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gun control >

Citation

"Gun Control Facts." By James D. Agresti and Reid K. Smith. Just Facts, September 13, 2010. Revised 2/11/13. <http://justfacts.com/guncontrol.asp>

Finding What You Want

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- Right-to-Carry Laws
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Introductory Notes

This research is based upon the most recent available data in 2010. Facts from earlier years are cited based upon availability and relevance, not to slant results by singling out specific years that are different from others. Likewise, data associated with the effects of gun control laws in various geographical areas represent random, demographically diverse places in which such data is available.

Many aspects of the gun control issue are best measured and sometimes can only be measured through surveys,[1] but the accuracy of such surveys depends upon respondents providing truthful answers to questions that are sometimes controversial and potentially incriminating [2] Thus, Just Facts uses such data critically, citing the best-designed surveys we find, detailing their inner workings in our footnotes, and using the most cautious plausible interpretations of the results.

Particularly, when statistics are involved, the determination of what constitutes a credible fact (and what does not) can contain elements of personal subjectivity. It is our mission to minimize subjective information and to provide highly factual content. Therefore, we are taking the additional step of providing readers with four examples to illustrate the type of material that was excluded because it did not meet Just Facts' Standards of Credibility.

General Facts

• Firearms are generally classified into three broad types: (1) handguns, (2) rifles, and (3) shotguns.[3] Rifles and shotguns are both considered "long guns."

• A semi-automatic firearm fires one bullet each time the trigger is pulled, ejects the shell of the fired bullet, and automatically loads another bullet for the next pull of the trigger. A fully automatic firearm (sometimes called a "machine gun") fires multiple bullets with the single pull of the trigger.[4]

Ownership

• As of 2009, the United States has a population of 307 million people.[5]

• Based on production data from firearm manufacturers,[6] there are roughly 300 million firearms owned by civilians in the United States as of 2010. Of these, about 100 million are handguns [7]

• Based upon surveys, the following are estimates of private firearm ownership in the U.S. as of 2010:

	Households With a Gun	Adults Owning a Gun	Adults Owning a Handgun
Percentage	40-45%	30-34%	17-19%
Number	47-53 million	70-80 million	40-45 million

[8]

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- * A 2005 nationwide Gallup poll of 1,012 adults found the following levels of firearm ownership:

Category	Percentage Owning a Firearm
Households	42%
Individuals	30%
Male	47%
Female	13%
White	33%
Nonwhite	18%
Republican	41%
Independent	27%
Democrat	23%

[9]

- * In the same poll, gun owners stated they own firearms for the following reasons:

Protection Against Crime	67%
Target Shooting	66%
Hunting	58%

[10]

Crime and Self-Defense

- * Roughly 16,272 murders were committed in the United States during 2008. Of these, about 10,886 or 67% were committed with firearms.[11]
- * A 1993 nationwide survey of 4,977 households found that over the previous five years, at least 0.5% of households had members who had used a gun for defense during a situation in which they thought someone "almost certainly would have been killed" if they "had not used a gun for protection." Applied to the U.S. population, this amounts to 162,000 such incidents per year. This figure excludes all "military service, police work, or work as a security guard." [12]
- * Based on survey data from the U.S. Department of Justice, roughly 5,340,000 violent crimes were committed in the United States during 2008. These include simple/aggravated assaults, robberies, sexual assaults, rapes, and murders.[13] [14] [15] Of these, about 436,000 or 8% were committed by offenders visibly armed with a gun.[16]
- * Based on survey data from a 2000 study published in the *Journal of Quantitative Criminology*, [17] U.S. civilians use guns to defend themselves and others from crime at least 989,883 times per year.[18]
- * A 1993 nationwide survey of 4,977 households found that over the previous five years, at least 3.5% of households had members who had used a gun "for self-protection or for the protection of property at home, work, or elsewhere." Applied to the U.S. population, this amounts to 1,029,615 such incidents per year. This figure excludes all "military service, police work, or work as a security guard." [19]
- * A 1994 survey conducted by the U.S. Centers for Disease Control and Prevention found that Americans use guns to frighten away intruders who are breaking into their homes about 498,000 times per year.[20]
- * A 1982 survey of male felons in 11 state prisons dispersed across the U.S. found:[21]
 - 34% had been "scared off, shot at, wounded, or captured by an armed victim"
 - 40% had decided not to commit a crime because they "knew or believed that the victim was carrying a gun"
 - 69% personally knew other criminals who had been "scared off, shot at, wounded, or captured by an armed victim" [22]
- * [Click here](#) to see why the following commonly cited statistic does not meet Just Facts' Standards of Credibility: "In homes with guns, the homicide of a household member is almost 3 times more likely to occur than in homes without guns."

L Vulnerability to Violent Crime

- * At the current homicide rate, roughly one in every 240 Americans will be murdered.[23]
- * A U.S. Justice Department study based on crime data from 1974-1985 found:
 - 42% of Americans will be the victim of a completed violent crime (assault, robbery, rape) in the course of their lives
 - 83% of Americans will be the victim of an attempted or completed violent crime
 - 52% of Americans will be the victim of an attempted or completed violent crime more than once[24]
- * A 1997 survey of more than 18,000 prison inmates found that among those serving time for a violent

crime, "30% of State offenders and 35% of Federal offenders carried a firearm when committing the crime." [25]

└ Criminal Justice System

* Nationwide in 2008, law enforcement agencies reported that 55% of aggravated assaults, 27% of robberies, 40% of rapes, and 64% of murders that were reported to police resulted in an alleged offender being arrested and turned over for prosecution. [26] [27]

* Currently, for every 12 aggravated assaults, robberies, sexual assaults, rapes, and murders committed in the United States, approximately one person is sentenced to prison for committing such a crime [28] [29] [30]

* A 2002 U.S. Justice Department study of 272,111 felons released from state prisons in 1994 found that within three years of their release:

- at least 67.5% had been arrested for committing a new offense
- at least 21.6% had been arrested for committing a new violent offense
- these former inmates had been charged with committing at least 2,871 new homicides, 2,444 new rapes, 3,151 other new sexual assaults, 2,362 new kidnappings, 21,245 new robberies, 54,604 new assaults, and 13,854 other new violent crimes [31]

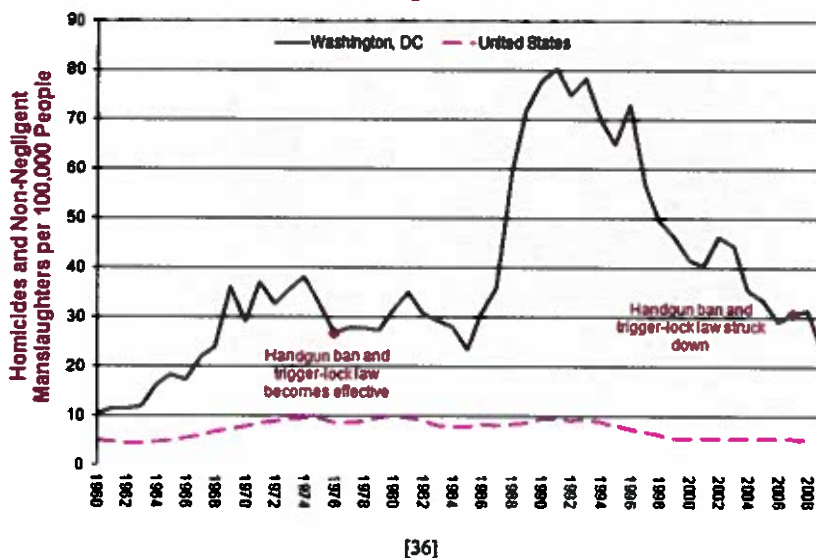
* Of 1,662 murders committed in New York City during 2003-2005, more than 90% were committed by people with criminal records. [32]

└ Washington, DC

* In 1976, the Washington, D.C. City Council passed a law generally prohibiting residents from possessing handguns and requiring that all firearms in private homes be (1) kept unloaded and (2) rendered temporally inoperable via disassembly or installation of a trigger lock. The law became operative on Sept. 24, 1976. [33] [34]

* On June 26, 2008, the U.S. Supreme Court, in a 5-4 ruling, struck down this law as unconstitutional. [35]

Murder Rates in Washington, D.C. and the United States



* During the years in which the D.C. handgun ban and trigger lock law was in effect, the Washington, D.C. murder rate averaged 73% higher than it was at the outset of the law, while the U.S. murder rate averaged 11% lower. [37]

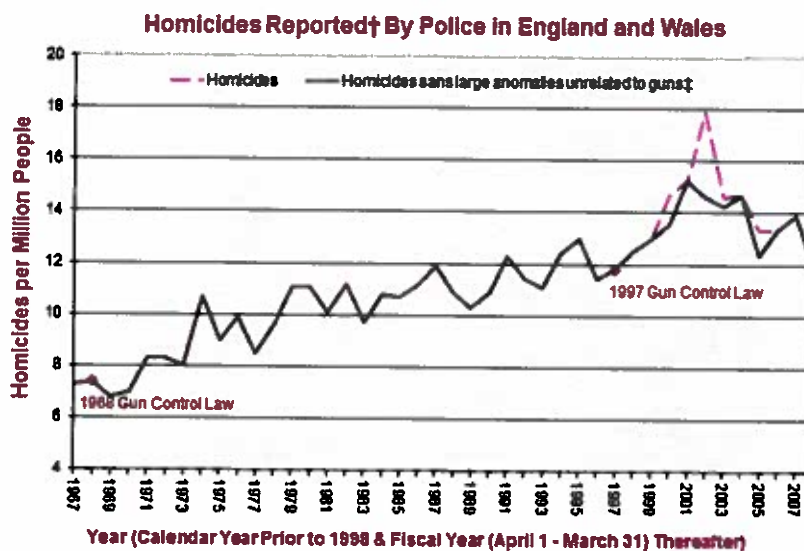
└ Britain

* In 1920, Britain passed a law requiring civilians to obtain a certificate from their district police chief in order to purchase or possess any firearm except a shotgun. To obtain this certificate, the applicant had to pay a fee, and the chief of police had to be "satisfied" that the applicant had "good reason for requiring such a certificate" and did not pose a "danger to the public safety or to the peace." The certificate had to specify the types and quantities of firearms and ammunition that the applicant could purchase and keep. [38]

* In 1968, Britain made the 1920 law stricter by requiring civilians to obtain a certificate from their district police chief in order to purchase or possess a shotgun. This law also required that firearm certificates specify the identification numbers ("if known") of all firearms and shotguns owned by the applicant. [39]

* In 1997, Britain passed a law requiring civilians to surrender almost all privately owned handguns to the

police. More than 162,000 handguns and 1.5 million pounds of ammunition were "compulsorily surrendered" by February 1998. Using "records of firearms held on firearms certificates," police accounted for all but fewer than eight of all legally owned handguns in England, Scotland, and Wales.[40]



† Homicide data is published according to the years in which the police initially reported the offenses as homicides, which are not always the same years in which the incidents took place.

‡ Large anomalies unrelated to guns.

2000: 58 Chinese people suffocated to death in a shipping container en route to the UK

2002: 172 homicides reported when Dr. Harold Shipman was exposed for killing his patients

2003: 20 cockle pickers drowned resulting in manslaughter charges

2005: 52 people were killed in the July 7th London subway/bus bombings

[41]

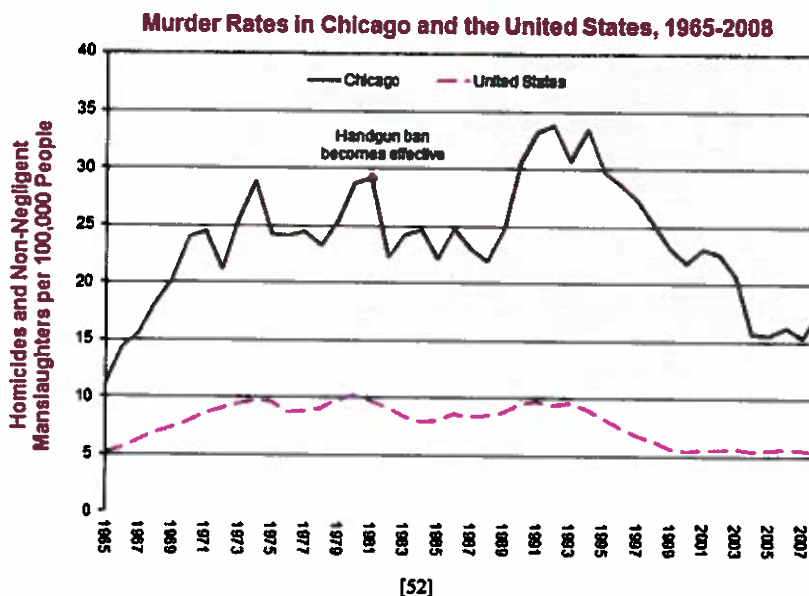
• Not counting the above-listed anomalies, the homicide rate in England and Wales has averaged 52% higher since the outset of the 1968 gun control law and 15% higher since the outset of the 1997 handgun ban.[42]

Chicago

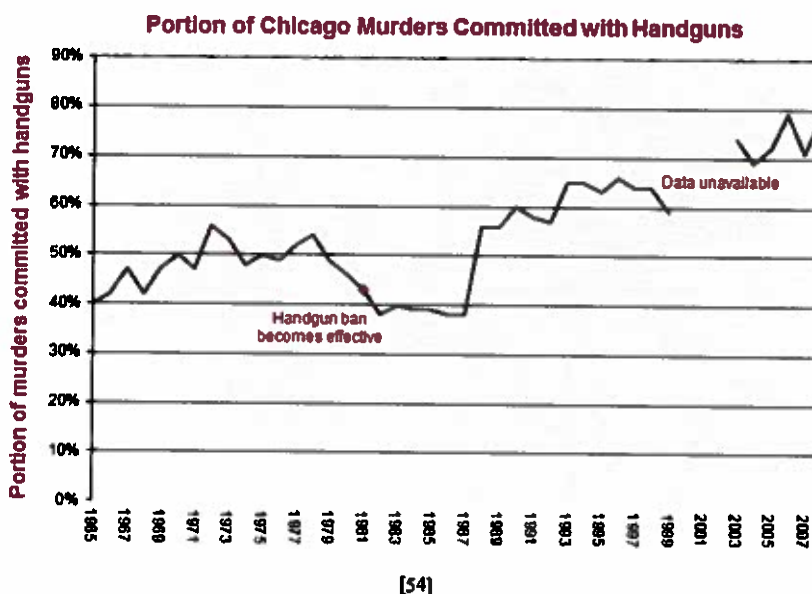
• In 1982, the city of Chicago instituted a ban on handguns. This ban barred civilians from possessing handguns except for those registered with the city government prior to enactment of the law. The law also specified that such handguns had to be re-registered every two years or owners would forfeit their right to possess them. In 1994, the law was amended to require annual re-registration.[43] [44] [45]

• In the wake of Chicago's handgun ban, at least five suburbs surrounding Chicago instituted similar handgun bans. When the Supreme Court overturned the District of Columbia's handgun ban in June 2008, at least four of these suburbs repealed their bans.[46] [47] [48] [49] [50]

• In June 2010, the U.S. Supreme Court ruled (5-4) that Chicago's ban is unconstitutional.[51]



* Since the outset of the Chicago handgun ban, the Chicago murder rate has averaged 17% lower than it was before the law took effect, while the U.S. murder rate has averaged 25% lower. [53]



* Since the outset of the Chicago handgun ban, the percentage of Chicago murders committed with handguns has averaged about 40% higher than it was before the law took effect [55]

* In 2005, 96% of the firearm murder victims in Chicago were killed with handguns. [56]

Background Checks and Criminals' Sources of Guns

* Under federal law:

• It is illegal and punishable by up to 10 years in prison for the following people to receive, possess, or transport any firearm or ammunition:

someone convicted of or under indictment for a felony punishable by more than one year in prison, someone convicted of a misdemeanor punishable by more than two years in prison, a fugitive from justice, an unlawful user of any controlled substance, someone who has been ruled as mentally defective or has been committed to any mental institution, an illegal alien, someone dishonorably discharged from the military, someone who has renounced his or her U.S. citizenship, someone subject to certain restraining orders, or someone convicted of a domestic violence misdemeanor [57] [58] [59] [60]

