

United States Senate Judiciary Committee

Full Committee Hearing

“What Should America Do About Gun Violence?”

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Summary

- Senator Feinstein’s proposed ban on so-called “assault weapons” is not based on how fast the guns fire, or how powerful they are.
- Instead, the bans are based on superficial features, such as an adjustable stock, or a forward grip.
- The features are not “military” features. Rather, they make the gun more accurate, or more comfortable, for a particular user. These are positive features, not negative ones.
- It is inaccurate to claim that magazines holding more than 10 rounds are “high capacity.” Rather, they are standard for a vast number of handguns, and for many rifles.
- Police and law-abiding citizens choose semi-automatic handguns, and rifles such as the AR-15, for the same reason: they are often the best choices for the lawful defense of self and others. To assert that such firearms are only meant for mass murder is a libel against law-abiding civilians and law enforcement. It is malicious hate speech.
- A Department of Justice study found that Senator Feinstein’s 1994-2004 had no statistically discernible benefits. A close analysis of her 2013 bill indicates that the bill would be equally useless.
- Great Britain shows the perils of mass gun confiscation: higher violent crime rates than the United States, and an especially high rate of home invasion burglaries.
- A steadily increasing rate of gun ownership in the United States in recent decades (today, there are more guns than Americans) has been accompanied by sharply declining violent crime. Today, Americans are safer from violent crime than any time since the early 1960s.
- Congress has repeatedly outlawed federal gun registration because of the accurate recognition that in other countries, and in the United States, gun registration is a tool for gun confiscation.
- Michael Bloomberg’s bills for “universal background checks” have always had provisions for gun registration, and many other violations of the civil liberties of law-abiding persons—such as persons who were

falsely accused of drug crimes, or sexual minorities who were improperly ordered to undergo counseling.

- Universal background checks are unenforceable without universal gun registration. The attempt to impose universal gun registration in Canada was such a fiasco that the registration law was repealed in 2012.
- Armed defenders have repeatedly stopped incipient mass murders, including at schools. Utah and Texas have demonstrated that armed teachers behave responsibly.
- Armed defenders deter attacks on diamond stores. Children are more precious than diamonds, and deserve equal protection.

“[W]e cannot clearly credit the [1994 ‘assault weapons’] ban with any of the nation’s recent drop in gun violence.”—U.S. Department of Justice 2004 study.²

“Passing a law like the assault weapons ban is a purely symbolic move in that direction [to disarm the citizenry]. . . . [T]hat change in mentality starts with the symbolic yielding of certain types of weapons. The real steps, like the banning of handguns, will never occur unless this one is taken first. . . .”—Charles Krauthammer³

“The [‘assault’] weapons’ menacing looks, coupled with the public’s confusion over fully automatic machine guns versus semi-automatic assault weapons—anything that looks like a machine gun is assumed to be a machine gun—can only increase the chance of public support for restrictions on these weapons.”—Josh Sugarmann, Founder, Violence Policy Center⁴

The Political Attack on Firearms Ownership

On December 14, 2012, a deranged and hate-filled mass-murderer first killed his own mother and then snuffed out 26 additional lives at Sandy Hook Elementary School in Newtown, Connecticut. It was one of the worst mass murders at school since 1927, when a defeated school board candidate set off explosives at an elementary school in Bath Township, Michigan, killing 38 children and five adults. The horrific crime at Sandy Hook tore the heart out

of the nation. It filled every life-loving American—every parent, grandparent, aunt, and uncle—with anger, dread, and anguish.

In the aftermath of this crime, many Americans are exploring ways to responsibly and realistically reduce the possibility of another such attack, such as by better-addressing mental illness,⁵ training people how to more-effectively respond to “active shooters,”⁶ and allowing teachers and other responsible adults to carry concealed handguns in schools—something already successfully implemented in Utah and parts of Texas, Ohio, and Colorado.⁷

Unfortunately, others are promoting repressive laws which would have done nothing to prevent Sandy Hook, and would do nothing to prevent the inevitable copycat crimes that may take place in the near future. The demands for symbolic but useless anti-gun laws are accompanied by an aggressive culture war against dissenters. A *Des Moines Register* journalist declared that well-known defenders of gun rights should be dragged behind pickup trucks, that the Second Amendment should be repealed, that the National Rifle Association (NRA) should be declared a “terrorist organization,” and that membership in the NRA should be outlawed.⁸ A writer for the *Huffington Post* declared that anyone who believes guns may legitimately be owned for self-defense—or that the Second Amendment protects that right—is a “menace” and “a danger to your children.”⁹

Unfortunately, such mean-spirited and unjust demonization and scapegoating of law-abiding American gun owners has become a central feature of the political campaign to ban or restrict semi-automatic guns and the magazines that go with them. Even worse, the Newtown murders are being politically exploited

Prohibitionists use the false and inflammatory labels of “assault weapon” and “high-capacity magazine” to mischaracterize ordinary firearms and their standard accessories.

The AR-15 rifle has for years been the most popular, best-selling firearm in the United States. Millions of law-abiding Americans own AR-15s and similar guns. In an article for *Slate*, Justin Peters estimates that there may be nearly four million AR-15 rifles in the country—and that’s just one brand of rifle.¹⁰ Contrary to media claims, these ordinary citizens are not psychopaths intent on mass murder. Rather, Americans own so-called “assault weapons” for all the legitimate reasons that they own any type of firearm: lawful defense of self and others, hunting, and target practice. They do not own these firearms to “assault” anyone. To the contrary, rifles such as the AR-15, and standard capacity magazines of 11-19 rounds (for handguns) and up to 30 rounds (for rifles) are commonly used by rank and file police officers, because such firearms and magazines are often the best choice for the lawful protection of self and others.

That is why the police choose them so often. At Sen. Feinstein’s press conference introducing her new prohibition bill, Rev. Hale, of the National

Cathedral, asserted that the guns and magazines are useful only for mass murder. This is a mean-spirited insult to the many police officers who have chosen these very same guns and magazines as the best tools for the most noble purpose of all: the defense of innocent life.

What Is An “Assault Weapon?”

Gun prohibition advocates have been pushing the “assault weapon” issue for a quarter century. Their political successes on the matter have always depended on public confusion. The guns are *not* machine guns. They do *not* fire automatically. They fire only one bullet each time the trigger is pressed, just like every other ordinary firearm. They are *not* more powerful than other firearms; to the contrary, their ammunition is typically intermediate in power, less powerful than guns and ammunition made for big game hunting.

The difference between automatic and semi-automatic

For an automatic firearm (commonly called a “machine gun”), if the shooter presses the trigger and holds it, the gun will fire continuously, automatically, until the ammunition runs out.¹¹ Ever since the National Firearms Act of 1934, automatics have been very strictly regulated by federal law: Every person who wishes to possess one must pay a \$200 federal transfer tax, must be fingerprinted and photographed, and must complete a months-long registration process with the federal Bureau of Alcohol, Tobacco, Firearms, and Explosives (BATFE). In addition, the transferee must be granted written permission by local law enforcement, via ATF Form 4. Once registered, the gun may not be taken out of state without advance written permission from BATFE.

Since 1986, the manufacture of new automatics for sale to persons other than government agents has been forbidden by federal law.¹² As a result, automatics in U.S. are rare (there are about a hundred thousand legally registered ones), and expensive, with the least expensive ones costing nearly ten thousand dollars.

The automatic firearm was invented in 1883 by Hiram Maxim. The early Maxim Guns were heavy and bulky, and required a two-man crew to operate. In 1943, a new type of automatic was invented, the “assault rifle.” The assault rifle is light enough for a soldier to carry for long periods of time. Soon, the assault rifle became the ubiquitous infantry weapon. Examples include the U.S. Army M-16, the Soviet AK-47, and the Swiss militia SIG SG 550. The AK-47 (and its various updates, such as the AK-74 and AKM) can be found all over the Third World, but there are only a few hundred in the United States, mostly belonging to firearms museums and wealthy collectors.

The precise definition of “assault rifle” is supplied by the Defense Intelligence Agency.¹³ If you use the term “assault rifle,” persons who are knowledgeable about firearms will know precisely what kinds of guns you are

talking about. The definition of “assault rifle” has never changed, because the definition describes a particular type of thing in the real world—just like the definitions of “apricot” or “Minnesota.”

In contrast, the definition of “assault weapon” has never been stable. The phrase is merely an epithet. It has been applied to things which are not even firearms (namely, air guns). It has been applied to double-barreled shotguns, to single-shot guns (guns whose ammunition capacity is only a single round), and to many other sorts of ordinary handguns, shotguns, and rifles.

The first “assault weapon” ban in the United States, in California in 1989, was created by legislative staffers thumbing through a picture book of guns, and deciding which guns looked bad. The result was an incoherent law which, among other things, outlawed certain firearms that do not exist, since the staffers just copied the typographical errors from the book, or associated a model by one manufacturer with another manufacturer whose name appeared on the same page.

Over the last quarter century, the definition has always kept shifting. One recent version is Sen. Dianne Feinstein’s new bill. Another is the pair of bills defeated in the January 2013 lame duck session of the Illinois legislature which would have outlawed most handguns (and many long guns as well) by dubbing them “assault weapons.”

While the definitions of what to ban keep changing, a few things remain consistent: The definitions do *not* cover automatic firearms, such as assault rifles. The definitions do *not* ban guns based on how fast they fire, or how powerful they are. Instead, the definitions are based on the name of a gun, or on whether a firearm has certain superficial accessories (such as a bayonet lug, or a grip in the “wrong” place).

Most, but not all, of the guns which have been labeled “assault weapons” are semi-automatics. Many people think that a gun which is “semi-automatic” must be essentially the same as an automatic. This is incorrect.

Semi-automatic firearms were invented in the 1890s, and have been common in the United States ever since. Today, about three-quarters of new handguns are semi-automatics. A large share of rifles and shotguns are also semi-automatics. Among the most popular semi-automatic firearms in the United States today are the Colt 1911 pistol (named for the year it was invented, and still considered one of the best self-defense handguns), the Ruger 10/22 rifle (which fires the low-powered .22 Long Rifle cartridge, popular for small game hunting or for target shooting at distances less than a hundred yards), the Remington 1100 shotgun (very popular for bird hunting and home defense), and the AR-15 rifle (popular for hunting game no larger than deer, for target shooting, and for defense). All of these guns were invented in the mid-1960s or earlier. All of them have, at various times, been characterized as “assault weapons.”

Unlike an automatic firearm, a semi-automatic fires only one round of ammunition when the trigger is pressed. (A “round” is one unit of

ammunition. For a rifle or handgun, a round has one bullet. For a shotgun, a single round contains several pellets).

In some other countries, a semi-automatic is usually called a “self-loading” gun. This accurately describes what makes the gun “semi”-automatic. When the gun is fired, the bullet (or shot pellets) travel from the firing chamber, down the barrel, and out the muzzle. Left behind in the firing chamber is the now empty case or shell that contained the bullets (or pellets) and the gunpowder.

In a semi-automatic, some of the energy from firing is used to eject the empty shell from the firing chamber, and then load a fresh round of ammunition into the firing chamber. Then, the gun is ready to shoot again, when the user is ready to press the trigger.

In some other types of firearms, the user must perform some action in order to eject the empty shell and load the next round. This could be moving a bolt back and forth (bolt action rifles), moving a lever down and then up (lever action rifles), or pulling and then pushing a pump or slide (pump action and slide action rifles and shotguns). A revolver (the second-most popular type of handgun) does not require the user to take any additional action in order to fire the next round.¹⁴

The semi-automatic has two principle advantages over lever action, bolt action, slide action, and pump action guns. First, many hunters prefer it because the semi-automatic mechanism allows a faster second shot. The difference may be less than a second, but for a hunter, this can make all the difference.

