"Shall Issue": The New Wave of Concealed Handgun Permit Laws

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This paper appeared in Tennessee Law Review 62:3 [Spring, 1995] 679-757, with a very nice set of graphs, which do not appear in this version. In addition, the printed version has a number of very minor changes as well as different footnote numbering. More writings from the Kopel and Independence Institute on licensed handgun carrying.

Executive Summary

About a third of the states have adopted laws requiring that citizens who pass a background check and a safety class must be granted a permit to carry a concealed firearm for protection, if they apply.

Critics of carry reform have predicted that blood will flow in the streets as hot-tempered citizens shoot each other in trivial disputes.

Analysis of murder rates in carry reform states shows that fears of reform opponents have been unfounded. Careful study of homicide trends in these states reveals that carry reform has not led to an increased homicide rate.

In Florida, for example, a murder rate that was 36% above the national average when carry reform went into effect in 1987, fell by 1991 to 4% below the national average.

The fact the permits are available does not mean that everyone will carry a gun. Usually only about 1% to 4% of a state's population will choose to obtain a permit.

Accordingly, states considering carry reform can enact such laws knowing that reform will not endanger public safety. Carry reform, at least sometimes, allows citizens to save their own lives by protecting themselves against criminal attack.

An additional reform, already on the books in California, allows domestic violence victims whom a court has determined to be in immediate danger, to carry a handgun for protection, without need to undergo a months-long application process for a permit.

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What would happen if adults who passed a background check and safety test qualified for a permit to carry a concealed handgun? About a third of all states have adopted laws or practices so that persons who are legally allowed to possess a handgun in their own home are eligible for a license to carry a concealed handgun for protection. The laws require that eligible persons must, after passing a background check (and sometimes a firearms safety class) be granted the permit if they apply. If the application is rejected, the burden of proof is on the non-issuing sheriff, police chief, or judge, to show that an applicant is unqualified or a danger to public safety. Typically, about 1% to 4% of a state's population decides to obtain such a permit.

This Issue Paper examines how these laws have been written to satisfy concerns about public safety. The Paper also investigates the concern that more permits will lead to more needless killings. After analysis of all available data, this Paper finds that concealed carry laws can be enacted by states with little fear that such laws will compromise public safety, and in some cases, such laws may enhance public safety.

A Short History of Concealed Handgun Permits

Laws prohibiting concealed carrying of handguns without a permit are, in most of the United States, relatively recent. While some statutes from before the Civil War did address concealed carrying, they did so by outlawing it entirely, rather than by setting up a system whereby concealed carrying would be lawful only with a permit. These antebellum statutes usually had no exemptions for sheriffs or other peace officers, even when on duty. [1] During the 1920s and 1930s many states adopted "A Uniform Act to Regulate the Sale and Possession of Firearms." This model law, adopted by the National Conference of Commissioners on Uniform State Laws and supported by the National Rifle Association, prohibited unlicensed concealed carry.

Recognizing that there were circumstances when at least some civilians would have a legitimate need for concealed carry of a handgun, most states adopted provisions allowing a sheriff, police chief or judge to issue concealed handgun permits. Significantly, such statutes were broadly discretionary; while the law might specify certain minimum standards for obtaining a permit, the decision whether a permit should be issued was not regulated by express statutory standards. [2]

In some parts of the United States, concealed handgun permit statutes were passed for frankly racist reasons, as a method of prohibiting Blacks from carrying arms. "The statute was never intended to be applied to the white population and in practice has never been so applied," in the words of a Florida Supreme Court Justice. [3]

While the motivations behind California's concealed handgun statute are not as clearly understood, the effect has been similar. California's legislative

research body studied the issue in 1986 and concluded: "The overwhelming majority of permit holders are white males." [4] Because so many victims of violent crime are female or non-white, the discrimination in granting of carry permits is especially hard to justify. [5]

Not every state adopted the Uniform Act. Some states had already enacted their own statutes. [6] Vermont adopted no statute prohibiting concealed carry of handguns, at least partly because of the Vermont Supreme Court's expansive reading of the Vermont Constitution's protections in State v. Rosenthal (1903). [7] Today, Vermont still has no laws prohibiting or regulating concealed carry, except "with the intent or avowed purpose of injuring a fellow man..." [8]

Modern Discretionary Permits

In many jurisdictions which continue to retain unlimited administrative discretion, abuse of discretion is common. Persons denied permits are often people whom a reasonable use of discretion would find to be most qualified for permits. Conversely, persons granted permits are often politically influential, rather than really in need.

In Denver, Police Chief Ari Zavaras slashed the number of carry permits, granting only 45 permits in a city of half a million. Detective William Phillips, the administrator of Zavaras' permit program, explained that only applicants with a "true and compelling need" could be granted permits. "Just because you fear for your life is not a compelling reason to have a permit," he elaborated. [9] After Chief Zavaras retired, he admitted that he carries a handgun almost constantly. "Now, when wandering around Denver, I very rarely go without one."

Denver talk-show host Alan Berg was Jewish, passionate, highly provocative, and fond of insulting people with whom he disagreed. When Berg began receiving death threats from white supremacists, he went to a local police department to ask for a handgun carry permit. The police chief attempted to talk him out of applying, and finally rejected his application. Shortly thereafter, Berg was assassinated by members of Aryan Nations. [10] No one will ever know whether, had Berg been armed, he might have frightened off the men who came to murder him; what is known is that without a gun, Alan Berg was speedily killed.

In Los Angeles County, a female private detective was disqualified from obtaining a permit because of her gender. [11] In the City of Los Angeles, the police administration refused to issue any permits at all. In a city of over three million people, from 1984 until 1992, not one person was found by the Los Angeles Police Department to "need" a handgun permit.

The Los Angeles policy changed, however, on June 28, 1992. The new police chief, Willie Williams, twice failed practice versions of the POST (Police Officer Standards and Training) test. As a result, Mr. Williams could not

legally qualify to be a police officer in Los Angeles (although he could retain the appointed position of police chief). On June 28, 1992, Mr. Williams was issued a concealed carry permit, the first civilian since 1984 to be so honored. [12] That fall, the City of Los Angeles was sued for its discriminatory handling of permits; the City settled before trial, and entered into a settlement promising to issue licenses on the basis of need. [13]

Despite the City's agreement to the settlement, only five permits were issued in the ensuing nine months. Three of those permits went to government employees, and two to private attorneys. On the basis of the absence of a "compelling" need, a permit was denied to a jeweler who routinely carried large amounts of jewelry and valuables, who had been burgled, who had received police-documented death threats from a criminal he had helped a deputy apprehend, and who had passed a defensive handgun class. [14]

Licensing in the rest of California is similarly haphazard, and local officials enforce their own criteria for who is "qualified" to exercise the "privilege" of protecting her life with a firearm. For example, one town's police department requires, among other things, applicants to pass a written exam with questions such as:

> "The shock of firing may on occasion place an unusual stress on the gun resulting in damage or a need for adjustments. Which of the following parts are likely to require attention after firing:
>
> - the screws of the face plate
>
> - the ejector rod if revolver
>
> - the firing pin
>
> - all of the above."

Questions such as the one above are equivalent to conditioning the issuance of a driver's license on passing a test for becoming an auto mechanic.

In New York City, carry permits are awarded on the basis of political and social influence. Permits have been awarded to:

> - Laurence Rockefeller (a gun control advocate whose justification for the permit was "carry large sums of money"),
>
> - Gun prohibition advocate and New York Times publisher Arthur Ochs "Punch" Sulzberger (justification: "carry large sums of money, securities, etc.")
>
> - Gun control advocate William F. Buckley (whose first application cited his need for "protection of personal property while traveling in and about the city"),
>
> - The husband of Dr. Joyce Brothers (Dr. Brothers has written that gun ownership is a sign of sexual dysfunction in males). [15]

- Celebrities including Bill Cosby, Howard Stern, and publisher Michael Korda. [16]

Other licensees include an aide to a city councilman widely regarded as corrupt, several major slumlords, a Teamsters Union boss who is a defendant in a major racketeering suit, and a restaurateur identified with organized crime and alleged to control important segments of the hauling industry. [17]

At the same time, permits are not awarded to persons in genuine need, such as crime victims who are cooperating with the police, will testify against a criminal, and who are receiving death threats from the criminal. Such persons will not even have their permit applications for home handgun possession processed within the legal six month limit for home handgun license applications.

And while being a publisher of a respectable publication such as the New York Times or National Review is apparently sufficient in itself for a carry permit, being the recipient of death threats such as "kill the white creep...You will be shot...This is no joke. We are going to kill Al Goldstein," is not a sufficient basis. Mr. Goldstein, while the recipient of death threats whose seriousness is not contested by the police, is the publisher of the highly unrespectable Screw magazine. [18]

Class discrimination pervades the process. New York City taxi drivers, who are more at risk of robbery than almost anyone else in the city, are denied gun permits, since they carry less than $2,000 in cash. (Many taxi drivers carry weapons anyway.) As the courts have ruled, ordinary citizens and storeowners in the city may not receive so-called carry permits because they have no greater need for protection than anyone else in the city. [19]

As "reform" of these abuses of discretion, some police administrators refuse to issue permits to anyone, other than retired police officers.

Given the problems with discretionary permit system, it is not surprising that many people have begun calling for, and many legislatures have enacted, laws to regularize the carry permit application process. [20] The map on this page shows the states which have, either by statute or by practice, made handgun carry permits available to all adults who can pass a background check and a proficiency exam.

[graphic of map goes here]

States which allow law-abiding adults to carry handguns for protection

The New Breed Of Concealed Handgun Permit Laws

In increasing numbers since 1987, many American states have adopted a new breed of concealed handgun permit laws that make it easier for many adults to get a permit to carry a concealed handgun. While most residents of these

states are unlikely to ever apply for a concealed weapon permit, the choice is up to them.

How many permits have been issued? What happened to the murder rate when these laws took effect? How many serious problems developed because of the laws? In the following sections, we will examine the peculiarities of each state's non-discretionary concealed handgun permit law, and what happened to murder rates before and after these laws took effect.

Methodology for Judging Effects of the Laws

Proponents of carry reform have hoped that such laws would reduce crime of all types, including homicide. Reform advocates suggest that crime will fall not only because lawfully armed citizens will use guns to thwart criminal attack, but also because the general deterrent effect of citizens carrying guns will cause some criminals to desist from confrontational crime.

The expectation of carry advocates is consistent with research performed for the National Institute of Justice. When professors James D. Wright and Peter Rossi interviewed and polled felony prisoners in ten state correctional systems, 56% of the prisoners said that a criminal would not attack a potential victim who was known to be armed. Thirty- nine percent of the felons had personally decided not to commit a crime because they thought the victim might have a gun, and 8% said that this experience had occurred "many times." Criminals in states with higher civilian gun ownership rates worried the most about armed victims. [21]

Conversely, opponents of carry reform have argued that reform will lead to tragic increases in homicide. Accordingly, this paper examines what happened to murder rates before and after these laws are adopted. While there is a need for further research to examine what, if any, effect the carry reform laws have had on crimes such as rape and robbery, the examination of murder rates is a reasonable starting point for carry reform analysis. In particular, studying the murder rates allows an evaluation of the "worst case" scenario offered by carry opponents: that carry reform will lead to increased homicide.

Does it make sense simply to compare the murder rates of each of these states after the new laws have taken effect to the national average? No, because many of the states that adopted non-discretionary permit laws have always been low murder rate states, and any comparison that fails to see how much murder rates changed because of these laws, will give an artificially rosy analysis of the effects of carry reform.

We could (and will) examine whether the murder rates declined after the new laws took effect, but this would be misleading as well, because many of the new laws took effect between 1986 and 1990, when the murder rates for the entire country were on the rise. Thus, a rising murder rate in one state when

most other states were also experiencing a rise might mislead us about the effect of the new law.

A more meaningful measurement is murder rate percentage. What is the relationship between the murder rate for a particular state, and the murder rate for the rest of the United States? As an example, if Florida's murder rate for 1975 was 13.5 per 100,000 people per year, and the murder rate for the rest of the United States was 9.3 per 100,000 people per year, then Florida's murder rate percentage for 1975 was 145%. In other words, for every 100 murders per 100,000 people in the rest of the U.S., there were 145 murders per 100,000 people in Florida. Since the murder rates for many states rise and fall roughly in parallel with the rest of the U.S., the murder rate percentage can be a meaningful measure of how a particular state's policies influence the murder rate.

Recognizing that some readers will regard with suspicion such a synthetic measure (as is only proper--Disraeli's epigram "lies, damn lies, and statistics" comes to mind), we have included graphs for the murder rate for each state, and for the rest of the United States for the years that we will examine.

Why look at the year the law was passed? First of all, in some cases the law took effect part-way through the year, as it did in Florida. Secondly, the deterrent effect of such laws may be related to public discussion of these new laws. Thus, we may even see some benefit before the law takes effect, as it increases the criminal's fear that the next victim may be armed.

State-by-State Analysis

Washington

Washington State adopted the Uniform Pistol & Revolver Act in 1935. In 1961, Washington State departed from the discretionary permit system, and required that if the applicant for a concealed weapon permit was allowed to possess a handgun under Washington law, the permit had to be issued. [22] At first glance, Washington's new policy appears quite remarkable, but a little reflection on the nature of concealed weapons suggests the state's decision reflected a realistic understanding of handgun ownership.

The only circumstances under which a concealed handgun is likely to come to the attention of the police are that either the weapon was drawn (either criminally or in self-defense), or that the person carrying it was searched by the police for some other, presumably criminal reason. A person allowed to possess a concealable firearm in his or her home, cannot, practically speaking, be prevented from carrying it concealed outside the home. As a New York court upholding New York State's handgun licensing law (the Sullivan Act) observed, "If he has it in his possession, he can readily stick it in his pocket when he goes abroad." [23]

If large numbers of handgun owners choose to ignore a concealed weapon law, the state has only three ways of responding: repeal the law, restrict handgun ownership at home, or make concealed weapon permits available to nearly anyone who is allowed to own a handgun. Whereas New York decided to license the possession of a handgun at home very restrictively, Washington state decided to make permits easy to get, and thus keep handgun ownership safe and legal.

Washington's statute is astonishingly forceful:

> The judge of a court of record, the chief of police of a municipality, or the sheriff of a county, shall within thirty days after the filing of an application of any person issue a license to such person to carry a pistol concealed on his person within this state for four years from date of issue, for the purposes of protection or while engaged in business, sport or while traveling. [24]

The statute goes on to list the conditions that would cause, "[s]uch citizen's constitutional right to bear arms" to be denied, namely the applicant being under 21 years old; subject to a court order or injunction regarding firearms; out on bail pending trial or appeal; awaiting sentencing for a crime of violence; or subject to an outstanding arrest warrant for a misdemeanor or felony.

The same statute includes provisions for filing a civil suit against any agency that wrongfully refuses to issue a license, or modifies the requirements of the law. Notably, RCW sec. 9.41.070 allows non-residents to obtain such permits, although the state has up to 60 days to perform a background check on non-residents and on residents who have moved into Washington in the last 90 days. [25]

In 1983, two important changes were made: the licenses would be valid for a 4 year term (previously they had only been valid for 2 years); and license applicants who were improperly denied, and who sued an issuing agency for wrongful denial, would be automatically awarded attorneys fees.

As of 1993 there were 241,806 licenses outstanding in Washington State. [26] Given Washington's population of approximately five million, about 4% of the population appears to have a carry permit. [27]

In Washington, the effects of the law (for good or bad), were subtle. As the accompanying graph shows, after the passage of the non-discretionary issuance law, murder rates rose and fell largely in line with the rate for the rest of the U.S. In the two years before the new law took effect, Washington's murder rate was a bit less than half of the rate for the rest of the U.S. (Unfortunately, the Uniform Crime Reports program of the FBI only began to produce reasonably complete statewide murder statistics in 1959.)

Throughout the period from 1961 through 1982, the Washington murder percentage rates stayed between 44% and 60% of the rest of America. While

U.S. murder rates dropped in the early 1980s, Washington murder rate percentage continued to rise, reaching a peak of 68% of the U.S. rate in 1988, before dropping back to more normal levels in the last three years. Was this the result of all those Washingtonians carrying concealed handguns?

Probably not. The murder rate percentage was rising before the new law took effect. At least part of the increase during the 1980s can be attributed to the actions of one sociopath, the Green River Killer, who murdered 48 Washington women during the years 1982-84. [28] This one person was responsible for at least 8% of all murders in Washington State in those three years. (We say, at least, because many of the Green River Killer's victims may not have been identified as his victims.)

Similarly, Ted Bundy murdered at least 10 women in Washington State in 1974 (before moving on to other states), [29] causing more than 5% of the murders that year. But we must be careful that we do not let these aberrations explain too much; the Green River Killer's activities stopped in 1984 for no known reason, while the murder rate percentages in Washington State remained unusually high until 1989 when they suddenly plunged to levels typical of the period before 1982.

For many years, Washington State remained an aberration with its non-discretionary permit process. While permits were easy to get in many other states, and some courts were prepared to hold that a concealed weapon permit was, in some sense, a right guaranteed by the state constitution, [30] the language of many other state statutes still left substantial discretion to the government to deny a permit. [31]

All this started to change in 1987, when the new wave of non-discretionary concealed handgun permit laws started to appear

Florida

Florida's 1987 reform law set off the modern wave of carry reform that has now been copied in many other states. Among all the states, Florida has collected the most detailed information about the impact of the carry laws. Florida also provides a good test case for the possible negative impacts of carry reform. A high-crime state with heavy urbanization, a massively over-crowded prison system, and an extremely diverse (and often tense) ethnic mix of population, Florida has all the ingredients for concealed carry disaster.

Vermont, which has never required a license for open or concealed carry, might be expected to suffer few consequences from widespread handgun carrying; the state already has a low crime rate, is relatively homogeneous, and is mostly rural. Florida, being just the opposite, should be the place where concealed carry would cause major problems, if concealed carry were capable of causing problems anywhere in the United States. The Florida problems might be expected to be especially severe in Dade County (Miami)

where crime and racial tensions are higher than in all but a few major American cities.

In 1987, Florida adopted a non-discretionary concealed weapon permit law that guaranteed issuance of a concealed weapon permit to any Floridian who is 21 or older; "Does not suffer from a physical infirmity which prevents the safe handling of a weapon or firearm"; has not been convicted of a felony; has not been convicted of a drug charge in the preceding three years; has not been confined for alcohol problems in the preceding three years; has completed any of a number of firearms safety classes; and has not been committed to a mental hospital in the preceding five years. A 1993 revision allows American citizens who are not Florida residents to obtain a permit that can be used when visiting Florida.

The only area of discretion was that a license could be denied if an applicant had been convicted of any misdemeanor crime of violence, or was on probation for such a crime, within the preceding three years. [32] Judges were required to take the firearms safety class, but were otherwise exempted from the rest of the list of requirements. [33]

The Florida permit ended the power of local law enforcement to deny carry permits for arbitrary reasons. Under the old system, a doctor who performed abortions and whose clinic had been bombed was denied a permit because he was not in the professional security business. [34]

Coverage of the Florida reform in The Economist (a British newsweekly) typified most of the American national media's coverage. The magazine asserted that after taking a few hours of training, "Anyone who wants to carry a pistol may now do so." Apparently, the provisions about minimum age requirements, drug abuse, felony convictions, mental hospital commitment, and misdemeanor convictions, excluded no one in The Economist's eyes. [35] The Florida media were sometimes hysterical, predicting that the law would increase lawlessness and death. Opposing legislators warned that Florida would become "the GUNshine state."