• It is illegal and punishable by up to 10 years in prison to sell or transfer any firearm or ammunition to someone while "knowing" or having "reasonable cause to believe" this person falls into any of the

prohibited categories listed above.[61] [62]

- It is illegal to "engage in the business of importing, manufacturing, or dealing in firearms" without a federal license to do so.[63] [64] [65]
- It is illegal for any federally licensed firearms business to sell or transfer any firearm without first conducting a background check to see if the buyer/recipient falls into any of the prohibited categories listed above.[66] [67]
- It is illegal for anyone except a federally licensed firearms business to sell, buy, trade, or transfer a firearm across state lines.[68]
- Under federal law, private individuals are not required to conduct a background check before selling or transferring a firearm to someone who lives in the same state, but it is illegal and punishable by up to 10 years in prison for a private individual to sell or transfer a firearm while "knowing" or having "reasonable cause to believe" that the recipient falls into one of the prohibited categories above.[69] [70]
- Some states such as California require background checks for all firearms transactions, including those conducted between private individuals.[71] [72] [73]

└ Denials

- In the 10-year period from November 30, 1998 to December 31, 2008, about 96 million background checks for gun purchases were processed through the federal background check system. Of these, approximately 681,000 or about 1% were denied.[74] [75]
- During 2002 and 2003, out of 17 million background checks resulting in 120,000 denials, the federal government prosecuted 154 people (about one-tenth of 1% of the denials).[76] [77]
- According to federal agents interviewed in a 2004 U.S. Justice Department investigation, the "vast majority" of denials under the federal background check system are issued to people who are not "a danger to the public because the prohibiting factors are often minor or based on incidents that occurred many years in the past." As examples of such, agents stated that denials have been issued due to a 1941 felony conviction for stealing a pig and a 1969 felony conviction for stealing hubcaps.[78] [79]
- The same investigation audited 200 background check denials and found that 8% of denied applicants were not prohibited from lawfully possessing a firearm.[80]
- During 2008, applicants appealed about 19% of the 70,725 background check denials issued that year. Of these, about 23% were later overturned and the applications approved.[81]

└ Allowances

- As of 2010, federal law does not prohibit members of terrorist organizations from purchasing or possessing firearms or explosives.[82]
- Between February 2004 and February 2010, 1,225 firearm and three explosives background checks for people on terrorist watch lists were processed through the federal background check system. Of these, 91% of the firearm transactions and 100% of the explosives transactions were allowed.[83]
- Under federal law, individuals who have been convicted of a felony offense that would typically prohibit them from possessing firearms can lawfully possess firearms if their civil rights are restored by the requisite government entities.[84]
- As of 2002, 15 states automatically restore the firearm rights of convicts upon their release from prison or completion of parole, and 6 other states automatically restore the firearm rights of juvenile convicts upon their release from prison or completion of parole. In 2004, the Office of the Inspector General of the U.S. Department of Justice wrote that this system

may result in a paradoxical situation in which someone convicted of a misdemeanor crime of domestic violence is permanently barred from owning a firearm, while someone who kills his spouse has his firearm rights restored after serving his sentence.[85]

└ Enforcement

- To undergo a background check, prospective gun buyers are required by federal regulations to present "photo-identification issued by a government entity." [86]
- Using fake driver's licenses bearing fictitious names, investigators with the Government Accountability Office had a 100% success rate buying firearms in five states that met the minimum requirements of the federal background check system.[87] [88] A 2001 report of this investigation states that the federal background check system "does not positively identify purchasers of firearms," and thus, people using fake IDs are not flagged by the system.[89]

└ Gun Shows

* "A gun show is an exhibition or gathering where guns, gun parts, ammunition, gun accessories, and literature are displayed, bought, sold, traded, and discussed." [90]

* Roughly 2,000-5,200 gun shows take place in the United States each year [91]

* Gun shows "provide a venue for the sale and exchange of firearms by federal firearms licensees (FFLs).... Such shows also are a venue for private sellers who buy and sell firearms for their personal collections or as a hobby. In these situations, the sellers are not required to have a federal firearms license. Although federal firearms laws apply to both FFLs and private sellers at gun shows, private sellers, unlike FFLs, are under no legal obligation to ask purchasers whether they are legally eligible to buy guns or to verify purchasers' legal status through background checks...." [92]

* In the three-year period from October 2003 through September 2006, the Bureau of Alcohol, Tobacco and Firearms (ATF) conducted 202 operations at 195 gun shows, leading to 121 arrests and 83 convictions (with some cases still pending as of June 2007). [93]

* A 1997 U.S. Justice Department survey of 14,285 state prison inmates found that among those inmates who carried a firearm during the offense for which they were sent to jail, 0.7% obtained the firearm at a gun show, 1% at a flea market, 3.8% from a pawn shop, 8.3% from a retail store, 39.2% through an illegal/street source, and 39.6% through family or friends. [94]

Right-to-Carry Laws

* Right-to-carry laws permit individuals who meet certain "minimally restrictive" criteria (such as completion of a background check and gun safety course) to carry concealed firearms in most public places. [95] Concealed carry holders must also meet the minimum federal requirements for gun ownership as detailed above.

* Each state has its own laws regarding right-to-carry and generally falls into one of three main categories:

- 1) "shall-issue" states, where concealed carry permits are issued to all qualified applicants
- 2) "may-issue" states, where applicants must often present a reason for carrying a firearm to an issuing authority, who then decides based on his or her discretion whether the applicant will receive a permit
- 3) "no-issue" states, where concealed carry is generally forbidden

* As of January 2012:

• 40 states are shall-issue:

Alaska	Arizona	Arkansas	Colorado
Florida	Georgia	Idaho	Indiana
Iowa	Kansas	Kentucky	Louisiana
Maine	Michigan	Minnesota	Mississippi
Missouri	Montana	Nebraska	Nevada
New Hampshire	New Mexico	North Carolina	North Dakota
Ohio	Oklahoma	Oregon	Pennsylvania
Rhode Island	South Carolina	South Dakota	Tennessee
Texas	Utah	Vermont	Virginia
Washington	West Virginia	Wisconsin	Wyoming

[96]

NOTE: Alaska, Arizona, Vermont, and Wyoming allow lawful firearm owners to carry concealed firearms without a permit. All other shall-issue states require firearm owners to obtain a permit to carry concealed firearms [97]

• 9 states are may-issue:

Alabama	California	Connecticut	Delaware
Hawaii	Maryland	Massachusetts	New Jersey
New York			

[99]

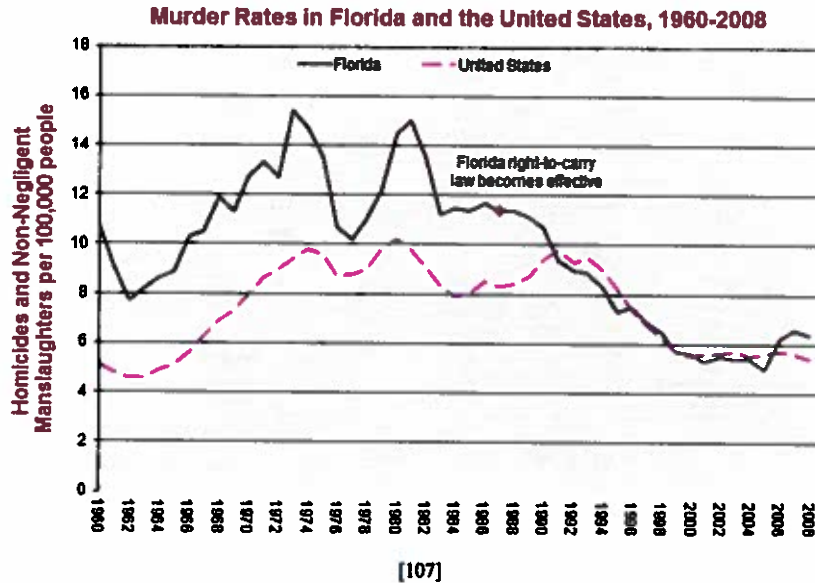
NOTE: May-issue states vary significantly in the implementation of their laws. Some, such as Connecticut, [100] act effectively as shall-issue states, while others, such as New Jersey, act effectively as no-issue states. [101]

• 1 state is no-issue: Illinois [102]

* [Click here](#) to see why the following commonly cited statistic does not meet Just Facts' Standards of Credibility: In right-to-carry states, the violent crime rate is 24% lower than the rest of the U.S., the murder rate is 28% lower, and the robbery rate is 50% lower.

Florida

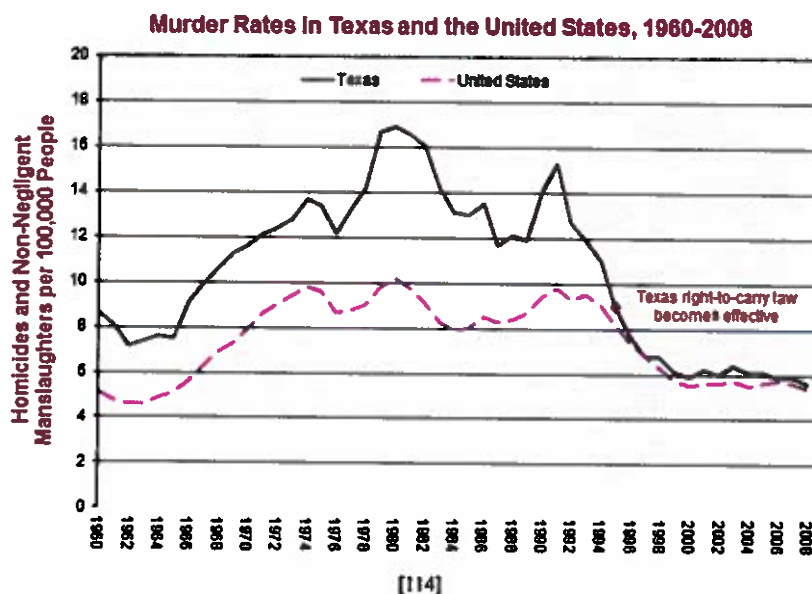
- * On October 1, 1987, Florida's right-to-carry law became effective.[103]
- * This law requires that concealed carry licensees be 21 years of age or older, have clean criminal/mental health records, and complete a firearms safety/training course.[104]
- * As of July 31, 2010, Florida has issued 1,825,143 permits and has 746,430 active licensees,[105] constituting roughly 5.4% of the state's population that is 21 years of age or older.[106]



- * Since the outset of the Florida right-to-carry law, the Florida murder rate has averaged 36% lower than it was before the law took effect, while the U.S. murder rate has averaged 15% lower.[108]
- * From the outset of the Florida right-to-carry law through July 31, 2010, Florida has revoked 5,674 or 0.3% of all issued permits. Of these:
 - 522 permits were revoked for crimes committed prior to licensure
 - 4,955 permits were revoked for crimes committed after licensure, of which 168 involved the usage of a firearm.[109]

Texas

- * In January 1996, Texas's right-to-carry law became effective.[110]
- * This law requires that concealed carry licensees be at least 21 years of age (or 18 years of age if a member or veteran of the U.S. armed forces), have clean criminal/mental health records, and complete a handgun proficiency course.[111]
- * In 2009, Texas had 402,914 active licensees,[112] constituting roughly 2.4% of the state's population that is 21 years of age or older.[113]

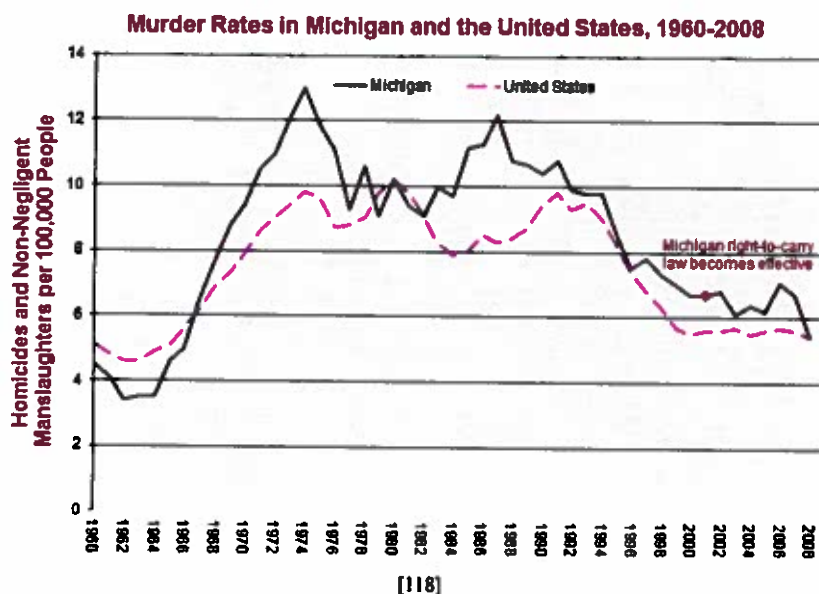


* Since the outset of the Texas right-to-carry law, the Texas murder rate has averaged 30% lower than it was before the law took effect, while the U.S. murder rate has averaged 28% lower. [115]

Michigan

* On July 1, 2001, Michigan's right-to-carry law became effective [116]

* This law requires that concealed carry licensees be at least 18 years of age (or 21 years of age if purchasing a handgun from a licensed dealer), have clean criminal/mental health records, and pass a written firearms safety test. [117]

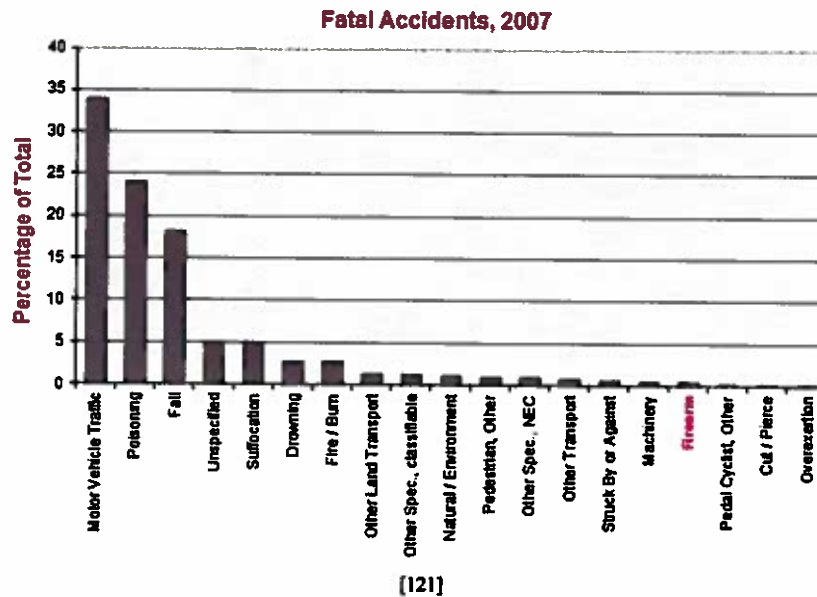


* Since the outset of the Michigan right-to-carry law, the Michigan murder rate has averaged 4% lower than it was before the law took effect, while the U.S. murder rate has averaged 2% lower. [119]

Accidents

Fatal

* In 2007, there were 613 fatal firearm accidents in the United States, constituting 0.5% of 123,706 fatal accidents that year. [120]



• Fatal firearm accidents in 2007 by age groups:

Age Group	Fatal Firearm Accidents	
	Raw number	Portion of fatal accidents from all causes
<1 yrs	1	0.1%
1-4 yrs	18	1.1%
5-9 yrs	20	2.1%
10-14 yrs	26	2.1%
15-24 yrs	155	1.0%
25-34 yrs	94	0.6%
35-44 yrs	91	0.5%
45-54 yrs	82	0.4%
55-64 yrs	57	0.5%
65+ yrs	69	0.2%

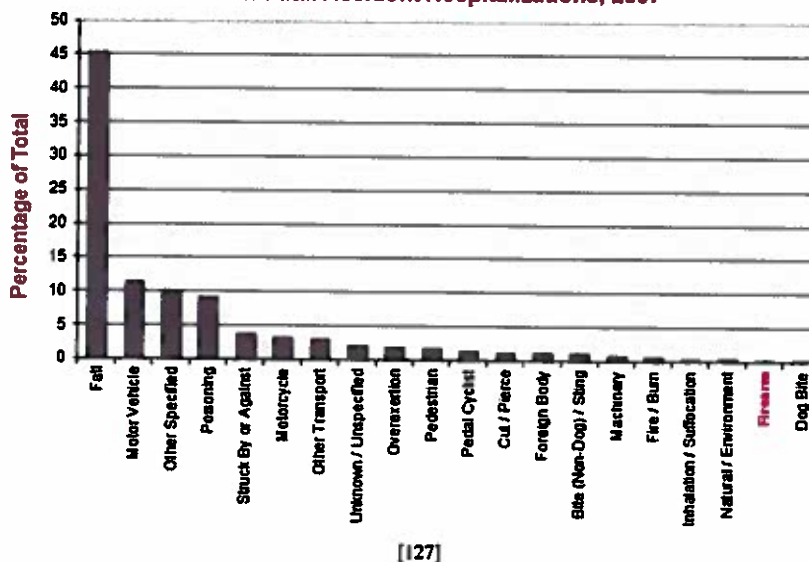
[122]

• Non-Fatal

• In 2007, there were roughly 15,698 emergency room visits for non-fatal firearm accidents,[123] constituting 0.05% of 27.7 million emergency room visits for non-fatal accidents that year.[124]

• These emergency room visits for non-fatal firearm accidents resulted in 5,045 hospitalizations,[125] constituting 0.4% of 1.4 million non-fatal accident hospitalizations that year [126]

Non-Fatal Accident Hospitalizations, 2007



└ Harm vs. Benefit

* In *D.C. v Heller*, the 2008 Supreme Court ruling striking down Washington's D.C.'s handgun ban, Justice Stephen Breyer authored a dissenting opinion that was joined by Justices John Paul Stevens, David Souter, and Ruth Bader Ginsburg. The opinion states:

First, consider the facts as the legislature saw them when it adopted the District statute. As stated by the local council committee that recommended its adoption, the major substantive goal of the District's handgun restriction is "to reduce the potentiality for gun-related crimes and gun-related deaths from occurring within the District of Columbia." ...