Second, and more importantly, the semi-automatic’s use of gunpowder energy to eject the empty case and then to load the next round substantially reduces how much recoil is felt by the shooter. This makes the gun much more comfortable to shoot, especially for beginners, or for persons without substantial upper body strength and bulk.

The reduced recoil also make the gun easier to keep on target for the next shot, which is important for hunting and target shooting, and extremely important for self-defense.

Semi-automatics also have their disadvantages. They are much more prone to misfeeds and jams than are simpler, older types of firearms, such as revolvers or lever action.

Contrary to the hype of anti-gun advocates and less-responsible journalists, there is no rate of fire difference between a so-called “assault” semi-automatic gun and any other semi-automatic gun.

How fast does a semi-automatic fire?

Here is a report on the test-firing of a new rifle:

187 shots were fired in three minutes and thirty seconds and one full fifteen shot magazine was fired in only 10.8 seconds.

Does that sound like a machine gun? A “semi-automatic assault weapon”? Actually it is an 1862 test report of the then-new lever-action Henry rifle, manufactured by Winchester. If you have ever seen a Henry rifle, it was probably in the hands of someone at a cowboy re-enactment, using historic firearms from 150 years ago.

The Winchester Henry is a lever-action, meaning that after each shot, the user must pull out a lever, and then push it back in, in order to eject the empty shell casing, and then load a new round into the firing chamber.

The lever-action Winchester is not an automatic. It is not a semi-automatic. It was invented decades before either of those types of firearms. And yet that old-fashioned Henry lever action rifle can fire one bullet per second.

By comparison, the murderer at Sandy Hook fired 150 shots over a 20 minute period, before the police arrived. In other words, a rate of fewer than 8 shots per minute. This is a rate of fire far slower than the capabilities of a lever-action Henry Rifle from 1862, or a semi-automatic AR-15 rifle from 2010. Indeed, his rate of fire could have been far exceeded by a competent person using very old technology, such as a break-open double-barreled shotgun.

Are semi-automatics more powerful than other guns?

The power of a firearm is measured by the kinetic energy it delivers. Kinetic energy is based on the mass (the weight) of the projectile, and its velocity.¹⁵ So a heavier bullet will deliver more kinetic energy than a lighter one. A faster bullet will deliver more kinetic energy than a slower bullet.¹⁶

How much kinetic energy a gun will deliver has nothing to do with whether it is a semi-automatic, a lever action, a bolt action, a revolver, or whatever. What matter is, first of all, the weight of the bullet, how much gunpowder is in the particular round of ammunition, and the length of the barrel.¹⁷

None of this has anything to do with whether the gun is or is not a semi-automatic. Manufacturers typically produce the same gun in several different calibers, sometimes in more than a dozen calibers.

Regarding the rifles which some people call “assault weapons,” they tend to be intermediate in power, as far as rifles go. Consider the AR-15 rifle in its most common caliber, the .223. The bullet is only a little bit wider than the puny .22 bullet, but it is longer, and thus heavier.

Using typical ammunition, an AR-15 in .223 would have 1,395 foot-pounds of kinetic energy.¹⁸ That’s more than a tiny rifle cartridge like the .17 Remington, which might carry 801 foot-pounds of kinetic energy. In contrast, a big-game cartridge, like the .444 Marlin, might have 3,040.¹⁹ This is why rifles like the AR-15 are suitable and often used for hunting small to medium

animals (such as rabbits or deer), but are not suitable for the largest animals, such as elk or moose.²⁰

Many (but not all) of the ever-changing group of guns which are labeled “assault weapons” use detachable magazines (a box with an internal spring) to hold their ammunition. But this is a characteristic shared by many other firearms, including many non-semiautomatic rifles (particularly, bolt-actions), and by the large majority of handguns. Whatever the merits of restricting magazine size (and we will discuss this below), the size of the magazine depends on the size the magazine. If you want to control magazine size, there is no point in banning certain guns which can take detachable magazines, while not banning other guns which also take detachable magazines.

Bans by name

Rather than banning guns on rate of fire, or firepower, the various legislative attempts to define an “assault weapon” have taken two approaches: banning guns by name, and banning guns by whether they have certain superficial features.

After a quarter century of legislative attempts to define “assault weapon,” the flagship bill for prohibitionists, by Senator Dianne Feinstein, still relies on banning 157 guns by name. This in itself demonstrates that “assault weapons” prohibitions are not about guns which are actually more dangerous than other guns.

After all, if a named gun really has physical characteristics which make it more dangerous than other guns, then legislators ought to be able to describe those characteristics, and ban guns (regardless of name) which have the supposedly dangerous characteristics.

Banning guns by name violates the Constitution’s prohibition on Bills of Attainder. It is a form of legislative punishment, singling out certain politically disfavored companies for a prohibition on their products.

Bans by features

An alternative approach to defining “assault weapon” has been to prohibit guns which have one or more items from a list of external features. These features have nothing to do with a gun’s rate of fire, its ammunition capacity, or its firepower. Below are various items from Senator Feinstein’s 1994 and/or 2013 bills.

Bayonet lugs. A bayonet lug gives a gun a military appearance. But to say the least, it has nothing to do with any real-world issue. Drive-by bayonetings are not a problem in this country.

Attachments for rocket launchers and grenade launchers. Since nobody makes guns for the civilian market that have such features, these bans would affect

nothing. Putting the words “grenade launcher” and “rocket launcher” into the bill gives readily-gulled media the opportunity to ask indignantly “How can anyone support guns made to shoot grenades!?!” Besides that, grenades and rockets are subject to extremely severe controls, and essentially impossible for civilians to acquire.

Folding or telescoping stocks. Telescoping stocks are extremely popular because they allow shooters to adjust the gun to their own size and build, to the clothing they’re wearing, or to their shooting position. Folding stocks make a rifle or shotgun much easier to carry in a backpack while hunting or camping. Even with a folding stock, the gun is still far larger, and less concealable, than a handgun.

Grips. The Feinstein bills outlaw any long gun that has a grip, or anything which can function as a grip. Of course, all guns have grips—or they couldn’t be held in the hand to fire at all. While this means that some bills would presumptively ban nearly all semi-autos, the likely intent is to ban pistol-style grips. This reflects the fact that gun prohibitionists learn much of what they know about guns by watching movies made by other gun prohibitionists, such as the “Rambo” series by Sylvester Stallone. So they think that the purpose of a “pistol grip” is to enable somebody to “spray fire” a gun. And, of course, the prohibitionists imagine that semiautomatic rifles *are* exactly the same as the machine guns in the Rambo movies.

In truth, a grip helps a responsible shooter stabilize the rifle while holding the stock against his shoulder. It is particularly useful in hunting, where the shooter will not have sandbags or a benchrest, or perhaps anything else on which to rest the forward part of the rifle. Accurate hunting is humane hunting. And should a long gun be needed for self-defense, accuracy can save the victim’s life.

The gun prohibition lobbies, though, oppose firearms accuracy. On the January 16, 2013, PBS Newshour, Josh Horwitz (an employee of the Coalition to Stop Gun Violence) said that grips should be banned because they prevent “muzzle rise” and thereby allow the shooter to stay on target.

Well, yes, a grip helps stabilize the gun so that a second shot (whether at a deer or a violent attacker) will go where the first shot went. Horowitz was essentially saying that guns which are easy to fire accurately should be banned.

This is backwards. It is like claiming that history books which are especially accurate should be banned, while less-accurate books could still be allowed.

Guns which are more accurate are better for all the constitutionally-protected uses of firearms, including self-defense, hunting, and target shooting. To single them out for prohibition is flagrantly unconstitutional.

Barrel covers. For long guns that do not have a forward grip, the user may stabilize the by holding the barrel with her non-dominant hand. A barrel cover or shroud protects the user's hand. When a gun is fired repeatedly, the barrel can get very hot. This is not an issue in deer hunting (where no more than a few shots will be fired in a day), but it is a problem in some other kinds of hunting, and it is a particular problem in target shooting, where dozens of shots will be fired in a single session.

Threaded barrel for safety attachments. Threading at the end of a gun barrel can be used to attach muzzle brakes or sound suppressors.

When a round is fired through a gun barrel, the recoil from the shot will move the barrel off target, especially for a second, follow-up shot. Muzzle brakes reduce recoil and keep the gun on target. It is very difficult to see how something which makes a gun more accurate makes it so "bad" that it must be banned.

A threaded barrel can also be used to attach as sound suppressor. Suppressors are legal in the United States; buying one requires the same very severe process as buying a machine gun. They are sometimes, inaccurately, called "silencers." They typically reduce a gunshot's noise by about 15-20 decibels, which still leaves the gun four times louder than a chainsaw.

But people who only know about firearms by watching movies imagine that a gun with a "silencer" is nearly silent, and is only used by professional assassins. In real life, sound suppressors are used by lots of people who want to protect their hearing, or to reduce the noise heard by neighbors of a shooting range. Many firearms instructors choose suppressors in order to help new shooters avoid the "flinch" that many novices display because of a gun's loudness.

The bans on guns with grips, folding stocks, barrel covers, or threads focus exclusively on the relatively minor ways in which a feature might help a criminal, and completely ignore the feature's utility for legitimate sports and self-defense. The reason that manufacturers include these features on firearms is because millions of law-abiding firearms owners choose them for entirely legitimate purposes.

Sen. Dianne Feinstein's 2013 Legislation

Sen. Feinstein attempts to reassure gun owners by also including an appendix of guns which she is not banning. In 1994, she exempted 670 "recreational" firearms. In 2013, the exempted guns list grows to over 2,200. Notably, not a single handgun appears on either of Sen. Feinstein's lists. The basis for a gun being exempted is because it is, supposedly, suitable for recreational uses. This ignores the holding of *District of Columbia v. Heller* that self-defense is the core of the Second Amendment.

The exemption list is meaningless. It is inflated by naming certain models repeatedly. For example, the Remington 870 pump action shotgun appears 16 different times, in its various configurations. Besides that, none of the exempted guns are covered by the bill's ban on guns by name or by feature.

Regarding grandfathered guns, Sen. Feinstein makes them non-transferable, thus imposing a slow-motion form of uncompensated confiscation.

Grandfathering with slow-motion confiscation may be a way-station to immediate confiscation, when political circumstances allow. As Sen. Feinstein told CBS 60 Minutes in 1995, "If it were up to me, I would tell Mr. and Mrs. America to turn them in—turn them all in."²¹

Would a ban do any good?

Connecticut banned so-called "assault weapons" in 1993, and the ban is still on the books. The Bushmaster rifle used by the Sandy Hook murderer was not an "assault weapon" under Connecticut law. Nor was it an "assault weapon" under the 1994-2004 Feinstein ban.²² The new Feinstein ban would cover that particular model of Bushmaster. But it would allow Bushmaster (or any other company) to manufacture other semi-automatic rifles, using a different name, which fire just as fast, and which fire equally powerful bullets.

To reiterate, the Sandy Hook murderer's rate of fire (150 shots in 20 minutes) could be duplicated by any firearm produced in the last century and a half.

We do not have to speculate about whether "assault weapon" bans do any good. A Department of Justice study commissioned by the Clinton administration found that they do not.

In order to pass the 1994 federal ban, proponents had to accept two related provisions. First, the ban would sunset after 10 years. Second, the Department of Justice would have to commission a study of the ban's effectiveness. The study would then provide Congress with information to help decide whether to renew the ban.