How many permits were issued? From October 1, 1987, when the new law went into effect, to December 31, 1993, there were 205,631 applications received. A total of 986 applications were denied (572 for criminal history, 414 for incomplete application). A total of 188,106 licenses were issued, of which 105,214 were valid as of December 31 1993. (Many licensees did not renew.) Several thousand applications were either in process, denied and under appeal, suspended, or withdrawn by the applicant. [36]

A total of 350 licenses have been revoked. The revocations were for: clemency rule change or legislative change (66); illegible prints (10); crime prior to licensure (74, of which 4 involved a firearm); crime after licensure (182, of which 17 involved a firearm); and "other" (18). Thus, of the 188,106 licensees,

approximately 1 in 10,000 (1/100th of 1%) had a license revoked for a crime involving a firearm. [37]

Dade County (Miami) has compiled more detailed data. Dade showed a dramatic change in the number of permits as a result of the new law. The number of permits increased from 1,200 (in September 1987) to 21,092 (in August 1992). The Dade police kept detailed records of all arrest and non-arrest incidents involving permit-holders in Dade County. The following incidents of criminal misuse of a firearm leading to a conviction and a license revocation were reported: two cases of aggravated assault involving a firearm (one of which involved the gun being fired); one case of armed trespass of cultivated land; and one case of a motorist shooting at another car. Besides the above firearms crimes, there was one case where a permit-holder accidentally attempted to enter the secured area at Miami International Airport carrying a firearm in her purse, and one case where a man accidentally shot himself in the leg. The Dade police recorded the following incidents involving defensive use of licensed carry firearms: two robbery cases where the permit-holder produced a firearm and the robbers fled; two cases involving permit-holders who intervened to attempt to stop a robbery, but the robbers were not apprehended (and no one else was hurt); one robbery victim whose gun was taken away by the robber; a victim who shot a pit bull that was attacking him; two cases involving the capture of a burglar; three cases of burglars being scared away but not captured; [38] one case of thwarted rape; and a bail bondsman firing two shots at a fleeing bond-jumper who was wanted for armed robbery. [39]

The Florida/Dade reports show the following:

- A very small number of permit holders were convicted of perpetrating crimes with firearms.

- A relatively larger (but still small overall) number of permit holders used their firearms to thwart or attempt to thwart crimes.

- There was no known incident of a permit-holder intervening in an incompetent or dangerous manner, such as shooting an innocent bystander by mistake.

From the enactment of the 1987 Florida carry reform until August 31, 1992, the Dade County permit incident tracking project provided the most detailed information available about actual incidents involving carry permit holders. The tracking program had been created as result of intense fears among some police administrators about the consequences of the carry reform law. The tracking program was abandoned in the fall of 1992, because of the rarity of incidents involving carry permit holders, and the greatly diminished concern about the issue on the part of law enforcement administrators. The fact that

negative incidents involving permit holders were so rare as to not be worth counting is in itself evidence of the lack of negative effects of carry reform.

Representative Ron Silver, the leading opponent of Florida's carry reform, graciously admitted in November 1990, "There are lots of people, including myself, who thought things would be a lot worse as far as that particular situation [carry reform] is concerned. I'm happy to say they're not." John Fuller, general counsel for the Florida Sheriffs Association, stated, "I haven't seen where we have had any instance of persons with permits causing violent crimes, and I'm constantly on the lookout." [40]

Based on the reports of incidents known to the police, the Florida carry reform law would appear to be a net plus for public safety. The pro-safety result becomes even more lopsided if one believes that the persons who committed crimes with their licensed firearms probably would have committed the same crimes even without a license.

At the same time, the sum of known incidents does not tell us everything that would be desirable to know. Many crimes are not reported to the police. We have no certain figures for the number of crimes perpetrated or thwarted by permit holders which never came to the attention of the police.

Accordingly, we now look at the overall trends in Florida murder rates. Of all the states that enacted concealed carry reform, Florida shows the most dramatic change. As the graph details, Florida's murder rate throughout the period 1975-1986 was between 118% and 157% of the murder rate elsewhere in America. After passage of Florida's law, the murder rate began declining, rapidly, dramatically, and consistently, at a time when the rest of the U.S. was experiencing an increase in murder rates. By 1991, Floridians were less likely to be murdered than people elsewhere in America. Only in 1992 did the murder rate percentage stop falling. Even then, this is because the U.S. murder rate fell more than 10% from 1991 to 1992, while the Florida murder rate fell "only" 5%.

Greater safety for Florida residents and American tourists may be the reason for another notable characteristic of Florida in recent headlines--criminal attacks on foreign tourists. These tourists stood out because of the distinctive rental car license plates that Florida issued until recently. Unlike Florida residents or American tourists (who might shoot back), foreign tourists would certainly be unarmed, suggests the head of the Florida Department of Law Enforcement. [41]

Carry reform, even though it coincided with a drop in the Florida homicide rate, is obviously not sufficient in itself to solve all the problems of a dysfunctional criminal justice system. Parts of Florida remains extremely unsafe, for reasons that would strike many Americans as intuitively obvious. Perhaps as a result of the pressure put on the criminal justice system by the "drug war," Miami is astonishingly lenient with serious criminals. According

to study by the Miami Herald, only 15% of convicted felons in Dade County (Miami) are sent to state prison, compared to 46% nationally. Even compared to cities such as Los Angeles, New York, or Washington, Dade County sends its felons to prison at a much lower rate, and if the felons do go to prison they stay in prison for much less time than felons in other jurisdictions. A resident of metropolitan Miami is at a higher risk of being victimized than a resident of any other city in the United States. [42]

Concealed carry permits are obviously not a complete solution to a criminal justice system that has nearly collapsed. But given the government's manifest inability to protect the populace, it is certainly appropriate that the people be allowed to protect themselves.

Virginia

Readers in a hurry may wish to skip the remaining state-by-state descriptions, and proceed directly to the "analysis" section. The story of the other states is essentially the same as Washington and Florida. In general, the adoption of concealed carry reform did not lead to a noticeable increase in the homicide rate; in a few cases the homicide rate dropped, but the drop cannot be tied with certainty to the new law.

In 1988, Virginia's concealed weapon statute was modified. While the changes were not quite as explicit as the Washington or Florida statutes--and indeed, Virginia's Legislature continued modifying the statute through 1992 to deal with judges who resist issuing of permits--the intent is clear:

> The court, after consulting the law-enforcement authorities of the county or city and receiving a report from the Central Criminal Records Exchange, shall issue such permit if the applicant is of good character, has demonstrated a need to carry such concealed weapon, which need may include but is not limited to lawful defense and security, is physically and mentally competent to carry such weapon and is not prohibited by law from receiving, possessing, or transporting such weapon. [43]

Because some judges refused to renew permits, the law was again amended in 1992 to require judges to renew permits "unless there is good cause shown for refusing to reissue a permit." [44] Unlike the other non-discretionary permit laws that have been passed, there is no maximum time specified for an application to be processed.

Virginia has no centralized data base of concealed weapon permits. Each of 123 circuit courts in Virginia would have to be contacted in order to determine how many permits are currently issued. [45]

The first year after the change showed a dramatic decline in murder rate percentages, followed by a return to murder rate percentages typical of the period before the law. Virginia, however, has the misfortune to border

Washington, D.C., and some of this failure may represent spillover of rapidly increasing crime from the District of Columbia (where handgun possession is almost entirely outlawed). [46] Moreover, the Virginia Legislature has had to revise its statutes several times to make it clear that judges really are supposed to issue permits. The need for repeated revision suggests that while the law required issuance of permits, many judges effectively nullified it by using discretionary authority not granted them.

Even today, while the law is applied as written in most of Virginia, in the two counties of Virginia closest to Washington, D.C., carry permit applicants must often spend thousands of dollars in legal fees to force courts to issue permits according to legislative command. [47] Thus, where permits are the most badly needed, they are the least available.

Georgia

Georgia's concealed weapon permit law before 1989 was somewhat ambiguous. While one part of the concealed weapon statute states, "The judge of the probate court of each county may...issue a license..." [48] [emphasis added], a later portion specifies:

> Not later than 60 days after the date of the application the judge of the probate court shall issue the applicant a license to carry any pistol or revolver if no facts establishing ineligibility have been reported and if the judge determines the applicant has met all the qualifications, is of good moral character, and has complied with all the requirements contained herein. [49] [emphasis added]

Other portions of the statute specify that licenses shall not be issued to anyone under 21, [50] a fugitive from justice, or anyone awaiting court proceedings for a felony or "forcible misdemeanor." [51] Also disqualified is anyone placed under supervision by a court within the last ten years for a "forcible felony," or the last five years for a "forcible misdemeanor or a nonforcible felony," [52] or hospitalized for alcohol or drug treatment in the last five years. [53] Anyone convicted of any sort of manufacturing, distribution, or possession of a controlled substance is likewise ineligible. [54] The maximum fee for processing was set at $30. [55]

But was the issuance of a permit discretionary or not? The use of "may" in one place suggested that it was discretionary. Yet the language "shall issue" seems non-discretionary. The Georgia Attorney General resolved the question in 1989, when he issued an opinion holding that the judge, "has no discretion to exercise, but must issue permit unless provided with information indicating disqualification of applicant." [56]

In Georgia, the effect of the 1989 reinterpretation of the concealed weapon permit law was inconclusive. About 11,000 people in the Atlanta area now have permits. [57] The Georgia murder rate fell 16% in the years 1989-1992, while the rest of the U.S. experienced a 1.6% increase in murder rates. This

might indicate that the new interpretation of the law acted in a positive way to reduce murder, relative to where it might have otherwise gone.

But we must not draw this conclusion too hastily, because examination of Georgia murder rates for the years 1975-1988 shows a rather dramatic and unobvious variation in the relationship between Georgia and U.S. murder rates. A few more years may provide an opportunity to more clearly evaluate how effective the change in the law was in Georgia. The most cautious conclusion we can draw is that it at least did no harm. A more optimistic conclusion is that it may have reduced murder rates.

Pennsylvania

Pennsylvania took action in 1989. While not as explicit as Florida's law, or as forcefully worded as Washington's, the Pennsylvania reform put some teeth in the Pennsylvania Constitution's right to keep and bear arms provision. The requirements include that the applicant be 21 or over; have no drug convictions, no convictions for crimes of violence, no prior mental hospital commitments; not be addicted to "marijuana or a stimulant, depressant or narcotic drug"; not be "a habitual drunkard," convicted of a felony, awaiting trial for a felony; an illegal alien; not be dishonorably discharged from the U.S. military, or a fugitive from justice. Non-residents are eligible for a concealed weapon permit on the same basis as residents, except that the statute requires that they must currently possess an equivalent permit in their home state, provided such permits exist.

Some discretionary authority remains, however. A sheriff can refuse a permit to "an individual whose character and reputation is such that the individual would be likely to act in a manner dangerous to public safety." While the phrase is not defined anywhere in the statute, the law does state:

> A license to carry a firearm shall be for the purpose of carrying a firearm concealed on or about one's person or in a vehicle and shall be issued if, after an investigation not to exceed 45 days, it appears that the applicant is an individual concerning whom no good cause exists to deny the license. [58]

Accordingly, the burden of proof seems to fall on the sheriff to show good cause for refusing a permit.

One unique feature of the Pennsylvania law is that in "a city of the first class" (Philadelphia), [59] the chief of police retained the authority to deny a permit unless:

> [T]he applicant has good reason to fear an injury to the applicant's person or property or has other proper reason for carrying a firearm and that the applicant is a suitable individual to be licensed. [60]

"Suitable individual to be licensed" could mean, in practice, "politician or other person with political influence." Nonetheless, permits issued elsewhere in Pennsylvania are valid in Philadelphia. [61]

As of January 1992, there were 362,142 carry licenses issued in the state, meaning that about 3% of Pennsylvanians had a permit. [62]

Pennsylvania is especially interesting, primarily because Philadelphia is expressly exempted from the requirement to issue concealed weapon permits (though permits issued elsewhere in the state are good in Philadelphia). The graph for Pennsylvania shows no obvious difference after adoption of the new permit law. For two years (1989 and 1990) the murder rate percentage rose; in 1991, the murder rate percentage declined, then returned in 1992 to near the 1989-90 level.

But when we plot murder rates for Philadelphia by itself, or for the rest of the state, the results are puzzling. For Philadelphia, there was a small rise in murder rates in 1990, followed by declines in 1991 and 1992 to below the 1989 level. For the rest of the state, there was a slight decline in 1989, and slight increases in 1990 and 1991, leveling off in 1992, roughly paralleling what happened to murder rates in the U.S. outside of Pennsylvania. Since murder rates in the rest of Pennsylvania are very low, and the need to carry a concealed weapon is doubtless rare, the concealed weapon permit law may not have made much practical difference in those areas.

Yet the 1991-92 decline in Philadelphia, if it continues, suggests some benefit from the increased number of permits being issued elsewhere in the state. Does the knowledge that people walking the streets of Philadelphia might be from other Pennsylvania cities, where permits are readily issued, act as some sort of restraint on Philadelphia criminals? Has there been a dramatic increase in Philadelphia residents who have taken up residence elsewhere (at least from a legal standpoint) in order to obtain permits? Or is this just another random variation? Only time will tell, but at a minimum, the easy availability of permits does not seem to have made Pennsylvania a more dangerous state.

Oregon

In 1989, Oregon also adopted a non-discretionary policy for issuance of handgun permits. The requirements were similar, though not identical to those we have already seen. The applicant must be over 21; must be a resident of the county where the application is made; must have no outstanding arrest warrants; must be "not free on any form of pretrial release"; must have demonstrated competence through any of a number of firearm safety classes; must have no felony convictions; must have no misdemeanor convictions or mental hospital commitments in the preceding four years; and must not be prohibited by a court from owning a firearm for mental illness. [63]

An escape clause similar to Pennsylvania's is contained in the Oregon statutes, allowing the sheriff to deny a permit:

> [I]f the sheriff has reasonable grounds to believe that the applicant has been or is reasonably likely to be a danger to self or others, or to the community at large, as a result of the applicant's mental or psychological state, as demonstrated by past pattern of behavior or participation in incidents involving unlawful violence or threats of unlawful violence. [64]

The escape clause handles the case where the applicant has a history of wandering the streets shouting threats at Martians or pink elephants, or getting into bar fights, but has so far managed to avoid conviction or mental hospital commitment. Yet the language is sufficiently narrowly drawn that a sheriff would need a "pattern" of behavior to refuse a permit. If the sheriff simply refused an applicant based on a single such incident, it would doubtless lead to appeal to the courts, where the sheriff would be liable for the filing fees, if the applicant were to win his appeal. [65]

A unique provision requires the Oregon State Police to determine if any other states had substantially comparable requirements for issuance of a permit. If any such comparable state laws were found, permits from that state would be recognized as valid in Oregon. [66] To date, the Oregon State Police have refused to recognize any other state's concealed handgun law as substantially comparable.

In Oregon, murder rates were already on the decline, both relative to the U.S. rate, and compared to the 1986 state peak, when the new law was passed. As a result, it would be unrealistic to give the new law all the credit for the continuing sharp decline in murder in 1990. In addition, while murder rate percentages in 1991 and 1992 rebounded, examination of the murder rates chart shows that this is more an artifact of the sharp decline in the U.S. murder rate in 1992, rather than because of a dramatic increase in the Oregon murder rate. Indeed, the Oregon murder rate in 1992 was on a par with the rate in 1989 when the new law was passed--and well below the rate for the three years before the new law.

In Oregon, over 87,000 citizens--about 2% of the adult population--now have a carry permit. Oregon police estimate that 25% of permit applicants are female. [67] Of the 87,390 Oregonians who have been issued permits, 194 (less than one-half of one percent) have had their licenses revoked; revocations have been based on offenses such as shoplifting or assault. No license holder has been convicted of a crime involving a gun. Captain F. Sherwood Stillman, coordinator of the statewide licensing program, observed that, "The people who get these concealed handgun licenses are not people we should be concerned about having firearms; these are law-abiding citizens." [68]

West Virginia

West Virginia's non-discretionary permit system was adopted as the result of the voters adding a right to keep and bear arms provision to the state constitution in 1986. [69] A person charged with carrying a concealed weapon in violation of a state statute challenged the law on the grounds that it violated the West Virginia Constitution's right to keep and bear arms, because the law gave too much discretion to local government to deny permits. The West Virginia Supreme Court agreed. [70]

In response, the West Virginia legislature wrote a new concealed weapon permit law that required U.S. citizenship; residence in the county where application was made; age 18 or over; not being a drug addict; having no conviction of a felony or violent crime involving a deadly weapon; being "physically and mentally competent to carry such a weapon;" and at least for first time applicants, completion of one of a number of firearms safety classes. [71]

The courts showed some recalcitrance in applying the new law, and applicants who were denied permits appealed. In Application of Metheney (W.Va. 1990), the West Virginia Supreme Court made it clear that while a judge could determine whether the applicant's purpose was actually "defense of self, family, home or state, or other lawful purpose," if the evidence showed such to be the case, the judge was obligated to issue a permit. [72]

In West Virginia, the Department of Public Safety maintains information on concealed weapon permits, but the filing system "is manual at this time, therefore, it would be virtually impossible to compile the data requested." [73]

In West Virginia, a small state where even a single criminal can make an enormous difference in a state's murder rate, the results are inconclusive. The year the new law was passed, there was a dramatic increase in West Virginia murder rates, followed by declines in 1990 and 1991, and a rise in 1992. However, the number of murders in 1989 was 121; in 1990, 102; in 1991, 111; in 1992, 115. The state is so small that even the actions of one sociopath can dramatically alter a particular year's murder totals.

Idaho

Idaho's change to a non-discretionary permit system is more complex than most of the other states we have examined. As originally adopted in 1990, the language of the first paragraph was nearly identical to Washington's statute, even to the extent of asserting, "The citizen's constitutional right to bear arms shall not be denied him, unless..." [74] Like the Washington statute, it provided for permits for both residents and non-residents. (The provision for non-resident permits was removed, effective July 1, 1991. [75] An amendment effective April 2, 1991, adjusted the formula used for allocating the license fee to the various parts of the government.)

Even with the subsequent amendments, the Idaho statute is somewhere between the Washington and Oregon statutes in its liberality. It denies a permit to non-residents; anyone ineligible to own a firearm under state or federal law; anyone awaiting trial on, or convicted of a felony; fugitives from justice; drug addicts; those lacking "mental capacity" as defined by Idaho law; the mentally ill, gravely disabled, or incapacitated, as defined by Idaho law; those dishonorably discharged from the U.S. military; anyone convicted of a violent misdemeanor in the last three years; or illegal aliens.

There is some discretion in the Idaho statute--but in such a limited way that it provides no real obstacle to those over 21. While the first part of the statute declares those under 21 are ineligible for a permit, a later part provides that a sheriff may issue a license to carry concealed to an applicant between 18 and 21 if the sheriff feels that good cause exists. For an applicant over 21, who is not in one of the prohibited categories listed above, the only discretionary authority available to the sheriff is that, "the sheriff may require the applicant to demonstrate familiarity with a firearm by any of the following, provided the applicant may select which one..." The list of available firearms safety classes is sufficiently broad, including any NRA firearms safety, training, or hunter education course, that even if a sheriff exercises his discretion in requiring one of these courses, it provides little obstacle to obtaining a permit. [76]

Idaho's murder rate is subject to major variations from year to year, as is typical of states with small populations. In the late 1970s, the Idaho murder rate was as high as 63% of the rate for the rest of the nation. In the period 1980-1989, under the old, discretionary concealed handgun permit law, Idaho's murder percentage rate had declined, staying in the range 28% to 48%. In the two years since, the murder rate continued to decline, reaching 19% of the U.S. murder rate in 1991--another statistical fluke of the low population?

The first year murder decline, in 1990, could just be another result of the small population causing a random fall in murder rates, as the previous years show. But when the murder percentage rate fell again in 1991, it might cause one to suspect that progress is being made. The 1992 results, however, suggest random variation was the explanation for the 1990 and 1991 declines.