... [A]ccording to the committee, "[f]or every intruder stopped by a homeowner with a firearm, there are 4 gun-related accidents within the home." [128]

* This committee report cites no source or evidence for this statistic. [129]

* A 1994 survey conducted by the U.S. Centers for Disease Control and Prevention (CDC) found that Americans use guns to frighten away intruders who are breaking into their homes about 498,000 times per year. [130]

* According to the CDC, there were about 18,498 gun-related accidents that resulted in death or an emergency room visit during 2001 [131] (the earliest year such data is available from the CDC [132]). This is roughly 27 times lower than the CDC's 1994 estimate for the number of times Americans use guns to frighten away intruders who are breaking into their homes. [133]

└ Safety

* Five critical rules of gun safety from the NRA and other sources.

- 1) Always keep the gun pointed in a safe direction (whether loaded or unloaded).
- 2) Always keep your finger off the trigger until ready to shoot.
- 3) Always keep the gun unloaded until ready to shoot.
- 4) Be aware of what is behind your target.
- 5) When handling firearms, never use alcohol or any drug that might impair your awareness or judgment (including prescription drugs). [134]

Politics

└ Interest Groups

* From the 1990 election cycle through August 22, 2010, the following political contributions were made by gun rights and gun control interest groups to federal candidates:

	Total Contributions	Donations to Democrats	Donations to Republicans	Percent to Dems	Percent to Repubs
Gun Rights	\$22,467,579	\$3,231,405	\$19,195,400	14%	85%
Gun Control	\$1,888,886	\$1,776,310	\$112,326	94%	6%

[135] [136]

- * In the 2008, 2006, 2004, 2002, and 2000 election cycles, neither gun rights nor gun control interest groups were among the top 50 interest groups donating to incumbent members of Congress.[137]
- * In the 2008 election cycle, gun rights groups donated \$2,397,743 to federal candidates,[138] equating to about 1% of the money donated by lawyers/law firms.[139]
- * In the 2008, election cycle, gun control groups donated \$57,919 to federal candidates, equating to about 2% of the money donated by gun rights groups.[140]

↳ Party Platforms

- * The 2008 Republican Party Platform voices support for the Second Amendment and the Supreme Court's 2008 decision in *D.C. v Heller*, which overturned Washington's D.C.'s handgun ban. The Platform calls for "the next president to appoint judges who will similarly respect the Constitution." [141]
- * The 2008 Democratic Party Platform voices support for the Second Amendment, states that the "right to own firearms is subject to reasonable regulation," and calls for "closing the gun show loophole, improving our background check system, and reinstating the assault weapons ban." [142]

↳ Politicians

- * The President of the United States appoints judges to the Supreme Court. These appointments must be approved by a majority of the Senate.[143] Senate rules allow for a "filibuster," in which a vote to approve a judge can be blocked unless three-fifths of the senators (typically 60 out of 100) agree to let it take place.[144] [145]
- * Once seated, federal judges serve for life unless they voluntarily resign or are removed through impeachment, which requires a majority vote of the House of Representatives and a two-thirds vote in the Senate.[146]
- * On June 26, 2008, the U.S. Supreme Court, in a 5-4 decision, ruled that Washington's D.C.'s handgun ban was unconstitutional.[147] Both of the Justices appointed by Democrats voted to uphold the ban, and five of the seven Justices appointed by Republicans voted to strike it down.[148]
- * Of the five Justices who voted to strike down the D.C. handgun ban, Barack Obama voted against the nomination of two of them and identified two of the others as judges he would not have nominated.[149] [150] [151] Of the four justices who voted to uphold the handgun ban, John McCain identified all of them as judges he would not have nominated.[152]
- * In May 2009, President Obama announced Sonia Sotomayor as his first nominee to the Supreme Court. [153] She was confirmed in a 68-31 Senate vote, with 100% of Democrats voting for her confirmation and 78% of Republicans voting against it.[154]
- * Within a year of being confirmed to the Supreme Court,[155] Sotomayor joined in a dissenting opinion declaring that Chicago's handgun ban was constitutional, that "the use of arms for private self-defense does not warrant federal constitutional protection from state regulation," and that the Framers of the Constitution "did not write the Second Amendment in order to protect a private right of armed self-defense." [156]
- * In May 2010, Obama announced his second nominee to the Supreme Court, Elena Kagan.[157] As a law clerk for Supreme Court Justice Thurgood Marshall, Kagan wrote a memo recommending Marshall deny hearing an appeal from a man who was convicted of violating Washington, D.C.'s gun laws. She wrote in the memo:

[The man's] sole contention is that the District of Columbia's firearms statutes violate his constitutional right to "keep and bear arms." I'm not sympathetic.[158]

- * Kagan was confirmed to the Supreme Court by the Senate in a 63-37 vote, with 98% of Democrats voting for her confirmation and 88% of Republicans voting against it.[159]

Constitution

- * In the Bill of Rights, the Second Amendment to the Constitution reads:

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms shall not be infringed.[160]

- * Gun control proponents have argued and some federal courts have ruled that the Second Amendment does not apply to individual citizens of the United States but only to members of militias, which, they assert, are now the state National Guard units.[161] [162] In 2002, a federal appeals court panel ruled that "the people" only "have the right to bear arms in the service of the state." [163]

- * Gun rights proponents have argued and some federal courts have ruled that the Second Amendment recognizes "an individual right to keep and bear arms." [164] In 2001, a federal appeals court panel ruled that the Second Amendment "protects the right of individuals, including those not then actually a member of any militia or engaged in active military service or training, to privately possess and bear their own firearms..." [165]

* James Madison was the primary author of the Bill of Rights,[166] is known as the "Father of the Constitution" for his central role in its formation,[167] and was one of three authors of the Federalist Papers, a group of essays published in newspapers and books to explain and lobby for ratification of the Constitution.[168] [169]

* In Federalist Paper 46, James Madison addressed the concern that a standing federal army might conduct a coup to take over the nation. He argued that this was implausible because, based on the country's population at the time, a federal standing army couldn't field more than 25,000-30,000 men. He then wrote:

To these would be opposed a militia amounting to near half a million of citizens with arms in their hands, officered by men chosen from among themselves, fighting for their common liberties, and united and conducted by governments possessing their affections and confidence.

Besides the advantage of being armed, which the Americans possess over the people of almost every other nation, the existence of subordinate governments, to which the people are attached, and by which the militia officers are appointed, forms a barrier against the enterprises of ambition, more insurmountable than any which a simple government of any form can admit of. Notwithstanding the military establishments in the several kingdoms of Europe, which are carried as far as the public resources will bear, the governments are afraid to trust the people with arms. [170]

↳ *D.C. v Heller*

* In 1976, the Washington, D.C. City Council passed a law generally prohibiting residents from possessing handguns and requiring that all firearms in private homes be (1) kept unloaded and (2) rendered temporarily inoperable via disassembly or installation of a trigger lock.[171] [172]

* On June 26, 2008, the U.S. Supreme Court, in a 5-4 ruling known as *D.C. v Heller*, struck down this law as unconstitutional.[173]

* Excerpts from the majority ruling (Justice Scalia, joined by Roberts, Kennedy, Thomas, and Alito):

The District's total ban on handgun possession in the home amounts to a prohibition on an entire class of "arms" that Americans overwhelmingly choose for the lawful purpose of self-defense. Under any of the standards of scrutiny the Court has applied to enumerated constitutional rights, this prohibition ... would fail constitutional muster.

Similarly, the requirement that any lawful firearm in the home be disassembled or bound by a trigger lock makes it impossible for citizens to use arms for the core lawful purpose of self-defense and is hence unconstitutional.

The Second Amendment is naturally divided into two parts: its prefatory clause and its operative clause. The former does not limit the latter grammatically, but rather announces a purpose. The Amendment could be rephrased, "Because a well regulated Militia is necessary to the security of a free State, the right of the people to keep and bear Arms shall not be infringed."

* Excerpts from a minority dissent (Justice Stevens, joined by Souter, Ginsburg, and Breyer):

[T]he words "the people" in the Second Amendment refer back to the object announced in the Amendment's preamble. They remind us that it is the collective action of individuals having a duty to serve in the militia that the text directly protects and, perhaps more importantly, that the ultimate purpose of the Amendment was to protect the States' share of the divided sovereignty created by the Constitution.

As used in the Second Amendment, the words "the people" do not enlarge the right to keep and bear arms to encompass use or ownership of weapons outside the context of service in a well-regulated militia.

* Excerpt from a minority dissent (Justice Breyer, joined by Stevens, Souter, and Ginsburg):

[The Framers were] unlikely then to have thought of a right to keep loaded handguns in homes to confront intruders in urban settings as *central*. And the subsequent development of modern urban police departments, by diminishing the need to keep loaded guns nearby in case of intruders, would have moved any such right even further away from the heart of the amendment's more basic protective ends.

* The Bill of Rights includes two Amendments other than the Second that use the phrase "right of the people":

Amendment 1: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of

speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." [174]

Amendment 4: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." [175]

* In *D.C. v Heller*, the Supreme Court Justices debated the meaning of the phrase "right of the people" in the Second Amendment. Below are excerpts of this debate:

• Majority Opinion (Justice Scalia, joined by Roberts, Kennedy, Thomas, and Alito):

The unamended Constitution and the Bill of Rights use the phrase "right of the people" two other times... The Ninth Amendment uses very similar terminology... All three of these instances unambiguously refer to individual rights, not "collective" rights, or rights that may be exercised only through participation in some corporate body. ...

... Nowhere else in the Constitution does a "right" attributed to "the people" refer to anything other than an individual right.

What is more, in all six other provisions of the Constitution that mention "the people," the term unambiguously refers to all members of the political community, not an unspecified subset.

• Dissenting Opinion (Justice Stevens, joined by Souter, Ginsburg, and Breyer):

The Court also overlooks the significance of the way the Framers used the phrase "the people" in these constitutional provisions. In the First Amendment, no words define the class of individuals entitled to speak, to publish, or to worship; in that Amendment it is only the right peaceably to assemble, and to petition the Government for a redress of grievances, that is described as a right of "the people." These rights contemplate collective action. While the right peaceably to assemble protects the individual rights of those persons participating in the assembly, its concern is with action engaged in by members of a group, rather than any single individual. Likewise, although the act of petitioning the Government is a right that can be exercised by individuals, it is primarily collective in nature. For if they are to be effective, petitions must involve groups of individuals acting in concert. ...

As used in the Fourth Amendment, "the people" describes the class of persons protected from unreasonable searches and seizures by Government officials. It is true that the Fourth Amendment describes a right that need not be exercised in any collective sense. But that observation does not settle the meaning of the phrase "the people" when used in the Second Amendment.

• Majority Opinion (Justice Scalia, joined by Roberts, Kennedy, Thomas, and Alito):

Justice Stevens is of course correct ... that the right to assemble cannot be exercised alone, but it is still an individual right, and not one conditioned upon membership in some defined "assembly," as he contends the right to bear arms is conditioned upon membership in a defined militia. And *Justice Stevens* is dead wrong to think that the right to petition is "primarily collective in nature." *Ibid.* See *McDonald v. Smith*, 472 U. S. 479, 482-484 (1985) (describing historical origins of right to petition).

↳ *McDonald v Chicago*

* In an 1833 Supreme Court case known as *Barron v Baltimore*, the Court ruled that the rights of the people in the Constitution and the Bill of Rights only had to be respected by the federal government and could be infringed by state governments. [176]

* During the aftermath of the Civil War in 1868, the United States adopted the 14th Amendment to the Constitution, the first section of which reads:

... No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. ... [177]

* Senator Jacob Howard of Michigan served on the committee that drafted the 14th Amendment, and he introduced it on the floor of the Senate. In this speech, he stated that the "great object" of the first section of the amendment is "to restrain the power of the States and compel them at all times to respect" the "personal rights guaranteed and secured by the first eight amendments of the Constitution" including "the right to keep and to bear arms...." [178]

* In 1982, the city of Chicago instituted a ban on handguns. This ban barred civilians from possessing handguns except for those registered with the city government prior to enactment of the law. The law also

specified that such handguns had to be re-registered every two years or owners would forfeit their right to possess them. In 1994, the law was amended to require annual re-registration.[179] [180] [181]

- On June 28, 2010, the U.S. Supreme Court ruled (5-4) that this ban is unconstitutional.[182]

- Excerpt from the majority ruling (Justice Alito, joined by Roberts, Scalia, Kennedy, and Thomas):

In sum, it is clear that the Framers and ratifiers of the Fourteenth Amendment counted the right to keep and bear arms among those fundamental rights necessary to our system of ordered liberty.

- Excerpt from a concurring opinion (Justice Thomas):

[An 1876 decision by the Supreme Court] holding that blacks could look only to state governments for protection of their right to keep and bear arms enabled private forces, often with the assistance of local governments, to subjugate the newly freed slaves and their descendants through a wave of private violence designed to drive blacks from the voting booth and force them into peonage, an effective return to slavery. Without federal enforcement of the inalienable right to keep and bear arms, these militias and mobs were tragically successful in waging a campaign of terror against the very people the Fourteenth Amendment had just made citizens.

- Excerpt from a minority dissent (Justice Breyer, joined by Ginsburg and Sotomayor):

[T]he use of arms for private self-defense does not warrant federal constitutional protection from state regulation.

- Excerpt from a minority dissent (Justice Stevens):

[T]he strength of the individual's liberty interests and the State's regulatory interests must always be assessed and compared.

Footnotes

[1] Paper: "Estimating intruder-related firearm retrievals in U.S. households, 1994." By Robin M. Ikeda and others. *Violence and Victims*, Winter 1997. Pages 363-372. <http://www.ncbi.nlm.nih.gov/pubmed/9591354>

Page 370: "Obtaining information on the protective use of firearms in an efficient and unbiased manner is difficult. These data can be collected through official records, such as police reports, or through special studies. Police reports are more likely to include events with untoward outcomes. Cross-sectional surveys may also be subject to reporting biases and may not yield a sufficient number of episodes to analyze because these events are rare. Nevertheless, surveys are likely to be the most common investigatory tool because of their simplicity and apparent straightforwardness."