The Justice Department of Attorney General Janet Reno chose the Urban Institute to conduct the required study. The Urban Institute is well-respected and long-established progressive think tank in Washington. The study found the Feinstein ban to be a complete failure. There was no evidence that lives were saved, no evidence that criminals fired fewer shots during gun fights, no evidence of any good accomplished. Given the evidence from the researchers selected by the Clinton-Reno Department of Justice, it was not surprising that Congress chose not to renew the 1994 ban.

The final report was published by the U.S. Department of Justice's research arm, the National Institute of Justice, in 2004, based on data through 2003. The authors were Christopher S. Koper, Daniel J. Woods, and

Jeffrey A. Roth.²³ The 2004 final report replaced two preliminary papers by Roth and Koper, one of which was published in 1997, and the other in 1999.²⁴

The 2004 final report concludes: “we cannot clearly credit the ban with any of the nation’s recent drop in gun violence. . . . Should it be renewed, the ban’s effects on gun violence are likely to be small at best and perhaps too small for reliable measurement.”

As the paper noted, “assault weapons” “were used in only a small fraction of gun crimes prior to the ban: about 2% according to most studies and no more than 8%.” Most of those that were used in crime were pistols, not rifles.

Recall that “assault weapons” are arbitrarily categorized guns that are functionally equivalent to other guns. Thus, criminals, to the degree that the ban affects them at all, can and did easily substitute other guns for so-called “assault weapons.”

Regarding the ban’s impacts on crime, the 2004 paper concludes that “the share of crimes involving” so-called “assault weapons” declined, due “primarily to a reduction in the use of assault pistols,” but that this decline “was offset throughout at least the late 1990s by steady or rising use of other guns equipped with” magazines holding more than ten rounds. In other words, as anyone with common sense could have predicted, criminals easily substituted some guns for others. (Magazines are discussed in the next section.)

Unfortunately, Senator Feinstein’s website is somewhat inaccurate in claiming that the 1994 ban was helpful. The Senator’s web page on “assault weapons” lists five sources that allegedly show the “effectiveness” of the 1994 ban. However, four of those sources pertain, not to changes in crime rates, but to changes in weapon and magazine use. Such trends do not show that the 1994 ban was effective. Instead, they show, among other things, that the ban took place in a period of declining crime rates. Crime was declining before the imposition of the ban, and it continued to decline after the ban was lifted. The shift in gun use in crime also shows that criminals can easily replace “assault” semi-automatic guns with other, functionally equivalent semi-automatic guns.²⁵

The four cited sources show that if you make it illegal to manufacture a gun with a certain name, then firearms companies will make guns with different names. Then, guns with the “bad” names will become a smaller fraction of the total U.S. gun supply. Some of the guns in the legal pool of guns are eventually acquired by criminals. (The principal means are thefts, and “straw purchases,” in which a confederate who does not have a criminal record purchases a firearm on behalf of a convicted criminal. Straw purchases are federal felonies.) So over time, criminals have fewer guns with the “bad” name, and more guns with other names. Changing the names of the guns that criminals use does not make anyone any safer.

For the fifth source, the website makes the following claim:

In a Department of Justice study, Jeffrey Roth and Christopher Koper find that the 1994 Assault Weapons Ban was responsible for a 6.7 percent decrease in total gun murders, holding all other factors equal. . . .

Original source (page 2): Jeffrey A. Roth & Christopher S. Koper, “Impact Evaluation of the Public Safety and Recreational Firearms Use Protection Act of 1994,” The Urban Institute (March 1997).

Attentive readers will notice that Roth and Koper are two of the authors of the 2004 study discussed above. So why does the website cite the 1997 study by these researchers, but not their 1999 study or (regarding this point) their 2004 study? The later studies repudiated the preliminary guess in the 1997 study.

Here is what the 1997 study actually said:

Our best estimate is that the ban contributed to a 6.7 percent decrease in total gun murders between 1994 and 1995, beyond what would have been expected in view of ongoing crime, demographic, and economic trends. However, with only one year of post-ban data, we cannot rule out the possibility that this decrease reflects chance year-to-year variation rather than a true effect of the ban.²⁶

So initially, the researchers mistook a “year-to-year variation”—actually part of a long-term decline in crime rates—for the effects of the “assault weapons ban.” They corrected this error in their subsequent reports—a fact that Senator Feinstein’s website does not acknowledge.

What about state-level “assault weapons bans?” Remember that Connecticut has had such a ban since 1993. The Newtown murders are a vivid illustration that such bans do not save lives.

Economist John Lott examined data for the five states with “assault weapon” bans in his 2003 book, *The Bias Against Guns*. Controlling for sociological variables, and testing the five states with bans against the other 45 states, he found no evidence of a reduction in crime. To the contrary, the bans were associated with increased crime in some categories.²⁷ Whether the adverse effect Lott reports is a phantom of statistical analyses or random factors, or whether it is the result of criminals feeling relatively empowered due to state governments cracking down on law-abiding gun owners, the state-level data do not support the claim that “assault weapons” bans reduced crime rates.

It is ridiculous to claim that banning some semi-automatic guns, while leaving other, functionally equivalent semi-automatic guns legal, will reduce violent crime. It is analogous to banning knives with black handles, but not knives with brown handles, and expecting that to reduce knife-related crime.

Regarding mass murders in particular, *Mother Jones* examined 62 mass shootings since 1982, finding that 35 of the total 142 guns used were

designated as “assault weapons.”²⁸ To take one example not involving an “assault weapon,” in 1991 a man murdered 22 people at a Texas cafeteria using a pair of ordinary semi-automatic pistols, not an “assault weapon.” He reloaded the gun multiple times.²⁹ Tragically, in order to comply with laws against concealed carry, Suzanna Hupp had locked her own handgun in her vehicle before entering the cafeteria, rendering her defenseless as the attacker murdered her parents and many others.³⁰

Obviously criminals need not limit themselves to semi-automatic guns. Consider first the potential lethality of shotguns. The Winchester Model 12 pump action shotgun (defined as a “recreational” firearm by the 1994 federal “assault weapons” ban) can fire six 00 buckshot shells, each shell containing twelve .33 caliber pellets, in three seconds. Each of the pellets is larger in diameter than the bullet fired by an AKS (a semiautomatic look-alike of an AK-47 rifle). In other words, the Winchester Model 12 pump action shotgun can in three seconds unleash seventy-two separate projectiles, each single one capable of causing injury or death. The Remington Model 1100 shotgun (a common semiautomatic duck-hunting gun, also defined as a “recreational” firearm under the 1994 ban) can unleash the same seventy-two projectiles in 2.5 seconds. In contrast, an AKS would take about a minute to fire forty aimed shots (or perhaps twice that many without aiming).³¹ Notably, a pump-action shotgun is extremely easy to reload without lowering the gun from firing position, and each additionally loaded shell can be fired immediately. When mass murderers target victims in tightly-packed venues, a “recreational” shotgun could be particularly deadly.

The purpose of gun bans is to ban guns

The only true utility of a ban on “assault weapons” is to condition the public to bans on more guns. For example, Douglas Anthony Cooper advocates a ban on “assault” semi-automatics and “high-capacity” magazines, though he grants such legislation makes little or no difference. His solution is to ban all semi-automatic rifles and all pump-action shotguns, writing that pump-action shotguns “are in some ways *more* useful than many often-banned weapons, if you intend to shoot a huge number of people, quickly.”³²

In the 1996 op-ed quoted above, Charles Krauthammer calls for government to “disarm its citizenry,” and he sees the “assault weapons ban” as meaningful only as a step in that direction. Krauthammer argues, “The claim of the advocates that banning these 19 types of ‘assault weapons’ will reduce the crime rate is laughable. There are dozens of other weapons, the functional equivalent of these ‘assault weapons,’ that were left off the list and are perfect substitutes for anyone bent on mayhem.” Nevertheless, Krauthammer sees the ban as useful insofar as it leads to “real steps, like the banning of handguns,” down the road.³³

Although writer Christian Chung does not offer a detailed plan on the legislation he would eventually like to see in place, he refers to Feinstein’s

newly proposed “assault weapons ban” as “only the start” of much more extensive legislation. One of Chung’s complaints is that the “assault weapons ban” arbitrarily outlaws some semi-automatic guns because of some “cosmetic addition” while leaving functionally equivalent guns legal.³⁴

Writing for the *Atlantic*, senior editor Robert Wright similarly complains about the “assault weapons ban,” arguing that “the assault weapons issue is a red herring.” As he points out, “there’s no clear and simple definition of an assault weapon, and this fact has in the past led to incoherent regulation.” What is Wright’s preferred legislation? He advocates legislation to accomplish the following: “It’s illegal to sell or possess a firearm—rifle or pistol—that can hold more than six bullets. And it’s illegal to sell or possess a firearm with a detachable magazine.”³⁵ In other words, Wright wants to outlaw the overwhelming majority of semi-automatic guns.

Magazines

Nationally, anti-gun advocates are calling for a ban on magazines holding more than 10 rounds. New York Governor Andrew Cuomo has gone even further, with a ban on anything holding more than seven.³⁶ These bans are unconstitutional, and harmful to public safety.

A magazine is the part of the firearm where ammunition is stored. Sometimes the magazine is part of the firearm itself, as in tube magazines underneath barrels. This is typical for shotguns.

For rifles and handguns, the typical magazine is detachable. A detachable magazine is a rectangular or curved box, made of metal or plastic. At the bottom of the magazine is a spring, which helps push a fresh round of ammunition into the firing chamber, after the empty shell from the previous round has been ejected. Some people use the word “clip,” but this is incorrect.

The type or model of gun does not determine what size magazine can be used. Any gun that uses a detachable magazine can accommodate a detachable magazine of any size.

As detailed above, the 1994 Feinstein ban was predicated on the theory that “recreational” firearm use is legitimate, and other firearms use is not. The ban did in fact impede recreational firearms use. More importantly, the ban is plain a violation of *Heller*, which affirms the right of defensive gun ownership.

For target shooting competitions, there are many events which *require* the use of magazines holding more than 10 rounds. For hunting, about half the states limit the magazine size that a hunter can carry in the field, but about half the states do not.

In some scenarios, such as deer hunting, it is quite true that a hunter will rarely get off more than two shots at a particular animal. But in other situations, particularly pest control, the use of 11 to 30 round magazines is quite typical, because the hunter will be firing multiple shots. These include

the hunting of packs of feral wild hogs (which are quite strong, and are often difficult to put down with a single shot), prairie dogs, and coyotes.

More generally, the rifle that might shoot only one or two shots at a deer might be needed for self-defense against a bear, or against human attackers. In 2012, Arizona repealed its limitations on magazine capacity for hunters precisely because of the need for self-defense against unexpected encounters with smuggling gangs in the southern part of the state. It is well-established that drug traffickers and human traffickers often use the same wild and lonely lands that hunters do.

For the firearms that are most often chosen for self-defense, asserting that any magazine over 10 (or seven) rounds is “high capacity” is incorrect. The term “high-capacity magazine” might have a legitimate meaning when it refers to a magazine that extends far beyond that intended for the gun’s optimal operation. For example, although a semi-automatic handgun can accept a 30-round magazine, such a magazine extends far beneath the gun grip, and it is therefore impractical to use with a concealed-carry permit, to take one example. For a handgun, a 30-round magazine may be a “high-capacity magazine.”