Montana

In 1991, Montana adopted a statute similar to Idaho's. Whereas the old Montana law gave judges discretionary authority to issue concealed weapon permits as they saw fit, the new statute was unambiguous and non-discretionary:

> A county sheriff shall, within 60 days after the filing of an application, issue a permit to carry a concealed weapon to the applicant. [77]

Unlike the Idaho statute, an applicant must be a resident for at least six months, at least 18 years old, and have a state-issued picture identification card of some sort. The prohibited categories are similar to the other states: those ineligible under state or federal law to possess a firearm; those convicted of a felony; outstanding arrest warrant; drug addict (including such determinations in civil proceedings); "mentally ill, mentally defective, or mentally disabled"; dishonorably discharged from the U.S. military; or convicted in the last five years [78] of violating Montana's statutes that prohibit carrying a concealed weapon while under the influence, or in a prohibited place, such as a government building, bank, or bar. [79]

The same escape clause exists as in the Idaho and Oregon statutes, which allows a sheriff to deny a permit to an applicant based on "reasonable cause" for concern about "the peace and good order of the community..." Where the Idaho statute allows the sheriff to require proof of firearms competence at his discretion, the Montana statute requires completion of any of a number of firearms safety courses, though it is much more careful to avoid naming the NRA, instead referring to "[A]n organization that uses instructors certified by a national firearms association." The Montana statute also refers to the carrying of concealed weapons as "this privilege," and not as a right, unlike the Idaho law. [80]

Montana's new law was adopted in 1991. By the end of 1993, there were 1,369 residents with carry permits. [81] Like Idaho, Montana has a very "notchy" murder percentage rate, and for the same reason as Idaho: very few people. Therefore, we should not attach too much significance to the apparent first year's murder reduction, especially since it followed 1990, a year with an unusually high murder rate percentage. But it is interesting that the 1991 Montana murder rate percentage was the lowest since 1975, and 1992's murder rate percentage is still near the bottom of the period 1975-91. (The comments about declining U.S. murder rates in 1992 and Idaho's murder rate percentage rise apply here as well.) Only time will provide us evidence as to the effects of the Montana concealed handgun permit law.

Mississippi

Mississippi adopted a non-discretionary concealed handgun law effective July 1, 1991. The requirements for obtaining a license included: resident of the state twelve months or more; 21 years old; no "physical infirmity which prevents the safe handling of a pistol or revolver;" no felony conviction in the United States; no drug abuse problem (as indicated by commitment to a treatment facility or conviction within the preceding three years); no mental hospital commitments in the last five years; "not been adjudicated mentally incompetent"; or be a fugitive from justice. The Mississippi Department of Public Safety's discretion in issuing a permit was limited to one area only: if a person had been convicted of "one or more crimes of violence constituting a

misdemeanor" in the preceding three years, it was not required to issue a permit, but could issue one if it wanted to do so.

The permit is valid for four years, and the application fee is $100. The renewal fee is $50. Unlike many of the other non-discretionary permit laws, Mississippi's law includes a long list of places where this permit is not valid: police stations, courthouses, public parks, bars, schools, and the Mississippi Legislature. [82]

In Mississippi, the Department of Public Safety had issued at least 7,000 permits as of October 27, 1993. [83] That means that 0.27% of the total population of the state has obtained a permit in a little over two years of the new law. Like Montana, Mississippi's experience with non- discretionary concealed handgun permit laws is too recent meaningfully to judge the results. At least we can conclude that the first year and half of the new law did nothing to dramatically raise the murder rate.

Wyoming

Wyoming's concealed handgun law before 1994 was somewhat different from most other states. Each county's sheriff issued permits, at his sole discretion, but such permits were often not recognized in other counties. As State Senator Mark Harris explained the problem to one of the authors (Cramer) in a phone conversation in April of 1994, "I tried to get permits from all the sheriffs along the Interstate from my home to Cheyenne [where the Wyoming Legislature meets] and I couldn't." As a result, Senator Harris introduced legislation to reform the existing concealed weapon law.

The usual provisions appear: applicants must be a resident of Wyoming for at least six months; at least 21 years old; "not suffer from a physical infirmity which prevents the safe handling of a firearm;" "not ineligible to possess a firearm" under federal law; no drug or alcohol abuse history; and no mental illness history. The applicant is required to demonstrate "familiarity with a firearm," and a wide variety of courses are listed as acceptable methods of doing so. The permits are to be issued by the Attorney General's office. The only discretion in issuance of permits is that applicants may be rejected for pleading guilty or no contest to any misdemeanor crime of violence in the preceding three years.

Like many of the other states, a permit may be denied if the sheriff of the applicant's residence county believes "that the applicant has been or is reasonably likely to be a danger to himself or others, or to the community at large as a result of the applicant's mental or psychological state, as demonstrated by a past pattern or practice of behavior..." Also like Idaho, permits may be issued to applicants between 18 and 21 at the recommendation of the applicant's sheriff.

The application fee is $50 plus actual fingerprinting costs, and the permit is good for five years. The permit must be issued or denied within 60 days of application.

Perhaps reflective of Wyoming's experience with permits only good in the county of issuance, the Wyoming law recognizes permits issued in other states, as long as they are issued by "a state agency." It is not clear whether permits issued under the authority of a state law, even if issued by a county sheriff, would qualify under this provision. [84]

Arizona

Arizona has long allowed open carry of handguns, but did not have even a discretionary permit system for concealed carry. In some counties, the politically well connected were made special deputy sheriffs in order to get around this problem.

In April of 1994, a statute originally intended to prohibit the carrying of guns by minors was amended to create a non-discretionary concealed weapon permit system for adults. The new law requires the Department of Public Safety to issue a permit to anyone who is a resident of the state; at least 21 years old; not under indictment for, and not convicted of a felony; not mentally ill or "adjudicated mentally incompetent or committed to a mental institution"; "not unlawfully present in the United States"; and who has completed a firearms safety training program approved by the Department of Public Safety.

Unlike many of the other state laws requiring safety training as a condition of permit issuance, Arizona specifies what such training must include. The training must deal with "the legal issues relating to the use of deadly force" along with the safe handling and maintenance of weapons.

Permits must be issued or denied within 60 days. The permit is good for four years. Unlike the other state laws we have looked at, the application fee is not specified in the statute, and is to be "determined by the Director of Public Safety." There is no provision for non-residents to apply for a permit, nor does this statute recognize out of state permits. [85] (Non-residents remain able to carry openly without need for a permit under Arizona law.)

Tennessee

In May 1994, Tennessee passed a concealed handgun permit law that, while not as strong as some of the other laws we have considered, certainly is non-discretionary. The revised version of Tennessee Code sec.39-17-1315 was changed from, "the sheriff may issue such a permit..." to "The sheriff shall issue such a permit..." Unlike some of the other laws we have considered, the law does not explicitly prohibit convicted felons, but does allow the sheriff to refuse to issue a permit if, "in the sheriff's opinion, [the applicant] has a

history of instability or physical infirmity," or "poses a likelihood of risk to the public..."

The existing requirements for applicants to complete a training course in firearms, and to have liability insurance or surety bond of at least $50,000, were maintained. Tennessee is the only carry reform state to have such a requirement, analogous to the public liability insurance requirement that most states have for driving a car on public roads. [86]

Alaska

Like Arizona and Wyoming, Alaska has long allowed the open carry of handguns. In 1994, Alaska passed a concealed handgun permit law that at first glance seems quite similar to the other laws we have examined--but there are some surprising differences. Nonetheless, it is still a non-discretionary permit law.

The qualifications are quite similar to the other statutes we have examined. The applicant must be 21 years of age or older; "eligible to own or possess a firearm under the laws of this state and under federal law;" not convicted or under indictment for a felony; not convicted of any of a number of misdemeanors within the last five years, or currently under indictment for any of those misdemeanors; "is not now suffering, and has not within the five years immediately preceding the application suffered" from mental illness; not adjudicated "mentally incapacitated"; and a resident of Alaska. Anyone who was currently in a court-ordered drug or alcohol program is also prohibited, as well as anyone in such a program in the last three years. [87]

Like many of the other states, Alaska's law requires a demonstration of competence with a handgun. Unlike the other states, however, the certificate of competence must specify the "action type and caliber of handgun or handguns" with which the applicant has demonstrated competence. A permit holder may carry a lesser caliber gun of the same action type, but not a different action type.

Like Arizona, Alaska specifies considerable detail about the content of the firearms safety course, including knowledge of "Alaska law relating to firearms and the use of deadly force." Unlike all the other states we have examined, a permit holder must demonstrate competence not only when he applies for a permit, but also in the twelve months immediately before he renews his permit. [88]

The application fee is to be based on the actual costs to process the application fee, but not to exceed $125 for original application, and $60 for renewal. [89] Permits are valid for five years. Permits must be issued or denied within 15 days of the FBI providing background check information, and the background check request to the FBI must be made within five days of receipt of the application. [90]

Permits are not valid in a number of places that other states also restrict: jails, police stations, courthouses, and airline terminals. But many places that other states felt no need to restrict are prohibited for concealed carry in Alaska: school grounds, "a building housing only state or federal offices or the offices of a political subdivision of the state"; "a vessel of the Alaska marine highway system;" "a facility providing services to victims of domestic violence or sexual assault;" banks, and residences, businesses, or charitable organizations that have posted a sign prohibiting concealed carry. [91]

Most interesting of all, however, is that cities have the authority to prohibit concealed carry by permitees. To do so, however, at least 10% of the voters (as counted at the last regular election) must petition the city to put the matter on the next special election ballot, and a majority must vote to prohibit concealed carry. [92]

In signing the law, Governor Hickel explained that the decisive factor was the women who called his office: "Those that impressed me the most were the women who called and said they worked late and had to cross dark parking lots, and why couldn't they carry a concealed gun?" [93]

This statute certainly shows less trust of the people than many of the other laws we have examined. Perhaps the best example of this concern is the sort of handguns that may be carried concealed. Derringers are not allowed, and neither are "miniature handguns," defined as handguns that lack a trigger guard and have a barrel length of 3.5" or less. [94] Nearly every other state leaves it to the discretion of the permit holder to decide what sort of handgun to carry for self-defense. Alaska's requirement that carry guns have trigger guards, which reduce the risk of accidental discharge, does not appear entirely unreasonable; on the other hand, we know of no instance of an accidental discharge involving a derringer or other gun without a trigger guard in the states which do not specify which type of gun may be carried.

Finally, two non-American jurisdictions have changed their handgun carry laws recently, although we do not have data on which to draw any conclusions about the results of the new laws. Citizens of Lithuania and Estonia are now allowed to own and carry handguns for protection. The laws were enacted in response to the rising crime rates that characterize all of the former Soviet republics. [95]

Analysis of State Homicide Data

In the states discussed above, the dire warnings of the gun control lobbies were not realized. It should not be surprising that the carry laws appear not to have a noticeable impact on the homicide rate in most states (Florida, perhaps, excepted). To begin with, it is important to notice that in most of the states studied, the general rise and fall of murder rates before the new laws took effect roughly approximated the rate in the rest of the country. This

suggests that, in general, the causes of changes in murder rates are largely determined nationally.

Some criminologists have suggested that the state of the economy has a significant impact on murder rates, and that the mass media's glorification of violence plays some significant role in promoting violence. [96] Almost all criminologists agree that demographics play a crucial role in crime rates; as the percentage of the population in the late teens and early twenties increases, so will the murder, since males in this age group are disproportionately involved in violent crime. (About 50% of murderers are under 25.) [97]

It is also important to recognize the dramatic effects that a small number of murderers can have in some of the smaller states from year to year. The murder rates of West Virginia, Idaho, and Montana, are all dramatically variable from year to year, because the populations are small, and one serious criminal can dramatically raise the murder rate one year, followed by a dramatic drop when he is caught or moves on. As a result, the experience of the larger states is more useful for judging the effects of the non-discretionary issuance laws.

Are there any conclusions to be drawn here? In Florida, carry reform appears to have done some good, and perhaps saved a number of lives, although much more detailed statistical analysis would be required to isolate with certainty the carry reform law as a factor in the homicide rate decline. In Virginia, where some judges subverted the clear intent of the legislature, the reform law appears to have not been effective. In Georgia, where the change resulted from an Attorney General's reinterpretation of the law, the evidence suggests that carry reform perhaps might have reduced murder rates. In West Virginia, the results are inconclusive. In Oregon, the new law took effect with murder rates already in decline, and it is impossible to determine whether or how much the new law contributed. In Pennsylvania, legal reform might, arguably, have done some good in Philadelphia, and apparently done no harm outside of Philadelphia. In Idaho, Montana, and Mississippi, the results are inconclusive.

In several of the states, the positive results would seem to have been most dramatic the year of adoption, with results tapering off afterwards. This may be a result of publicity about the law discouraging criminals, or the result of publicity encouraging a short burst of law-abiding citizens applying for permits.

In neither large or small states do we see evidence of obvious long-term increases in murder rates after passage of these laws. This is the most significant, certain conclusion that can be drawn from the data presented above. The experience of the carry reform states plainly shows that homicide rates will not increase as a result of crimes committed by persons with carry

permits. Carry reform legislation may or may not reduce the homicide rate, but reform legislation clearly does not raise the homicide rate.

Additional Carry Reform Research

In addition to the state-by-state research discussed above, there have been two other research projects looking at the impact of concealed carry laws. One study (performed by author Cramer) looked at comparative data from California counties. The other study, a master's thesis at a public policy school, analyzed crime trends in six states. We turn first to the California data.

Effects of Different Policies Among California Counties

To carry a concealed firearm in California requires a permit. [98] Open carry of a loaded firearm is prohibited in cities and the unincorporated parts of many of the more populated counties. [99] Even in those unincorporated areas where it is legal to openly carry a loaded firearm, social pressure or police harassment can make it impractical to carry a gun for self-defense.

CCWs are issued at the discretion of the chief of police of a city in the county, or sheriff of the county, in which the applicant resides. As long as the applicant passes the background check provided by the California Dept. of Justice, a chief of police or sheriff may issue a permit. [100] For many years, some police chiefs and sheriffs have used this discretion to issue CCWs infrequently, or only to protect businesses. The guidelines used by Sonoma County's police chiefs and sheriff, for example, consider protection of business assets as one of the approval criteria. The only provision for self-defense is described as "Specific circumstances that are articulated which show an overwhelming need to have a weapon available for personal protection," which leaves out the vast majority of law-abiding adults.

One of the arguments frequently presented for why CCWs should be issued infrequently is that carried guns will seldom be used defensively, but will be used "to shoot your loved ones, your neighbors, people you get into arguments with," in the words of one California bureaucrat explaining his refusal to issue permits.

To test whether different government approaches to CCW permits affect the crime rate, the ideal would be to compare two counties with comparable policing, laws, and demographics, with the only difference being that one county issued CCWs readily, and the other did not issue them at all. Such a perfect test case does not exist; but what we do have is an enormous variation in CCW issuance rates in California. In some counties, they are nearly unobtainable; in other counties, more than 3% of the total population (not just the adult population) have such permits. Is there any evidence to support the notion that where CCWs are easily obtained, that guns are more likely to be used criminally?

Before we look at the data, let us consider the circumstances in which carrying a handgun for self-defense in public might be useful. The majority of murders in the United States are unlikely to be prevented by wider issuance of such permits. Domestic disturbances turned lethal usually do not take place on the streets, except as spillover from a fight inside a private dwelling. The homicidal attacks which carrying a gun in public has the most hope of making a difference are those committed in the course of some other public felony, such as robbery, burglary, rape, or kidnapping.

Of the 18,269 murders committed nationally in 1988, about 19% were "felony type" (committed in the course of some other felony, such as robbery, burglary, rape, or kidnapping). [101]Another 1% were "suspected felony type"; 27% were classed as "Unable to determine"--the police either do not know who did it, or the suspect or witnesses could not or would not explain it. Some of the remaining murders ("Romantic triangle," "Argument over money or property," "Other arguments," "Miscellaneous non-felony type") might be preventable by wider issuance of CCWs, to the extent that they involved stalking-type situations or confrontations in public areas. But to the extent that murders involved fights between people who lived in the same household, or who met in other private circumstances, laws relating to carrying of concealed weapons would have little impact.

Let us presume that more civilians carrying handguns for self-defense will not reduce the non-felony murder rate--that all the non-felony murders involve fights inside a home, or other circumstances where handgun carrying would be irrelevant.. Let us only consider the 20% of murders that are felony or suspected felony murders. Some felony murders are simply not preventable by armed citizens because of the weapons used; arson, for example, was the method for 258 of the murders committed nationally in 1988. Similarly, murders committed with poison, explosives, and narcotics would seem outside the realm of an armed defense solution. But for the 97% of felony murders using direct physical force (guns, knives, clubs, bare hands, strangulation) [102] , a handgun carried on the person at least has the potential to save the victim.

As with murder, the majority of rapes do not involve attacks by total strangers outside the home. Concealed weapons permits are unlikely to have much of an impact on teenagers raped in their home by their uncle, or college students victimized by date rape. Carrying of concealed weapons could have an impact in deterring on rapists who attack strangers in parking lots and other public spaces. Of course to the extent that men obtain concealed carry permits in greater numbers than women (either as a result of discrimination or choice), then the impact on rape would be reduced.

The crime which a concealed handgun carried on public streets has the greatest potential to prevent is robbery, and the murders which result from a robbery. Only 33.4% of reported robberies involve the use of a firearm, so an

armed potential victim stands an excellent chance of defending himself successfully in the two-thirds of robberies with weapons inferior to a gun, or with brute force. [103] (A trained citizen could well prevail in a fight with a criminal who had a gun, since few criminals practice with their guns, and many citizens do practice; but the citizen's odds of success are obviously higher when he is better-armed than the attacker.) A significant portion of robberies do take place in public places where the victim's carrying a concealed handgun would be relevant. In western states (including California), 49.7% of robberies in 1988 were described by the FBI Uniform Crime Reports as "Street/highway." [104][SCOTT WAS HERE]

The final crime to be measured is aggravated assault, a crime which also takes place frequently out of doors. (All domestic violence in California is now classified as aggravated assault, so a large amount takes place indoors as well.) It has long been an article of faith in some circles that the presence of a gun makes a fistfight into a gunfight, and battery into at least attempted murder. Accordingly, if the widespread availability of concealed firearms permits is going to increase the murder rate, one mechanism might be by the escalation of the seriousness of conflicts that begin with an aggravated assault. Conversely, if the widespread carrying of concealed firearms has a general deterrent effect on crime (since criminals do not know which potential victim is carrying a gun), then aggravated assault might be expected to decrease.

Permit Issuance In California

The California Dept. of Justice maintains statistics on issuance of CCWs, broken down by the police agency issuing the permit. [105] There are some great surprises here. The City of Los Angeles, for example, with almost 3.5 million people, had no concealed weapons permits outstanding in 1989. (Note: the accompanying table shows concealed weapon permit figures by county, not city--all the permits issued in Los Angeles County in 1989 were issued by either the Los Angeles Sheriff's Dept., or one of the other cities in Los Angeles County.) On the other hand, there were many small cities throughout California with populations less than 10,000, that had dozens of outstanding CCWs.

Since California law allows a person to obtain a CCW from any police chief of the county in which the applicant resides, or the sheriff of that county, and few people restrict their activities to the city in which they live, it makes sense to study CCWs and crime rates on a county by county basis. [106] There are 58 counties in California. We have divided these counties into three groups: those counties where fewer than one-tenth of 1% of the population have CCWs; those counties where .1% to 1% of the population have CCWs; and those counties where more than 1% of the population have CCWs. Note that "population" here means everyone living in

the county, including large numbers of people who are ineligible for CCWs because of age, criminal history, or mental illness.

There are 19 counties in the first group, predominantly urban, or urban dominated, where the number of CCWs is less than one-tenth of 1% of the total population. In some of these counties, a criminal has almost no risk of attacking a legally armed civilian on the street. In San Francisco, there are 1.5 CCWs per 100,000 people; in Los Angeles County, there are less than 5 CCWs per 100,000 people. Stated another way, the following events are about equally likely to occur:

- A Los Angeles criminal will attack a citizen who has a permit to carry a concealed weapon.

- A poker player will be dealt a straight flush in the first five cards. [107]

- A randomly selected high school football player will one day be the starting quarterback in the Super Bowl. [108]

A criminal in Los Angeles or San Francisco can completely ignore the risks of attacking someone who is legally carrying a gun--it is more probable that the criminal will attack an off-duty or plainclothes police officer than a legally armed civilian. Since this first group of counties contains five-sixths of the population of the state, the crime rates in these counties largely determine the statewide averages.