[2] Book: *Firearms and Violence: A Critical Review*. By the Committee to Improve Research and Data on Firearms and the Committee on Law and Justice, National Research Council of the National Academies. Edited by Charles F. Wellford, John V. Pepper, and Carol V. Petrie. National Academies Press, 2005. Page 35:

While surveys of firearms acquisitions, possession, and use are of varying quality and scope, they all share common methodological and survey sampling-related problems. The most fundamental of these is the potential for response errors to survey questionnaires. Critics argue that asking people whether they own a firearm, what kind it is, and how it is used may lead to invalid responses because ownership is a controversial matter for one or more reasons: some people may own a firearm illegally, some may own it legally but worry that they may use it illegally, and some may react to the intense public controversy about firearm ownership by becoming less (or even more) likely to admit to ownership (Blackman, 2003).⁷

⁷ While in most surveys respondents are provided confidentiality, the concern is still expressed that violations of confidentiality directly or through data mining could lead to the identification of specific respondents in a way that might allow the identification of firearms owners.

[3] Report: "Guns Used in Crime." By Marianne W. Zawitz. U.S. Department of Justice, Bureau of Justice Statistics, July 1995. <http://bjs.ojp.usdoj.gov/content/pub/pdf/GUIC.PDF>

Page 2:

What are the different types of firearms?

Handgun A weapon designed to fire a small projectile from one or more barrels when held in one hand with a short stock designed to be gripped by one hand.

Revolver A handgun that contains its ammunition in a revolving cylinder that typically holds five to nine cartridges, each within a separate chamber. Before a revolver fires, the cylinder rotates, and the next chamber is aligned with the barrel.

Pistol Any handgun that does not contain its ammunition in a revolving cylinder. Pistols can be manually operated or semiautomatic. A semiautomatic pistol generally contains cartridges in a

magazine located in the grip of the gun. When the semiautomatic pistol is fired, the spent cartridge that contained the bullet and propellant is ejected, the firing mechanism is cocked, and a new cartridge is chambered.

Derringer A small single- or multiple-shot handgun other than a revolver or semiautomatic pistol.

Rifle A weapon intended to be fired from the shoulder that uses the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.

Shotgun A weapon intended to be fired from the shoulder that uses the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.

[4] Report: "Firearm Use by Offenders." By Caroline Wolf Harlow, U.S. Department of Justice, November 2001. <http://bis.ojp.usdoj.gov/index.cfm?tv=obdetail&id=940>

Page 15:

A semiautomatic gun is a firearm in which a shell is ejected and the next round of ammunition is loaded automatically from a magazine or clip. The trigger must be pulled for each shot. Semiautomatic guns may be classified as handguns, rifles, or shotguns.

A machine gun is an automatic gun which, if the trigger is held down, will fire rapidly and continuously. It is not a semi-automatic gun for which the trigger must be pulled for each shot. (Classified as *fully automatic* for analysis)

[5] Dataset: "Annual Estimates of the Resident Population for the United States, Regions, States, and Puerto Rico: April 1, 2000 to July 1, 2008." U.S. Census Bureau, December 2009. <http://www.census.gov/popest/states/NST-ann-est.html>

As of July 1, 2009, total people = 307,006,550

[6] Book: *Firearms and Violence: A Critical Review*. By the Committee to Improve Research and Data on Firearms and the Committee on Law and Justice, National Research Council of the National Academies. Edited by Charles F. Wellford, John V. Pepper, and Carol V. Petrie. National Academies Press, 2005. Pages 56-57:

Firearm production statistics are derived from reports of firearms manufacture, import, and export made the Bureau of Alcohol, Tobacco, and Firearms. Estimates of firearm availability are derived by adding the net growth in the number of firearms (manufactures plus imports minus exports) to a base measure of firearms stock.⁴

⁴ Production-based estimates have limitations in that they account for neither additions to the stock from illegal or other uncounted means nor losses from seized, lost, or nonworking firearms. These data also exclude firearms manufactured or exported for the military but include firearms purchased by domestic law enforcement agencies.

Page 57: "Table 3-2 presents production-based estimates of the size of the civilian firearms stock based on a cumulated total since 1999."

1999, total firearms (258,322,465), handguns (93,742,357)

[7] Web page: "Firearms Fact Card, 2010." National Rifle Association, January 20, 2010. <http://www.nra.org/Issues/FactSheets/Read.aspx?ID=83>

"Privately owned firearms in the U.S.: Approaching 300 million, including nearly 100 million handguns. The number of firearms rises over 4 million annually."

NOTE: Although the NRA does not state that this data is derived from production-based estimates, it is consistent with the 1999 production-based estimates in the citation above.

[8] Data from and calculations performed with information from the following sources:

a) Web page: "Firearms Fact Card, 2010." National Rifle Association, January 20, 2010. <http://www.nra.org/Issues/FactSheets/Read.aspx?ID=83>

"Gun owners in the U.S.: 70-80 million; 40-45 million own handguns"

"American households that have firearms: 40-45%"

NOTES:

- Although the NRA does not state that this data is derived from surveys, Just Facts found that it is consistent with a broad range of surveys.

- Just Facts requested data on firearm ownership from the U.S. Department of Justice on February 17, 2010. The Department of Justice responded that this information is "not maintained by this Agency."

b) Dataset: "Average Number of People per Household, by Race and Hispanic Origin, Marital Status, Age, and Education of Householder: 2009." U.S. Census Bureau, January 2009. <http://www.census.gov/population/www/socdemo/hh-fam/cps2009.html>
Total households = 117,181,000

c) Dataset: "Annual Estimates of the Resident Population for the United States, Regions, States, and Puerto Rico: April 1, 2000 to July 1, 2008." U.S. Census Bureau, December 2009.

<http://www.census.gov/popest/states/NST-ann-est.html>

As of July 1, 2009, total people = 307,006,550

d) Web page: "State & County QuickFacts." U.S. Census Bureau. Last revised November 17, 2009.

<http://quickfacts.census.gov/qfd/states/00000.html>

Persons under 18 years old, percent, 2008 = 24.3%

CALCULATIONS:

- 1) Number of households with a gun = 117,181,000 households in the U.S. \times .040-.045 households with a gun = 46,872,400-52,731,450
- 2) Percentage of adults owning a gun = 70-80 million people owning a gun / (307,006,550 people in the U.S. \times (1-.243 persons under 18 years old)) = 30.1% - 34.4%
- 3) Percentage of adults owning a handgun = 40-45 million people owning a handgun / (307,006,550 people in the U.S. \times (1-.243 persons under 18 years old)) = 17.2% - 19.4%

[9] Article: "Gun Ownership and Use in America." By Joseph Carroll. Gallup Poll, November 22, 2005. <http://www.gallup.com/poll/20098/gun-ownership-use-america.aspx>

[10] Article: "Gun Ownership and Use in America." By Joseph Carroll. Gallup Poll, November 22, 2005. <http://www.gallup.com/poll/20098/gun-ownership-use-america.aspx>

[11] Report: "2008 Crime in the United States, Expanded Homicide Data – Table 9." Federal Bureau of Investigation, U.S. Department of Justice, September 2009. <http://www2.fbi.gov/ucr/cius2008/offenses/expanded...>

NOTE: This table states that 66.9% of all murders were committed with firearms, but this data does not account for all homicides – only those for which a "Supplemental Homicide Report" was filed (correspondence from U.S. Department of Justice to Just Facts, January 15, 2010). Hence, this table shows 14,180 total murder victims, while the UCR states: "An estimated 16,272 persons were murdered nationwide in 2008." Assuming the proportion of murders committed with firearms is approximately the same regardless of whether or not a Supplemental Homicide Report is filed:

$16,272 \times .669 \approx 10,886$ people murdered with firearms

[12] Paper: "Armed Resistance to Crime: The Prevalence and Nature of Self-Defense with a Gun." By Gary Kleck and Marc Gertz. *Journal of Criminal Law and Criminology*, Fall 1995. <http://www.law.northwestern.edu/jclc/backissues/86-1.html>

Page 160: "The present survey ... was carefully designed to correct all of the known correctable or avoidable flaws of previous surveys.... We interviewed a large nationally representative sample...."

Pages 160-161: "A professional telephone polling firm, Research Network of Tallahassee, Florida, carried out the sampling and interviewing."

Page 161: "Each interview began with a few general 'throat-clearing' questions about problems facing the R's community and crime. The interviewers then asked the following question: 'Within the past five years, have you yourself or another member of your household used a gun, even if it was not fired, for self-protection or for the protection of property at home, work, or elsewhere? Please do *not* include military service, police work, or work as a security guard.'"

Page 172: "While estimates of DGU frequency are reliable because they are based on a very large sample of 4,977 cases, results pertaining to the details of DGU incidents are based on 213 or fewer sample cases, and readers should treat these results with appropriate caution."

Page 163: "An additional step was taken to minimize the possibility of DGU [defensive gun use] frequency being overstated. The senior author went through interview sheets on every one of the interviews in which a DGU was reported, looking for any indication that the incident might not be genuine. ... There were a total of twenty-six cases where at least one of these problematic indications was present ... Estimates using all of the DGU cases are labeled herein as 'A' estimates, while the more conservative estimates based only on cases devoid of any problematic indications are labeled 'B' estimates."

Page 176: "Another way of assessing how serious these incidents appeared to the victims is to ask them how potentially fatal the encounter was. We asked Rs [respondents]: 'If you had *not* used a gun for protection in this incident, how likely do you think it is that you or someone else would have been killed? Would you say almost certainly *not*, probably not, might have, probably would have, or almost certainly would have been killed?' Panel K indicates that 15.7% of the Rs stated that they or someone else "almost certainly would have" been killed ..."

NOTES: Table 2 on page 184 lists the results of the survey. In keeping with Just Facts' Standards of Credibility, we are using the most cautious plausible interpretations of this data, which is for households (as opposed to individuals) and a five-year recall period based "only on cases devoid of any problematic indications." As shown in this table, this amounts to 3.456% of households or 1,029,615 defensive gun uses per year. Accounting for the 15.7% figure from page 176 (cited above): 1,029,615 defensive gun uses per year \times .157 of respondents stating someone "almost certainly would have been killed" if they "had not used a gun for protection" = 161,650 such incidents. Using percentages for the same calculation: $3.456\% \times .157 = 0.54\%$.

[13] Web page: "Definitions." U.S. Department of Justice, Bureau of Justice Statistics. Last revised May 3, 2010. <http://bjs.ojp.usdoj.gov/index.cfm?ty=tdtp>

Aggravated assault

(1) Intentionally and without legal justification causing serious bodily injury, with or without a deadly weapon or (2) using a deadly or dangerous weapon to threaten, attempt, or cause bodily injury, regardless of the degree of injury, if any. Includes attempted murder, aggravated battery, felonious assault, and assault with a deadly weapon.

Robbery

Completed or attempted theft, directly from a person, of property or cash by force or threat of force, with or without a weapon, and with or without injury.

Simple assault

Attack without a weapon resulting either in no injury, minor injury (for example, bruises, black eyes, cuts, scratches or swelling) or in undetermined injury requiring less than 2 days of hospitalization. Also includes attempted assault without a weapon.

[14] NOTE: The U.S. government publishes two primary crime measures: The FBI's "Uniform Crime Report" (UCR) and the Department of Justice's "National Crime Victimization Survey" (NCVS). The UCR is based upon incidents reported to law enforcement authorities and does not account for unreported crimes. The NCVS is based upon data gathered from extensive interviews, and hence, provides more accurate estimates of crime than the UCR.* The NCVS, however, does not provide data on: murders and nonnegligent manslaughters (because the victims cannot be interviewed), crimes committed against children under the age of 12, and commercial crimes such as robberies of banks and convenience stores.† Therefore, Just Facts uses the NCVS data as a baseline and extrapolates the missing information from UCR and NCVS data.

* Book: *Firearms and Violence: A Critical Review*. By the Committee to Improve Research and Data on Firearms and the Committee on Law and Justice, National Research Council of the National Academies. Edited by Charles F. Wellford, John V. Pepper, and Carol V. Petrie. National Academies Press, 2005. Page 21: "The National Crime Victimization Survey ... is widely viewed as a 'gold standard for measuring crime victimization.'"

Page 30: "Although the NCVS data do many things right, they are, like any such system, beset with methodological problems of surveys in general as well as particular problems associated with measuring illicit, deviant, and deleterious activities...."

† Report: "The Nation's two crime measures." U.S. Department of Justice, October 2004.
<http://bis.ojp.usdoj.gov/content/pub/pdf/mcm.pdf>

The U.S. Department of Justice administers two statistical programs to measure the magnitude, nature, and impact of crime in the Nation: the Uniform Crime Reporting (UCR) Program and the National Crime Victimization Survey (NCVS). Each program produces valuable information about aspects of the Nation's crime problem. Because the UCR and NCVS programs are conducted for different purposes, use different methods, and focus on somewhat different aspects of crime, the information they produce together provides a more comprehensive panorama of the Nation's crime problem than either could produce alone. ...

The FBI's UCR program ... collects information on the following crimes reported to law enforcement authorities: homicide, forcible rape, robbery, aggravated assault, burglary, larceny-theft, motor vehicle theft, and arson. ...

[Regarding the NCVS:] Two times a year, U.S. Census Bureau personnel interview household members in a nationally representative sample of approximately 42,000 households (about 75,000 people). Approximately 150,000 interviews of persons age 12 or older are conducted annually. ...

[The NCVS] does not measure homicide or commercial crimes (such as burglaries of stores). ...

Second, the two programs measure an overlapping but non-identical set of crimes. The NCVS includes crimes both reported and not reported to law enforcement. The NCVS excludes, but the UCR includes, homicide, arson, commercial crimes, and crimes against children under age 12.

[15] CALCULATION:

4,856,510 NCVS violent victimizations (not including: (a) fatal crimes, (b) crimes committed against children under the age of 12, and (c) commercial crimes)*
+ (a) 16,272 UCR murders and nonnegligent manslaughters (i.e., fatal crimes)†
+ (b) 244,866 nonfatal violent victimizations committed against children under age 12 (extrapolated)‡
+ (c) 222,125 commercial robberies (extrapolated)§
≈ 5,339,773 violent criminal victimizations

* Bulletin: "National Crime Victimization Survey: Criminal Victimization, 2008." By Michael R. Rand. Bureau of Justice Statistics, U.S. Department of Justice, September 2009.

<http://bis.ojp.usdoj.gov/content/pub/pdf/cv08.pdf>

Page 1: "Violent crimes" include "rape/sexual assault, robbery, and aggravated and simple assault."

Page 1, Table 1 shows 4,856,510 violent criminal victimizations, of which 551,830 are robberies.

† Report: "2008 Crime in the United States, Murder." Federal Bureau of Investigation, U.S. Department of Justice, September 2009. http://www2.fbi.gov/ucr/cius2008/offenses/violent_crime/murder_homicide.html
"The FBI's Uniform Crime Reporting (UCR) Program defines murder and nonnegligent manslaughter as the willful (nonnegligent) killing of one human being by another. ... An estimated 16,272 persons were murdered nationwide in 2008."

NOTE: Although the verbiage above could imply that "nonnegligent manslaughter" and "murder" are categorized as separate offenses, this is not the case. As explained in correspondence from the U.S. Department of Justice to Just Facts (January 15, 2010), "These two are counted as one offense, and numbers defining them are not separated." Hence, the 16,272 murders cited above also includes nonnegligent

manslaughters.

‡ Report: "2008 Crime in the United States, Expanded Homicide Data – Table 9." Federal Bureau of Investigation, U.S. Department of Justice, September 2009.