The persons who have the most need for actual high-capacity magazines are persons who would have great difficulty changing a magazine—such as elderly persons, persons with handicaps, persons with Parkinson’s disease, and so on. For a healthy person, changing a magazine takes only a second or two. How is this accomplished? Typically a gun’s magazine-release button is near the trigger. To change a magazine, the person holding the gun presses the magazine-release button with a thumb or finger. The magazine instantly drops to the floor. While pushing the magazine-release button with one hand, the other hand grabs a fresh magazine (which might be carried in a special holster on a belt) and bringing it towards the gun. The moment the old magazine drops out, a fresh one is inserted.³⁷

Although changing magazines is quick, persons being attacked by violent criminals will typically prefer not to spend even two seconds in a magazine change. This is why semi-automatic handguns often come factory-standard with a magazine of 11 to 19 rounds. For example, Rep. Gabrielle Giffords has said that she owns a 9mm Glock handgun. The most popular Glocks in this caliber come standard with 15 or 17 round magazines.³⁸

For most other manufacturers as well, handgun magazines with a capacity of 11 to 19 rounds are factory standard. A ban on magazines with a capacity of more than 10 rounds means a ban on the most common and most useful magazines purchased for purposes of recreational target practice and self-defense.

One thing that proves the obvious usefulness of standard capacity magazines is the fact that most police officers use them. An officer typically carries a semi-automatic handgun on a belt holster as his primary sidearm. The magazine capacity is typically in the 11-19 range.

Likewise, the long gun that is carried in police patrol cars is quite often an AR-15 rifle with a 30-round magazine.³⁹

True, a police officer is much more likely than other civilians to find him- or herself in a confrontation with violent criminals. Nevertheless, every civilian faces some risk of such a confrontation, and every law-abiding citizen has a moral right to own the best tools of self-defense should such a confrontation come to pass. Although different guns work better for different individuals in different circumstances, in many contexts the officer's advice is equally sound for non-police civilians who own a gun for self-defense.

Why might someone "need" a factory-standard fifteen-round magazine for a common 9 mm handgun? Beyond the fact that government should recognize and protect people's rights, not dictate to free Americans what they "need" to own, standard-capacity magazines can be extremely useful for self-defense. This is true in a variety of circumstances, such as if a defender faces multiple attackers, an attacker is wearing heavy clothing or body armor, an attacker is turbo-charged by methamphetamine or cocaine, an attacker poses an active threat from behind cover, or a home invader cuts the lights to the home before entering at night. Especially because, in stressful circumstances, police as well as non-police civilians often miss when firing a handgun even at close range, having the extra rounds can be crucially important in some defensive contexts.

Consider the advantages a criminal has over his intended victims. The criminal often takes time to carefully prepare an attack; the victim is caught off-guard. The criminal has the element of surprise; the victim is the one surprised. The criminal can adapt his plans, as by selecting different weaponry; the victim must respond with what's at hand at the moment of attack. A criminal can, for instance, substitute a shotgun or a bag full of revolvers for a semi-automatic gun. A criminal can pack multiple magazines if he uses a semi-automatic gun. The intended victim, on the other hand, usually will have on hand at most a single defensive gun, carrying (if it is a semi-automatic) a single magazine. Thus, what legislation such as a ban on "high-capacity" magazines does is give the criminal a greater advantage over his intended victims.

Would a magazine ban do any good?

Recall that in 2004 the National Institute of Justice study found that the 1994-2004 ban on the manufacture or import of such magazines had no discernible benefit. As the authors noted, the existing supply of such magazines was so vast that criminals apparently had no trouble obtaining magazines of whatever size they wished.⁴⁰

Since the September 2004 expiration of the ban on new magazines, the supply has grown vaster still. In other words, we know that the pre-1994 supply of magazines was so large that nine years of prohibition had no effect.

The much larger supply of magazines as of 2013 means that the already-demonstrated period of nine years of futility would be far longer.

No one can say if a ban on new magazines would ever do any good. But we can be rather certain that a ban would be ineffectual for at least fifteen years, and perhaps many more. Preventing the next Newtown is something that requires solutions which will start working this year—and not futile laws which, in the best case scenario, might possibly begin to have their first benefits around 2030.

It is entirely possible to speculate what might happen if criminals did not have magazines with 11 or more rounds, just as one can speculate about what might happen if all criminals could not obtain stolen cars, or if criminals could not obtain guns, or if all criminals were left-handed. But there is no particular reason to think that any of these scenarios might ever come true.⁴¹

A national ban on the millions of currently owned “high capacity” magazines would require a heavy-handed police state to enforce. The new Cuomo ban in New York will be enforceable only if the state’s motto of “The Empire State” is changed to “The Police State.”

It would be possible to outlaw the legal transfer of grandfathered magazines, but this would not remove “high-capacity” magazines from the black market.

Regarding “shootout” scenarios, the types of criminals most likely to get into shootouts with the police or with other criminals are precisely the types of criminals expert at acting on the black market. Although gun prohibitionists often link “assault weapons” to gang violence associated with the illegal drug trade,⁴² they miss the irony of their argument. They are, in effect, claiming that gangs operating the black market in drugs will somehow be restricted from acquiring “high capacity” magazines by legislation limiting the manufacture and sale of such magazines. In short, their argument—at least as it pertains to career criminals—is ludicrous. If gangsters can obtain all the cocaine they want, despite a century of severely-enforced prohibition, they are going to be able to get 15 round magazines.

Besides that, magazines are not very difficult to build. Anyone with moderate machine shop skills can build a small metal box and put a spring in it. Building magazines is vastly easier than building guns, and we know that tribespeople in Ghana (who do not have access to high-quality machine shops) produce a hundred thousand working copies of the AK-47 per year.⁴³

Moreover, 3-D printing technology has *already* produced “printed” plastic magazines.⁴⁴ It’s not very hard—just a box in a particular shape, along with a spring. For manufacturing actual firearms, 3-D printing is currently just a hypothetical; a firearm needs to be strong enough to withstand (over the course of its use) many thousands of gunpowder explosions in the firing chamber. But for a mere magazine, the current strength of printed plastics is sufficient.

We can limit the discussion, then, to mass murders in which the perpetrator targets victims randomly, often seeking the global infamy the mass media so readily provide them. Of course some such people could still illegally purchase a “high capacity magazine” on the black market. Given that 36 percent of American high school seniors illegally acquire and consume marijuana,⁴⁵ it is unrealistic to think that someone intent on mass mayhem would be unable to find his magazine of choice on the black market.

Besides that, the truly high-capacity magazines (e.g., a 100 round drum), are very prone to malfunction. For example, during the mass murder at the movie theater in Aurora, the murderer’s 100-round magazine malfunctioned, causing the killer to cease using the gun with the magazine.⁴⁶ Had the killer had numerous, smaller magazines, he would have been able to fire more rounds from that particular gun. Hundred round magazines are novelty items, and are not standard for self-defense by civilians or police.

Advocates of the ban on standard capacity magazines assert that while the attacker is changing the magazine, one of the victims can tackle him. There are three known instances where something this may have happened: in Springfield, Oregon, in 1998; in Tucson, Arizona, in 2011;⁴⁷ and the Long Island Railroad in 1991.

Far more commonly, however, the victims are fleeing, and are not close enough to the shooter to tackle him during a two-second interval. At Newtown, the murderer changed magazines many times, firing only a portion of the rounds in each magazine.⁴⁸ At the 1991 murders at the Luby’s Texas cafeteria (24 dead), the perpetrator changed magazines multiple times. In the Virginia Tech murders, the perpetrator changed magazines 17 times.⁴⁹

The *Heller* decision teaches us that one does not decide on the constitutionality of banning something simply by looking at instances of misuse. Handguns are used in thousands of homicides annually, and in several hundred thousand other gun crimes. A ban on handguns (imagining it would be effective) would have orders of magnitude greater benefits than a ban on magazines holding more than 10 rounds (imagining that too to be effective).

Heller, however, reminds us that the Second Amendment has already done the cost-benefit analysis. The Framers were quite familiar with gun crime, and with lawful defensive gun use. The arms and accessories protected by the Second Amendment are those which are commonly used by law-abiding citizens for legitimate purposes, especially self-defense. In today’s America, this certainly includes handguns and rifles with magazines that prohibitionists would consider “large.”

International Comparisons

Some Americans, including Howard Dean, the former chair of the Democratic National Committee, have advocated the mass confiscation of

firearms. Their model is the confiscations that took place in the past quarter-century in Great Britain.

This dystopian situation in Great Britain actually shows the perils of repressive anti-gun laws:

- In the United States, only about 13% of home burglaries take place when the occupants are home, but in Great Britain, about 59% do. American burglars report that they avoid occupied homes because of the risk of getting shot. English burglars prefer occupied homes, because there will be wallets and purses with cash, which does not have to be fenced at a discount. British criminals have little risk of confronting a victim who possesses a firearm. Even the small percentage of British homes which have a lawfully-owned gun would not be able to unlock the gun from one safe, and then unlock the ammunition from another safe, in time to use the gun against a home invader. It should hardly be surprising, then, that Britain has a much higher rate of home invasion burglaries than does the United States.⁵⁰
- Overall, the violent crime rate in England and Wales is far above the American rate. (Using the standard definition for the four most common major violent crimes: homicide, rape, robbery, and aggravated assault.)
- According to the United Nations (not exactly a “pro-gun” organization), Scotland is the most violent nation in the developed world.⁵¹

In the early 20th century, the Great Britain had virtually no gun control, virtually no gun control. Today, it has a plethora of both.

What went wrong? Various minor and ineffectual gun controls were enacted in the late nineteenth and early twentieth centuries; proposals for more extensive controls ran into strenuous opposition in Parliament from MPs who still believed in natural rights. The advocacy for gun control was almost always accompanied by a bodyguard of lies, such as when the government, fearful of a workers rebellion, pushed through the Firearms Act of 1920. The government falsely told the public that gun crimes were rapidly increasing, and hid the law’s true motive (political control) from the public, presenting the law as a mere anti-crime measure.⁵² In practice, the law eliminated the right of British subjects to be armed, and turned it into a privilege. The Firearms Act also began a decades-long process of eliminating the public’s duty to protect their society and right to protect themselves. By the late 20th century, Great Britain had one of the lowest rates of gun ownership in the Western World. Only 4% of British households would admit gun ownership to a telephone pollster.⁵³

In 1998, after a known pedophile used a handgun to murder kindergarten children in Dunblane, Scotland, the Parliament banned non-government possession of handguns. As a result the Gun Control Network (a prohibition advocacy group) enthused that “present British controls over firearms are regarded as ‘the gold standard’ in many countries.” According to GCN spokesperson Mrs. Gill Marshall-Andrews, “the fact that we have a gold standard is something to be proud of...”⁵⁴

A July 2001 study from King’s College London’s Centre for Defence Studies found that handgun-related crime increased by nearly 40% in the two years following implementation of the handgun ban. The study also found that there had been “no direct link” between lawful possession of guns by licensed citizens and misuse of guns by criminals. According to the King’s College report, although the 1998 handgun ban resulted in over 160,000 licensed handguns being withdrawn from personal possession, “the UK appears not to have succeeded in creating the gun free society for which many have wished. Gun related violence continues to rise and the streets of Britain...seem no more safe.”⁵⁵

A few weeks before the King’s College study was released, Home Office figures showed that violent crime in Great Britain was rising at the second fastest rate in the world, well above the U.S. rate, and on par with crime-ridden South Africa.⁵⁶ In February 2001, it was reported that 26 percent of persons living in England and Wales had been victims of crime in 1999.⁵⁷ Home Secretary Jack Straw admitted, “levels of victimisation are higher than in most comparable countries for most categories of crime.” On May 4, 2001, *The Telegraph* disclosed that the risk of a citizen being assaulted was “higher in Britain than almost anywhere else in the industrialized world, including America.”⁵⁸

As King’s College observed, with passage of the Firearms Act of 1997, “it was confidently assumed that the new legislation effectively banning handguns would have the direct effect of reducing certain types of violent crime by reducing access to weapons.”⁵⁹ The news media promised that the “world’s toughest laws will help to keep weapons off the streets.”⁶⁰

Yet faster than British gun-owners could surrender their previously-registered handguns for destruction, guns began flooding into Great Britain from the international black market (especially from eastern Europe and China), driven by the demands of the country’s rapidly developing criminal gun culture.⁶¹

It is true that there are far fewer gun deaths in Great Britain than in the United States. Most of the difference is due to different methods of suicide; guns being scarce in Great Britain, suicides are perpetrated with other methods.