In the second group are 22 counties, where between .1% and 1% of the population held a CCW in 1989. These are primarily rural counties, though some, like Fresno and Sonoma Counties, have at least one medium-sized city. The major violent felony rates in this group are below the statewide average, though rape is barely so. In fact, the murder rate is lowest in the second group of counties, though it's not much lower than the third group.

In the third group are 17 counties where more than 1% of the population has been issued a CCW. These are predominately rural counties, with a few small cities. Most of these counties have so few people that crime rates per 100,000 people can be somewhat misleading, since a single murder can make a county of 3,600 people appear artificially dangerous; some of these counties went all of 1989 without a murder. In 1989, this group had the lowest rates for rape, aggravated assault, and robbery--and murder rates were still less than 69% of the statewide average. This may be a statistical fluke, since in 1988, this third group of counties had the lowest murder rate. To give some idea of the way that small sample sizes can affect results, if there had been seven fewer murders in 1989 in these 17 counties, the third group would have had the lowest crime rates in all categories of violent crime. Further, more than half the murders committed in the third group are in two counties (Madera and Yuba) with the lowest CCW issuance rates in this group.

Now look at Table 2. Our theoretical analysis suggested that more CCWs should be most effective at preventing robbery--and the liberal issuance counties' robbery rates are only 15% of the statewide average. We also suspected that rape would be relatively unaffected by more CCWs --and while rape rates are lower than the statewide average, the difference is not dramatic. Finally, murder and aggravated assault rates are about one-third below the statewide average, even with all those guns ready to be drawn.

Table 1: California Concealed Weapons Permits & Violent Crime Rates

CCW's per 100,000	Aggravated Assault	Homicide	Rape	Robbery
Highly restrictive counties	28.3	621.5	11.7	41.5
Moderately restrictive counties	372.7	437.5	449.9	6.5
Non-restrictive counties	40.4	124.4	1,736.5	414.2
California total	7.5	31.3	48.5	122.5
	593.5	10.9	41.1	331.8

Table 2: California County Crime Rates as a Percentage of Statewide Averages

County Group	Permits per 100,000	Aggravated Assault	Homicide	Rape	Robbery
Highly restrictive counties	less than 100	105%	107%	101%	112%
Moderately restrictive counties	100 to 1,000	76%	60%	98%	38%
Non-restrictive counties	greater than 100,000	70%	69%	76%	15%
California		100%	100%	100%	100%

What Do the Data Tell Us?

It would, of course, be foolish to assert that the large percentage of outstanding CCWs in the third group of counties is the reason for the lower rates for aggravated assault, robbery, and rape. These are rural counties, with dramatically different demographics than the urban counties in California. Nonetheless, it may be a reason. So why are the aggravated assault rates so low in these counties where, it seems, you might have trouble walking down the street without passing an armed civilian? Perhaps the conventional wisdom--that guns will be used in a fight--is simply wrong. Perhaps the presence of a gun causes a great many aggressors to simply withdraw from a fight, since the risk of death is so obvious. These are all suppositions, however. What is clear is that even with all those people authorized to carry guns, the rates for murder, rape, aggravated assault, and most dramatically, robbery, are lower than the statewide average.

Here we have examples of counties where the percentage of the population licensed to carry a gun starts to approach the percentage of the population that watches the Phil Donahue show--yet the murder rate remains quite low. [109] If more CCWs are really a threat to public safety, and the number of CCWs outstanding in this third group of counties is so large, the other

factors that determine murder and aggravated assault rates must be truly enormous to so completely overwhelm the effects of all those CCWs.

In sum, the comparative data from California counties suggest, but do not prove, that making concealed carry permits available to licensed, trained citizens may reduce the robbery rate, and perhaps the rates for other violent crimes. The data are completely inconsistent with the hypothesis that CCW issuance will lead to more murders or other crimes.

Six-State Comparative Study

A different approach was taken by Brian Withrow, a master's degree candidate at Southwest Texas State University. [110] Withrow looked at three states which had implemented carry reform: Florida, Pennsylvania, and Oregon. He then paired each state with the closest matching state that had similar demographics, but did not have carry reform. Florida was paired with Texas, Pennsylvania with Illinois, and Oregon with Arizona. As Withrow acknowledged, no two states are exactly similar, and the attempts to match any pair of states suffers from this limitation.

Withrow then examined each pair of states to test for the impact of carry reform laws. If carry reform laws were effective in producing a statistically noticeable reduction in the crime rate, then a state which enacted carry reform would be expected to show an improving trend (relative to a non-reform) state, in various crime categories. For example, if Pennsylvania (pre-reform) and Illinois (no reform) had similar rape rates in the years before concealed carry reform was enacted in Pennsylvania, but after Pennsylvania reformed its carry law, the Pennsylvania rape rate remained stable while the Illinois rate rose sharply, the result would be consistent with the hypothesis that concealed carry reduces the rape rate.

The results of Withrow study are as follows:

Table 3: Support for hypothesis that concealed carry reform reduces crime

State Pairs	Murder	Aggravated Assault	Rape	Robbery
Florida/ Texas	supports weakly	does not support	weakly support	supports
Pennsylvania/ Illinois	supports weakly	does not support	weakly support	supports
Oregon/ Arizona	does not support	supports support	does not support	does not support

The Withrow research does suggest that concealed carry reform can save lives. The first two pairs (Florida/Texas) and Pennsylvania/Illinois are good test cases. Pre-reform, all four states had strong laws against carrying firearms; after the reform laws were enacted, the Florida and Pennsylvania systems worked so that large numbers of citizens were able to acquire permits. (Unlike in Virginia, where some local officials refuse to implement the state's "shall issue" system.)

The Oregon/Arizona pair, however, is poorly chosen. Although Arizona did not have a concealed carry "shall issue" law at the time of the Withrow study (a "shall issue" law was enacted in 1994), Arizona has always allowed adults to carry an unconcealed handgun without even the need for a permit. Unlike in some other states where open carry is ostensibly legal (such as Colorado and North Carolina), open carry in Arizona has always been tolerated by the police, and is common, even in downtown Phoenix. Accordingly, the Oregon/Arizona test compares a state with limited concealed carry that moved to widespread concealed carry (Oregon) with a state that has always had limitless open carry (Arizona). Unlike the Florida/Texas and Pennsylvania/Illinois pairs, the Oregon/Arizona pair does not tell us about a state with restricted carry that changed its policy (Florida and Pennsylvania) versus a state which retained restrictive policy (Texas and Illinois). Thus, it is appropriate to discard the Oregon/Arizona results as not providing worthwhile information about the contrast between a restrictive and a "shall issue" carry policy.

Significantly, when we look at the results of the Florida/Texas and the Pennsylvania/Illinois trends, the results are identical. There is strong support for the hypothesis that concealed carry reform reduces murder; weak support for reduction in aggravated assault and in robbery; and no support for a statistically noticeable reduction in rape.

Of all the states studied previously (in the state-by-state homicide trends), it was Florida, a large state with a major homicide problem, that was the only state to show a major change in its homicide rate after the enactment of concealed carry. The Withrow data reinforces the tentative conclusion suggested by the raw Florida data: in a large state with a serious crime problem, concealed carry reform may have a significant life-saving effect.

It is also possible, suggests Withrow's research, that carry reform could have a small but statistically significant effect in reducing aggravated assault and robbery.

In sum, this Paper has looked at three different approaches studying the effects of concealed carry reform on crime rates: a comparison of state homicide trends with national trends, a comparison of crime rates among different counties with different policies in California, and a comparison of before and after crime rates in Florida versus Texas, and in Pennsylvania and Illinois.

In all three studies, the results are consistent. Concealed carry reform appears to reduce murder rates, at least in large, high-crime states. Concealed carry reform may reduce aggravated assault and robbery rates. Perhaps most significantly, there is simply no evidence that concealed carry reform will cause a net increase in the homicide rate, or in any other crime rate. The fact that, despite the evidence of carry reform in nearly a third of American states, the gun control lobbies persist in predicting a major

increase in homicide whenever concealed carry reform is introduced must be attributed to the triumph of (ghoulish) hope over experience.

Other Issues

The evidence presented thus far cannot guarantee that carry reform will significantly reduce a state's homicide rate. So why change the laws if they are not clearly going to reduce murder rates? Conversely, the question might be asked, if carry reform does not do any harm, why not allow law-abiding citizens, who have passed a background check for criminal behavior and mental stability, to have the means to defend themselves most effectively? If there is no clear threat to the public safety, and if examples like Florida suggest that in some instances, carry reform has the potential to contribute to public safety, why not allow law- abiding citizens to make their own choice about carrying?

While carry reform is no panacea for crime, it should also be remembered that the failure to enact carry reform can have deadly consequences, as the next section details.

Saving Lives

In October 1991 in Killeen, Texas, a psychopath named George Hennard rammed his pickup truck through the plate glass window of Luby's cafeteria. Using a pair of ordinary pistols, he murdered 23 people in 10 minutes, stopping only when the police arrived.

Dr. Suzanna Gratia, a cafeteria patron, had a gun in her car, but, in conformity to Texas law, the gun was not carried on her person; Texas, despite its Wild West image, was the first state in the nation to completely prohibit the carrying of handguns. [111] Carry reform legislation had almost passed the legislature, but had been stopped in the House Calendars Committee by the gun control lobby.

A few months later, Dr. Gratia testified to the Missouri Legislature (concerning a concealed handgun permit law being considered in that state) that if she had been carrying her gun, she could have shot at Hennard:

> I know what a lot of people think, they think, "Oh, my God, then you would have had a gunfight and then more people would have been killed." Uh- uh, no. I was down on the floor; this guy is standing up; everybody else is down on the floor. I had a perfect shot at him. It would have been clear. I had a place to prop my hand. The guy was not even aware of what we were doing. I'm not saying that I could have saved anybody in there, but I would have had a chance. [112]

Hennard reloaded five times, and had to throw away one pistol because it jammed, so there was plenty of opportunity for someone to fire at him.

Even if Dr. Gratia had not killed or wounded Hennard, he would have had to dodge hostile gunfire, and would not have been able methodically to finish off his victims as they lay wounded on the floor. The hypothetical risks of a stray bullet from Dr. Gratia would have been tiny compared to the actual risks of Hennard not facing any resistance. But because of the restrictive Texas law, Dr. Gratia was not carrying a gun, and could not take a shot at Hennard. Instead, she watched him murder both her parents.

Two months later, a pair of criminals with stolen pistols herded 20 customers and employees into the walk-in refrigerator of a Shoney's restaurant in Anniston, Alabama. Hiding under a table in the restaurant was Thomas Glenn Terry, armed with the .45 semi-automatic pistol he carried legally under Alabama law. One of the robbers discovered Terry, but Terry killed him with five shots in the chest. The second robber, who had been holding the manager hostage, shot at Terry and grazed him. Terry returned fire, and critically wounded the robber. [113]

Twenty-three people died in Killeen, Texas, where carrying a gun for self-defense was illegal. Twenty lives were saved, and only the two criminals died in Anniston, Alabama, where self-defense permits are legal. [114]

After the Luby's incident, carry reform was again debated in the Texas legislature. Gun control advocates insisted that public policy should not be based on isolated massacres (an ironic reversal of the control advocates' frequent efforts to use massacres as springboards for various gun prohibition measures). It was also suggested that, while Dr. Gratia might have saved lives with her gun, more lives would be lost in the long run because of mistakes made by angry or incompetent citizens carrying guns. As the research above has detailed, such a prediction has no factual support.

Despite the sometimes-hysterical claims of the gun prohibition lobbies, mass murders in public places are rare. But the Shoney's in Alabama was not the only place where an armed citizen with a gun stopped a massacre in progress. In 1986, a Cuban refugee with a machete went on a rampage on the Staten Island Ferry; he killed two people and wounded nine others, but was subdued by a retired police officer at gunpoint. [115] In Las Vegas in July 1993, a man with a shotgun screamed, "I'm sick of this, and I'm not going to take it any more," and then opened fire in a state disability insurance office. He jumped into his truck, and began driving wildly through the building. A security guard shot him in the head.

It might be argued that the above two cases are different because they involved a retired police officer, and a security guard. Not every mass-murderer, unfortunately, has the bad luck to pick a crowd that includes a retired police officer or a security guard. If the average citizen, with training and a background check, can use a gun and pose no more danger to society than does a former police officer or a security guard with a gun (and we so demonstrate, below), then expanding the number of licensed, trained people

who are allowed to carry firearms will commensurately reduce the carnage of psychotic killers.

In Israel, a permit to own a handgun (which is granted to every law-abiding citizen) is equivalent to a permit to carry a handgun. In April 1984, three terrorists opened fire with automatic rifles and began throwing hand grenades at the busiest intersection in West Jerusalem. As the Los Angeles Times reported, "One of the attackers was killed in a hail of answering fire from the owners and customers of nearby shops." A wild firefight broke out with Israelis and the two remaining terrorists exchanges flurries of bullets until the police arrived and captured the terrorists. Fourteen people were wounded, and it was possible that in the chaos, some of the Israelis were accidentally wounded by "friendly fire." [116] But at the end of the day, no Israelis were dead, but one terrorist was, a superb result compared with what happens when victims are defenseless.

The next day, the surviving terrorists were presented to the media. They explained that they had planned to machine-gun a succession of crowded areas, fleeing before the police arrived. One terrorist complained indignantly that his bosses had not told him that Israeli citizens carry guns. [117]

In November 1993, a vicious racist shot twenty-two unarmed, defenseless victims on the Long Island Railroad. Four months later, a terrorist group, determined to sabotage the new peace accord between Israel and the Palestinians attempted to perpetrate a mass murder of people using public transportation in Israel. The Associated Press reports:

> A Palestinian opened fire with a submachine gun at a bus stop near the port of Ashod today, killing one Israeli and wounding four before being shot to death by bystanders, officials said...
>
> National police spokesman Erich Bar-Chen said today's attacker, who was armed with an Uzi submachine guns, was shot and killed by a civilian and a soldier who were at the bus stop and hitchhiking post used by soldiers. Ashod is 15 miles south of Tel Aviv and 15 miles north of the Gaza Strip. [118]

It seems clear that, at the least, carry permits for licensed, trained citizens will save lives when madmen or terrorists attempt mass murder in public places. Accordingly, opponents of carry licenses must bear the burden of demonstrating that the number of lives lost from the issuance of carry licenses will outweigh the lives saved during attempted massacres. As detailed above, opponents of carry reform cannot carry their burden of proof. There is no evidence to suggest that carry reform will cause any increase in murder, let alone an increase so large as to outweigh the significant number of lives that could be saved by allowing people like Doctor Suzanna Gratia to help protect the public.

Peace of Mind

In addition to the lives that could be saved by licensed, trained citizens carrying guns, there is a second, important benefit: peace of mind. Many people choose to buy automobiles with passenger-side air bags or other safety features; many people also choose to use the seat belts in a car. It is unlikely, of course, that on any given automobile trip, there will an accident in which the safety belt, or other safety device, in needed; similarly, it is unlikely that a person who goes out in public will be attacked by a criminal on any given day. But even on days when drivers are not struck by other cars, the safety devices confer a genuine benefit, because the drivers feel safer. Likewise,

> If people feel safer because they own a gun and in turn lead happier lives because they feel safer and more secure, then their guns make a direct and nontrivial contribution to their overall quality of life. [119]

If women feel safer walking at night because they can carry a firearm, then the firearm makes a tangible contribution to a better society, whether or not a statistically significant drop in the crime rate results.

Of course the increased peace of mind that results from people knowing they will be able to protect themselves would not be beneficial if there was more criminal violence as a result. But as the data presented above indicate, all of the data suggest that allowing licensed, trained citizens to carry firearms for protection will not cause more gun crime.

The Morality of Defensive Firearms

Taking the Law Into One's Hands

The use of firearms for lawful self-defense by licensed, trained citizens is sometimes decried as "taking the law into one's hands." In a legal sense, armed use of force for self-defense is not "taking the law into one's hands." Using deadly force or the threat thereof to defend against a violent felony is legal in all 50 states. American law is unanimous that deadly force may be used, if no lesser force will suffice, not merely against attempted murder, but also to thwart violent felonies such as rape. [120] There are many circumstances where exercising the choice to use force for self-defense or defense of another is entirely lawful. Using such force, therefore, cannot be "taking the law into one's hands" any more than exercising other lawful choices, such as signing a contract. Similarly, every American state recognizes, at the least, the right of citizens to arrest a person committing a violent felony in her presence.

When criminals use force, though, they are violating the law, and thereby taking the law into their own hands. When citizens use or threaten force to stop the law-breaking, they are taking the law back from the criminals, and restoring the law to its rightful owners: themselves.

Violence Begets Violence

In the concealed carry debate, it is sometimes asserted that carrying or using a gun for protection is immoral, or that "Violence begets violence." For example, author Betty Friedan argues "that lethal violence even in self-defense only engenders more violence." [121]

The implication of Ms. Friedan's remark is that a woman who shoots a homicidal rapist should be condemned for engendering violence, rather than commended for preventing worse violence, that victims of murderous assault should forgo violence, and should instead count on the police to arrest the murderer, post-mortem. Although pacifism has its adherents, the American legal system is not among them. As criminal law scholar Herbert Weschler observed, the right of crime victims to use deadly force is based on what Weschler called the "universal judgment that there is no social interest in preserving the lives of the aggressors at the cost of those of their victims." [122]

The American people overwhelmingly believe that it is legitimate to use deadly force against criminal attack, and that it is moral not just for government employees, but for crime victims to do so. A 1985 Gallup survey asked "If the situation arose, would you use deadly force against another person in self-defense?" Only 13% said "no." (And presumably some of those 13% were expressing their own choice, but would not felonize persons who chose differently.)

After Bernhard Goetz shot four teenagers who were attempting to rob him on a Manhattan subway in 1984, a Newsweek poll asked: "Do you feel that taking the law into one's own hands, often called vigilantism is justified by circumstances?" (The question was phrased in a way that was quite prejudicial to self-defense; "vigilantism" has nothing to do with self-defense, but instead refers to extra- judicial punishment of a suspect by a mob. [123]) The question was asked in two separate surveys; in one group, 23% said that violence was never justified; in the other survey, 17% so opined. [124]

Plainly then, the very large majority of the American people believe that use of force, including deadly force if necessary, is a legitimate response to dangerous criminal attacks. In a society that respects liberty of conscience, this large majority should not attempt to force its morality of lawful self-defense onto the minority of the population that would prefer to see themselves and their families raped, robbed, and slaughtered rather than to use force. At the same time, the pacifist minority should not attempt to force its morality onto the majority that approves of lawful defensive force.

Religion

It is not uncommon, when concealed carry laws are debated before legislative bodies, for representatives of liberal organizations such as the National Council of Churches to show up and announce the "moral" opposition to concealed carry on behalf of "the religious community." But reflexive hostility

to the lawful use of force for legitimate defense is hardly the only moral position that may be held by a sincerely religious person. [125]

The Book of Exodus specifically absolves a homeowner who kills a burglar. [126] The Sixth Commandment "Thou shalt not kill" refers to murder only, and does not prohibit the taking of life under any circumstances; notably, the law of Sinai specifically requires capital punishment for a large number of offenses. [127] A little bit earlier in the Bible, Abram, the father of the Hebrew nation, learns that his nephew Lot has been taken captive. Abram (later to be renamed "Abraham" by God) immediately called out his trained servants, set out on a rescue mission, found his nephew's captors, attacked and routed, rescuing Lot. (Genesis 14). The resort to violence to rescue an innocent captive is presented as the morally appropriate choice.

Most gun prohibitionists who look to the Bible for support do not cite specific interdictions of weapons (there are none) but instead point to the general passages about peace and love, such as "Do not resist an evil person. If someone strikes you on the right cheek, turn to him the other also" (Matthew 5: 38-39); "Love your enemies and pray for those who persecute you" (Matthew 5: 43); and "Do not repay anyone evil for evil." (Romans 12: 17).

