in the home is to admit that the government cannot protect everyone all the time. Sadly, it is the governments that most conspicuously fail in their protection obligations that are most insulted by the existence of armed self-defense—and hence determined to forbid it.

The corollary of the D.C. government’s legal position that it has no obligation to pay compensation to crime victims—regardless of how much its police are at fault—is that firearm manufacturers must pay crime victims and also pay the D.C. city government itself, regardless of fault.

D.C. was among the cities that participated in the Brady Center’s junk lawsuits against firearm manufacturers. Even though no firearm manufacturer even sells guns in the District; even though all the companies had complied with the vast body of laws regarding firearms, which make firearms the most heavily-regulated consumer product in the United States. (No other consumer product requires one to get advance permission from the FBI or the state police for every single retail purchase.)

D.C., however, has gone even further. A 1991 law makes gun manufacturers absolutely liable for every injury inflicted with any semi-automatic firearm that holds 12 or more rounds. For example, a woman who lives in Arizona buys a Remington Model 552 Speedmaster there. Years later, the woman and her family move to D.C. One night, a gang breaks into the family’s home and begins attacking the children. The woman uses her .22 to shoot the intruders, correctly believing that using the firearm is the only way to stop her children from being murdered.

Under the D.C. absolute-liability law, the criminals have a right to sue Remington for compensation for the injuries they received during the shooting. It is irrelevant under the D.C. statutes that the gun was lawfully sold in another state, that Remington

does not sell guns in the District or that the “victims” were violent predators. Remington would likewise be liable if the gun were stolen in Arizona and, years later, sold to a D.C. criminal who shot another D.C. criminal.

In 1992, the Senate, using its explicit constitutional authority over the District of Columbia, voted to repeal the D.C. liability statute. The repeal, though, was removed in backroom maneuvering by then Sen. Fritz Hollings, D-S.C., acting at the behest of the trial lawyers lobby.

Finally, in 2006 the federal Protection of Lawful Commerce in Arms Act preempted almost all abusive anti-gun lawsuits, including those promoted by the D.C. city government.

Unfortunately, the mother in the above scenario would still be a criminal under D.C. law, because the D.C. gun lock law includes no exception for emergency self-defense. The destruction of the right to self-defense was no accident. As city councilman Dave Clarke (a long-time anti-gun advocate) explained when he was pushing the handgun and self-defense ban, “I don’t intend to run the government around the moment of survival.”

Thus, D.C.’s current law puts all D.C. citizens in the same position as the slaves who lived in D.C. before the Civil War. Then, D.C.’s gun laws were based on the slave codes of Maryland and Virginia (which had donated the land for the District). Those laws forbade slaves from owning or carrying firearms without their master’s consent.

In the 1995 law journal article “Second-Class Citizenship and the Second Amendment in the District of Columbia,” Stephen Halbrook examines the history of the D.C. gun laws. He shows that when Congress abolished slavery in the District in 1862, and repealed the District’s slave codes, Congress intended, among other things, to protect the

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Second Amendment right of the freedmen to keep and bear arms. (Halbrook's article from the George Mason University *Civil Rights Law Journal* is available on www.StephenHalbrook.com.)

Our nation's capital should be a shining example of freedom, but anti-rights bigots have turned the city into a miserable example of the dangers of prohibition. In the 20th century,

public swimming pools and most other places in Washington, D.C., were racially segregated. The bigoted segregation laws disgraced not only D.C. itself, but also the entire nation. The National Rifle Association stood firm against the bigotry, as the NRA's shooting range at its D.C. headquarters was always open to everyone equally, regardless of race.

Now, our nation's capital—and

therefore our entire nation—is again disgraced by bigotry in the District. The gun prohibition laws are also an insult to the great man for whom the city is named, George Washington—who was an avid gun collector with more than 50 handguns, muskets and other firearms. As Secretary of State Thomas Jefferson wrote to President Washington in 1796, "One loves to possess arms, though they hope never to have occasion for them."

Today, bigots in the D.C. government despise the possession of arms and deny the right of survival.

In the 1954 case of *Bolling v. Sharpe*, the U.S. Supreme Court invalidated the District's laws segregating the public schools. Soon, the Supreme Court may decide whether to act against another bigoted D.C. law that violates the Constitution. ☪



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