The one major criminal justice statistic in which Great Britain appears to be doing better than the U.S. is the homicide rate, with the U.S. rate at a little more than 4, and the England and Wales rate at 1.4. However, the U.S.

rate is based on initial reports of homicides, and includes lawful self-defense killings (about 10-15% of the total); the England and Wales rate is based only on final dispositions, so that an unsolved murder, or a murder which is pleaded down to a lesser offense, is not counted a homicide. In addition, multiple murders are counted as only a single homicide for Scottish statistics.⁶²

But let's assume that the entire difference is the homicide rates between the U.S. and Great Britain is due to gun control. The advocates of British-style controls in America ought to acknowledge the fearsome price that gun control has exacted on the British people: an astronomical rate of rape, of home invasions, and of violent crime in general.

Registration

An important difference between Great Britain and the United States is that in Great Britain, many people complied with gun confiscation because their guns were already registered.

The evidence is overwhelming that Americans will not comply with gun confiscation programs; a recent Rasmussen poll showed that 65 percent of American gun owners would not obey government orders to surrender their guns.

Nor will Americans obey laws which retroactively require them to register their guns. During the first phase of the "assault weapon" hoax, several states and cities passed bans, and allowed grandfathered owners to keep the guns legally by registering the guns. The non-compliance rates for retroactive registration were always at least 90%, and frequently much higher than that.⁶³

Americans are quite aware that gun registration can be a tool for gun confiscation. That is why Congress has enacted three separate laws (1941, 1986, and 1993) to prohibit federal gun registration. Congress first acted in 1941 because Congress saw how Hitler and Stalin had been using gun registration for confiscation.⁶⁴ Since then, registration lists have been used in many countries, and in New York City, for confiscation. Indeed, even if we look only at registration laws enacted by democratic nations, in most countries gun registration lists have eventually been used for the confiscation of many firearms.

Congress cannot expand or contract the judicially-declared scope of a constitutional right;⁶⁵ but Congress can, under section 5 of the Fourteenth Amendment, enact "prophylactic" measures to prevent state and local governments from endangering civil rights,⁶⁶ provided that these laws are "congruent and proportional" to the problem that Congress is addressing.⁶⁷ Congress should use this power to prohibit all state and local registration of guns and gun owners, and to require the destruction of any existing records.

Persons who are advocating gun confiscation are irresponsible in the extreme. Confiscation would endanger the lives of law enforcement officers

who were ordered to carry it out. We should remember that the political dispute between the American Colonies and Great Britain turned into a shooting war precisely at the moment when the British attempted house-to-house gun confiscation.⁶⁸

Mass prohibitions of guns or gun accessories invite a repetition of the catastrophe of alcohol prohibition. Just as alcohol prohibition in the 1920s and drug prohibition in modern times have spawned vast increases in state power, and vast infringements on the Bill of Rights, another national war against the millions of Americans who are determined to possess a product which is very important to them is almost certain to cause tremendous additional erosion of constitutional freedom and traditional liberty. Legal and customary protections unreasonable search and seizure, against invasion of privacy, against selective enforcement, and against harsh and punitive statutes would all suffer.⁶⁹

What Can be Done?

Acknowledging success

Regarding firearms crime in general (and not just the highly-publicized mass homicides), we should start by acknowledging the success of policies of the last three decades. Since 1980, the U.S. homicide rate has fallen by over half, from more than 10 victims per 100,000 population annually, to under 5 today.⁷⁰

Homicide, as horrifying as it is, did not make the top fifteen causes of death for 2011, according to preliminary data published by the Centers for Disease Control.⁷¹ Of the 2,512,873 total deaths for that year, the large majority were caused by health-related problems. The fifth leading cause of death was accidents, at 122,777 deaths. Suicide made the top ten with 38,285 deaths.

Appropriately, the media tend to report homicides much more frequently and emphatically than they report deaths from other causes. The problem is that the uncritical consumer of media might develop a skewed perspective of the actual risks he or she faces.

In 2011, homicides numbered 15,953, or 0.63 percent of all deaths. Of those, 11,101 were caused by “discharge of firearms”—or nearly 70 percent of all homicides.

The vast majority of these were from handguns, which shotguns in second place. The FBI reports that in 2011, 13 percent of homicides were committed with “knives or cutting instruments,” while nearly 6 percent were committed with “personal weapons” such “hands, fists, feet, etc.”⁷²

Most of the guns which are inaccurately called “assault weapons” are rifles. All types of rifles combined comprise only about two percent of homicide weapons—far less than “blunt instruments” such as hammers, clubs, and so on.

As for accidents in 2011, 34,676 deaths were caused by “motor vehicle accidents”; 33,554 deaths by “accidental poisoning and exposure to noxious substances”; 26,631 deaths by falls; 3,555 deaths by “accidental drowning and submersion”; and 851 deaths by “accidental discharge of firearms.”⁷³

Regarding violent crime in general, violent crime has been on a 20-year decline, so that today Americans are safer from violent crime than at any time since the early 1960s.⁷⁴

The news is even better for young people. According to Bureau of Justice Statistics (part of the U.S. Department of Justice), “From 1994 to 2010, the overall rate of serious violent crime against youth declined by 77%.”⁷⁵

These successes have taken place during a period when American gun ownership has soared. In 1964, when crime was about the same as it is now, per capita gun ownership was only .45, less than 1 gun per 2 Americans. In 1982, there were about .77 guns per capita. (About 3 guns per 4 Americans). By 1994, that had risen to .91 (9 guns per 10 Americans). Today, there are slightly more guns in America than Americans. We have increased from 232 million guns in 1982 to over 308 million in 2010.⁷⁶

The causes of crime fluctuations are many. They include (among other things) changes in illegal drug activity and government enforcement thereof, changes in police tactics, changes in incarceration rates, changes in the average age of the population (which in the U.S. has been increasing), and changes in reporting (which can mask real changes in underlying crime trends).

It would not be accurate to say that increased gun ownership, and the spread of laws allowing the licensed carry of handguns is the only cause of progress that has been made in recent decades. We can say with certainty that “more guns” is not associated with “more crime.” If anything, just the opposite is true.

Armed defenders

Sandy Hook Elementary School was a pretend “gun free zone”: responsible adults were legally prohibited from effectively protecting the children in their care, while an armed criminal was could not be prevented from entering.

What did finally stop the murderer? He killed himself just before being confronted by men carrying guns, guns that no doubt included “assault weapons” with “high-capacity magazines.” As the Associated Press reports, the murderer “shot himself in the head just as he heard police drawing near to the classroom where he was slaughtering helpless children.”⁷⁷

The Newtown murders took place in a state with a ban on “assault weapons,” and with a strict system of gun owner licensing and registration—one of the most restrictive in the nation. Not even the most restrictive laws (short of complete prohibition of all legal gun ownership) can remedy the problems of an absent, divorced, and detached father, and a custodial mother

who is so recklessly irresponsible that even while she tells people in town about her plans to have her son committed to a mental institution, she leaves her registered guns readily accessible to him.

Armed guards are generally successful at deterring the robbery of diamond stores and banks, and they are equally legitimate for preventing the murder of children, who are far more valuable than diamonds or greenbacks.

There are at least 10 cases in which armed persons have stopped incipient mass murder: Pearl High School in Mississippi; Sullivan Central High School in Tennessee; Appalachian School of Law in Virginia; a middle school dance in Edinboro, Pa.; Players Bar and Grill in Nevada; a Shoney's restaurant in Alabama; Trolley Square Mall in Salt Lake City; New Life Church in Colorado; Clackamas Mall in Oregon (three days before Sandy Hook); Mayan Palace Theater in San Antonio (three days after Sandy Hook).

Sometimes the hero was an armed school guard (Sullivan Central High). Sometimes it was an off-duty police officer or mall security guard (Trolley Square, Mayan Theater, Clackamas Mall and the Appalachian Law School, where two law students, one of them a police officer and the other a former sheriff's deputy, had guns in their cars). Or a restaurant owner (Edinboro). Or a church volunteer guard with a concealed carry permit (Colorado). Or a diner with a concealed carry permit (Alabama and Nevada). At Pearl High School, it was the vice principal who had a gun in his car and stopped a 16-year-old, who had killed his mother and two students, before he could drive away, perhaps headed for the junior high.

For schools, Utah provides a model. In Utah, if a law-abiding adult passes a fingerprint-based check and a safety training class, then he or she is issued a permit to carry a concealed handgun throughout the state. Thus, teachers may carry at school. Several Texas school districts also encourage armed teachers. Connecticut, however, is similar to most of the other 40 other states that generally allow law-abiding adults to carry in public places: It limits where guns may be carried, and no civilian, not even teachers and principals, may carry at school.

Anti-gun ideologues invent all sorts of fantasy scenarios about the harms that could be caused by armed teachers. But the Utah law has been in effect since 1995, and Texas since 2008, with not a single problem.⁷⁸

Gun prohibitionists also insist that armed teachers or even armed school guards won't make a difference. But in the real world, they have—even at Columbine, where the armed “school resource officer” (a sheriff's deputy, in this case) was in the parking lot when the first shots were fired. The officer twice fired long-distance shots and drove the killers off the school patio, saving the lives of wounded students there. Unfortunately, however, the officer failed to pursue the killers into the building—perhaps due to a now-abandoned law enforcement doctrine of waiting for the SWAT team to solve serious problems.

Whatever should be done in the long run, the long gun will be much too late to stop the next copycat sociopath who attacks a school (or a mall or movie theater). More concealed carry laws like the ones in Utah and Texas are the best way to save lives right now. Teachers who are already licensed to carry a gun everywhere else in the state should not be prevented from protecting the children in their care.

Doing something effective

While armed defense is a necessity, in the short run, to thwart copycat killers, long-term solutions are also necessary.

A very large proportion of mass murders—and about one-sixth of “ordinary” murderers—are mentally ill. Better care, treatment, and stronger laws for civil commitment could prevent many of these crimes. Of course any involuntary commitment must respect the Constitution which, as applied by the U.S. Supreme Court, requires proof by “clear and convincing evidence” that the individual is a danger to himself or others in order for the person to be committed. Better mental health treatment is expensive in the short run, but pays for itself in the long run, through reduced criminal justice and imprisonment costs, not to mention reduced costs to victims.⁷⁹

Although “universal background checks” are, at the highest level of generality, a popular idea, one should pay attention to the details. Every “background check” bill introduced in Congress in the last several years has come from Michael Bloomberg’s gun prohibition lobby, and has included a gun registration component. For the reasons detailed above, gun registration is anathema to the Second Amendment.