None of these exhortations take place in the context of an imminent threat to life. A slap on the cheek is a blow to pride, but not a threat to life. Reverend Anthony Winfield, author of a study of Biblical attitudes towards weapons, suggests that these verses command the faithful not to seek revenge for evil acts, and not to bear grudges against persons who have done them wrong. He points to the passage "If it is possible, as far as it depends on you, live in peace with everyone" (Romans 12: 18), as showing an awareness that in extreme situations, it might not be possible to live in peace. [128]

Further evidence that the New Testament does not command universal pacifism is found in the missions of John the Baptist and Peter, both of whom preached to soldiers who converted. Neither John nor Peter demanded that the soldiers lay down their arms, or find another job. (Luke 3: 14; Acts 10: 22-48).

John did tell the soldiers "Don't extort money, and don't accuse people falsely," just as he told tax collectors "Don't collect any more than you are required to." The plain implication is that being a soldier (or a tax collector) is not itself wrong, so long as the inherent power is not used for selfish purposes.

Of course most gun prohibitionists do not see anything wrong with soldiers carrying weapons and killing people if necessary. But if--as the New Testament strongly implies--it is possible to be a good soldier and a good Christian, then it is impossible to claim that the Gospel always forbids the use of violence, no matter what the purpose. The stories of the soldiers

support Winfield's thesis that the general "peace and love" passage are not blanket prohibitions on the use of force in all circumstances.

Is an approving attitude towards the bearing of arms confined to professional soldiers? Not at all. At the last supper, Jesus' final instructions to the apostles begin: "When I sent you without purse, bag, or sandals, did you lack anything?"

"Nothing," the apostles answer.

Jesus continues: "But now, if you have a purse, take it, and also a bag; and if you don't have a sword, sell your cloak and buy one." He ends by observing "what is written about me is reaching its fulfillment."

The apostles then announce, "Lord, behold, here are two swords," and Jesus cuts them off: "That is enough." (Luke 22: 36-38).

Even if the passage is read with absolute literalness, Jesus was not setting up a rule that every apostle must carry a sword (or a purse or a bag). For the eleven, two swords were "enough."

More importantly, Jesus may not have been issuing an actual command that anybody carry swords, or purses, or bags. The broader, metaphorical point being made by Jesus was that the apostles would, after Jesus was gone, have to take care of their own worldly needs to some degree. The purse (generally used for money), the bag (generally used for clothing and food), and the sword (generally used for protection against the robbers who preyed on travelers, including missionaries, in the open country between towns) are all examples of tools used to take care of such needs. When the apostles took Jesus literally, and started showing him their swords, Jesus, frustrated that they missed the metaphor, ended the discussion. The metaphorical interpretation is supported by scholarly analysis, and seems to best account for the entire conversation.

Even when reduced to metaphor, however, the passage still contradicts the rigid pacifist viewpoint. In the metaphor, the sword, like the purse or the bag, is treated as an ordinary item for any person to carry. If weapons and defensive violence were illegitimate under all circumstances, Jesus would not have instructed the apostles to carry swords, even in metaphor, any more than Jesus would have created metaphors suggesting that people carry demonic statues for protection, or that they metaphorically rape, rob, and murder.

A few hours after the final instructions to the apostles, when soldiers arrived to arrest Jesus, and Peter sliced off the ear of one of their leaders, Jesus healed the ear. He then said "No more of this" (Luke 22: 49-51) or "Put your sword away" (John 18: 10) or "Put your sword back in its place, for all who draw the sword will die by the sword" (Matthew 26: 52). (The quotation is sometimes rendered as "He who lives by the sword will die by the sword.") [129]

Jesus then rebuked the soldiers for effecting the arrests with clubs and swords, for Jesus was "not leading a rebellion." The most immediate meaning of these passages is that Jesus was preventing interference with God's plan for the arrest and trial. Additionally, Jesus was instructing the apostles not to begin an armed revolt against the local dictatorship or the Roman imperialists. Jesus had already refused the Zealots' urging to lead a war of national liberation.

Do the passages also suggest a general prohibition against drawing swords (or other weapons) for defense? The versions of the story recounted in Luke and John do not, but the version in Matthew could be so read.

If Matthew is analyzed along the lines of "He who lives by the sword will die by the sword," the passage is an admonition that a person who centers his life on violence (such as a gang member) will likely perish. On the other hand, a translation of "all who draw the sword will die by the sword" could be read as a general rule against armed violence in any situation.

The best way to understand the Bible, most theologians would concur, is not to look at passages in isolation, but instead to carefully study passages in the context of the rest of the Bible. If the single line in Matthew were to be read to indicate that to draw the sword is always wrong, then it would be difficult to account for the other passages which suggest that drawing a sword as a soldier (or carrying a sword as an apostle) is not illegitimate. Looking at the passage of Matthew in the context of the rest of the Bible would, therefore, look to the passage as a warning against violence as a way of life, rather than as a flat-out ban on defensive violence in all situations.

A 1994 document produced by the Vatican's Pontifical Council for Justice and Peace states:

> In a world marked by evil and sin, the right of legitimate defense by armed means exists. This right can become a serious duty for those who are responsible for the lives of others, for the common good of the family or of the civil community. [130]

The Catholic Church recognizes people as saints because (among other reasons), the lives of saints are considered to worthy of study and emulation. February 27 is the feast day of Saint Gabriel Possenti. According to The One Year Book of Saints, as a young man in 19th-century Italy, Francesco Possenti was known as the best dresser in town, as a "superb horseman," and as "an excellent marksman." The young man was also a consummate partygoer, who was engaged to two women at the same time. Twice during school he had fallen desperately ill, promised to give his life to God if he recovered, and then forgotten his promise. One day at church, Possenti saw a banner of Mary. He felt that her eyes looked directly at him, and he heard the words "Keep your promise."

Possenti immediately joined an order of monks, taking the name Brother Gabriel. The main incident for which Saint Gabriel Possenti is remembered was this:

> One a summer day a little over a hundred years ago, a slim figure in a black cassock [Possenti] stood facing a gang of mercenaries in a small town in Piedmont, Italy. He had just disarmed one of the soldiers who was attacking a young girl, had faced the rest of the band fearlessly, then drove them all out of the village at the point of a gun....
>
> [W]hen Garibaldi's mercenaries swept down through Italy ravaging villages, Brother Gabriel showed the kind of man he was by confronting them, astonishing them with his marksmanship, and saving the small village where his monastery was located. [131]

Saint Gabriel Possenti's "astonishing marksmanship" was displayed after he had just disarmed the soldier. The mercenaries' leader told Possenti that it would take more than just one monk with a handgun to make the mercenaries leave town. The saint pointed out to the mercenaries a lizard which was running across the road. Possenti shot the lizard right through the head, at which point the mercenaries decided that discretion was the better part of valor; they obeyed Possenti's orders to extinguish the fires they had started and to return the property they had stolen. They then fled the village, never to be heard from again.

Jewish law comes to the same conclusion as the Vatican Pontifical Council: "If someone comes to kill you, rise up and kill him first," commands the Talmud. [132] Bystanders are likewise required to kill persons who attempting rape. [133] While there is a duty to self-defense, the duty to defend others is seen as prior. [134]

The view that forcible resistance to evil attack is itself evil has serious implications: Patrick Henry and the other founding fathers were wrong to urge armed resistance to the British Redcoats; the Jews who led the Warsaw Ghetto revolt against Hitler were immoral; Jeffrey Dahmer's victims would have been wrong to use a weapon to protect themselves; Saint Gabriel Possenti was a paragon of evil; Abraham should not have rescued his kidnapped nephew; and police officers who fire their guns to protect innocent people are sinful.

Consider the situation of a mother in a rough Los Angeles neighborhood, moments after an escaped psychopathic murderer has broken into her house. The woman has good reason to fear that the intruder is about to slaughter her three children. If she does not shoot him with her .38 special, the children will be dead before the police will arrive. Is the woman's moral obligation to murmur "violence engenders violence," and keep her handgun in the drawer while her children die? Or is the mother's moral duty to save her children, and shoot the intruder?

The view that life is a gift from God, and that permitting the wanton destruction of one's own life (or the life of a person under one's care) amounts to hubris is hardly new. As a 1747 sermon in Philadelphia put it:

> He that suffers his life to be taken from him by one that hath no authority for that purpose, when he might preserve it by defense, incurs the Guilt of self murder since God hath enjoined him to seek the continuance of his life, and Nature itself teaches every creature to defend itself. [135]

Whatever their disagreements on other matters, the natural rights philosophers who provided the intellectual foundation of the American Revolution saw self-defense as "the primary law of nature," from which many other legal principles could be deduced. [136]

As the great Supreme Court Justice Louis Brandeis wrote: "We shall have lost something vital and beyond price on the day when the state denies us the right to resort to force..." [137]

Leading criminal law scholars have emphasized a different, less philosophical, point: that victims protect the entire community when they kill a dangerous criminal rather than leaving him free to prey on others. To theorists such as Bishop, Stephens and Pollock "Sudden and strong resistance to unrighteous attack is not merely a thing to be tolerated ...as a necessary evil [but is] a just and perfect" right. A good citizen attacked has "a moral duty" to use all force necessary to apprehend or otherwise incapacitate criminals rather than to submit or retreat. [138]

Underlying the assertion that use of force to defend innocent life is immoral is the presumption that persons who use such force are "selfish." To the extent that social science can shed any light on this presumption, the presumption turns out to be exactly backwards. A study of "Good Samaritans" who came to aid of victims of violent crime found that 81% "own guns and some carry them in their cars. They are familiar with violence, feel competent to handle it, and don't believe they will be hurt if they get involved." [139] Are these people inferior moral beings who "engender violence"?

In any case, the claim that as a moral or practical matter a crime victim should rely on the government for protection can be raised only if the government has an obligation to protect the victim. And quite clearly under American law, the government has no such obligation.

The Absence of a Legal Government Obligation to Protect Citizens

It is well-settled American law that the police have no legal duty to protect any individual citizen from crime, even if the citizen has received death threats and the police have negligently failed to provide protection. [140] In New York, for example, the rule was explicated by the Court of Appeals in

the case Riss v. New York: the government is not liable even for a grossly negligent failure to protect a crime victim. In the Riss case, a young woman telephoned the police and begged for help because her ex-boyfriend had repeatedly threatened, "If I can't have you, no one else will have you, and when I get through with you, no-one else will want you." The day after she had pleaded for police protection, the ex-boyfriend threw lye in her face, blinding her in one eye, severely damaging the other, and permanently scarring her features. "What makes the City's position particularly difficult to understand," wrote a dissenting opinion, "is that, in conformity to the dictates of the law, Linda did not carry any weapon for self-defense. Thus, by a rather bitter irony she was required to rely for protection on the City of New York which now denies all responsibility to her." [141]

In the case of Warren v. District of Columbia, two women were upstairs when they heard their roommate being attacked by men who had broken in downstairs. They immediately telephoned the police for assistance. Half an hour having passed and their roommate's screams having ceased, they assumed the police must have arrived and taken care of the situation. Actually, their call for help for a violent felony in progress had somehow been lost in the shuffle while the roommate was being beaten into silence. When the two roommates went downstairs, as the court's opinion graphically describes: "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 their attackers.

The roommates later sued the District of Columbia for ignoring their phone call for help. Having set out the facts of the case facts, the District of Columbia's highest court exonerated the District and its police, because it is:

> a fundamental principle of American law that a government and its agents are under no general duty to provide public services, such as police protection, to any individual citizen. [142]

Given the doctrine of police immunity, it is difficult to contend that trained citizens should not be allowed to carry firearms to protect themselves.

At least in cases where the government affirmatively interferes with a person's ability to protect, government immunity from lawsuit should be waived. If a person who can pass a background check, and has passed a safety class, and has been denied a firearms carry permit because the police administration does not believe that citizens should carry guns, government legal immunity should not apply if the person is injured by a criminal. The government should not be able to strip a person of her right to defend herself, and then assert that it has no responsibility for the con sequences. If the person is killed because the police failed to act, the survivors should have the right to sue. [143]

It is hypocritical for police administrators (who carry guns and work in buildings protected by government-issue police bodyguards) and politicians (who likewise have ready access to government-paid protection, and who generally live in relatively safe areas) to use legal immunity to disclaim government responsibility to protect ordinary people, and then to use overly restrictive handgun carry laws to prevent those people from protecting themselves.

Judge David Shields, a judge on Chicago's special "gun court," explained to Congress the kinds of persons who came before his court for failing to possess a handgun carry permit (impossible to obtain in Chicago, except for the politically connected):

> For most, this is their first arrest of any kind. I don't mean now that this is their first conviction, but I mean this is their very first arrest of any kind, and many of them are old people. Many of them are shopkeepers, persons who have been previous victims of violent crimes....
>
> I think most of the defendants who come to court believe that they need a gun to protect themselves in the community, and I have one statement that was made by an elderly defendant that I think summed up the attitude of such people. When he responded, he said, "I would much rather be caught by the police with a gun than to be caught out on the street in my neighborhood without a gun."
>
> And I don't think that when the remark was made he was in any way capricious or arbitrary with the court. I that that was his sincere belief. I think the courts and probably most members of the community aren't really exposed to the problems of the ghetto community and it is probably fair to say that most of us aren't likely to voluntarily go into those communities except under the most optimum circumstances; meaning broad daylight and certainly not alone at night or on foot. [144]

Can Citizens Use Guns Competently?

Ordinary people, even if they have passed a firearms safety class, cannot be trusted to use guns competently, it is sometimes claimed. The guns will be taken away by criminals, or the gun-owners will shoot an innocent bystander by mistake, it is sometimes predicted. Wherever the concealed carry issue is raised in the future, it can be predicted with confidence that these objections will be raised by reform opponents, including many law enforcement professionals who claim expertise on the issue.

The existing body of research provides no support for these fears. The best evidence we have about what happens when people have carry permits is the experience of the 1/3 of American states that issue such permits routinely.

From these states, the most detailed data are those compiled by the Dade County (Miami) police. As discussed above, the police kept track of every known incident involving the county's more than 21,000 handgun carry permitees over a six-year period. In that six-year period, there was one known incident of a crime victim having his gun taken away by the criminal. There were no known incidents of a crime victim injuring an innocent person by mistake. In some cases the handgun permit holder was successful in preventing a crime, and in some cases not, but in no case was any innocent person injured as a result of mistake by a permit-holder.

Another study examined newspaper reports of gun incidents in Missouri, involving police or civilians. In this study, civilians were successful in wounding, driving off, capturing criminals 83% of the time, compared with a 68% success rate for the police. Civilians intervening in crime were slightly less likely to be wounded than were police. Only 2% of shootings by civilians, but 11% of shootings by police, involved an innocent person mistakenly thought to be a criminal. [145]

The Missouri research does not prove that civilians are more competent than police in armed confrontations. Civilians can often choose whether or not to intervene in a crime in progress, whereas police officers are required to intervene. Being forced to intervene in all cases, police officers would naturally be expected to have a lower success rate, and to make more mistakes. Attorney Jeffrey Snyder elaborates:

> Rape, robbery, and attempted murder are not typically actions rife with ambiguity or subtlety, requiring special powers of observation and great book-learning to discern. When a man pulls a knife on a woman and says, "You're coming with me," her judgment that a crime is being committed is not likely to be in error. There is little chance that she is going to shoot the wrong person. It is the police, because they are rarely at the scene of the crime when it occurs, who are more likely to find themselves in circumstances where guilt and innocence are not so clear-cut, and in which the probability for mistakes is higher. [146]

In addition, the Missouri study was not restricted to "carry" situations, but also included self-defense in the home. Persons using a gun to defend their own home, who know its layout much better than does an intruder, might be expected to have a higher success rate than would persons using a gun in a less familiar public setting.

The most detailed information about civilian defensive gun use has been compiled by Professor Gary Kleck (a liberal Democrat, and member of the ACLU and Common Cause) in his book Point Blank: Guns and Violence in America. In 1992 the American Society of Criminology awarded the book the Hindelang Prize, as the most significant contribution to criminology in the previous three years. In Point Blank, Kleck studied computer tapes from the U.S. Department of Justice's National Crime Survey, for the years 1979-85.

Analyzing the data from over 180,000 crime incidents in the National Crime Survey, as well from other studies, Kleck found the following:

> - In no more than 1% of defensive gun uses was the gun taken away by a criminal.
>
> - The odds of a defensive gun user accidentally killing an innocent person are less than 1 in 26,000.
>
> - For robbery and assault victims, the lowest injury rates (17.4% for robberies, and 12.1% for assaults) were among victims who resisted with a gun.
>
> - The next lowest injury rates were among persons who did not resist. Other forms of resistance (such as shouting for help, or using a knife), had higher injury rates than either passive compliance or resistance with a gun. [147]

Again, it should be remembered that the above data do not separate defensive home use (where victim success rates would be expected to be higher) from use in public areas. Still, taken as a whole, the National Crime Survey data, like Missouri data do suggest that uniformed government employees are not the only class of people who can use a firearm successfully to defend self and others.

The Wild West, or "What if everyone carried a handgun?"

To persons opposed to carry reform, the case can be made simply by stating that allowing licensed, trained citizens to carry guns would make modern America like the Wild West. A shorthand version of the statement is simply to raise the rhetorical question, "What if everyone carried a gun?"

Asking a question such as "What if everyone did X?" is only a useful contribution to the debate if there is some realistic possibility that everyone might actually do X. What if everyone had fifteen children? What if everyone remained celibate? [148] Universal celibacy would destroy the human race in one generation, whereas the universal bearing of 15 children per family could cause huge social and environmental problems. If "What if" questions were the guide to public policy, then it would be logical to enact a law requiring every family to have exactly two children, thus preventing the horrible scenarios of universal celibacy or universal over-fecundity.

But in the real world, some people choose to be celibate, some people choose to have 15 children, and most people choose something in-between, resulting in a reasonable population growth rate, without the need of government regulation.

In the real world, the question "What if everyone carried a gun?" is as meaningless as the question "What if everyone tried to park at the state

capitol at the same time?" The research presented above shows that no more than 4% of a state's population is likely to choose to obtain a handgun carry permit.

To the extent that the "What if" question has any relevance, the best answer can be found by looking at the most recent era in American history when everyone really did carry a gun.

Although late 20th century Americans, basing their views mostly on television and the movies, have one image of the "Wild West," historian Roger McGrath set out to study the West in detail, to try to understand how violent it really was. McGrath's book Gunfighters, Highwaymen, & Vigilantes examines the 19th century Sierra Nevada mining towns of Aurora and Bodie. [149]

Aurora and Bodie certainly had more potential for violence than most other places in the West. The population was mainly young transient males subject to few social controls. There was one saloon for every twenty-five men; brothels and gambling houses were also common. "Sobriety was thought proper only for Sunday school teachers and women," McGrath observed. [150] Governmental law enforcement was ineffectual, and sometimes the sheriff was himself the head of a criminal gang. Nearly everyone carried a gun. (Aurorans usually carried a Colt Navy .36 six-shot revolver, while Bodeites sported the Colt Double Action Model known as the "Lightning.") [151]

The homicide rate in those towns was extremely high, as the "bad men" who hung out in saloons shot each other at a fearsome rate, in some cases exceeding the homicide rate in modern Washington, D.C. These shootings amounted to consensual violence among disreputable young men who enjoyed getting drunk and getting into fights. [152] The presence of guns turned many petty drunken quarrels into fatalities.

But other crime was virtually nil. The per capita annual robbery rate was 7% of modern New York City's. The burglary rate was 1%. Rape was unknown. [153] "The old, the weak, the female, the innocent, and those unwilling to fight were rarely the targets of attacks," McGrath found. One resident of Bodie did "not recall ever hearing of a respectable women or girl in any manner insulted or even accosted by the hundreds of dissolute characters that were everywhere. In part this was due to the respect depravity pays to decency; in part to the knowledge that sudden death would follow any other course." [154] Everyone carried a gun and except for young men who liked to drink and fight with each other, everyone was far more secure than today's residents of cities where ordinary people cannot carry a firearm for protection.