<http://www2.fbi.gov/ucr/cius2008/offenses/expanded...>

NOTE: Extrapolating data from this source (further details available upon request), approximately 4.8% of murder victims were under the age of 12. If a similar percentage of nonfatal violent victimizations occur in this age group:

$y = \text{violent victimizations, ages 0-11}$

$y \approx (0.048 \times 4,856,510 \text{ NCVS violent victimizations}) / (1 - 0.048)$

$y \approx 244,866$

§ Report: "2008 Crime in the United States, Robbery." Federal Bureau of Investigation, U.S. Department of Justice, September 2009. http://www2.fbi.gov/ucr/cius2008/offenses/violent_crime/robbery.html

NOTE: Excluding hold-ups of lemonade stands, it is fairly safe to assume there are few commercial robberies of children under the age of 12. Extrapolating data from this source (further details available upon request), approximately 28.7% of robberies are commercial and 71.3% are private. Applying these proportions to the NCVS data:

$y = \text{commercial robberies}$

$y \approx (0.287 \times 551,830 \text{ NCVS (private) robberies}) / (1 - 0.287)$

$y \approx 222,125$

[16] CALCULATION:

343,550 NCVS violent victimizations in which the offender was armed with a firearm (not including: (a) fatal crimes, (b) crimes committed against children under the age of 12, and (c) commercial crimes).*

+ (a) 10,886 murders and nonnegligent manslaughters in which a firearm was used (extrapolated)†

+ (b) 17,385 nonfatal violent victimizations committed against children under age 12 in which the offender was armed with a firearm (extrapolated)‡

+ (c) 53,310 commercial robbery victimizations in which the offender was armed with a firearm (extrapolated)§

+ 10,706 rapes/sexual assaults in which the offender was armed with a firearm (extrapolated)#

= 435,837 violent victimizations in which the offender was armed with a firearm

* Bulletin: "National Crime Victimization Survey: Criminal Victimization, 2008." By Michael R. Rand. Bureau of Justice Statistics, U.S. Department of Justice, September 2009.

<http://bjs.ojp.usdoj.gov/content/pub/pdf/cv08.pdf>

Page 6: "An offender was armed with a gun, knife, or other object used as a weapon in an estimated 20% of all incidents of violent crime in 2008 (table 7)."

Page 6, "Text table 3. Firearm use in violent crime, 1999 and 2008": violent victimizations involving a firearm = 343,550

Page 6, "Table 7. Presence of weapons in violent incidents, by type, 2008":

- percentage of robberies involving a firearm = 24%

- number of rapes/sexual assaults involving a firearm = 0 (Note: Just Facts does not take this figure at face value and instead, extrapolates an estimated number.)

NOTE: With regard to guns and other weapons, this report employs the words "presence" and "use" interchangeably. This is evident by the fact that "Text table 3. Firearm use in violent crime, 1999 and 2008" and "Table 7. Presence of weapons in violent incidents, by type, 2008" cite the same figure (303,880) for the number of violent firearm incidents. Thus, the word "use" does not necessarily mean the offender fired the gun. Instead, the word "use" means the offender was armed with a gun.

† Report: "2008 Crime in the United States, Expanded Homicide Data – Table 9." Federal Bureau of Investigation, U.S. Department of Justice, September 2009.

<http://www2.fbi.gov/ucr/cius2008/offenses/expanded...>

NOTE: This table states that 66.9% of all murders were committed with firearms, but this data does not account for all homicides – only those for which a "Supplemental Homicide Report" was filed (correspondence from U.S. Department of Justice to Just Facts, January 15, 2010). Hence, this table shows 14,180 total murder victims, while the UCR states: "An estimated 16,272 persons were murdered nationwide in 2008." Assuming the proportion of murders committed with firearms is approximately the same regardless of whether or not a Supplemental Homicide Report is filed:

$16,272 \times .669 \approx 10,886$ people murdered with firearms

‡ 2008 NCVS data shows 4,856,510 nonfatal violent victimizations of people ages 12 and over, of which 343,550 or 7.1% involved the use of firearms. Based upon the extrapolation above, roughly 244,866 nonfatal violent victimizations were committed against children under the age of 12. Assuming the proportion of victimizations committed with firearms is approximately the same regardless of whether or not the victims are under the age of 12 (probably a high estimate):

$244,866 \times .071 \approx 17,385$ nonfatal violent victimizations committed against children under age 12 in which the offender was armed with a firearm

§ Based upon the extrapolation above, roughly 222,125 commercial robberies were committed in 2008. 2008 NCVS data shows 24% of noncommercial robberies are committed using firearms. Assuming the proportion of robberies committed with firearms is approximately the same regardless of whether or not they are commercial (probably a low estimate):

$222,125 \times .24 \approx 53,310$ commercial robbery victimizations in which the offender was armed with a firearm

2008 NCVS data shows zero rape/sexual assaults committed by an offender armed with a gun, and the 2008 UCR explicitly states, "Weapon data are not collected for forcible rape offenses." [Report: "2008 Crime in the United States, Violent Crime." Federal Bureau of Investigation, U.S. Department of Justice, September 2009. http://www2.fbi.gov/ucr/cius2008/offenses/violent_crime/index.html] Hence, Just Facts

extrapolates the number of rape/sexual assaults involving firearms based upon several reliable NCVS and UCR metrics (further details available upon request).

[17] Paper: "Measuring Civilian Defensive Firearm Use: A Methodological Experiment." By David McDowall and others. *Journal of Quantitative Criminology*, March 2000.
<http://www.springerlink.com/content/mgn3274255v6i67/>

Page 7:

The most important of the other set of questions asked:

Within the past 12 months, have you yourself used a gun, even if it was not fired, to protect yourself or someone else, or for the protection of property at home, work, or elsewhere?

This is largely identical to the standard question from the other surveys, but the reference period is 1 year rather than 5 years. The question also refers to the respondent alone, rather than to all household members.

Page 8: "Because gun ownership is a strong correlate of firearm resistance (e.g., Kleck and Gertz, 1996, p. 187), we selected a national sample from commercial lists of likely gun owners. Of the eventual respondents, 83% did report the presence of a gun in their home."

Page 8: "This left 3006 households, an 81% response rate. The interviewers selected a single respondent from within each household. In a random 75% of the cases, the interviewers asked for the male head of household. In the remaining 25% they asked for the female head."

Page 10: "Table II. Types of Incidents of Firearm Defense...."

Type of Incident	Number of Respondents	Percentage of Respondents
No incident	2851	94.8%
Civilian against offender, clear	48	1.6%
Civilian against offender, ambiguous	24	0.8%
Law enforcement and security work	30	1.0%
Civilian against possible offender, no contact	20	0.7%
Against animals	13	0.4%
Carries gun for protection only	10	0.3%
Target shooting	8	0.3%
Military duties	2	0.1%

[18] As shown in the previous footnote, this study did not use a nationally representative population. To correct for this, Just Facts used the following equation:

$$t = c \times g \times p / [n \times r \times [(s \times d / f) + [(1-s) \times (1-d) / (1-f)]]]$$

Where:

t = Total defensive gun uses in a nationally representative population

c = Defensive gun uses in this survey, civilian against offender, clear = 48

g = Minimum proportion of households with a gun = 0.34*

p = Population, ages 25-70 = 158,799,375†

n = Survey sample size = 3006

r = Proportion of survey respondents with a gun in their home = .83

s = Proportion of survey respondents who are female = .25

d = Proportion of defensive gun uses by females = .46†

f = Proportion of population (ages 25-70) who are females = .51†

NOTES:

In keeping with Just Facts' Standards of Credibility, we have given preferentiality to figures that are contrary to our viewpoints and used the most cautious plausible interpretations of this data. Details of how we have done this are explained in the following notes.

* This equation operates under the conservative assumption that respondents in homes without firearms had no defensive gun uses, even though such people may have used others' firearms for defense. In a range of surveys stretching over the previous 30 years, 34% is the lowest figure we have found for the percentage of homes with guns. [Paper: "Estimating intruder-related firearm retrievals in U.S. households, 1994." By Robin M. Ikeda and others. *Violence and Victims*, Winter 1997. Pages 363-372.
<http://www.ncbi.nlm.nih.gov/pubmed/9591354>

Page 369: "A second concern about representativeness of the sample is that the prevalence of households with firearms in our survey (34%) is lower than that reported in polls (41%) for the same year (Maguire & Pastore, 1995). ... It is similar, however, to that observed in the 1994 National Health Interview Survey (37%) (personal communication, National Center for Health Statistics) and another national telephone survey about using firearms for protection (36%) (Kleck & Gertz, 1995)."

† Data file: "U.S. Interim Projections by Age, Sex, Race, and Hispanic Origin: 2000-2050, Detailed Data File." Population Projections Branch, U.S. Census Bureau, May 11, 2004.
<http://www.census.gov/population/www/projections/>

NOTE: The survey in the footnote above selected respondents by asking for the male/female head of

household. Just Facts used a conservative estimate of this population by only including people from 25 to 70 years old.

‡ Paper: "Armed Resistance to Crime: The Prevalence and Nature of Self-Defense with a Gun." By Gary Kleck and Marc Gertz. *Journal of Criminal Law and Criminology*, Fall 1995.
<http://www.law.northwestern.edu/jclc/backissues/86-1.html>

Page 178: "Perhaps the most surprising finding of the survey was the large share of reported DGUs [defensive gun uses] that involved women. Because of their lower victimization rates and lower gun ownership rates, one would expect women to account for far less than half of DGUs. Nevertheless, 46% of our sample DGUs involved women."

[19] Paper: "Armed Resistance to Crime: The Prevalence and Nature of Self-Defense with a Gun." By Gary Kleck and Marc Gertz. *Journal of Criminal Law and Criminology*, Fall 1995.
<http://www.law.northwestern.edu/jclc/backissues/86-1.html>

Page 160: "The present survey ... was carefully designed to correct all of the known correctable or avoidable flaws of previous surveys.... We interviewed a large nationally representative sample...."

Pages 160-161: "A professional telephone polling firm, Research Network of Tallahassee, Florida, carried out the sampling and interviewing."

Page 161: "Each interview began with a few general 'throat-clearing' questions about problems facing the R's community and crime. The interviewers then asked the following question: 'Within the past *five years*, have you yourself or another member of your household *used* a gun, even if it was not fired, for self-protection or for the protection of property at home, work, or elsewhere? Please do *not* include military service, police work, or work as a security guard.'"

Page 172: "While estimates of DGU frequency are reliable because they are based on a very large sample of 4,977 cases, results pertaining to the details of DGU incidents are based on 213 or fewer sample cases, and readers should treat these results with appropriate caution."

Page 163: "An additional step was taken to minimize the possibility of DGU [defensive gun use] frequency being overstated. The senior author went through interview sheets on every one of the interviews in which a DGU was reported, looking for any indication that the incident might not be genuine. ... There were a total of twenty-six cases where at least one of these problematic indications was present. ... Estimates using all of the DGU cases are labeled herein as 'A' estimates, while the more conservative estimates based only on cases devoid of any problematic indications are labeled 'B' estimates."

NOTES: Table 2 on page 184 lists the results of the survey. In keeping with Just Facts' Standards of Credibility, we have cited the most conservative result of this survey, which is for households (as opposed to individuals) and a five-year recall period based "only on cases devoid of any problematic indications." As shown in this table, this amounts to 3.456% of households or 1,029,615 defensive gun uses per year.

[20] Paper: "Estimating intruder-related firearm retrievals in U.S. households, 1994." By Robin M. Ikeda and others. *Violence and Victims*, Winter 1997. <http://www.ncbi.nlm.nih.gov/pubmed/9591354>

Page 363:

To estimate the frequency of firearm retrieval because of a known or presumed intruder, the authors analyzed data from a 1994 national random digit dialing telephone survey (n = 5,238 interviews). ... National projections based on these self-reports reveal an estimated 1,896,842 (95% CI [confidence interval] = 1,480,647-2,313,035) incidents in which a firearm was retrieved, but no intruder was seen; 503,481 (95% CI = 305,093-701,870) incidents occurred in which an intruder was seen, and 497,646 (95% CI = 266,060-729,231) incidents occurred in which the intruder was seen and reportedly scared away by the firearm.

Page 364: "A specified random selection procedure was used to ensure that approximately one half of respondents were male and one half were female. If more than one eligible individual was in the selected gender category, the interviewer asked for the respondent with the most recent birthday. Households occupied by minorities were oversampled to ensure adequate minority representation and then weighted to adjust for unequal selection probabilities."

[21] Book: *Armed and Considered Dangerous: A Survey of Felons and Their Firearms* (Expanded Edition). By James D. Wright and Peter D. Rossi. Aldine De Gruyter, 1986 (Expanded edition published in 1994).

Page 1: "Almost all of the information presented here was obtained from a survey of men serving sentences for felony offenses in 11 state prisons scattered throughout the country. However uncertain one may be about their reliability as sources, convicted criminals are about the only source of empirical information on this topic that can be tapped at reasonable cost. (We also show later that convicted felons are not totally unreliable informants.)"

Page 26: "[W]e restricted the study to felons who had been out 'on the street' recently enough to possess useful, current information; operationally, this meant a restriction to men who began their current prison term on or after 1 January 1979."

Page 32:

The definitive study of the quality of prisoner self-report data is Marquis (1981), a data quality analysis of the RAND "Criminal Careers" survey. In this study, data quality was assessed by comparing prisoners' self reports with information contained in official criminal justice records. Since the format and procedures of the RAND survey were very similar to those followed in our survey, it is

reasonable to assume that Marquis' findings generalize. Summarizing briefly, Marquis found:

1. There is no evidence that prisoners attempt to deny salient aspects of their criminal past. ...
2. Comparisons of self-reported conviction-offense data with official records showed that "on a general level, the data are close to unbiased" (Marquis, 1981: 32). Moderate biases were found on some items, but in general, reliability of the self-report data was "moderately high."

[22] Same as above. Page 155:

2. Have you ever been scared off, shot at, wounded, or captured by an armed victim? No: 66%, Yes: 34%, (N) = (1673)
3. Was there ever a time in your life when you decided not to do a crime because you knew or believed that the victim was carrying a gun? No, never: 61%, Yes, just once: 10%, Yes, a few times: 22%, Yes, many times: 8%, (N) = (1627)
4. [H]ave any of the criminals you have known personally ever been scared off, shot at, wounded, or captured by an armed victim? No, none: 31%, Yes, but only one: 10%, Yes, a few: 48%, Yes, many: 11%, (N) = (1627)

[23] Calculations performed with data from the following sources:

a) Report: "2008 Crime in the United States, Murder." Federal Bureau of Investigation, U.S. Department of Justice, September 2009. http://www2.fbi.gov/ucr/cius2008/offenses/violent_crime/murder_homicide.html
"An estimated 16,272 persons were murdered nationwide in 2008."

b) Dataset: "Annual Estimates of the Resident Population for the United States, Regions, States, and Puerto Rico: April 1, 2000 to July 1, 2008." U.S. Census Bureau, December 22, 2008.
<http://www.census.gov/popest/states/NST-ann-est.html>
"July 1, 2008, United States: 304,059,724"

c) Report: "Deaths: Preliminary Data for 2007." By Jiaquan Xu and others. U.S. Centers for Disease Control and Prevention, Division of Vital Statistics, August 19, 2009.
http://www.cdc.gov/nchs/data/nvsr/nvsr58/nvsr58_01.pdf
Page 1: "Life expectancy at birth rose by 0.2 years to 77.9 years."

NOTE: The calculations that determine this fact were performed by a licensed actuary using two different methodologies, both of which yield the same answer. An Excel file containing these calculations is available upon request.

[24] Report: "Lifetime Likelihood of Victimization." By Herbert Koppel. Bureau of Justice Statistics, U.S. Department of Justice, March 1987. <http://www.ncjrs.gov/pdffiles1/bjs/104274.pdf>

Page 1:

Annual victimization rates alone do not convey the full impact of crime as it affects people. No one would express his or her concern by saying, "I am terribly afraid of being mugged between January and December of this year." People are worried about the possibility that at some time in their lives they will be robbed or raped or assaulted, or their houses will be burglarized.

Annual rates can provide a false sense of security by masking the real impact of crime. Upon hearing that the homicide rate is about 8 to 10 per 100,000 population, one feels safe; after all, 1 chance in 10,000 is not very frightening. Actually, however, at recent homicide rates about 1 of every 133 Americans will become a murder victim; for black males the proportion is estimated to be 1 of every 30. Similarly, while 16 out of 10,000 women are rape victims annually, the lifetime chances of suffering a rape are much greater.