Consider, for example, the misnamed “Fix Gun Checks Act,” from the previous Congress, S. 436 (sponsored by Sen. Schumer). Here is what the bill actually would have done:

- Create a national firearms registry.
- Make it a federal felony to temporarily allow someone to use or hold’s one’s firearm in the following circumstances:
 - While a friend visits your home.
 - While taking a friend target shooting on your property, or on public lands where target shooting is allowed.
 - While instructing students in a firearms safety class.
- Current law bans gun possession if there has been a formal determination that a person’s mental illness makes him a danger to himself or others. S. 436 would abolish the requirement for a fair determination and a finding of dangerousness. Instead, S. 436 would ban gun possession by anyone who has ever been ordered to receive counseling for any mental problem. This would include:

- A college student who was ordered to get counseling because the school administration was retaliating against him for criticizing the administration.
- An adult who when in fifth grade was ordered to receive counseling for stuttering, for attention deficit disorder, or for mathematics disorder.
- A person who was once ordered to receive counseling for homosexuality, cross-dressing, or for belonging to some other sexual minority.
- A woman who was raped in an elevator, and who has therefore developed a phobia about elevators.
- S. 436 rejects the constitutional standards of due process and fair trial. S. 436 allows for the prohibition of gun ownership based on an arrest, rather than a conviction. Thus, S. 436 would make it gun possession a felony for a person who was once arrested for marijuana possession, and was later found innocent because a police officer mistook tobacco for marijuana.
- Among the reasons that S. 436 was unconstitutional was because it:
 - Strips a person of a fundamental constitutional right because of an arrest, rather than a conviction.
 - Is purportedly based on the congressional power “to regulate Commerce . . . among the several States”—but its transfer bans apply solely to transfers that are not commerce, and are not interstate.
 - Violates the scope of gun control laws approved by the Supreme Court in *District of Columbia v. Heller*. The Heller Court approved of some “laws imposing conditions and qualifications on the commercial sale of arms.” Yet S. 436 attempted to control non-retail “transfers” that are not even “commercial” or “sales”—such as letting a friend use a gun while target shooting.
 - Is unconstitutionally “overbroad” because rather than banning gun possession by persons who have been determined to pose a threat to themselves or others (current laws) bans gun possession by anyone who has been ordered to get counseling even for non-dangerous mental problems (such as nicotine dependence, or lack of interest in sex).
 - Violates the Fifth Amendment requirement of due process of law, because it imposes gun bans without due process—such as a mere arrest, or the mere order by a school employee or work supervisor that a person receive counseling. Regardless of whether that employee or supervisor offered the person a fair hearing, and regardless of whether the counselor eventually determined that the person had no mental problem at all.

- Violates the equal protection of the laws guarantee which is implicit in the Fifth Amendment, because it bans possession for categories of persons who cannot rationally be classified as more dangerous than other persons. The victims of S. 436's unfair gun bans would include homosexuals and other sexual minorities, persons who have a phobia about elevators or diseases, and many other persons who are ordered into counseling for reasons that have nothing to do with dangerousness.

Today, the media are reporting that a backroom deal is being worked out in the Senate on "universal background checks." Senators who sincerely follow their oath to protect the United States Constitution would not support a bill which has a title of "Universal Background Checks," but which contains any of the poisonous anti-constitutional provisions of last session's Bloomberg "background checks" bill.

Moreover, without universal gun registration, mandated background checks on purely private sales (e.g., friends in a hunting club selling guns to each other) are impossible to enforce. Universal gun registration is impossible in practice, and would lead to massive resistance. When Canada tried to impose universal gun registration, the result was a complete fiasco. The registration system cost a hundred times more than promised. Non-compliance (by Canadians, who are much more compliant with government than Americans) was at least fifty percent. And the registration system proved almost entirely useless in crime solving or crime prevention. In 2012, the Canadian government repealed the registration law, and ordered all the registration records destroyed.

Obviously, criminals who are selling guns to each (which is completely illegal, and already subject to severe mandatory sentences) are not going to comply with a background check mandate. It will be irrelevant to them.

Ordinary law-abiding citizens who selling guns to each other might be happy to take the gun into a firearm store for a voluntary check, provided that the check is not subject to a special fee, that there is no registration, and that the check is convenient and expeditious. Changing statutes and regulations so that gun stores can carry out voluntary checks for private sellers is the most that can be expected, realistically. President Obama's order that the Bureau of Alcohol, Tobacco, Firearms and Explosives provide instructions to dealers on how to facilitate voluntary checks is a good idea. In light of this order, there is no need for Congress to enact additional legislation to impose a futile and unenforceable mandate.

"Doing something" is the slogan for politicians who seek merely to exploit terrible crimes for self-serving purposes. "Doing something effective" is the approach of people who want to save lives and protect the public, especially children.

The lives of Americans, especially schoolchildren, depend on the choice that elected officials make between these two alternatives.

¹ Some of this testimony is based on a Policy Analysis which Kopel and co-author Ari Armstrong are writing for the Cato Institute. The published Cato version will include more complete endnotes, which were impossible to provide for this testimony, given the very short time available.

² Christopher S. Koper, Daniel J. Woods, and Jeffrey A. Roth, “An Updated Assessment of the Federal Assault Weapons Ban: Impacts on Gun Markets and Gun Violence, 1994-2003: Report to the National Institute of Justice, United States Department of Justice,” University of Pennsylvania, June 2004, http://www.sas.upenn.edu/jerrylee/research/aw_final2004.pdf.

³ Charles Krauthammer, “Disingenuous Debate on Repeal of Assault Weapons Ban,” *Chicago Tribune*, April 8, 1996, http://articles.chicagotribune.com/1996-04-08/news/9604080024_1_assault-weapons-ban-gun-control-crime-rate.

⁴ Josh Sugarmann, “Conclusion,” *Assault Weapons and Accessories in America*, Violence Policy Center, 1988, <http://www.vpc.org/studies/awaconc.htm>.

⁵ See, for example, David Kopel, “Guns, Mental Illness and Newtown,” *Wall Street Journal*, December 17, 2012, <http://online.wsj.com/article/SB10001424127887323723104578185271857424036.html>.

⁶ See Ari Armstrong, “Civilian Responses to Active Shooters,” *Free Colorado*, July 21, 2012, <http://ariarmstrong.com/2012/07/civilian-responses-to-active-attackers>; *Active Shooter Survival* (DirectMeasures, 2012), Survival Edge Series, Disc 1, <http://www.directmeasures.com/buy-ACT-LastResort.htm>.

⁷ Alexander Abad-Santos, “This Is What Teachers Learning to Shoot Guns Look Like,” *Atlantic Wire*, December 28, 2012, <http://www.theatlanticwire.com/national/2012/12/post-newtown-teacher-gun-training-classes/60409>; Angela K. Brown, “Texas Town Allows Teachers to Carry Concealed Guns,” Associated Press, December 20, 2012, <http://www.usatoday.com/story/news/nation/2012/12/20/texas-town-teachers-guns/1781663>; Cathy Lynn Grossman and Greg Toppo, “Trainer for Gun-Toting Teachers: ‘Make it Hard to Kill a Kid,’” *USA Today*, December 28, 2012, <http://www.usatoday.com/story/news/nation/2012/12/27/gun-classes-teachers-utah-ohio-shooting/1793773>; Michelle Malkin, “The Gift of Self-Empowerment,” December 26, 2012, <http://michellemalkin.com/2012/12/26/the-gift-of-self-empowerment>.

⁸ Tim Graham, “Des Moines Register Publishes Gun-Ban Column Advocating Deadly Violence Against NRA, GOP Leaders,” *Fox News*, January 2, 2013, <http://www.foxnews.com/opinion/2013/01/02/liberal-ex-columnist-death-threats-published-in-des-moines-register>.

⁹ Douglas Anthony Cooper, “A Proven Way to End the Gun Slaughter: Will We Fight for It?,” *Huff Post Politics*, December 26, 2012, http://www.huffingtonpost.com/douglas-anthony-cooper/proven-way-end-slaughter_b_2341815.html.

¹⁰ Justin Peters, “How Many Assault Weapons Are There In America? How Much Would It Cost the Government To Buy Them Back?,” *Slate*, December 20, 2012, http://www.slate.com/blogs/crime/2012/12/20/assault_rifle_stats_how_many_assault_rifles_are_there_in_america.html.

¹¹ Some machine guns are or may be set to fire a certain number of rounds with one pull of the trigger.

¹² “Fully-Automatic Firearms,” NRA-ILA, July 29, 1999, <http://www.nraila.org/news-issues/fact-sheets/1999/fully-automatic-firearms.aspx>; “National Firearms Act (NFA)—

Machine Guns,” <http://www.atf.gov/firearms/faq/national-firearms-act-machine-guns.html>, accessed January 3, 2013.

¹³ See David B. Kopel, *Guns: Who Should Have Them* (New York: Prometheus Books, 1995), p. 162; *Defense Intelligence Agency, Small Arms Identification and Operation Guide—Eurasian Communist Countries* (Washington, D.C.: Government Printing Office, 1988), p. 105.

¹⁴ However, the energy which is used to turn the cylinder of the revolver (bringing the next round into place, ready to fire) comes from the user pulling the trigger. (The trigger is mechanically linked to the cylinder, and a trigger pull performs the “double action” of cocking the hammer and firing a round.) Thus, the revolver does not use gunpowder energy in order to load the next round. So even though a revolver is comparable to a semi-automatic handgun in that each pull of the trigger chambers and fires one round, a revolver is not a semi-automatic.

¹⁵ The formula is: $KE = \frac{1}{2} MV^2$. Or in words: one-half of mass times the square of the velocity.

¹⁶ Rifles have longer barrels than handguns, and rifle cartridges generally burn more gunpowder. Thus, a bullet shot from a rifle spends more time traveling through the barrel than does a bullet shot from a handgun. As a result, the rifle bullet receives a longer, more powerful push from the expanding cloud of gunpowder in the barrel. So rifles generally deliver more kinetic energy than do handguns. (As for shotguns, the mass of shot pellets is much heavier than any single rifle or handgun bullet, so shotguns have very high kinetic energy at short ranges. But their kinetic energy drops rapidly, because the round pellets rapidly lose speed due to air friction. Rifle and handgun bullets are far more aerodynamic than are shotgun pellets.)

¹⁷ If the gun’s caliber is .17, that means the gun’s barrel is 17/100 of an inch wide, and can accommodate a bullet which is very slightly smaller than that. So a .38 caliber bullet is bigger than a .17 caliber bullet, and a .45 caliber bullet is bigger than either of them. (Calibers can also be expressed metrically. 9mm is nearly the same as .357, which is slightly smaller than .38).

The bullet’s size depends on its width (caliber) and on its length. So one .45 caliber bullet might be longer, and hence heavier, than another .45 caliber bullet.

For any particular gun in any particular caliber, there are a variety of rounds available, some of which have more gunpowder than others. More gunpowder makes the bullet fly straighter for longer distances (especially important in many types of hunting or target shooting); less gunpowder reduces recoil, and makes the gun more comfortable to shoot and more controllable for many people.

¹⁸ Measured at the muzzle. Kinetic energy begins declining as soon as the bullet leaves the barrel, because air friction progressively reduces velocity.

¹⁹ For details, see David B. Kopel, *Guns: Who Should Have Them* (New York: Prometheus Books, 1995), pp. 168–70.

²⁰ The assertion that so-called “assault weapons” are “high-velocity” is true only in the trivial sense that most guns which are called “assault weapons” are rifles, and rifles are generally higher velocity than handguns or shotguns.

As for the handguns which are sometimes dubbed “assault weapons,” they are necessarily lower velocity, with less powerful bullets, than the most powerful handguns. The most powerful handgun calibers, such as .44 magnum or .454 Casull (often carried by hikers for self-defense against bears) have so much gunpowder that the relatively delicate mechanisms of a semi-automatic handgun cannot handle them. These heavy-duty calibers are available only for revolvers.

²¹ Quoted in Randy E. Barnett and Don B. Kates, “Under Fire: The New Consensus on the Second Amendment,” *Emory Law Journal*, vol. 45, 1996. http://www.bu.edu/rbarnett/underfire.htm#Document0zzFN_B535.