The experience of Aurora and Bodie was repeated throughout the West. One study of five major cattle towns with a reputation for violence--Abilene,

Ellsworth, Wichita, Dodge City, and Caldwell--found that all together the towns had less than two criminal homicides per year. [155] During the 1870s, Lincoln County, New Mexico was in a state of anarchy and civil war. Homicide was astronomical, but (as in Bodie and Aurora) confined almost exclusively to drunken males upholding their "honor." Modern big-city crimes such as rape, burglary, and mugging were virtually unknown. [156] A study of the Texas frontier from 1875-1890 found that burglaries and robberies (except for bank, train, and stage coach robberies) were essentially non-existent. People did not bother locking doors, and murder was rare, except of course for young men shooting each other in "fair fights" in which they voluntarily engaged. [157]

John Umbeck's investigation of the High Sierra gold fields in the mid-19th century yielded similar results. After the Gold Rush brought on the discovery of gold at Sutter's Mill in 1848, thousands of prospectors rushed to gold fields in the California mountains. There was no police force. Indeed, there was no law at all regarding property rights, since the military governor of California had just proclaimed as invalid (without offering a replacement), the Mexican land law. There was intense competitive pressure (and greed) for gold, and nearly everyone carried firearms. Yet there was hardly any violence. [158] Similarly, when much of the Indian territory of Oklahoma was opened all at once for white settlement, heavily armed settlers rushed in immediately to stake their claims, and the settlers with their guns arrived long before effective law enforcement did. Yet there was almost no violence. [159]

In sum, historian W. Eugene Hollon found "the Western frontier was a far more civilized, more peaceful, and safer place than American society is today." [160] Frank Prassel concludes "this last frontier left no significant heritage of offenses against the person, relative to other sections of the country." [161] Americans living under gun prevalence conditions of the Old West were far safer than Americans living in modern cities such as San Francisco, Detroit, or Cleveland, where citizens are not allowed to protect themselves when they leave their homes.

In modern Washington, D.C., criminals sometimes murder drivers who have stopped at a traffic light, simply for the pleasure of watching them die. Yet the Washington, D.C. government, which cannot protect those drivers (or anyone else) forbids the law-abiding populace to possess a handgun in their car, in their home, or on their person. Columnist Samuel Francis describes the system of government in Washington (and many other cities) as "anarcho-tyranny." The government provides little effective protection against violent criminals, but mobilizes the full power of the state against crime victims who attempt to protect themselves. [162]

Crime flourishes in modern American cities because the American people and their government tolerate it, because much of the government and the

populace fear the idea that a victim might carry a gun more than they fear the rapists, robbers, and murderers who rule the streets of so much of our nation. Bodie, Aurora, and the rest of the Old West had little high culture, and their streets were made of dirt and littered with horse manure. But a woman could walk alone safely after dark in those towns; good people did not cower in fear and allow predatory thugs to terrorize the innocent. Perhaps the people of the Old West understood what civilization was all about much better than do modern Americans who choose to accept the current system of anarcho-tyranny.

The evidence from Aurora, Bodie, and the rest of America does not prove that guns are an unalloyed good, or that no form of gun control is desirable. Guns in the wrong hands (such as drunken young men) can wreak great harm. Disarming gun abusers would obviously be beneficial. The problem of the laws proposed by the various "gun control" groups, however, is the that very persons who have no compunction about violating substantive laws (such as the law against murder) will also have no compunction about violating lesser laws (such as a ban on carrying guns).

As this paper has detailed, the possession of guns by potential crime victims is a nearly unalloyed social good. Blanket bans on the carrying of guns (or licensing systems which are de facto bans) are a virtually unalloyed evil, because such laws disarm the victims while doing virtually nothing to disarm the criminals.

In both Aurora/Bodie (where there were no gun control laws) and in modern Washington, D.C. (where owning, let alone carrying, a handgun is illegal), the criminals all carried guns. In both Aurora/Bodie and modern Washington, the homicide rate caused by those gun-toting criminals was astronomical. In Aurora/Bodie, however, the homicide victims were almost entirely other criminals; in Washington, the homicide victims are much more likely to be innocents.

Police Opinion and Police Competence

Most Americans who believe that use of deadly force for self-defense is immoral conduct, and that society should outlaw such immorality do not really oppose the use of violence for protection. They simply oppose the use of violence by crime victims, as opposed to government employees. If it is agreed that the police may lawfully use force, then the question is no longer whether force per se is legitimate, but who may legitimately use force.

As a moral matter, the creature of government cannot have powers greater than its creator the people. If an individual police officer, acting in his own best judgment under his reasonable understanding of the facts of a particular encounter, has the moral authority, on his own, to fire a weapon to protect himself or another person, how can the same act, performed by a crime victim, suddenly become immoral?

Or, rather than being immoral, is citizen self-defense simply impractical? Many police lobbyists so insist, as they work at state capitols in opposition to concealed carry reform. To some persons, police opinion about carry reform is dispositive. If the police are against it, the idea must be a danger to public safety.

But it should hardly be surprising to find monopolists who favor preservation of their monopoly, and who can convince themselves and others that their monopoly genuinely protects the public good. If a current law gives the police administration unbridled discretion over who may exercise the "privilege" of carrying a gun, then it is not unexpected that many police administrators would vigorously resist any effort to deprive them of their boundless discretion.

The opinions of police administration lobbyists, however, are not necessarily representative of the entire law enforcement community. The first survey of police attitudes toward concealed carry was a 1976 poll conducted by Boston Police Commissioner Robert diGrazia, in an effort to find national police support for an initiative to ban handgun ownership in Massachusetts. In the national survey, 51% of chiefs agreed with the statement "Persons who have a general need to protect their own life and property, like those who regularly carry large sums of money to the bank late at night, should be allowed to possess and carry handguns on their person." Fifty-seven percent of chiefs expected their subordinates to be more supportive of such carrying. [163]

Rank-and-file police officers are even more supportive of citizens carrying guns. In 1991, Law Enforcement Technology magazine conducted a poll of all ranks of police officers. Seventy-six percent of street officers believed that all trained, responsible adults should be able to obtain handgun carry permits; 59% of managers agreed. [164]

In fact, the police appear to be more supportive of carry reform laws than is the general public. Carry reform generally garners about 35% support in opinion polls of the general public; the range is between about 20% and about 55%. Since only about 4% (at most) of the public ever obtains a carry permit, it is interesting that carry reform can attract support from a much larger percentage of the public than is likely to obtain a permit.

Fundamental rights such as self-defense (or free speech, or reproductive rights), are not dependent on majority vote, or upon police approval. A majority of the public does have the right to prevent the exercise of self-defense (or other fundamental rights) in ways that may inappropriately endanger other people. For example, a majority could appropriately forbid the carrying of grenades for self-defense, since grenades produce an indiscriminate blast with a high risk of injuring innocent bystanders. In contrast, the carrying of firearms for lawful defense by licensed, trained citizens poses no net risk to members of the public who are not carrying. To the contrary, all the data demonstrate the members of the public are made

safer (or at least not harmed) by the availability of carry permits to other law-abiding citizens. Accordingly, opinion polls are of little use in resolving the carry permit issue, since a man who does not want to carry has no legitimate moral right to prevent a stranger from defending herself.

In regards to police opinion, the police argument is frequently a pretext for politicians who oppose concealed carry, regardless of what the police think. In 1990, during a crime wave in New York City, a retired police officer named Stephen D'Andrilli appeared on a television talk show, and proposed that one million New Yorkers be given permits to carry handguns. The show's host, Dick Oliver, asked New York Governor Cuomo what he thought of the idea. Cuomo denounced the idea, and the exchange continued:

> Cuomo: "Why don't you ask the cops what they think of everybody packing guns?"
>
> Host: "It happens that Mr. Byrne, head of the PBA, walked by before and I asked him. He said, 'It's a good idea.'"
>
> Cuomo: "Well, somebody better talk to Mr. Byrne, straighten him out." [165]

Central to the idea that the police, and the police alone, should be privileged to carry defensive firearms is the presumption that the police possess abilities which are not possessed by licensed, trained permit holders. As we have already seen, however, scholarly research and police data both indicate that ordinary citizens are capable of using firearms competently for defense.

While the vast majority of police officers are likewise competent, it would be a grave mistake to imagine that police officers are immune from the foibles and stresses can lead to unlawful shootings. ne study of 1,500 incidents involving police use of deadly force concluded that deadly force was not justified in 40% of the incidents, and was questionable in another 20%. [166]Using evidence from the Chicago Police Department's internal investigations, one scholar found 14% of killings by Chicago officers to be "prima facie cases of manslaughter or murder" and "Several others presented factual anomalies sufficient to suggest that a thorough investigation might well have revealed such prima facie cases." Not a single one of those was prosecuted--or even reprimanded for shootings in plain violation of official policy. [167]

Whenever a New York City police officer fires a gun (outside of a target range), police officials review the incident. About 20% of discharges have been determined to be accidental, and another 10% to be intentional discharges in violation of force policy. In other words, only 70% of firearms discharges by police are intentional and in compliance with force policy. [168] In Los Angeles, 75% of shootings by police officers led to discipline of the officer or retraining because the officer had made an error. [169]

Many police officers work difficult, stressful jobs for many years. Ordinary citizens, if they find themselves under stress, can simply retreat back to their

houses or apartments. If ordinary citizens are not trusted to carry handguns, how can handgun carrying be defended for a group of people who are under significantly higher emotional stress than ordinary people? Not only are police misuses of firearms in the line of duty common, police misuse of guns outside the line of duty is all too frequent. When an off- duty New York City policeman fires a gun, one time out of four the firing will be an accident, a suicide, or an act of frustration. [170] The rate of substantiated crimes perpetrated by New York City police officers is approximately 7.5 crimes per year per thousand officers. The number of New York police crimes alleged is 112.7 per thousand officers. [171]

Opponents of concealed carry can readily imagine hypotheticals of how an armed citizen might overreact to a particular situation; actual instances of over-reaction by licensed, trained citizens are rare, as we have detailed. But actual instances of police over-reaction are already well known:

> - In Portland, Oregon, police officers on a drug raid used German MP-5 submachine guns to shoot a grandfather at least 28 times; the autopsy suggested that over 20 of the shots were fired in his back has he lay collapsed face down over a chair. Justifying the police action, the police chief predicted "the shooting was a sign of things to come as criminals become better armed and police try to match their firepower." The grandfather had been carrying an unloaded 2-shot derringer. [172]
>
> - In Tyler, Texas, a police officer who had previously been accused of using excessive force shot a bedridden 84-year-old Black woman during a 2 a.m. drug raid in Tyler, Texas. No drugs were found. [173]
>
> - One Los Angeles officer entered the following message on his computer report: "I almost got me a Mexican last nite but he dropped the dam gun to quick, lots of wit." [spelling errors in original]. [174]

The above incidents are, of course, the exception to the generally high level of conduct of the American police. Anecdotal stories of police abuse do not provide a good reason for believing the police as a whole cannot be trusted with guns. And unsupported hypotheticals about what a licensed, trained citizen might do not provide a good reason for believing the citizens cannot be trusted with guns.

In general, police do not receive an amount of training which places them far above ordinary trained citizens. More typically, they receive a few dozen hours of training at the police academy, and may be, at most, required every so often to recertify their ability to hit a target. A deplorably large number of handgun-toting officers have not practiced marksmanship since they passed their firearms certification test as a police recruit. The amount of training which police officers have in defensive gun use rarely exceeds what a civilian could learn at a good firearms instruction academy. With the advent of inexpensive indoor laser target systems and high-technology video trainers

for "shoot-don't shoot" programs, and the proliferation of civilian firearms schools, citizens willing to invest some time can be schooled in defensive firearms use to at least the same level of competence as the average police officer. [175]

Few persons who object to ordinary citizens carrying handguns raise the same objections about security guards carrying handguns. [176] And security guards generally receive even less training than the police. It is true that security guards are visible targets for attack, but so are women who must walk alone at night in dangerous neighborhoods. If law-abiding citizens pass a licensing and training system equivalent to that of security guards or police, there is no basis for denying these citizens a permit. To structure the handgun carry permit system so wealthy owners of jewelry stores can hire security guards for protection, but low-income owners of convenience stores, who cannot afford a security guard, are deprived of protection--even though the convenience store owner is as objectively qualified as a security guard to carry a gun--is economic discrimination, and amounts to valuing the property of the jewelry store owner more highly than the life of the convenience store owner.

Does the Gun Control Lobby Mean What it Says?

Handgun Control, Inc. claims that its objective is "keeping guns out of the wrong hands," which appears to mean disarming criminals, the mentally ill, and drug addicts, rather than law-abiding citizens. Nearly all gun owners agree with the objective; they just disagree about the most effective mechanisms for achieving that goal. Non- discretionary concealed weapon permit laws provide an example of the sort of background check that many gun owners would readily agree to, in exchange for a concealed handgun permit. If the forces that have imposed a national background check for purchasing a handgun are serious about their goals, they should endorse concealed carry reform. The gun control lobbies support all sorts of bills as being worthwhile "if it saves just one life." Concealed carry reform clearly passes the "saves one life" test. Nevertheless, the gun control lobbies have opposed concealed carry reform in every state where it has been proposed.

Concealed carry reform laws usually feature exactly the kinds of controls that HCI claims are the essence of a sensible gun policy: mandatory safety training, licenses which must be renewed every few years, fingerprinting, background checks, disqualifications for people with records of alcoholism or drug abuse, and a months-long application/cooling off period. Although every one of these HCI-backed controls are also backed by the National Rifle Association and by other advocates of concealed carry reform, HCI rejects any idea that concealed carry reform can form the basis of any kind of compromise regarding gun control.

Some persons might charge HCI with brazen hypocrisy for rejecting concealed carry laws which are founded on the exact types of licensing procedures which HCI claims is the essence of a "sane" gun policy. But in truth, HCI is simply being true to the philosophy that underlies its entire program: that gun ownership for defensive purposes is illegitimate. As Handgun Control, Inc. Chair Sarah Brady put it, "To me, the only reason for guns in civilian hands is for sporting purposes." [177] Or as her husband, Jim Brady, answered a reporter's question about whether handguns were defensible: "For target shooting, that's okay. Get a license and go to the range. For defense of the home, that's why we have police departments." [178]

The views of HCI's current leaders are consistent with those of its founder, the late Nelson "Pete" Shields, who advised: "the best defense against injury is to put up no defense--give them what they want or run. This may not be macho, but it can keep you alive." [179] HCI's advice may be prudent when victim believes a mugger's promise that handing over the wallet will speedily end the encounter. But should Mr. Shield's philosophy become the binding legal rule for potential rape victims? For stalking victims? For persons who reasonably fear that the mugger will kill them, so as to eliminate a witness?

Handgun Control, Inc. has a right to participate in the political process and to advance laws based on the belief that civilians should not have guns for defensive purposes. The gun control debate would be more productive, however, if HCI's moral intuition were not subsumed to the implausible claim that the very laws which HCI considers perfect for determining who may buy a gun suddenly become hopelessly flawed when used to determine who may carry a gun.

Domestic Violence and Other Imminent Perils

Regardless of how the general issue regarding concealed carry reform is resolved, there is one law which deserves consideration for immediate enactment in every jurisdiction in the country. Such a law is already in effect in California; it provides that stalking victims, domestic violence victims, and other persons who are in immediate peril may carry a firearm, without a need to go through the carry permit application process. The California law states:

> A violation of Section 12025 is justifiable when a person who possesses a firearm reasonably believes that he or she is in grave danger because of circumstances forming the basis for a current restraining order issued by a court against another person or persons who has or have been found to pose a threat to his or her life or safety. [180]

The California law recognizes that, even in a jurisdiction where a sheriff may appreciate the need of citizens to protect themselves, the carry permit

application process may take weeks or months. When a stalker may attack within hours, a six-week delay may be fatal.

The California law is also carefully bounded, because it does not allow a person to carry a gun simply because of vague, subjective fears. The California law only applies when an independent governmental body--a court--has found a particular threat to the victim, a threat sufficient to cause the court to enter a restraining order.

Notably, the California law applies only so long as the restraining order remains in effect. Once the threat has passed, so does the exemption from the normal carry permit law.

One beneficiary of the California law was Barbara Angeli. After Ms. Angeli, a forty-four year-old restaurant owner, broke off a relationship with a man she had dated, he began stalking her. In May 1991, he raped her while threatening her with a gun and a screwdriver. In June she obtained a temporary restraining order for the man to stay away from her, pending his rape trial scheduled for September. A few days later, while she was driving at about one a.m. on a San Francisco street, he pulled his car in front of hers, blocking her way. He left his car, and walked over to hers, displaying his .380 pistol. She drew her .38 Special revolver, and shot him five times, wounding him fatally. The police department classified the shooting as a "justifiable homicide." [181]

Ohio has an even broader exemption from the need for a carry permit. Under the Ohio statute, any merchant who is carrying his or her proceeds without the need to obtain a permit. In addition, any other person who reasonably believes that he or she is being threatened may carry.

> (C) It is an affirmative defense to a charge under this section of carrying or having control of a weapon other than dangerous ordnance, that the actor was not otherwise prohibited by law from having the weapon, and that any of the following:
>
> (1) The weapon was carried or kept ready at hand by the actor for defensive purposes, while he was engaged in or was going to or from his lawful business or occupation, which business or occupation was of such character or was necessarily carried on in such a manner or at such a time or place as to render the actor particularly susceptible to criminal attack, such as would justify a prudent man in going armed.
>
> (2) The weapon was carried or kept ready at hand by the actor for defensive purposes, while he was engaged in a lawful activity, and had reasonable cause to fear a criminal attack upon himself or a member of his family, or upon his home, such as would justify a prudent man in going armed. [182]

Since criminals will carry anyway, whether or not they are being threatened, the Ohio law may deserve consideration by legislatures which want to avoid getting into the detail of creating a licensing system. Even in states which do have a licensing system, the California and Ohio statutes may be appropriate exceptions to the requirement to obtain a license.

Federal Carry Permits?

At the state or federal level, a law written much like Washington State's, clear and unambiguous as to who may obtain a permit, and clearly excluding people who are threats to public safety, ought to satisfy gun control advocates whose goal is keeping handguns out of the wrong hands, rather than banning handguns entirely.

Consistent with general principles of federalism, carry reform laws might best be adopted by the individual states, rather than imposed by the federal government. As the fact that concealed carry reform protects rather than endangers public safety becomes clearer with the experience of various states, the more fearful states will have the option of copying or refining the successful carry reforms of the earlier experimenters.

A national concealed weapon permit would, however, have the advantage of facilitating interstate travel, by simplifying the status of a person who travels from state to state with a firearm for protection. The supporters of a national background check have no problem with the federal government imposing on the states a handgun purchase background check or waiting period. Accordingly, it would be highly inconsistent for gun control advocates to claim that a national carry permit law using a "Brady Bill" type background check would violate states' rights.

National carry reform would prevent situations such as one which recently occurred in New Jersey. A North Carolina man was driving through New Jersey when he was stopped and his car searched. The New Jersey police arrested the man and confiscated his gun, based on the theory that anyone who sets foot (or tire) in New Jersey for even a moment may not possess any firearm unless the person has a New Jersey gun permit. [183]

National carry reform legislation could, however, be an imposition on those states that have no concealed weapon statute, such as Vermont, or states whose concealed carry statutes only apply in cities and towns, such as Idaho. Accordingly, a federal reform statute could require states to issue permits, but need not prevent states from allowing citizens to carry in their own states without a permit. Alternatively, as a starting point, each state could be required to honor every other state's concealed handgun permits, just as drivers licenses are recognized by all states.

Advocates of national carry reform legislation should recognize the risks that the sometimes more restrictive portion of carry permit laws (such as training requirements, and disqualifications for persons with misdemeanor

convictions) might be expanded into conditions for mere possession of handguns. Given the current national administration's fixation with gun control, the potential for such restrictions being enacted at the national level is much greater than the prospects for similar restrictions at the state level.

Additionally, a federal carry permit could lead to partial federal registration of gun owners, since everyone who applied for a permit would be on a federal list. State-level carry reform laws also create a risk of centralized record-keeping of gun owners. State or federal carry reform could minimize the centralization of data by having licenses issued by city or county officials, and forbidding the consolidation of the local government data. But, as the computer hacker saying goes, "Data want to be free." Any system of licensing relating to individual gun owners necessarily creates risks of government registration, especially as sharing of information in computer data bases becomes easier.