The problem lies with people's perception of the meaning of annual rates with respect to their own lives. If the Earth revolved around the sun in 180 days, all of our annual crime rates would be halved, but we would not be safer. ...

Because of the assumptions involved in the calculations and because the data derive from a sample survey, the numbers presented in this report are estimates only; they should be interpreted only as indications of approximate magnitude, not as exact measures. Essentially they are calculated values of lifetime risk rather than descriptions of what has been observed.

Page 2: "The estimates of lifetime likelihood of victimization are derived under the assumption that, throughout their lifetimes, people in the U.S. have incurred, and will continue to incur, criminal victimization at the same annual rates as were observed in the years 1975 through 1984."

Page 2 (Table 1): "Lifetime likelihood of victimization"

Percent of Persons Who Will be Victimized by Violent Crime Starting at 12 Years of Age				
	Total	Number of Victimations		
	one or more	one	two	three or more
Violent Crime	83%	30%	27%	25%
Violent Crime, Completed	42%	32%	9%	2%

[25] Report: "Firearm Use by Offenders." By Caroline Wolf Harlow, U.S. Department of Justice, November

2001. <http://bis.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=940>

Page 2: "Data for this report are based primarily on personal interviews with large nationally representative samples of State and Federal prison inmates."

Page 13: "A total of 14,285 interviews were completed for the State survey and 4,041 for the Federal survey, for overall response rates of 92.5% in the State survey and 90.2% in the Federal survey."

Page 1: "Among inmates in prison for homicide, a sexual assault, robbery, assault or other violent crime, 30% of State offenders and 35% of Federal offenders carried a firearm when committing the crime."

[26] Report: "Crime in the United States, Table 25: Percent of Offenses Cleared by Arrest or Exceptional Means, by Population Group, 2008." U.S. Department of Justice, Federal Bureau of Investigation, September 2009. http://www2.fbi.gov/ucr/cius2008/data/table_25.html

Total, All Agencies, Percent cleared by arrest:*

Murder and nonnegligent manslaughter = 63.6%

Forcible rape = 40.4%

Robbery = 26.8%

Aggravated assault = 54.9%

Data Declaration (http://www2.fbi.gov/ucr/cius2008/data/table_25_dd.html): "The data used in creating this table were from all law enforcement agencies submitting at least 6 months of complete offense reports for 2008."

NOTE:

* Report: "Crime in the United States, Offenses Cleared." U.S. Department of Justice, Federal Bureau of Investigation, September 2009. <http://www2.fbi.gov/ucr/cius2008/offenses/clearances/index.html>

Cleared by Arrest

In the UCR Program, a law enforcement agency reports that an offense is cleared by arrest, or solved for crime reporting purposes, when at least one person is:

- Arrested.
- Charged with the commission of the offense.
- Turned over to the court for prosecution (whether following arrest, court summons, or police notice).

To qualify as a clearance, all of the conditions listed above must have been met. In its calculations, the UCR Program counts the number of offenses that are cleared, not the number of arrestees. Therefore, the arrest of one person may clear several crimes, and the arrest of many persons may clear only one offense. In addition, some clearances that an agency records in a particular calendar year, such as 2004, may pertain to offenses that occurred in previous years.

[27] NOTE: As shown in the following three articles, the data cited above is suspect because it is based on reports from local law enforcement agencies:

a) Article: "Retired Officers Raise Questions on Crime Data." By William K. Rashbaum. *New York Times*, February 7, 2010. <http://www.nytimes.com/2010/02/07/nvregion/07crime.html?hp>
 "More than a hundred retired New York Police Department captains and higher-ranking officers said in a survey that the intense pressure to produce annual crime reductions led some supervisors and precinct commanders to manipulate crime statistics, according to two criminologists studying the department."

b) Article: "Reducing rape with an eraser." By Judith Riesman. Dr. Judith Riesman, September 12, 2006. http://www.driudithreisman.com/archives/2006/09/reducing_rape_w.html

c) Article: "Brooklyn's 81st Precinct probed by NYPD for fudging stats; felonies allegedly marked as misdemeanors." By Rocco Parascandola. *New York Daily News*, February 2, 2010. http://www.nydailynews.com/news/nv_crime/2010/02/02/...
 "A Brooklyn precinct is under investigation for manipulating statistics to make its cops look like better crimefighters, the Daily News has learned. ... Schoolcraft told The News the top brass are so concerned with numbers that one precinct lieutenant is known as 'The Shredder' because he's often spotted destroying documents."

[28] Web page: "Definitions." U.S. Department of Justice, Bureau of Justice Statistics. Last revised May 3, 2010. <http://bis.ojp.usdoj.gov/index.cfm?ty=tdtp>

Aggravated assault

(1) Intentionally and without legal justification causing serious bodily injury, with or without a deadly weapon or (2) using a deadly or dangerous weapon to threaten, attempt, or cause bodily injury, regardless of the degree of injury, if any. Includes attempted murder, aggravated battery, felonious assault, and assault with a deadly weapon.

Robbery

Completed or attempted theft, directly from a person, of property or cash by force or threat of force, with or without a weapon, and with or without injury.

Simple assault

Attack without a weapon resulting either in no injury, minor injury (for example, bruises, black eyes, cuts, scratches or swelling) or in undetermined injury requiring less than 2 days of hospitalization.

Also includes attempted assault without a weapon.

[29] NOTE: The U.S. government publishes two primary crime measures: The FBI's "Uniform Crime Report" (UCR) and the Department of Justice's "National Crime Victimization Survey" (NCVS). The UCR is based upon incidents reported to law enforcement authorities and does not account for unreported crimes. The NCVS is based upon data gathered from extensive interviews, and hence, provides more accurate estimates of crime than the UCR.* The NCVS, however, does not provide data on: murders and nonnegligent manslaughters (because the victims cannot be interviewed), crimes committed against children under the age of 12, and commercial crimes such as robberies of banks and convenience stores.† Therefore, Just Facts uses the NCVS data as a baseline and extrapolates the missing information from UCR and NCVS data.

* Book: *Firearms and Violence: A Critical Review*. By the Committee to Improve Research and Data on Firearms and the Committee on Law and Justice, National Research Council of the National Academies. Edited by Charles F. Wellford, John V. Pepper, and Carol V. Petrie. National Academies Press, 2005. Page 21: "The National Crime Victimization Survey ... is widely viewed as a "gold standard for measuring crime victimization."

Page 30: "Although the NCVS data do many things right, they are, like any such system, beset with methodological problems of surveys in general as well as particular problems associated with measuring illicit, deviant, and deleterious activities...."

† Report: "The Nation's two crime measures." U.S. Department of Justice, October 2004.
<http://bis.ojp.usdoj.gov/content/pub/pdf/nicm.pdf>

The U.S. Department of Justice administers two statistical programs to measure the magnitude, nature, and impact of crime in the Nation: the Uniform Crime Reporting (UCR) Program and the National Crime Victimization Survey (NCVS). Each program produces valuable information about aspects of the Nation's crime problem. Because the UCR and NCVS programs are conducted for different purposes, use different methods, and focus on somewhat different aspects of crime, the information they produce together provides a more comprehensive panorama of the Nation's crime problem than either could produce alone. ...

The FBI's UCR program ... collects information on the following crimes reported to law enforcement authorities: homicide, forcible rape, robbery, aggravated assault, burglary, larceny-theft, motor vehicle theft, and arson. ...

[Regarding the NCVS:] Two times a year, U.S. Census Bureau personnel interview household members in a nationally representative sample of approximately 42,000 households (about 75,000 people). Approximately 150,000 interviews of persons age 12 or older are conducted annually. ...

[The NCVS] does not measure homicide or commercial crimes (such as burglaries of stores). ...

Second, the two programs measure an overlapping but non-identical set of crimes. The NCVS includes crimes both reported and not reported to law enforcement. The NCVS excludes, but the UCR includes, homicide, arson, commercial crimes, and crimes against children under age 12.

[30] Calculations performed with data from the following sources:

a) Report: "Felony Sentences in State Courts, 2006 – Statistical Tables." By Sean Rosenmerkel and others. U.S. Department of Justice, Bureau of Justice Statistics, December 2009.

<http://bis.ojp.usdoj.gov/content/pub/pdf/fssc06st.pdf>

Page 2 (in pdf): "Felonies are widely defined as crimes with the potential of being punished by more than 1 year in prison. State courts sentenced an estimated 1,132,290 persons for a felony in 2006, including 206,140 (or 18% of all felony convictions) for a violent felony (table 1.1). ... In 2006 an estimated 69% of all persons convicted of a felony in state courts were sentenced to a period of confinement—41% to state prison and 28% to local jails (table 1.2). Jail sentences are usually a year or less in a county or city facility, while prison sentences are usually more than a year and are served in a state facility."

Page 4 (in pdf): "Table 1.2. Types of felony sentences imposed in state courts, by offense, 2006"

Violent offenses, incarceration rate = 77%

NOTE: As table 1.1 shows, "Violent offenses" in this report include murder/nonnegligent manslaughter, rape, other sexual assault, robbery, aggravated assault, and other violent crimes such as negligent manslaughter and kidnapping. Simple assault is not included in these figures because it is a misdemeanor offense.

b) Report: "Federal Justice Statistics, 2006 - Statistical Tables." Prepared by the Urban Institute under the supervision of Mark Motivans of the Bureau of Justice Statistics, United States Department of Justice, May 1, 2009. <http://bis.ojp.usdoj.gov/content/pub/html/fjst/2006/fjst06st.pdf>

Page 32 (in pdf): Table 5.2. "Type and length of federal sentences imposed, by offense, October 1, 2005 - September 30, 2006."

Incarcerations for violent offenses = 2,311

NOTE: As page 32 (in the pdf) shows, violent felony offenses in this report include murder, negligent manslaughter, assault, robbery, sexual abuse, kidnapping, threats against the President. Simple assault is not included in these figures because it is a misdemeanor offense.

c) CALCULATION:

1,595,600 aggravated assaults, robberies, and rapes/sexual assaults (not including: (a) fatal crimes, (b) crimes committed against children under the age of 12, and (c) commercial crimes)*

+ (a) 16,272 UCR murders and nonnegligent manslaughters (i.e., fatal crimes)†

+ (b) 80,450 aggravated assaults, robberies, and rapes/sexual assaults committed against children under age 12 (extrapolated)‡

+ (c) 222,125 commercial robberies (extrapolated)§

≈ 1,914,447 aggravated assaults, robberies, and rapes/sexual assaults

* Bulletin: "National Crime Victimization Survey: Criminal Victimization, 2008." By Michael R. Rand. U.S. Department of Justice, Bureau of Justice Statistics, September 2009.

<http://bjs.ojp.usdoj.gov/content/pub/pdf/cv08.pdf>

Page 1, Table 1 shows 839,940 aggravated assaults, 551,830 robberies, and 203,830 rapes/sexual assaults. Total of these crimes = 1,595,600

† Report: "2008 Crime in the United States, Murder." Federal Bureau of Investigation, U.S. Department of Justice, September 2009. http://www2.fbi.gov/ucr/cius2008/offenses/violent_crime/murder_homicide.html
"The FBI's Uniform Crime Reporting (UCR) Program defines murder and nonnegligent manslaughter as the willful (nonnegligent) killing of one human being by another. ... An estimated 16,272 persons were murdered nationwide in 2008."

NOTE: Although the verbiage above could imply that "nonnegligent manslaughter" and "murder" are categorized as separate offenses, this is not the case. As explained in correspondence from the U.S. Department of Justice to Just Facts (January 15, 2010), "These two are counted as one offense, and numbers defining them are not separated." Hence, the 16,272 murders cited above also includes nonnegligent manslaughters.

‡ Report: "2008 Crime in the United States, Expanded Homicide Data – Table 9." Federal Bureau of Investigation, U.S. Department of Justice, September 2009.

http://www2.fbi.gov/ucr/cius2008/offenses/expanded_...

NOTE: Extrapolating data from this source (further details available upon request), approximately 4.8% of murder victims were under the age of 12. If a similar percentage of nonfatal violent victimizations occur in this age group:

$y = \text{violent victimizations, ages 0-11}$

$y = (0.048 \times 1,595,600 \text{ aggravated assaults, robberies, and rapes/sexual assaults}) / (1 - 0.048)$

$y \approx 80,450$

§ Report: "2008 Crime in the United States, Robbery." Federal Bureau of Investigation, U.S. Department of Justice, September 2009. http://www2.fbi.gov/ucr/cius2008/offenses/violent_crime/robbery.html

NOTE: Excluding hold-ups of lemonade stands, it is fairly safe to assume there are few commercial robberies of children under the age of 12. Extrapolating data from this source (further details available upon request), approximately 28.7% of robberies are commercial and 71.3% are private. Applying these proportions to the NCVS data:

$y = \text{commercial robberies}$

$y \approx (0.287 \times 551,830 \text{ NCVS (private) robberies}) / (1 - 0.287)$

$y \approx 222,125$

CALCULATIONS:

a) 206,140 violent felony convictions in state courts \times 0.77 incarceration rate for violent felony

convictions in state courts = 158,728 incarcerations for violent felonies in state courts

b) 2,311 incarcerations for violent offenses in federal courts + 158,728 incarcerations for violent

felonies in state courts = 161,039 incarcerations for violent crimes

c) 1,914,447 aggravated assaults, robberies, and rapes/sexual assaults / 161,039 incarcerations for such crimes = 11.9 violent crimes for every incarceration

NOTES: The latest available data were used for these calculations, and there is a three-year chronological variance between the annual totals in the sources cited. However, given the slight changes in such data from year to year, the approximation is valid.

[31] Report: "Recidivism of Prisoners Released in 1994." By Patrick A. Langan and David J. Levin. Bureau of Justice Statistics, June 2, 2002. <http://bjs.ojp.usdoj.gov/content/pub/pdf/rpr94.pdf>

Page 1:

This study of the rearrest, reconviction, and reincarceration of prisoners tracked 272,111 former inmates for 3 years after their release in 1994. The 272,111 – representing two-thirds of all prisoners released in the United States that year – were discharged from prisons in 15 States....

• Within 3 years from their release in 1994 –

67.5% of the prisoners were rearrested for a new offense (almost exclusively a felony or a serious misdemeanor)

Page 2: "To an unknown extent, recidivism rates based on State and FBI criminal history repositories understate actual levels of recidivism. The police agency making the arrest or the court disposing of the case may fail to send the notifying document to the State or FBI repository. Even if the document is sent, the repository may be unable to match the person in the document to the correct person in the repository or may neglect to enter the new information. For these reasons, studies such as this one that rely on these repositories for complete criminal history information will understate recidivism rates."

Page 4: "The 67.5% of releases rearrested within 3 years, or 183,675 persons, were charged with 744,480 new crimes, or an average of 4 new crimes each (table 3). Over 100,000 were new charges for a violent crime, including 2,900 new homicides, 2,400 new kidnappings, 2,400 rapes, 3,200 other sexual assaults, 21,200 robberies, 54,600 assaults, and nearly 13,900 other violent crimes." {Table 3 on this page has the precise figures cited by Just Facts.}

Page 4: "Over their adult criminal history (both prior to and following their release) the 272,111 offenders were arrested for nearly 4.9 million offenses altogether: 4.1 million prior to release plus nearly 0.8 million after release. That is an average of about 17.9 charges each."

Page 5: How many of the 272,111 were ever arrested for violence[?]? Although 22.5% of the 272,111 were released from prison in 1994 following an arrest and conviction for a violent crime, 53.7% of all the prisoners had a prior arrest for violence, and 21.6% were arrested for a violent crime after their release.



Population in DC as of July 1, 2009 = 599,657

d) Dataset: "Uniform Crime Reporting Program, United States, 1960-2008." Federal Bureau of Investigation, Criminal Justice Information Services Division. Data supplied to Just Facts on June 15, 2010. Data available upon request.

[37] Calculated with data from:

Dataset: "Uniform Crime Reporting Program, District of Columbia, 1960-2008." Federal Bureau of Investigation, Criminal Justice Information Services Division. Data supplied to Just Facts on June 15, 2010. Data available upon request.