²² Jacob Sullum, “How Do We Know an ‘Assault Weapon’ Ban Would Not Have Stopped Adam Lanza? Because It Didn’t,” *Reason*, December 17, 2012, <http://reason.com/blog/2012/12/17/how-do-we-know-an-assault-weapon-ban-wou>.

²³ Christopher S. Koper, Daniel J. Woods & Jeffrey A. Roth, “An Updated Assessment of the Federal Assault Weapons Ban: Impacts on Gun Markets and Gun Violence, 1994-2003: Report to the National Institute of Justice, United States Department of Justice,” University of Pennsylvania, June 2004, http://www.sas.upenn.edu/jerrylee/research/aw_final2004.pdf.

²⁴ Jeffrey A. Roth & Christopher S. Koper, “Impacts of the 1994 Assault Weapons Ban: 1994–96,” National Institute of Justice Research in Brief, U.S. Department of Justice, March 1999, <https://www.ncjrs.gov/pdffiles1/173405.pdf>.

²⁵ “Stopping the Spread of Deadly Assault Weapons,” <http://www.feinstein.senate.gov/public/index.cfm/assault-weapons>, accessed January 2, 2013. For another reply to Feinstein’s claims, see Gregory J. Markle, “A Short Analysis of Senator Feinstein’s ‘Proof’ of the Efficacy of the 1994 Assault Weapons Ban,” December 29, 2012, http://pc3c.org/files/feinstein_fisking.pdf.

²⁶ Jeffrey A. Roth & Christopher S. Koper, “Impact Evaluation of the Public Safety and Recreational Firearms Use Protection Act of 1994: Final Report,” Urban Institute, March 13, 1997, http://www.sas.upenn.edu/jerrylee/research/aw_final1997.pdf.

²⁷ John Lott, *The Bias Against Guns: Why Almost Everything You’ve Heard About Gun Control Is Wrong* (Washington, D.C.: Regnery Publishing, 2003), p. 214.

Looking at the raw crime data, Lott observes:

The comparison group here is the forty-five states that did not adopt a ban. For both murder and robbery rates, the states adopting assault weapons bans were experiencing a relatively faster drop in violent crimes prior to the ban and a relatively faster increase in violent crimes after it. For rapes and aggravated assaults, the trends before and after the law seem essentially unchanged.

Based on the crime data, Lott concludes that it is “hard to argue that . . . banning assault weapons produced any noticeable benefit in terms of lower crime rates.” In statistical analyses that seek to control for other possible factors in the fluctuations of crime rates, Lott finds that, if anything, the state-level “assault weapons” bans had an adverse effect on crime rates:

Presumably if assault weapons are to be used in any particular crimes, they will be used for murder and robbery, but the data appears more supportive of an adverse effect of an assault weapons ban on murder and robbery rates . . . , with both crime rates rising after the passage of the bans. . . . Murder and robbery rates started off relatively high in the states that eventually adopted a ban, but the gap disappears by the time the ban is adopted. Only after instituting the ban do crime rates head back up. There is a very statistically significant change in murder and rape rate trends before and after the adoption of the ban. . . . It is very difficult to observe any systematic impact of the ban on rape and aggravated assault rates.

²⁸ Mark Follman, Gavin Aronsen, and Deanna Pan, “A Guide to Mass Shootings in America,” *Mother Jones*, December 15, 2012, <http://www.motherjones.com/politics/2012/07/mass-shootings-map>; see also Mark Follman, Gavin Aronsen, and Deanna Pan, “US Mass Shootings, 1982–2012: Data from Mother Jones’ Investigation,” *Mother Jones*, December 28, 2012, <http://www.motherjones.com/politics/2012/12/mass-shootings-mother-jones-full-data>.

Mother Jones magazine is named for Mary Harry Jones, one of most eminent American radical socialists.

²⁹ Thomas C. Hayes, “Gunman Kills 22 and Himself in Texas Cafeteria,” *New York Times*, October 17, 1991, <http://www.nytimes.com/1991/10/17/us/gunman-kills-22-and-himself-in-texas-cafeteria.html>.

³⁰ “About Suzanna,” http://www.suzannahupp.com/?page_id=2, accessed January 13, 2013.

³¹ Most of the text in this paragraph is adapted from David B. Kopel, *Guns: Who Should Have Them* (New York: Prometheus Books, 1995), p. 164. That book in turn cites William R. Magrath, “An Open Letter to American Politicians,” *Police Marksman*, May–June 1989, p. 19; Edward Ezell, *The AK-47 Story* (Mechanicsburg, PA: Stackpole Books, 1986); Kent Jenkins Jr., “Calls for Ban Boost Assault Rifle Sales,” *Washington Post*, March 6, 1989, p. B1; and “Assault Weapon Import Control Act of 1989,” 1989: Hearings on H.R. 1154 before Subcommittee on Trade of the House Committee on Ways and Means, 101st Cong., 1st Sess. (1989).

³² Douglas Anthony Cooper, “A Proven Way to End the Gun Slaughter: Will We Fight for It?,” *Huff Post Politics*, December 26, 2012, http://www.huffingtonpost.com/douglas-anthony-cooper/proven-way-end-slaughter_b_2341815.html.

³³ Charles Krauthammer, “Disingenuous Debate on Repeal of Assault Weapons Ban,” *Chicago Tribune*, April 8, 1996, http://articles.chicagotribune.com/1996-04-08/news/9604080024_1_assault-weapons-ban-gun-control-crime-rate.

³⁴ Christian Chung, “Dianne Feinstein New Assault Weapons Ban Doesn’t Go Far Enough: It’s Only the Start,” *Policymic*, December 29, 2012, <http://www.policymic.com/articles/21639/dianne-feinstein-new-assault-weapons-ban-doesn-t-go-far-enough-it-s-only-the-start>.

³⁵ Robert Wright, “A Gun Control Law That Would Actually Work,” *Atlantic*, December 17, 2012, <http://www.theatlantic.com/national/archive/2012/12/a-gun-control-law-that-would-actually-work/266342>.

³⁶ The “features” on semi-automatic shotguns under the ban are similar to the features list for rifles, with one important addition. Feinstein outlaws any semi-auto shotgun that has “A fixed magazine with the capacity to accept more than 5 rounds.” This bans a wide variety of home defense shotguns. It also means that if you use a magazine extender to turn your 5-round Remington 1100 into a 7-round gun, you are now an instant felon.

³⁷ See Clayton E. Cramer, “High-Capacity-Magazine Bans,” *National Review*, December 19, 2012, <http://www.nationalreview.com/articles/336006/high-capacity-magazine-bans-clayton-e-cramer>. (If the final round from the last magazine has been fired, the first round from the new magazine must be chambered before the gun will fire. Chambering a round involves “racking” the gun by manually operating the gun’s slide mechanism, a process that typically takes fractions of a second.)

³⁸ The G17 (standard), G19 (compact), and G34 (competition). Optional magazines of 19 or 33 rounds are available. The subcompact G26 comes with a 10 round magazine, with 12, 15, 17, 19, and 33 round magazines available.

For a 9mm handgun ordinary-sized handgun, the 15 or 17 round magazine is “standard capacity,” not “high capacity,” whereas a 10-round magazine is “restricted capacity.” The Glock 30 SF, a larger .45 caliber, comes standard with a 10-round magazine, with factory options of 9 and 13 rounds. Because the bullets are larger (.45 inch vs. 9 mm, which is about .35 inch), fewer can fit in a given space—hence, the smaller magazine capacity. Other Glock .45 handguns come standard with larger or smaller magazines, depending on the size of the gun. “Glock 19 Gen4,” <http://us.glock.com/products/model/g19gen4>; “Glock 30 SF,” <http://us.glock.com/products/model/g30sf>; “Glock 21 Gen4,” <http://us.glock.com/products/model/g21gen4>; “Glock 36,” <http://us.glock.com/products/model/g36>; each accessed January 3, 2013.

³⁹ A look at a forum thread at Officer.com, “What Gun Does Your Department Use” (see <http://forums.officer.com/t138759>), offers an insightful look at typical police weaponry—the list includes Glocks with 17-round magazines and AR-15 semi-automatic rifles.

Regarding magazine capacity, one veteran from a municipal police department in Texas advises:

I would not carry a duty gun that carries fewer than 12 rounds in the magazine. One of the great advantages offered by semi-automatic handguns is the increased carrying capacity. Most manufacturers have increased the capacity of .45 pistols to at least 12 rounds, so this would be the minimum I would be comfortable with

“What is the Best Pistol for Police Officers?”, *Spartan Cops*, March 30, 2009, <http://www.spartancops.com/pistol-police-officers>; “About,” *Spartan Cops*, <http://www.spartancops.com/about>. Nashville Police can now carry their personal AR-15s in their vehicles while on duty. <http://tnne.ws/ULB0HY>.

⁴⁰ What about magazines? “The failure to reduce LCM use has likely been due to the immense stock of exempted pre-ban magazines, which has been enhanced by recent imports,” the 2004 paper speculates. The paper notes that “millions” of “assault weapons” and “large-capacity magazines” were “manufactured prior to the ban’s effective date.”

⁴¹ Still, if one wants to speculate, Koper, Woods, and Roth do so in an articulate fashion. Their 2004 report states:

[S]emiautomatic weapons with LCMs [large-capacity magazines] enable offenders to fire high numbers of shots rapidly, thereby potentially increasing both the number of persons wounded per gunfire incident (including both intended targets and innocent bystanders) and the number of gunshot victims suffering multiple wounds, both of which would increase deaths and injuries from gun violence.

Because of this, the paper’s writers speculate, “the LCM ban has greater potential for reducing gun deaths and injuries than does the AW [assault weapons] ban.” They continue:

[A] ban’s impact on gun violence is likely to be small at best, and perhaps too small for reliable measurement. . . . Guns with LCMs are used in up to a quarter of gun crimes, but it is not clear how often the outcomes of gun attacks depend on the ability to fire more than 10 shots (the current limit on magazine capacity) without reloading.

Nonetheless, reducing crimes with . . . LCMs could have non-trivial effects on gunshot victimizations. As a general matter, hit rates tend to be low in gunfire incidents, so having more shots to fire rapidly can increase the likelihood that offenders hit their targets, and perhaps bystanders as well. While not entirely consistent, the few available studies contrasting attacks with different types of guns and magazines generally suggest that attacks with semiautomatics—including AWs and other semiautomatics with LCMs—result in more shots fired, persons wounded, and wounds per victim than do other gun attacks.

The authors of the 2004 report, then, believe that a ban on magazines holding more than ten rounds likely would not reduce the number of crimes committed, but that such a ban might reduce the harm of certain types of rare crimes (presumably mass murders with many rounds fired and “shootouts”). The authors do not (and do not claim to) present convincing evidence that their hypothesis is correct; they present their claim as reasonable speculation.

However, a careful reading of the paragraphs cited above reveals one of the major flaws of the writers’ argument. The writers claim that “attacks with semiautomatics”—whether or not they are used with “large capacity” magazines—result in greater harm. There are good reasons to think that, even if criminals could somehow be restricted to using ten-round

magazines—and obviously they cannot—they could typically cause the same level of harm, and sometimes more harm.

The general problem with the claims of those who wish to ban magazines holding more than ten rounds is that such advocates fail to account for the adaptability of criminals. Such advocates assume they can hold “all other things equal,” when clearly criminals thrive on adapting their plans in order to surprise and overwhelm their intended victims.

⁴² Josh Sugarmann, “Drug Traffickers, Paramilitary Groups . . .,” *Assault Weapons and Accessories in America*, Violence Policy Center, 1988, <http://www.vpc.org/studies/awadrug.htm>.