As a legal matter, would a law requiring states to issue carry permits to licensed, trained citizens after a background check violate principles of federalism? Probably not.

First of all, under section five of the 14th Amendment, Congress has the power to enact laws which require states to respect fundamental civil rights. [184] Accordingly, Congress would have power to pass remedial legislation regarding states whose carry laws infringe the right "to keep and bear arms" which is recognized by the Second Amendment, as well as the separate right to own and carry handguns for self- defense which recent scholarship suggests is contained within the Ninth Amendment. [185] Since Congress has repeatedly determined that the Second Amendment guarantees an individual right, [186] and since the history of the 14th Amendment shows that it was adopted with express intent to end state infringements on the right to bear arms, [187] Congressional use of the 14th Amendment to enforce the Second Amendment would pose few Constitutional problems.

In addition, Article IV of the Constitution guarantees: "The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states," and Congress is empowered to enforce the guarantee. [188] Precedent suggests that the right to carry a firearm for protection is within the scope of the "privileges and immunities" clause. [189]

Although the modern American debate over the carrying of firearms for protection dates from Florida's 1987 reform statute, the issue is much, much older. The founders of the American republic were well aware of the severe arms control laws, especially laws regarding the carrying of arms, in despotic nations such as France. While absolutists defended these laws on the grounds of public safety, the founders viewed such laws as merely a prop for authoritarian rule. John Adams and Thomas Jefferson, who disagreed on many issues, both cited with approval the following passage from Cesare

Beccaria's 1764 book On Crimes and Punishments. (Beccaria is generally regarded as the founder of criminology):

> False is the idea of utility that sacrifices a thousand real advantages for one imaginary or trifling inconvenience; that would take fire from men because it burns, and water because one may drown in it; that has no remedy for evils, except destruction. The laws that forbid the carrying of arms are laws of such a nature. They disarm only those who are neither inclined nor determined to commit crimes. Can it be supposed that those who have the courage to violate the most sacred laws of humanity, the most important of the code, will respect the less important and arbitrary ones, which can be violated with ease and impunity, and which, if strictly obeyed, would put an end to personal liberty--so dear to men, so dear to the enlightened legislator--and subject innocent persons to all the vexations that the guilty alone ought to suffer? Such laws make things worse for the assaulted and better for the assailants; they serve to rather to encourage than to prevent homicides, for an unarmed man may be attacked with greater confidence than an armed man. They ought to be designated as laws not preventative but fearful of crimes, produced by the tumultuous impression of a few isolated facts, and not by thoughtful consideration of the inconveniences and advantages of a universal decree. [190] (emphasis added).

Whether or not concealed carry reform becomes an important issue before Congress, the issue will continue to arise before state legislatures. As the evidence detailed above suggests, concealed carry reform does not turn otherwise law-abiding citizens into hot-tempered murderous psychopaths. To the contrary, the evidence shows that concealed carry reform is sometimes associated with saving lives. Even in those places where carry reform cannot be conclusively proven to have saved lives, it at least did no harm.

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Endnotes

1. State v. Reid, 1 Ala. 612 (1840). See generally Clayton E. Cramer, For The Defense Of Themselves And The State: The Original Intent & Judicial Interpretation of the Right To Keep And Bear Arms (Westport, Conn.: Praeger, 1994), pp. 76- 78. Even the most restrictive state laws, however, included an exemption for travelers.

2. Gregory J. Petesch, ed., Montana Code Annotated, (Helena, Mont., Montana Legislative Council: 1990), p. 371. Also, Assembly Office of Research, Smoking Gun: The Case For Concealed Weapon Permit Reform (Sacramento, State of California: 1986), p. 6-8. See also Cramer, pp. 172-178, 263-264, and Don B. Kates, Jr., "History of Handgun Prohibition", in Don B. Kates, Jr., ed., Restricting Handguns: The Liberal Skeptics Speak Out (North River Press: 1979), for details of the late arrival of concealed handgun statutes in the North and West.

3. Watson v. Stone, 4 So.2d 700, 703 (Fla. 1941): "...the Act was passed for the purpose of disarming the negro laborers and to thereby reduce the number of unlawful homicides...and to give the white citizens in sparsely settled areas a better feeling of security. The statute was never intended to be applied to the white population...and there has never been, within my knowledge, any effort to enforce the provisions of the statute as to white people, because it has been generally conceded to be in contravention of the Constitution and non-enforceable if contested."

4. Assembly Office of Research, Smoking Gun: The Case For Concealed Weapon Permit Reform (Sacramento, State Of California: 1986), p. 2.

5. According to the FBI, 49.6% of murder victims in 1991 were Black. FBI, Uniform Crime Reports for the United States 1991 (Wash., 1992), p. 16 table 2.4.

6. At least one state, California, replaced an existing statute with the Uniform Act. See Statutes of California Passed At The Extra Session of the

Forty-Second Legislature, (San Francisco, Bancroft-Whitney: 1917), p. 221, to see the differences and similarities between the 1917 California concealed handgun statute, and the Uniform Act adopted by California in 1923.

7. State v. Rosenthal, 75 Vt. 295, 55 Atl. 610 (1903).

8. Vermont Statutes sec. 4003.

9. Steve Garnass, "Cops Get Tougher on Gun Permits," Denver Post, Apr. 24, 1988, p. A1.

10. Stephen Singular, Talked to Death (N.Y.: Beech Tree Books, 1987), p. 142. The police department in question was in Englewood, a suburb of Denver.

11. Paul Blackman, Carrying Handguns for Personal Protection: Issues of Research and Public Policy, paper presented at annual meeting of the American Society of Criminology, San Diego, Nov. 13-16, 1985, p. 9.

12. A statute was later passed allowing Mr. Williams to carry a handgun without need for a carry permit.

13. Patrick McGreevy, "Permit Rules on Concealed Guns Eased," (Los Angeles) Daily News, June 30, 1993.

14. John Hurst, "LAPD's Tight Control on Gun Permits May Prompt New Lawsuit," Los Angeles Times, June 25, 1994.

15. "Permit 29,000 to Pack Guns," (New York) Daily News, June 22, 1981; Susan Hall, "Nice People Who Carry Guns," New York, December 12, 1977; Carol Ruth Silver and Don B. Kates, "Self-Defense, Handgun Ownership, and the Independence of Women in a Violent, Sexist Society," in Restricting Handguns, p. 153.

16. Susan Lehman, "If Punch Sulzberger's Packing Heat, Screw Mogul Fumes, Why Not Me?" New York Observer, Dec. 21, 1992; Colum Lynch, "Elite in NYC are Packing Heat," Boston Globe, Jan. 8, 1993.

17. William Bastone, "Born to Gun: 65 Big Shots With Licenses to Carry," Village Voice, September 29, 1987, p. 11.

18. Lehman.

19. Slatky v. Murphy, New York Law Journal, October 14, 1971, p. 10.

Class discrimination is not limited to New York City. A federal district court in California recently upheld Los Angeles County's policy of issuing handgun carry permits almost entirely to retired police officers and to celebrities. The court found the county's policy rational "because famous persons and public figures are often subjected to threats of bodily harm." Hickman v. County of Los Angeles, no. CV 91-5594-RMT(Bx) (C.D. Cal., Apr. 21, 1994) (Takasugi, J.). The court's point is obviously correct; but the fact that famous persons who are subjected to threats of bodily harm are legitimately issued permits does not prove that unfamous persons who are also subjected to equally

serious threats of bodily harm can rationally be denied permits. Similarly, the court upheld the policy of issuing permits to ex-police officers because they are "particularly well-trained in the use of weapons." The fact that ex-police may be particularly well-trained does not provide a justification for denying a permit to an applicant who can prove that he or she is as well-trained (or even better-trained) than a former police officer.

20. Courts have sometimes stepped in to deal with egregious licensing abuses. In one case, the court held that the word "may" in a licensing statute means that a police department "must" issue permits to qualified applicants. Schwanda v. Bonney, 418 A.2d 163, 167 (Me. 1980). As the discussion on the pages above illustrates, however, the judiciary has been unable or unwilling to stop the rampant abuse of discretion in many jurisdictions; legislative reform remains the surest, most effective remedy for licensing abuse.

21. James Wright and Peter Rossi, Armed and Considered Dangerous: A Survey of Felons and Their Firearms (New York: Aldine de Grutyer, 1986), p. 151.

22. Wash. RCW 9.41.070 (1991).

23. People Ex Rel. Darling v. Warden of City Prison, 139 N.Y.S. 277, 154 App. Div. 413, 423, 29 N.Y.Cr. 74 (1913).

24. Wash. RCW 9.41.070 (1991).

25. Wash. RCW 9.41.070 (1991).

26. Bill MacKenzie, "Packin' the Heat," (Portland) Oregonian, Nov. 4, 1993.

27. Washington, like Florida and some other states, issues concealed carry permits to non-residents, who can use the permit when traveling in Washington. We presume that the number of non-resident permit holders is not so large as to significantly change the percentage of the Washington population which is estimated to have a carry permit.

28. Andrea Sachs & Joni H. Blackman, "Stalking the Green River Killer," Time, July 31, 1989, p. 57.

29. Stephen G. Michaud and Hugh Aynesworth, The Only Living Witness (New York, Linden Press: 1983). While Ted Bundy's bloody path of murders perpetrated with clubs and bare hands also led through Utah and Florida, the effects on murder rates in those states were less dramatic. In Utah, he did not kill as many people; in Florida, the murders were diluted in Florida's much larger population.

Although Bundy did not use firearms in his crimes, and his victims were apparently unarmed, citizen gun ownership did come into play at least once in Bundy's career. In June 1977, the Aspen, Colorado sheriff called out the posse comitatus (ordinary citizens with their own guns) to hunt for Bundy after he escaped from jail.

30. Schubert v. DeBard, 398 N.E.2d 1339, 1341 (Ind.App. 1980).

31. Mr. Cramer has been repeatedly told by New Hampshire gun owners that concealed handgun permit issuance is non- discretionary in the Granite State--but while New Hampshire authorities may issue permits readily, there is nothing in the statutes that requires them to do so. Conway v. King, 718 F.Supp. 1059 (D.N.H. 1989).

A number of Connecticut residents are also under the same impression. While Connecticut's concealed weapon permit law does provide an appeal process that appears to be weighted in favor of law-abiding citizens who wish a permit, there is nothing explicit in the statute that requires a permit to be issued. Conn. Stats. sec.sec. 29-30, 29-32.

32. Florida Statutes sec. 790.06 (1987).

33. Florida Statutes sec. 790.061 (1987).

34. Pensacola Journal, Feb. 13, 1985, cited in Paul Blackman, Carrying Handguns for Personal Protection: Issues of Research and Public Policy, paper presented at annual meeting of the American Society of Criminology, San Diego, Nov. 13-16, 1985, pp. 8-9.

35. "Come armed," The Economist, October 10, 1987, p. 31.

36. Florida Department of State, Concealed Weapons/Firearms License Statistical Report for Period 10/01/87 - 12/31/93 (Tallahassee, Florida).

37. Florida Department of State, Concealed Weapons/Firearms License Statistical Report for Period 10/01/87 - 12/31/93 (Tallahassee, Florida).

38. Some (but not all) of the burglaries occurred in the victim's home, a place where a concealed carry permit would not be necessary. Arguably, the greater familiarity with firearms that the carry law encouraged might have made some of the burglary victims more proficient with their gun.

39. Metro Dade Police Department, untitled report. Sample incident:

"Victim thwarted a robbery. While at an intersection the subject approached her vehicle, produced a knife and demanded her money. The victim raised a . 32 caliber handgun and stated, 'Let's see which is fastest, the bullet or the knife', at which time the subject fled on foot."

Id., p. 6.

40. Among the articles in Florida newspapers attesting to the absence of problems with concealed carry permits are: "Police Say Concealed Weapons Law Has Not Brought Rise in Violence," Palm Beach Post, July 26, 1988 (views of executive director of Florida Chiefs of Police and an official with the Florida Sheriffs' Association); "Concealed Weapon Law Opponents Still Searching for Ammunition," Florida Times-Union, May 9, 1988 (President of Florida Chiefs of Police states that his organization had attempted to

document problems in every police department in the state, and has found none): Gainesville Sun, Nov. 4, 1990.

41. Doyle Jourdon, head of the Florida Department of Law Enforcement, observed, "The bad guys are not stupid. They understand that a tourist from Germany is far less likely to come back and testify against them in court, and they know that these people carry large amounts of cash, don't have weapons and are generally not that well aware of where they're going." Larry Rohter, "Miami Unnerved by a Tourist's Killing," New York Times, Sept. 12, 1993.

42. Associated Press, "Dade Crooks Spend Less Time in Jail," Aug. 19, 1994.

43. Virginia Code Annotated, sec. 18.2-308 (1988).

44. Virginia Code Annotated, sec. 18.2-308 (1992).

45. John B. Russell, Jr., Commonwealth of Virginia, Office of the Attorney General, letter, October 14, 1992 to author Cramer.

46. Handguns registered in Washington, D.C. as of 1976 may still lawfully be possessed. Carry permits are impossible for ordinary citizens to obtain, and even guns kept at home must be locked up, greatly reducing their defensive utility.

47. There are approximately 10,000 carry permits in Virginia, but in Fairfax County (next to Washington, D.C.), only three permits were issued in all of 1990-91. Carlos Santos, "10,000 in State Legally Carry Concealed Guns," Richmond Times-Dispatch, Oct. 3, 1993. Prince William County, also in northern Virginia, issued only seven permits in 1990-91. "Tidewater Dominates List for Gun Permits," Associated Press, Sept. 30, 1993.

48. Georgia Criminal Code Annotated, sec. 26-2904(a) (1991).

49. Georgia Criminal Code Annotated, sec. 26-2904(d) (1991).

50. Georgia Criminal Code Annotated, sec. 26-2904(a)(1) (1991).

51. Georgia Criminal Code Annotated, sec. 26-2904(a)(2) (1991).

52. Georgia Criminal Code Annotated, sec. 26-2904(a)(3) (1991).

53. Georgia Criminal Code Annotated, sec. 26-2904(a)(4) (1991).

54. Georgia Criminal Code Annotated, sec. 26-2904(a)(5) (1991).

55. Georgia Criminal Code Annotated, sec. 26-2904(c)(2) (1991).

56. Op. Atty. Gen. U89-21 (August 25, 1989); Georgia Criminal Code Annotated, sec. 26-2904, Compiler's notes (1991).

57. As of December 1993, the permit figures for four major counties were: Cobb 2,920; DeKalb 3,050; Fulton 3,100; Gwinnett 2,299. Mike Fish, "Atlanta Celebrities (Quietly) Toting Guns," Atlanta Journal/Atlanta Constitution, Dec. 12, 1993.

58. Penn. Crimes Code sec. 6109 (1989).

59. Penn. Stat. Ann. 53 sec. 101 (1974) defines the classes of cities based on population. Only Philadelphia currently qualifies as a "city of the first class," by having a population above one million; the next closest city, Pittsburgh, is declining in population.

60. Penn. Crimes Code sec. 6109(e)(2) (1989).

61. Penn. Crimes Code sec. 6109(a) (1989).

62. As with Washington, we presume that the number of non-residents issued permits is not large enough to significantly change the estimate of the percentage of the Pennsylvania population which has obtained a permit.

63. Oregon Revised Statutes sec. 166.291 (1990).

64. Oregon Revised Statutes sec. 166.293 (1990).

65. Oregon Revised Statutes sec. 166.274 (1990).

66. Oregon Revised Statutes sec. 166.292 (1990).

67. MacKenzie, Oregonian, p. A1.

68. MacKenzie, Oregonian, p. A16.

69. City of Princeton v. Buckner, 377 S.E.2d 139, 141 (W.Va. 1988).

70. City of Princeton v. Buckner, 377 S.E.2d 139, 144 (W.Va. 1988).

71. West Virginia Code Annotated, sec. 61-7-4 (1992).

72. Application of Metheney, 391 S.E.2d 635, 638 (W.Va. 1990); West Virginia Code Annotated, sec. 61-7-4 (1992).

73. T. A. Barrick, West Virginia Dept. of Public Safety, letter of August 26, 1992 to author Cramer.

74. Idaho Code Annotated, sec. 18-3302 (1991).

75. Idaho Code Annotated, sec. 18-3302, Compiler's notes (1991).

76. Idaho Code Annotated, sec. 18-3302 (1991).

77. Montana Code sec. 45-8-321 (1991).

78. Montana Code sec. 45-8-321 (1991).

79. Montana Code sec. 45-8-327, sec. 45-8-328 (1991).

80. Montana Code sec. 45-8-321 (1991).

81. "Concealed Weapons Permits Skyrocket in Montana," Gun Week, Mar. 11, 994, p. 2.

82. Mississippi Code sec. 45-09-101 (1991).

83. Jim Ingram, Commissioner, Dept. of Public Safety, letter, October 27, 1993 to Donald Newcomb.

84. Senate Bill 17, to become Wyoming Statutes sec. 6-8-104 (1994).

85. House Bill 2131, to become Arizona Revised Statutes sec. 13-3112 (1994).

86. Tennessee Senate Bill 2182 (1994).

87. Alaska Stats. secs. 11.61.220(b), 11.61.220(f), 18.65.705 (1994).

88. Alaska Stats. sec. 18.65.715 (1994).

89. Alaska Stats. sec. 18.65.720 (1994).

90. Alaska Stats. sec. 18.65.700 (1994).

91. Alaska Stats. sec. 18.65.755 (1994).

92. Alaska Stats. sec.sec. 18.65.780, 18.65.785 (1994).

93. "Alaska Legalizes Concealed Guns," New York Times, May 29, 1994 (A.P. story).

94. Alaska Stats. sec. 18.65.790 (1994).

95. Associated Press, "Baltics Take Up Arms," Apr. 1, 1994 (dateline Tallinn, Estonia).

96. There are a number of studies of the effects of violence in the electronic media in promoting violence. Brandon Centerwall, "Television and Violence: The Scale of the Problem and Where to Go from Here," JAMA, vol. 267 (June 10, 1992): 3059-63; Wendy Wood, Frank Y. Wong, and J. Gregory Chachere, "Effects of Media Violence on Viewers' Aggression in Unconstrained Social Interaction," Psychological Bulletin, vol. 109 (May 1991, no. 3): 371-383, is one the more detailed recent attempts to analyze existing statistical studies of the effects of television and film violence on children. An example of a more narrow study that suggests the link is so weak as to be undetectable is Mary B. Harris, "Television Viewing, Aggression, and Ethnicity", Psychological Reports, vol. 70 (February 1992, no. 1): 137- 138.

97. Bureau of Justice Statistics, Report to the Nation on Crime and Justice, 2d ed., (Washington, DC, Government Printing Office: 1988), p. 42, provides information on the relationship between violent crime arrests and offender age.

98. Cal. Penal Code, sec. 12025.

99. Cal. Penal Code, sec. 12031.

100. Cal. Penal Code, sec. 12050.

101. In a precise legal sense, a "felony murder" is an unintentional murder that occurs during a violent felony. For example, a bank robber shoots a gun into the ceiling to get the attention of the customers of the bank; the bullet strikes a chandelier which falls on a customer and kills her. Under traditional common law rules, the bank robber would be guilty of murder ("felony murder") under the theory that perpetrating the violent felony evinced such a disregard for human life that it is fair to punish the robber for the fatal but unforeseen consequences of the robbery.

We use "felony murder" in this Issue Paper in a broader sense, to include all murders related to violent felonies, whether or not intentional. For example, a street robbery in which the robber deliberately kills the victim in order to eliminate a witness would be a "felony murder" for purposes of this Issue Paper.

102. Federal Bureau of Investigation, Crime in the United States, 1988 (U.S. Government Printing Office, Washington), pp. 12-13.

103. FBI, p. 21.

104. FBI, p. 19.

105. All CCW numbers contained in this article are from California Dept. of Justice, Automated Firearms Unit Licenses to Carry Concealed Weapons Total -- 1989.

106. All county population figures and crime rates are from Office of the Attorney General, 1989 Criminal Justice Profile (Statewide) (Bureau of Criminal Statistics and Special Services, Sacramento), pp. 23-25.