Dataset: "Uniform Crime Reporting Program, United States, 1960-2008." Federal Bureau of Investigation, Criminal Justice Information Services Division. Data supplied to Just Facts on June 15, 2010. Data available upon request.

NOTE: The averages were calculated by averaging the murder rates from all years in which the ban was effective for at least 6 months of the year.

[38] Law: "Firearms Act, 1920." Office of Public Sector Information
http://www.opsi.gov.uk/acts/acts1920/pdf/ukpga_19200043_en.pdf

Chapter 43, Section 1:

(1) A person shall not purchase, have in his possession, or carry any firearm or ammunition unless he holds a certificate (in this Act called a firearm certificate) granted under this section, and in force at the time ...

(2) A firearm certificate shall be granted by the chief officer of police of the district in which the applicant for the certificate resides, if he is satisfied that the applicant is a person who has a good reason for requiring such a certificate and can be permitted to have in his possession, use, and carry a firearm or ammunition without danger to the public safety or to the peace, and on payment of the prescribed fee....

(3) A firearm certificate shall be in the prescribed form and shall specify the nature and number of the firearms to which it relates, and, as respects ammunition, the quantities authorised to be purchased and to be held at any one time thereunder, and the certificate may on the application of the holder thereof be varied from time to time by the chief officer of police of the district in which the holder for the time resides ...

(5) A firearm certificate shall, unless previously revoked or cancelled, continue in force for three years, but shall be renewable for a further period of three years by the chief officer of police of the district in which the holder of the certificate resides....

(7) The fee to be paid on the grant or renewal of a firearm certificate shall be such as is specified in the First Schedule to this Act.

(8) If any person purchases, has in his possession, uses, or carries a firearm or ammunition without holding a firearm certificate or otherwise than as authorised by such a certificate or, in the case of ammunition, in quantities in excess of those so authorised, or fails to comply with any condition subject to which the certificate is granted, he shall be liable in respect of each offence on summary conviction to a fine not exceeding fifty pounds, or to imprisonment, with or without hard labour, for a term not exceeding three months, or to both such imprisonment and fine....

Chapter 43, Section 12:

(1) In this Act, unless the context otherwise requires. The expression "firearm" means any lethal firearm or other weapon of any description from which any shot, bullet, or other missile can be discharged, or any part thereof, and the expression "ammunition" means ammunition for any such firearms, and includes grenades, bombs, and other similar missiles, whether such missiles are capable of use with a firearm or not, and ingredients and components thereof:

Provided that a smooth bore shot-gun or air-gun or air-rifle (other than air-guns and air-rifles of a type declared by rules made by a Secretary of State under this Act to be specially dangerous) and ammunition therefor shall not in Great Britain be deemed to be a firearm and ammunition for the purpose of the provisions of this Act other than those relating to the removal of firearms and ammunition from one place to another or for export:

[39] Law: "Firearms Act, 1968." Office of Public Sector Information.
[http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1968/...](http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1968/)

**Part I: Provisions as to Possession, Handling and Distribution of Weapons and Ammunition;
Prevention of Crime and Measures to Protect Public Safety
General restrictions on possession and handling of firearms and ammunition.**

Section 1: Requirement of firearm certificate

(1) Subject to any exemption under this Act, it is an offence for a person—

(a) to have in his possession, or to purchase or acquire, a firearm to which this section applies without holding a firearm certificate in force at the time, or otherwise than as authorised by such a certificate;

(b) to have in his possession, or to purchase or acquire, any ammunition to which

this section applies without holding a firearm certificate in force at the time, or otherwise than as authorised by such a certificate, or in quantities in excess of those so authorised.

(2) It is an offence for a person to fail to comply with a condition subject to which a firearm certificate is held by him. ...

Section 2: Requirement of certificate for possession of shot guns.

(1) Subject to any exemption under this Act, it is an offence for a person to have in his possession, or to purchase or acquire, a shot gun without holding a certificate under this Act authorising him to possess shot guns.

(2) It is an offence for a person to fail to comply with a condition subject to which a shot gun certificate is held by him. ...

Part II: Firearm and Shot Gun Certificates; Registration of Firearms Dealers Grant, renewal, variation and revocation of firearm and shot gun certificates

Section 26 A: Applications for firearm certificates.

(1) An application for the grant of a firearm certificate shall be made in the prescribed form to the chief officer of police for the area in which the applicant resides and shall state such particulars as may be required by the form. ...

Section 26B: Applications for shot gun certificates.

(1) An application for the grant of a shot gun certificate shall be made in the prescribed form to the chief officer of police for the area in which the applicant resides and shall state such particulars as may be required by the form.

Section 27: Special provisions about firearm certificates.

(2) A firearm certificate shall be in the prescribed form and shall specify the conditions (if any) subject to which it is held, the nature and number of the firearms to which it relates [including if known their identification numbers,] and, as respects ammunition, the quantities authorised to be purchased and to be held at any one time thereunder. ...

Section 28: Special provisions about shot gun certificates.

(2A) A shot gun certificate shall specify the description of the shot guns to which it relates including, if known, the identification numbers of the guns.]

[40] Report: "Home Office: Handgun Surrender and Compensation." House of Commons, Committee of Public Accounts, June 21, 1999. <http://www.parliament.the-stationery-office.co.uk/pa/...>

6. Over 162,000 handguns and 700 tonnes of ammunition were compulsorily surrendered to local police stations between July 1997 and February 1998. The surrender was the main measure in response to the tragic events of 13 March 1996, when Thomas Hamilton walked into Dunblane Primary School armed with four handguns and 743 rounds of ammunition and shot dead 16 children and their teacher, and wounded 10 other children and three other teachers. Under the first Firearms (Amendment) Act of 1997 large-calibre handguns became prohibited from 1 July 1997, with owners having until 30 September 1997 to dispose of them lawfully, and small-calibre handguns became prohibited from 1 February 1998, with disposal by 28 February 1998.

7. As a first step in managing the surrender and compensation schemes, the Home Office and the police needed to contact handgun owners and dealers to ensure that they were aware of the terms of the prohibition and surrender. The Home Office provided booklets for the police to distribute to handgun owners and dealers, explaining the requirements of the legislation and the terms of the compensation.

13. The Home Office could not provide absolute assurance that no handguns had been unlawfully retained, but was reasonably satisfied that individual police forces had ensured that prohibited handguns in their area had either been surrendered or otherwise lawfully disposed of. The Home Office assured us that individual forces had accurate records of firearms held on firearms certificates. They had used these to follow up firearms which were to be surrendered under the terms of the Acts, and had made adequate checks on handguns claimed to have been otherwise lawfully disposed of, for example by owners sending them abroad. Sixteen of the 26 police forces the National Audit Office visited considered that they had satisfied themselves that all relevant handguns had been traced and those prohibited surrendered. The remaining ten had been unable to account for the handguns held by a total of 35 owners by the end of the surrender period, although by September 1998 over three-quarters of these cases had been resolved. ...

15. The intention of the prohibition under the 1997 firearms legislation was to remove handguns from civilian ownership, and thereby also from the risk of being used in crime.

[41] Graph constructed with data from:

Report: "Homicides, Firearm Offences and Intimate Violence 2008/09"
Edited by Kevin Smith and John Flatley. UK Home Office, January 21, 2010.
<http://rds.homeoffice.gov.uk/rds/pdfs10/hosb0110.pdf>

Page 9:

Data presented in this chapter have been extracted from the Homicide Index. Since it is continually being updated with revised information from the police and the courts, the Homicide Index is a better source of data than the main recorded crime dataset. ...

[On] 24 November 2009, the ... the Homicide Index database was 'frozen' so that analysis could be conducted.

Page 10:

The term 'homicide' covers the offences of murder, manslaughter and infanticide. ...

Homicide offences up to the financial year 2008/09 are presented in this chapter, with offences shown according to the year in which the police initially recorded the offence as homicide. This is not necessarily the year in which the incident took place or the year in which any court decision was made. ...

Caution is needed when looking at homicide trend figures, primarily because they are based on the year in which offences are recorded by the police rather than the year in which the incidents took place. As an example of this, the 172 homicides attributed to Dr Harold Shipman as a result of Dame Janet Smith's inquiry took place over a long period of time but were all recorded by the police during 2002/03 [same as fiscal year 2002 in the chart made by Just Facts]. Also, where several people are killed by the same principal suspect (such as the cockle pickers who drowned in Morecambe Bay and the 7 July 2005 London bombing victims), the number of homicides counted is the total number of persons killed rather than the number of incidents.

Page 11: "Figure 1.1 Offences recorded by the police in England and Wales, 1957 to 2008/09"

Page 20: "Table 1.01 Offences initially recorded by the police as homicide by current classification: England and Wales, 1956 to 2008/09"

[42] Calculated with data from the source above.

NOTES:

- The 52% figure was calculated by averaging the homicide rates from 1969 through fiscal year 2008, and comparing this figure to 1968.
- The 15% figure was calculated by averaging the homicide rates from fiscal years 1998-2008 and comparing this figure to fiscal year 2007 (which happens to be the same figure as calendar year 2007).

[43] Ruling number 1-95-1779: "Hunt v. Daley." Appellate Court of Illinois, First District, Third Division, February 19, 1997. <http://caselaw.findlaw.com/il-court-of-appeals/1056110.html>

This proceeding involves the 1982 Chicago Weapons Ordinance, passed by the Chicago City Council on March 19, 1982 ... rendering certain firearms unregistrable in the City of Chicago. Under that ordinance, several categories of firearms, including handguns, became unregistrable in the City of Chicago. ... However, pursuant to a grandfathering provision provided in the 1982 ordinance, handgun owners whose handguns were validly registered prior to the effective date of the handgun ban could continue to re-register their handguns. ... The 1982 ordinance also required that such re-registration take place every two years. ... [It was] ... amended and recodified in 1994 to require annual re-registration. ... The failure to re-register firearms every two years after the enactment of the 1982 ordinance rendered such firearms permanently unregistrable, and thereby caused handgun owners to forfeit their right to possess such firearms within the City of Chicago.

[44] Ruling number 83-1431: "Sklar v. Byrne." United States Court of Appeals, Seventh Circuit, February 8, 1984 (as amended April 17, 1984). <http://openjurist.org/727/f2d/633>

On March 19, 1982, the Chicago City Council passed an ordinance amending Chapter 11.1 of the Municipal Code of the City of Chicago which regulates the sale, possession and registration of firearms and ammunition. The ordinance requires that all firearms in Chicago be registered with the city. ... The ordinance also classifies some firearms as "unregistrable," thus making illegal their possession in the City of Chicago. Among the categories of "unregistrable" firearms are "Handguns, except those validly registered to a current owner in the City of Chicago prior to the effective date of this Chapter." ... The effective date of the Chapter was April 10, 1982.

[45] Case file. *McDonald v Chicago*. Plaintiff's complaint. Filed June 26, 2008. <http://www.chicagocase.com/wp-content/uploads/2008/...>

"Chicago Municipal Code § 8-20-200 provides: (a) Every registrant must renew his registration certificate annually. Applications for renewal shall be made by such registrants 60 days prior to the expiration of the current registration certificate. (b) The application for renewal shall include the payment of a renewal fee as follows: 1 firearm ... \$20.00...."

[46] Article: "Evanston latest suburb to repeal handgun ban in wake of high court ruling." By Deborah Horan, *Chicago Tribune*, August 12, 2008. <http://chicagotribune.com>

"Following the lead of at least two other Chicago suburbs [presumably Morton Grove and Wilmette], the City of Evanston has repealed its handgun ban in the wake of the June U.S. Supreme Court decision that ruled blanket prohibitions of handguns in the home for self-defense violated 2nd Amendment rights."

NOTE: According to their demographics page (<https://cityofevanston.org/pdf/DemographicProfile.pdf>), the City of Evanston has a population of 74,239 as of the 2000 Census. Accessed September 9, 2010.

[47] Article: "Morton Grove repeals 27-year-old gun ban." By Robert Channick, *Chicago Tribune*, July 28, 2008. <http://chicagotribune.com>

"Morton Grove's landmark handgun ban, imposed 27 years ago, died quietly Monday night, as the suburb's

Village Board bowed to a new legal reality and repealed the ordinance. The board's 5-1 vote came in response to last month's ruling by a divided U.S. Supreme Court that struck down a similar ban. The high court ruled that the 2nd Amendment protects a person's right to own a firearm for self-defense."

NOTE: According to their website, (<http://www.mortongroveil.org/>) Morton Grove is a village comprising 22,451, as of March 28, 2009. No date is given for the estimate or census result.

[48] Article: "Winnetka Handgun Ban Dead, 7-0 Vote Repeals Law." *WBBM 780 Chicago*. July 23, 2008. <http://www.wbbm780.com>

"The village board voted Tuesday night 7-0 to repeal the 19-year-old ban, following 45 minutes of discussion and public comment. The ordinance has not been enforced since last month's U.S. Supreme Court ruling affirming individual gun ownership rights in the case of the District of Columbia vs. Heller."

NOTE: According to their demographics page, (<http://www.winnetka.com/about/demographics.aspx>) Winnetka is a city with a population estimated in 2004 to number 27,628. Accessed March 28, 2009.

[49] Article: "Winnetka repeals handgun ban." By Lisa Black, *Chicago Breaking News Center*, November 19, 2008. <http://www.chicagobreakingnews.com/2008/11/winnetka-...>

"Winnetka Village Council voted unanimously Tuesday night to repeal the suburb's 20-year-old ban on possessing handguns but kept intact other portions of its ordinance regulating firearm use.... The action followed a recent Supreme Court decision and the filing of a lawsuit by the National Rifle Association and three village residents who asserted the ban violated their 2nd Amendment rights."

NOTE: According to their demographics page (http://www.villageofwinnetka.org/pdf/documents/winn_census_data.pdf), Winnetka Village had a total population of 12,419 in the 2000 census. Accessed March 28, 2009.

[50] Article: "City wins 1st round in handgun ban challenge." By Carlos Sadovi and Hal Dardick, *Chicago Breaking News Center*, December 18, 2008. [http://www.chicagobreakingnews.com/2008/12/...](http://www.chicagobreakingnews.com/2008/12/)

"On Thursday, U.S. District Judge Milton Shadur rejected the gun rights group's effort to extend the D.C. ruling to Chicago and Oak Park."

NOTES:

- See <http://www.nra.org/media/PDFs/oakpark.pdf> for the original complaint filed against Oak Park by the NRA.

- Oak Park is a village comprising 50,824 people, according to their demographics page, (http://www.oak-park.us/Village_Background/Village_Profile.html). No date is given for the estimate or census figure. Accessed March 28, 2009.

[51] Ruling: *McDonald v Chicago*. U.S. Supreme Court, June 28, 2010. Case 08-1521. Decided 5-4. Majority: Alito, Roberts, Scalia, Kennedy, Thomas. Dissenting: Stevens, Ginsburg, Breyer, Sotomayor. <http://www.law.cornell.edu/supct/html/08-1521.ZS.html>

Two years ago, in *District of Columbia v. Heller* ... we held that the Second Amendment "protects the right to keep and bear arms for the purpose of self-defense, and we struck down a District of Columbia law that banned the possession of handguns in the home. The city of Chicago (City) and the village of Oak Park, a Chicago suburb, have laws that are similar to the District of Columbia's, but Chicago and Oak Park argue that their laws are constitutional because the Second Amendment has no application to the States. ... Applying the standard that is well established in our case law, we hold that the Second Amendment right is fully applicable to the States.

NOTE: Second Amendment to the Constitution of the United States. Ratified December 15, 1791. <http://justfacts.com/constitution.asp#Amendment2>

"A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms shall not be infringed."

[52] Graph constructed with data from:

a) Dataset: "Uniform Crime Reporting Program, United States, 1960-2008." Federal Bureau of Investigation, Criminal Justice Information Services Division. Data supplied to Just Facts on June 15, 2010. Data available upon request.

b) Amicus Brief No. 08-1521: *McDonald v Chicago*. By Maureen Martin and Nancy Lee Carlson. Heartland Institute. [http://www.americanbar.org/...](http://www.americanbar.org/)

Appendix I (page 22 in pdf).