⁴³ David B. Kopel, Paul Gallant & Joanne D. Eisen, “The Arms Trade Treaty: Zimbabwe, the Democratic Republic of the Congo, and the Prospects for Arms Embargoes on Human Rights Violators,” 114 *Penn State Law Review* 891, at note 46 (2010).

⁴⁴ <http://defcad.org/>

⁴⁵ “Third of High School Seniors Take Marijuana,” *News Medical*, December, 22, 2012, <http://www.news-medical.net/news/20121222/Third-of-high-school-seniors-take-marijuana.aspx>.

⁴⁶ Alicia A. Caldwell, “James Holmes’ Gun Jammed During Aurora Attack, Official Says,” *Associated Press*, July 22, 2012, http://www.huffingtonpost.com/2012/07/22/james-holmes-gun-jammed-aurora-colorado-dark-knight-shooting_n_1692690.html.

⁴⁷ An additional fact about this case is that, had the Arizona murderer not been tackled by bystanders, he would have faced armed opposition moments later. Joe Zamudio, another man who helped restrain the murderer, said the following during an MSNBC interview:

I carry a gun, so I felt like I was a little bit more prepared to do some good than maybe somebody else would have been. . . . As I came out of the door of the Walgreens . . . I saw several individuals wrestling with him, and I came running. . . . I saw another individual holding the firearm, and I kind of assumed he was the shooter, so I grabbed his wrists, and . . . told him to drop it, and forced him to drop the gun on the ground. When he did that, everybody said, no, it’s this guy . . . and I proceeded to help hold that man down. . . . When I came through the door, I had my hand on the butt of my pistol, and I clicked the safety off. I was ready to kill him. But I didn’t have to do that, and I was very blessed I didn’t have to go to that place. Luckily, they’d already begun the solution, so all I had to do is help. If they hadn’t grabbed him, and he’d have been still moving, I would have shot him.

We were unable to locate the video on the MSNBC web page. It is reproduced at <http://youtu.be/y-3GTwalrGY>.

In return for this profoundly courageous act of heroism in which Zamudio ran toward gunfire, William Saletan libeled Zamudio in an article for Slate, wrongly claiming he “nearly shot the wrong man.” William Saletan, “Friendly Firearms,” *Slate*, January 11, 2011, http://www.slate.com/articles/health_and_science/human_nature/2011/01/friendly_firearms.html.

Obviously in the brief seconds of the incident, Zamudio considered the possibility that the man holding the gun might be the perpetrator of the crime—and then Zamudio acted with restraint, appropriately disarmed the man holding the gun, and helped restrain the perpetrator. Although police in Arizona likely are more responsible with their firearms than are police in New York, the recent incident in which New York police shot nine bystanders illustrates that Zamudio did the other man holding the gun—and everyone else in the crowd—a profound favor by forcing him to drop it.) “NYPD: 9 Shooting Bystander Victims Hit By Police Gunfire,” *Associated Press*, August 25, 2012, <http://www.foxnews.com/us/2012/08/25/nypd-shooting-bystander-victims-hit-by-police-gunfire>.

⁴⁸ Philip Caulfield, “Sandy Hook Elementary School Shooter Adam Lanza Wore Earplugs, Rapidly Changed Clips, Shot Up Cars in Parking Lot: Report,” *New York Daily News*, January 7, 2013, <http://www.nydailynews.com/news/national/lanza-wore-earplugs-shot-cars-article-1.1234747>.

⁴⁹ Will Grant, “Active Shooter Response: Lessons for Experts,” *Blackwater*, January 6, 2013, <http://blackwaterusa.com/active-shooter-response-lessons-from-experts>.

Even if they resorted to revolvers, criminals could impose mass casualties. Recall that Robert Wright, a senior editor at *The Atlantic*, wants to ban all detachable magazines and all guns “that can hold more than six bullets.” In other words, he wants to ban the large majority of guns in existence. (Like Cooper, Wright totally ignores the use of guns in self-defense.) Even if we assume that criminals could not still purchase their weapons of choice on the black market—an assumption that is obviously false—Wright’s analysis of the likely results is faulty.

Wright tries to hold “other things equal” that cannot be held equal. Wright uses the example of the Newtown murders, noting that the criminal carried a rifle and two handguns and that he shot about twelve rounds before reaching the students. Wright supposes, “At that point, as he headed for the classrooms, he’d have six more rapid-fire bullets left, after which he’d have to reload his guns bullet by bullet.” Robert Wright, “A Gun Control Law That Would Actually Work,” *Atlantic*, December 17, 2012, <http://www.theatlantic.com/national/archive/2012/12/a-gun-control-law-that-would-actually-work/266342>.

Wright ignores several obvious facts here. A criminal limited to six-round guns likely would choose larger-caliber guns and target each round more carefully. More significantly in a mass-murder scenario, a criminal would by no means be limited to three guns; he could easily carry many revolvers (or six-round semiautomatics). Like semi-automatics, double-action revolvers fire one round with each pull of the trigger.

For more on the effective firing rates of revolvers and other types of guns, see David B. Kopel, *Guns: Who Should Have Them* (New York: Prometheus Books, 1995), pp. 164–165 (The finger must accomplish more of the mechanical work with a double-action revolver.) Revolvers typically are extremely reliable, and often they are less expensive than other types of guns. Even a gun ban that banned most guns in existence—a far more ambitious proposal than legislation pertaining to the manufacture and sale of new “high capacity” magazines—would do nothing to curb black market sales, and it would have little or no impact on criminals’ ability to commit violent atrocities.)

⁵⁰ David B. Kopel, “Lawyers, Guns, and Burglars,” 43 *Arizona Law Review* 345 (2001).

⁵¹ “Scotland Worst for Violence – UN,” *BBC News*, Sept. 18, 2005 (“Scotland has been named the most violent country in the developed world by a United Nations Report.”).

⁵² Joyce Malcolm, *Guns and Violence: The English Experience* 141-142 (2002); Joseph Edward Olson & Clayton Cramer, “Gun Control: Political Fears Trump Crime Control,” 61 *Maine Law Review* 57-81 (2009), <http://ssrn.com/abstract=1083528>.

⁵³ David B. Kopel & Joseph P. Olson, “All the Way Down the Slippery Slope: Gun Prohibition in England, and Some Lessons for America,” 22 *Hamline Law Review* 399 (1999).

⁵⁴ House of Commons, Home Affairs – Second Report – Controls over Firearms, Session 1999-2000, Apr. 6, 2000, at ¶22, <http://www.publications.parliament.uk/pa/cm199900/cmselect/cmhaff/95/9502.htm>.

⁵⁵ *Illegal Firearms in the United Kingdom*, Centre for Defence Studies, King’s College London, Jul. 2, 2001, Working Paper 4.

⁵⁶ Nick Paton Walsh, “UK Matches Africa in Crime Surge,” *The Guardian*, Jun. 3, 2001.

⁵⁷ Sean O’Neill, “A Quarter of English are Victims of Crime,” *The Telegraph*, Feb. 23, 2001.

⁵⁸ Philip Johnston, “Britain Leads the World on Risk of Being Assaulted,” *The Telegraph*, May 4, 2001.

⁵⁹ *Illegal Firearms*, Working Paper 1, at 7.

- ⁶⁰ Philip Johnston, “World’s Toughest Laws Will Help to Keep Weapons off the Streets,” *The Telegraph*, Nov. 2, 1996.
- ⁶¹ *Illegal Firearms*, Working Paper 4, at 15.
- ⁶² See Joyce Malcolm, *Guns and Violence: The English Experience* 228-31 (2002); Patsy Richards, Homicide Statistics, Research Paper 99/56, House of Commons Library Social and General Statistics Section, May 27, 1999, at 9. See also Statistics Release, Homicides in Scotland in 2001 – Statistics Published: A Scottish Executive National Statistics Publication, Nov. 28, 2002, <http://www.scotland.gov.uk/stats/bulletins/00205-00.asp> (visited May 16, 2006), at Note 2 (“A single case of homicide is counted for each act of murder or culpable homicide irrespective of the number of perpetrators or victims.”)
- ⁶³ David B. Kopel, *Guns: Who Should Have Them?* (Prometheus Books, 1995).
- ⁶⁴ Stephen P. Halbrook, “Congress Interprets the Second Amendment: Declarations by a Co-Equal Branch on the Individual Right to Keep and Bear Arms,” 61 *Tenn. L. Rev.* 597 (1994).
- ⁶⁵ *City of Boerne v. Flores*, 521 U.S. 507 (1997).
- ⁶⁶ *Katzenbach v. Morgan*, 384 U.S. 641 (1966).
- ⁶⁷ *E.g.*, *Board of Trustees of Univ. of Alabama v. Garrett* (2001); *Nevada Dept. of Human Resources v. Hibbs* (2003),
- ⁶⁸ David B. Kopel, “How the British Gun Control Program Precipitated the American Revolution,” 38 *Charleston Law Review* 283 (2012), <http://ssrn.com/abstract=1967702>.
- ⁶⁹ For more detailed analysis of the civil rights implications of gun prohibition laws, see, e.g., David B. Kopel, *Peril or Protection? The Risks and Benefits of Handgun Prohibition*, 12 *ST. LOUIS U. PUB. L. REV.* 285, 319-23 (1993).
- ⁷⁰ “Estimated Crime in United States—Total,” U.S. Department of Justice, Uniform Crime Reporting Statistics, <http://www.ucrdatatool.gov/Search/Crime/State/RunCrimeStatebyState.cfm>, accessed January 4, 2013.
- ⁷¹ Donna L. Hoyert and Jiaquan Xu, “Deaths: Preliminary Data for 2011,” *National Vital Statistics Reports*, vol. 61, no. 6, October 10, 2012, p. 28, http://www.cdc.gov/nchs/data/nvsr/nvsr61/nvsr61_06.pdf.
- ⁷² “Murder, by State, Types of Weapons, 2011,” *Crime in the United States 2011*, Table 7, <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2011/crime-in-the-u.s.-2011/tables/expanded-homicide-data-table-7>.
- ⁷³ Donna L. Hoyert and Jiaquan Xu, “Deaths: Preliminary Data for 2011,” *National Vital Statistics Reports*, vol. 61, no. 6, October 10, 2012, pp. 41–42, http://www.cdc.gov/nchs/data/nvsr/nvsr61/nvsr61_06.pdf.
- ⁷⁴ For example, the homicide rate in 1962 and 1963 was 4.6 deaths per 100,000 population. In 1964 it was 4.8
- ⁷⁵ Nicole White & Janet L. Lauritsen, *Violent Crime Against Youth, 1994–2010*, Bureau of Justice Statistics, NCJ 240106 (Dec. 2012), <http://www.bjs.gov/content/pub/pdf/vcay9410.pdf>.
- ⁷⁶ Nicholas J. Johnson, David B. Kopel, Michael P. O’Shea & George Moscary, *Firearms Law and the Second Amendment: Regulation, Rights, and Policy* (Aspen Publishers 2012), online chapter 12, forthcoming at <http://firearmsregulation.org>.
- ⁷⁷ Matt Apuzzo and Pat Eaton-Robb, “Conn. Gunman Had Hundreds of Rounds of Ammunition,” Associated Press, December 17, 2012, <http://bigstory.ap.org/article/agents-visit-conn-gun-shops-after-school-massacre>.
- ⁷⁸ For more, see David B. Kopel, “Pretend ‘Gun-free’ School Zones: A Deadly Legal Fiction,” 42 *Connecticut Law Review* 515 (2009), <http://ssrn.com/abstract=1369783>.
- ⁷⁹ Clayton E. Cramer, *My Brother Ron: A Personal and Social History of the Deinstitutionalization of the Mentally Ill* (2012).