107. Les Krantz, What the Odds Are (New York: Harper Collins, 1992), p. 213 (the odds are 72,192 to 1).

108. Id., p. 108 (100,000 to 1).

109. One out of 15 households with television sets watches the Phil Donahue show. Krantz, p. 260.

110. Brian L. Withrow, The Effectiveness of Firearms Conceal Carry Laws on the Incidence and Pattern of Violent Crime, Southwest Texas State University, thesis submitted for Master of Public Administration, May 1993.

111. Cramer, pp. 113-119; Suzanna M. Gratia, "If I Had Had My Gun..." Washington Post, Feb. 27, 1993, p. A21.

112. Dr. Suzanna Gratia, transcript of testimony regarding HB-1720.

113. J. Neil Schulman, "A Massacre We Didn't Hear About," Los Angeles Times, Jan. 1, 1992; Steve Joynt, "Restaurant Customer Kills Would-Be Robber," (Birmingham) Post-Herald, Dec. 19, 1991.

114. Abraham Tennenbaum, "Handguns Could Help," Baltimore Sun, Oct. 26, 1991.

115. Robert D. McFadden, "Man with a Sword Kills 2 on Staten Island Ferry," N.Y. Times, July 8, 1986, p. A1.

116. Norman Kempster, "3 Terrorists Wound 48 in Jerusalem," L.A. Times, Apr. 3, 1984, p. 1.

117. Don B. Kates, Jr., "Firearms and Violence: Old Premises, New Research," in Ted Robert Gurr (ed.) Violence in America, Vol. I. (Newbery Park, Calif.: Sage, 1989), p. 209.

118. Associated Press, Apr. 7, 1994, reprinted in Marin Independent Journal, p. A3.

119. James D. Wright, "The Ownership of Firearms for Reasons of Self Defense," in ed. Don B. Kates, Jr. Firearms and Violence (Cambridge, Mass.: Ballinger, 1984), p. 327.

120. Kates & Engberg, "Deadly Force Self-Defense Against Rape," 15 University of California-Davis Law Review 873, 877-80 (1982).

121. A. Japenga, Health, March/April 1994, p. 54.

122. Herbert Wechsler, "A Rationale of the Law of Homicide," 27 Columbia Law Review 701, 736 (1937)

123. Richard Maxwell Brown, "The American Vigilante Tradition," in Hugh Davis Graham and Ted Robert Gurr, eds., Violence in America: Historical and Contemporary Perspectives (New York: Praeger, 1969).

124. New York Governor Mario Cuomo, however, stated that "If this man was defending himself against attack with reasonable force, he would be legally [justified, but] not morally..." Newsweek, Jan. 7, 1985.

125. For a thorough discussion of the issue, see Brendan Furnish & Dwight Small, The Mounting Threat of Home Intruders: Weighing the Moral Option of Armed Self-Defense (Thomas, 1993).

126. Exodus 22:2, "If the thief is caught while breaking in, and is struck so that he dies, there shall be no bloodguiltiness on his account."

127. Exodus chapters 21 and 22.

128. Rev. Anthony Winfield, Self-Defense and the Bible (Rosedale, N.Y. 1991).

129. Biblical scholar John Shelby Spong suggests that the sword incident in the Garden of Gethsemane never happened. He notes that the Gospel according to Mark (generally agreed to be the oldest of the four gospels) mentions no such incident; as the gospels proceeding (in chronological order of composition) from Matthew to Luke to John, the garden confrontation is introduced, and then additional details are added. Spong notes the textual evidence that when Jesus was arrested, the disciples panicked and fled, and did not regain their courage until after Easter. Spong suggests that the story of the disciples confronting the Roman soldiers was an invention of the later gospel authors (or their sources) who simply would not accept the humiliation of the disciples' (temporary) cowardice. John Shelby Spong, Resurrection: Myth or Reality? 224-25 (N.Y.: Harper Collins, 1994)(Spong, by the way, comes down on the "reality" side of the question posed by his book's title, although he finds considerable myth in many of the details, and he argues that a significant number of stories in the gospels are not intended as literal history.)

130. Pontifical Council for Justice and Peace, The International Arms Trade: An Ethical Reflection (Vatican City: Libreria Editrice Vaticana, 1994), p. 13. The first sentence of the quotation is supported by a footnote "Pastoral Constitution, Gaudium et Spes, No. 79." The second sentence is supported by a footnote "Catechism of the Catholic Church, No. 2265." The document notes that "the right" to armed defense "is coupled with the duty to do all possible to reduce to a minimum, and indeed eliminate, the causes of violence." Id., p. 13.

131. Rev. Clifford Stevens, The One Year Book of Saints (Our Sunday Visitor Pub. Div.: Huntington, Ind., 1989), p. 66.

132. Babylonian Talmud, Sanhedrin 72a.

133. Babylonian Talmud, Sanhedrin 73a.

134. For excellent discussion of Jewish law and the duty to use force, see George P. Fletcher, "Defensive Force as an Act of Rescue," Social Philosophy and Policy (Spring 1990): 81-88; and Fletcher, "Self-Defense as Justification for Punishment," 12 Cardozo Law Review 859 (1991).

135. Quoted in Don B. Kates, "Handgun Prohibition and the Original Meaning of the Second Amendment," 82 Michigan Law Review 204, 230 (1982), citing C. Asbury, The Right to Keep and Bear Arms in America: The Origins and Application of the Second Amendment to the Constitution, (unpublished doctoral thesis in history, available at University of Michigan Graduate Library), pp. 39-40.

136. 3 William Blackstone, Commentaries *4 (also asserting that the right was inalienable), Thomas Hobbes, Leviathan pp. 88, 95 (same), 2 Montesquieu, Spirit Of The Laws 60 ("Who does not see that self-defense is a duty superior to every precept?").

137. A. Lief, The Brandeis Guide To The Modern World, p. 212

138. F. Pollock, Treatise On The Law Of Torts 201 (New American ed. from 3rd English ed., 1894); Perkins, Criminal Law 997- 1994 (2d ed. 1969) describing view of Bishop and Stephens.

139. Ted L. Huston, Gilbert Geis, & Richard Wright, "The Angry Samaritans," Psychology Today (June 1976), p. 64.

140. See, for example, Bowers v. DeVito 686 F.2d 616 (7th Cir. 1982) (no federal Constitutional requirement that police provide protection); Calogrides v. Mobile, 475 So. 2d 560 (Ala. 1985); Cal. Govt. Code sec.sec. 845 (no liability for failure to provide police protection) and 846 (no liability for failure to arrest or to retain arrested person in custody); Davidson v. Westminster, 32 Cal.3d 197, 185 Cal. Rep. 252; 649 P.2d 894 (1982); Stone v. State 106 Cal.App.3d 924, 165 Cal. Rep. 339 (1980); Morgan v. District of Columbia, 468 A.2d 1306 (D.C.App. 1983); Warren v. District of Columbia, 444 A.2d 1 (D.C. App 1981); Sapp v. Tallahassee, 348 So.2d 363 (Fla. App. 1st Dist.),

cert. denied 354 So.2d 985 (Fla. 1977); Ill. Rev. Stat. 4-102; Keane v. Chicago, 98 Ill. App.2d 460, 240 N.E.2d 321 (1st Dist. 1968); Jamison v. Chicago, 48 Ill. App. 3d 567 (1st Dist. 1977); Simpson's Food Fair v. Evansville, 272 N.E.2d 871 (Ind. App.); Silver v. Minneapolis 170 N.W.2d 206 (Minn. 1969); Wuetrich v. Delia, 155 N.J. Super. 324, 326, 382 A.2d 929, 930, certif. denied 77 N.J. 486, 391 A.2d 500 (1978); Chapman v. Philadelphia, 290 Pa. Super. 281, 434 A.2d 753 (Penn. 1981); Morris v. Musser, 84 Pa. Cmwth. 170, 478 A.2d 937 (1984).

Ruth Brunell called the police on 20 different occasions to beg for protection from her husband. He was arrested only one time. One evening Mr. Brunell telephoned his wife and told he was coming over to kill her. When she called the police, they refused her request that they come to protect her. They told her to call back when he got there. Mr. Brunell stabbed his wife to death before she could call the police to them that he was there. The court held that the San Jose police were not liable for ignoring Mrs. Brunell's pleas for help. Hartzler v. City of San Jose, 46 Cal. App. 3d 6 (1st Dist. 1975).

141. Riss v. New York, 22 N.Y.2d 579, 293 N.Y.S.2d 897, 240 N.E.2d 806 (1958).

142. 444 A.2d at 6.

143. Precedent for such a holding could be based on Chambers-Castanes v. Kings County, 669 P.2d 451 (Wash. 1983), which held that there was an exception to the non-liability principle when the plaintiffs were dissuaded from taking steps to protect themselves because when they called for police assistance they were specifically assured that help was on its way.

144. Subcommittee on Crime, Committee on the Judiciary, United States House of Representatives, Firearms Legislation, 94th Cong., 1st Sess, Part 2, Chicago Hearings (1975), p. 587.

145. Silver & Kates, supra.

146. Jeffrey Snyder, "A Nation of Cowards," The Public Interest no. 113, Fall 1993.

147. Kleck, pp. 120-26.

148. Blackman, p. 29.

149. Roger D. McGrath, Gunfighters, Highwaymen, & Vigilantes: Violence on the Frontier (Berkeley: University of California Press, 1984).

150. McGrath, p. 255.

151. The Lightning was a double action version of the famous Peacemaker or Frontier revolver. Ian V. Hogg, The Illustrated Encyclopedia of Firearms (Secaucus, N.J.: Chartwell, 1978), p. 121.

152. The homicide rate in Aurora was approximately 64 per 100,000, and in Bodie as 116. The Washington, D.C. rate is usually somewhere in-between.

153. Bodie had a robbery rate of 84 per 100,000 persons per year. The rate in 1980 New York City was 1,140; in San Francisco-Oakland, 521, and the United States as a whole, 243. The Bodie burglary rate was 6.4 per 100,000 population per year. The 1980 New York City rate as 2,661; the San Francisco-Oakland rate was 2,267. The overall American rate was 1,668. The Bodie theft rate was 180, in contrast to New York's 3,369 and San Francisco-Oakland's 4,571. The American rate was 3,156. All data from McGrath, pp. 247-54.

154. Grant Smith, "Bodie, Last of the Old Time Mining Camps," Calif. Hist. Soc'y Q. vol. 4 (1925), p. 78, quoted in McGrath, p. 157.

155. Robert A. Dykstra, The Cattle Towns: A Social History of the Kansas Cattle Trading Centers (1968), pp. 144-47.

156. Robert M. Utley, High Noon in Lincoln: Violence on the Western Frontier (1987), pp. 173-79. Again, as in Aurora and Bodie, the ubiquity of firearms turned many drunken quarrels into homicides. Id.

157. William C. Holden, "Law and Lawlessness on the Texas Frontier 1875-1890," 44 Sw. Hist. Q. 188 (1940).

158. John Umbeck, "Might Makes Rights: A Theory of Formation and Distribution of Property Rights," 9 Econ. Inquiry 38 (1981).

In other parts of the West, citizens also successfully used a variety of private mechanisms to protect property rights in the absence of effective government. Terry L. Anderson & P.J. Hill, "An American Experiment in Anarcho-Capitalism: The Not So Wild, Wild West," 3 J. Libertarian Stud. 9 (1979).

159. Day, "'Sooners' or 'Goners,' They Were Hell Bent on Grabbing Free Land," 20 Smithsonian 192 (1989).

160. W. Eugene Hollon, Frontier Violence: Another Look (1974), p. x.

161. Frank Richard Prassel, The Western Peace Officer: A Legacy of Law and Order (1972), p. 17.

162. Samuel Francis, "Anarcho-Tyranny U.S.A.," Chronicles, July 1994: 14--19.

163. Boston Police, Handgun Control: A Survey of Leading Law Enforcement Officials in the Country (1976), pp. 53ff, discussed in Blackman, p. 31.

164. "The Law Enforcement Technology, Gun Control Survey," Law Enforcement Technology, July-Aug. 1991. The poll was based on readers sending in a survey form to the magazine. Since the polling was not conducted by random sample, the poll might not reflect a true cross-section of all police opinion. Of course a cadre of police chiefs who show up at the state capitol to testify against a concealed carry bill may also not be representative of police opinion, especially the opinion of street patrol officers.

165. Tony Codella, letter to Stephen D'Andrilli, Sept. 21, 1990 (on file with authors).

166. A. Kobler, "Figures (and perhaps some facts) on Police Killings of Civilians in the U.S. 1965-1969," 31 J. Soc. Issues 185 (1975). Internal police department review of Kansas City police shootings in which a person was struck by a bullet found that for the years 1973-1978, 40.2% of the police firearms discharges were unjustifiable. William A. Geller & Michael S. Scott, Deadly Force: What We Know 282 (Wash.: Police Exec. Res. Forum, 1992).

167. Richard Harding, "Killings by Chicago Police, 1969-70: An Empirical Study," 46 University of Southern California Law Review 284 (1973). See also Geller & Karales, "Shootings of and By Chicago Police: Uncommon Crises, Part I: Shootings by Chicago Police," 72 Journal of Criminal Law & Criminology 1813 (1981).

168. Gina Goehl, 1989 Firearms Discharge Assault Report (New York: Police Academy Firearms and Tactics Section, April 1989) (BM 369). For 1985-89, the cumulative figures are 1193 total discharges, 824 intentional and not in violation of force policy (69.1%), 112 intentional and in violation (9.4%); 135 accidental but not in violation of policy (11.3%), and 122 accidental and in violation (10.2%). [The percentages and numbers are slightly different from those in the Report itself, due to a Departmental mathematical errors in addition; the Department mistakenly totals the number of intentional lawful shootings as 836 (rather than 824), and mistakenly records the total of all incidents at 1,143, rather than 1,193. As a result, Department reports that the sum of all categories of incidents is 105.4%, rather than 100%.] In Philadelphia in 1989, accidents comprised 27% of police firearms discharges; in Dade County, Florida (Miami) that same year, accidents were 31%. Geller & Scott, p. 196.

169. Licthblau, "LAPD Officers Faulted in 3 of 4 Shooting Cases," Los Angeles Times, Aug. 14, 1994.

170. "The Guns of Kennesaw," N.Y. Times, Mar. 28, 1982, p. A26, col. 1. Some studies suggest that as many as one in four police officers may be an alcoholic. Geller & Scott, p. 288 n.26.

171. Richard Neely, Take Back Your Neighborhood (1990), pp. 74- 75. Other major cities reported similar rates of substantiated allegations. Id.

172. James Crawford, "Police Firepower a Cause for Concern," Oregonian, May 29, 1991; Letter from Hap Wong, attorney for family of shooting victim, to James Crawford (March 16, 1992)(on file with authors).

173. "Texas Grand Jury Fails to Indict Officer Who Killed Elderly Black Woman in 'Cocaine Raid' that Yielded no Drugs or Charges," News Briefs (National Drug Strategy Network), Aug. 1992, p. 8, citing Todd Gillman, "Kilgore Officer Not Indicted in Black Woman's Slaying," Dal. Morn. News, July 11, 1992, p. 1A; Lee Hancock, "Gnawing Question: Grand Jury in East

Texas will Consider Case of Officer who Killed Black Woman in Drug Raid", Dal. Morn. News, July 7, 1992, p. 1A.

174. Independent Commission on the Los Angeles Police Dept. ("Christopher Comm."), Report of the Independent Commission on the Los Angeles Police Department (1991), pp. 72-73, cited in Geller & Scott, p. 205.

175. For a good analysis of giving the police special handgun privileges, see James B. Jacobs, "Exceptions to a General Prohibition on Handgun Possession: Do They Swallow Up the Rule?" 49 Law & Contemporary Problems 1 (1986).

176. "Private security guards are simply vigilantes for the rich," observes West Virginia Supreme Court Justice Richard Neely. Neely, p. 51.

177. Tom Jackson, "Keeping the Battle Alive," Tampa Tribune, Oct. 21, 1993.

178. "In Step With: James Brady," Parade Magazine, June 26, 1994, p. 18.

179. Pete Shields, Guns Don't Die, People Do (N.Y.: Arbor, 1981), pp. 124-25.

180. Cal. Penal Code, sec. 12025.5.

181. Robert Popp, "Accused Rapist Gunned Down in Clash with Victim," San Francisco Chronicle, Sept. 14, 1991, p. A 13.

182. Ohio Rev. Code, sec. 2923.12(C). The law is discussed in Ohio v. Assad, 83 Oh. App. 3d 114, 614 N.E.2d 772 (Ohio Ct. App., 1992)(reversing conviction of merchant who carried a gun).

183. Tom Joyce, "Price of Freedom: North Carolina Man Gives up Gun He Can Carry at Home," Gloucester County Times, Apr. 6, 1993. The man accepted a plea bargain in which he escaped prison by being placed on probation, making regular visits to a New Jersey probation officer, and forfeiting his handgun. The man had allegedly been speeding when he was stopped on the New Jersey Turnpike. Having no basis for any suspicion, the officer making the traffic stop asked the man if he had any weapons in the car, and the man told the truth that he did.

184. The 14th Amendment states in part: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny any person within its jurisdiction the equal protection of the laws...The Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

185. Nicholas J. Johnson, "Beyond the Second Amendment: An Individual Right to Arms Viewed Through the Ninth Amendment," 24 Rutgers Law Journal 1 (1992).

186. When introducing the Second Amendment and other guarantees in the Bill of Rights, Congressman James Madison explained that the amendments "relate first to private rights." James Madison, Papers, vol. 12 (1979), pp.

193-94. The major popular analysis of the Second Amendment, which Madison praised, explained that in the Second Amendment, "the people are confirmed...in their right to keep and bear their private arms" Madison, pp. 239-40, 257; Tench Coxe, Federal Gazette, June 18, 1789, p. 2, col. 1. In 1982, the Senate Subcommittee on the Constitution investigated historical evidence, and unanimously concluded that the Second Amendment guaranteed an individual right to arms which was made enforceable against the states by the 14th Amendment. Senate Subcommittee on the Constitution, The Right to Keep and Bear Arms 11 (1982) (unanimous report). In 1986, Congress enacted the Firearm Owners' Protection Act, whose preamble stated: "The Congress finds that -- (1) the rights of citizens -- (A) to keep and bear arms under the second amendment to the United States Constitution [and fourth, fifth, ninth, and tenth amendment rights]" required additional protection, which Congress was enacting. In enacting the Property Requisition Act of 1941 to meet defense needs for the global conflict, Congress specifically forbade the requisitioning or registration of firearms. In enacting the 14th Amendment, Congress made frequent references to its desire to prevent state governments from interfering with the right to freedmen to keep and bear arms. See Stephen P. Halbrook, "Congress Interprets the Second Amendment: Declarations of a Coequal Branch on the Individual Right to Keep and Bear Arms," Tennessee Law Review (forthcoming, 1995).

187. Michael Kent Curtis, No State Shall Abridge (Duke University Press, 1986), pp. 52-53, 56, 72, 88, 104, 141-41, 164.

188. U.S. Const., Art. IV, sec.2, clause 1.

189. In the notorious (but never over-ruled) Dred Scott decision, Chief Justice Taney asserted the "absurdity" of the idea that a black man had equal rights with a white man under the U.S. Constitution, by listing the results that would stem from such a decision. Blacks would be free to travel wherever they wished, "without pass or passport," would enjoy "full liberty of speech in public and in private", and would be allowed "to hold public meetings upon political affairs, and to keep and carry arms wherever they went." Dred Scott v. Sandford, 60 U.S. 393, 417 (1857).

190. Cesare Beccaria, trans. Henry Palolucci, On Crimes and Punishments (New York: Bobbs-Merrill Co., 1963, 1st pub. 1764), pp. 87-88. Adams quoted Beccaria's analysis at the opening of the Boston Massacre trial; Jefferson laboriously copied the entire quotation by hand into his book of favorite quotes. Don B. Kates, Jr., "Handgun Prohibition and the Original Meanings of the Second Amendment," 82 Michigan Law Review 204, 233-34 (1983).