NOTE: Just Facts compared the data in this brief with comparable data obtained from the Census Bureau and FBI (available upon request). Notwithstanding some minor differences, the data was largely congruent. Just Facts chose to use the data in this brief because it is more complete than the other sources.

[53] Calculated with data from the footnote above. The averages were calculated by averaging the murder rates from all years in which the ban was effective for at least 6 months of the year.

[54] Graph constructed with data from Amicus Brief No. 08-1521: *McDonald v Chicago*. By Maureen Martin and Nancy Lee Carlson. Heartland Institute. [http://www.americanbar.org/...](http://www.americanbar.org/)

Appendix 1 (page 22 in pdf).

[55] Calculated with data from the footnote above. The averages were calculated by averaging the data from all years in which the ban was effective for at least 6 months of the year.

[56] "2005 Chicago Murder Analysis Report." Chicago Police Department. Table 6 (page 25), Table 7 (page 26), and Figure 13 (page 27). [https://portal.chicagopolice.org/portal/page/portal/ClearPath/...](https://portal.chicagopolice.org/portal/page/portal/ClearPath/)

NOTE: The following is paraphrased from tables and figure cited above. Table 6: "Shot: 339 (75.7%) of Victims." Table 7: "Shot – Handgun: 327; Rifle: 5; Shotgun: 2 victims. Stabbing – Knife: 39 victims." Figure 13: This is a graph showing the trend of shootings and stabbings in murders from 1991 to 2005. The lowest percentage of murders that were shootings is 69.0% (1992); the highest is 80.2% (2003). There is not, however, any statistically significant trend of an increase in shootings, (it is only coincidence that the lowest percentage occurred in 1992 and the highest in 2003).

CALCULATION: 327 handgun victims / 339 firearm victims = .965

[57] Web page: "Identify Prohibited Persons." Bureau of Alcohol, Tobacco, and Firearms. Accessed July 23, 2010 at <http://www.atf.gov/firearms/how-to/identify-prohibited-persons.html>

The Gun Control Act (GCA) makes it unlawful for certain categories of persons to ship, transport, receive, or possess firearms 18 USC 922(g). Transfers of firearms to any such prohibited persons are also unlawful. 18 USC 922(d).

These categories include any person:

- * Under indictment or information in any court for a crime punishable by imprisonment for a term exceeding one year;
- * convicted of a crime punishable by imprisonment for a term exceeding one year;
- * who is a fugitive from justice;
- * who is an unlawful user of or addicted to any controlled substance;
- * who has been adjudicated as a mental defective or has been committed to any mental institution;
- * who is an illegal alien;
- * who has been discharged from the military under dishonorable conditions;
- * who has renounced his or her United States citizenship;
- * who is subject to a court order restraining the person from harassing, stalking, or threatening an intimate partner or child of the intimate partner; or
- * who has been convicted of a misdemeanor crime of domestic violence

[58] United States Code Title 18, Part I, Chapter 44, Section 922: "Firearms, Unlawful Acts." Current as of February 1, 2010. Accessed July 23, 2010 at http://www.law.cornell.edu/uscode/uscode18/usc_sec_18...

(g) It shall be unlawful for any person—

- (1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year; (In this law, the words, "crime punishable by imprisonment for a term exceeding one year," do not mean what they plainly state. See the next footnote for full clarification. The implications of this are addressed shortly later in this research.)
- (2) who is a fugitive from justice;
- (3) who is an unlawful user of or addicted to any controlled substance...
- (4) who has been adjudicated as a mental defective or who has been committed to a mental institution;
- (5) who, being an alien—
 - (A) is illegally or unlawfully in the United States...
- (6) who has been discharged from the Armed Forces under dishonorable conditions;
- (7) who, having been a citizen of the United States, has renounced his citizenship;
- (8) who is subject to a court order that—...
 - (B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child...
- (9) who has been convicted in any court of a misdemeanor crime of domestic violence, to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

[59] United States Code Title 18, Part I, Chapter 44, Section 921: "Definitions." Current as of February 1, 2010. Accessed July 31, 2010 at http://www.law.cornell.edu/uscode/uscode18/usc_sec_18...

(a)(20) The term "crime punishable by imprisonment for a term exceeding one year" does not include—

- (A) any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices, or
- (B) any State offense classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less.

What constitutes a conviction of such a crime shall be determined in accordance with the law of the jurisdiction in which the proceedings were held. Any conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this chapter, unless such pardon, expungement, or restoration of civil rights

expressly provides that the person may not ship, transport, possess, or receive firearms.

[60] United States Code Title 18, Part I, Chapter 44, Section 924: "Firearms, Penalties." Current as of February 1, 2010. Accessed July 23, 2010 at http://www.law.cornell.edu/uscode/uscode18/usc_sup_01_18...

"(a)(2) Whoever knowingly violates subsection (a)(6), (d), (g), (h), (i), (j), or (o) of section 922 shall be fined as provided in this title, imprisoned not more than 10 years, or both."

[61] United States Code Title 18, Part I, Chapter 44, Section 922: "Firearms, Unlawful Acts." Current as of February 1, 2010. Accessed July 23, 2010 at http://www.law.cornell.edu/uscode/uscode18/usc_sec_18...

(d) It shall be unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person—

- (1) is under indictment for, or has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;
- (2) is a fugitive from justice;
- (3) is an unlawful user of or addicted to any controlled substance...
- (4) has been adjudicated as a mental defective or has been committed to any mental institution;
- (5) who, being an alien—
 - (A) is illegally or unlawfully in the United States...
- (6) who ... has been discharged from the Armed Forces under dishonorable conditions;
- (7) who, having been a citizen of the United States, has renounced his citizenship;
- (8) is subject to a court order that restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child...
- (9) has been convicted in any court of a misdemeanor crime of domestic violence. ...

[62] United States Code Title 18, Part I, Chapter 44, Section 924: "Firearms, Penalties." Current as of February 1, 2010. Accessed July 23, 2010 at http://www.law.cornell.edu/uscode/uscode18/usc_sup_01_18...

"(a)(2) Whoever knowingly violates subsection (a)(6), (d), (g), (h), (i), (j), or (o) of section 922 shall be fined as provided in this title, imprisoned not more than 10 years, or both."

[63] United States Code Title 18, Part I, Chapter 44, Section 922: "Firearms, Unlawful Acts." Current as of February 1, 2010. Accessed July 23, 2010 at http://www.law.cornell.edu/uscode/uscode18/usc_sec_18...

(a) It shall be unlawful—

(1) for any person—

- (A) except a licensed importer, licensed manufacturer, or licensed dealer, to engage in the business of importing, manufacturing, or dealing in firearms, or in the course of such business to ship, transport, or receive any firearm in interstate or foreign commerce...

[64] United States Code Title 18, Part I, Chapter 44, Section 921: "Definitions." Current as of February 1, 2010. Accessed July 23, 2010 at http://www.law.cornell.edu/uscode/uscode18/usc_sec_18...

(a) As used in this chapter— ...

(21) The term "engaged in the business" means—

- (A) as applied to a manufacturer of firearms, a person who devotes time, attention, and labor to manufacturing firearms as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the firearms manufactured;
- (B) as applied to a manufacturer of ammunition, a person who devotes time, attention, and labor to manufacturing ammunition as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the ammunition manufactured;
- (C) as applied to a dealer in firearms, as defined in section 921 (a)(11)(A), a person who devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms, but such term shall not include a person who makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of his personal collection of firearms;
- (D) as applied to a dealer in firearms, as defined in section 921 (a)(11)(B), a person who devotes time, attention, and labor to engaging in such activity as a regular course of trade or business with the principal objective of livelihood and profit, but such term shall not include a person who makes occasional repairs of firearms, or who occasionally fits special barrels, stocks, or trigger mechanisms to firearms;
- (E) as applied to an importer of firearms, a person who devotes time, attention, and labor to importing firearms as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the firearms imported; and
- (F) as applied to an importer of ammunition, a person who devotes time, attention, and labor to importing ammunition as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the ammunition imported.

(22) The term "with the principal objective of livelihood and profit" means that the intent underlying the sale or disposition of firearms is predominantly one of obtaining livelihood and pecuniary gain, as opposed to other intents, such as improving or liquidating a personal firearms collection: Provided, That proof of profit shall not be required as to a person who engages in the regular and repetitive purchase and disposition of firearms for criminal purposes or terrorism.

[65] United States Code Title 18, Part I, Chapter 44, Section 924: "Firearms, Penalties." Current as of

February 1, 2010. Accessed July 23, 2010 at http://www.law.cornell.edu/uscode/uscode18/usc_sup_01...

"(n) A person who, with the intent to engage in conduct that constitutes a violation of section 922 (a)(1)(A), travels from any State or foreign country into any other State and acquires, or attempts to acquire, a firearm in such other State in furtherance of such purpose shall be imprisoned for not more than 10 years."

[66] United States Code Title 18, Part I, Chapter 44, Section 922: "Firearms, Unlawful Acts." Current as of February 1, 2010. Accessed July 23, 2010 at http://www.law.cornell.edu/uscode/uscode18/usc_sec_18...

(1)(1) Beginning on the date that is 30 days after the Attorney General notifies licensees under section 103(d) of the Brady Handgun Violence Prevention Act that the national instant criminal background check system is established [November 30, 1998*], a licensed importer, licensed manufacturer, or licensed dealer shall not transfer a firearm to any other person who is not licensed under this chapter, unless—

(A) before the completion of the transfer, the licensee contacts the national instant criminal background check system established under section 103 of that Act...

* NOTE: Review of the Bureau of Alcohol, Tobacco, Firearms and Explosives' Enforcement of Brady Act Violations Identified Through the National Instant Criminal Background Check System." U.S. Department of Justice, Office of the Inspector General, July 2004.

<http://www.justice.gov/oig/reports/ATF/e0406/exec.htm>

"The Brady Act of 1993 created a 3-day waiting period before a purchaser can take possession of a firearm, and it established a background check system - the NICS [National Instant Criminal Background Check System] - that firearms dealers were required to contact before the transfer of any firearm to ensure that a person receiving a firearm was not prohibited under the GCA [1968 Gun Control Act] from possessing firearms. The FBI implemented the NICS on November 30, 1998."

[67] Web page: "National Instant Criminal Background Check System Fact Sheet." U.S. Department of Justice, Federal Bureau of Investigation. Accessed July 24, 2010 at <http://www2.fbi.gov/hq/ciisd/nics/nicsfact.htm>

Mandated by the Brady Handgun Violence Prevention Act (Brady Act) of 1993 ... the National Instant Criminal Background Check System (NICS) was established for Federal Firearms Licensees (FFLs) to contact by telephone, or other electronic means, for information to be supplied immediately on whether the transfer of a firearm would be in violation of Section 922 (g) or (n) of Title 18, United States Code, or state law. ...

The NICS is a national system that checks available records on persons who may be disqualified from receiving firearms. The FBI developed the system through a cooperative effort with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and local and state law enforcement agencies. The NICS is a computerized background check system designed to respond within 30 seconds on most background check inquiries so the FFLs receive an almost immediate response. Depending on the willingness of state governments to act as a liaison for the NICS, the FFLs contact either the FBI or a designated state Point of Contact (POC) to initiate background checks on individuals purchasing or redeeming firearms. The background check process, as performed by the FBI and by state POCs, is described below.

[68] United States Code Title 18, Part I, Chapter 44, Section 922: "Firearms, Unlawful Acts." Current as of February 1, 2010. Accessed July 23, 2010 at http://www.law.cornell.edu/uscode/uscode18/usc_sec_18...

(a) It shall be unlawful—...

(3) for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector to transport into or receive in the State where he resides ... any firearm purchased or otherwise obtained by such person outside that State, except that this paragraph

(A) shall not preclude any person who lawfully acquires a firearm by bequest or intestate succession in a State other than his State of residence from transporting the firearm into or receiving it in that State, if it is lawful for such person to purchase or possess such firearm in that State...

(5) for any person (other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector) to transfer, sell, trade, give, transport, or deliver any firearm to any person (other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector) who the transferor knows or has reasonable cause to believe does not reside in ... the State in which the transferor resides; except that this paragraph shall not apply to

(A) the transfer, transportation, or delivery of a firearm made to carry out a bequest of a firearm to, or an acquisition by intestate succession of a firearm by, a person who is permitted to acquire or possess a firearm under the laws of the State of his residence...

[69] United States Code Title 18, Part I, Chapter 44, Section 922: "Firearms, Unlawful Acts." Current as of February 1, 2010. Accessed July 23, 2010 at http://www.law.cornell.edu/uscode/uscode18/usc_sec_18...

(d) It shall be unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person—

(1) is under indictment for, or has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(2) is a fugitive from justice;

(3) is an unlawful user of or addicted to any controlled substance...

(4) has been adjudicated as a mental defective or has been committed to any mental institution;

(5) who, being an alien—

(A) is illegally or unlawfully in the United States...

(6) who ... has been discharged from the Armed Forces under dishonorable conditions;

(7) who, having been a citizen of the United States, has renounced his citizenship;

(8) is subject to a court order that restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child...

(9) has been convicted in any court of a misdemeanor crime of domestic violence. ...

[70] United States Code Title 18, Part I, Chapter 44, Section 924: "Firearms, Penalties." Current as of February 1, 2010. Accessed July 23, 2010 at http://www.law.cornell.edu/uscode/uscode18/uscode18 USC_sup_01 ...

"(a)(2) Whoever knowingly violates subsection (a)(6), (d), (g), (h), (i), (j), or (o) of section 922 shall be fined as provided in this title, imprisoned not more than 10 years, or both."

[71] "First Reports Evaluating the Effectiveness of Strategies for Preventing Violence: Firearms Laws." Prepared by Robert A. Hahn and others. U.S. Centers for Disease Control and Prevention, October 3, 2003. <http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5214a2.htm>

The Brady Law ... established national restrictions on acquisition of firearms and ammunition from federal firearms licensees. The interim Brady Law (1994--1998) mandated a 5-day waiting period to allow background checks. The permanent Brady Law, enacted in 1998, eliminated the required waiting period. It normally allows 3 days for a background check, after which, if no evidence of a prohibited characteristic is found, the purchase may proceed.... Certain states have established additional restrictions, and some require background checks of all firearms transactions, not only those conducted by federal firearms licensees.

[72] Web page: "Federal and State Firearms Laws." National Rifle Association Institute for Legislative Action. Accessed July 24, 2010 at <http://www.nraila.org/GunLaws/>

NOTE: This page contains a clickable map with links to synopses of the firearm laws in each state. In California for example, "All firearms sales, transfers or loans, including private transactions and sales at gun shows, must go through a California licensed firearms dealer." As explained above, federal law requires all dealers to conduct a background check to sell or transfer any firearm. Thus, this California law effectively requires background checks for all firearms transactions.

[73] Report: "State Laws and Published Ordinances — Firearms, 2008 — 29th Edition." U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives. Revised December 2009. <http://www.atf.gov/publications/firearms/state-laws/29th-edition/index.html>

NOTE: For those looking for more detail than is provided in the previous source, this report contains the laws of every state.

[74] "National Instant Criminal Background Check System (NICS) 2008 Operations Report." U.S. Department of Justice, Federal Bureau of Investigation. http://www2.fbi.gov/hq/ciisd/nics/ops_report2008/ops_report2008.htm

"From November 30, 1998, to December 31, 2008, a total of 95,984,008 transactions were processed through the NICS. ... From November 30, 1998, to December 31, 2008, the NICS Section has denied a total of 680,905 background check transactions."

CALCULATION: 680,905 denied transactions / 95,984,008 transactions processed = 0.0071 denial rate

[75] On July 30, 2010, Just Facts sent a letter to the Bureau of Alcohol, Tobacco, Firearms and Explosives requesting data on the number of prosecutions and convictions stemming from these 681,000 denials. We are awaiting a reply.

[76] Executive Summary: Review of the Bureau of Alcohol, Tobacco, Firearms and Explosives' Enforcement of Brady Act Violations Identified Through the National Instant Criminal Background Check System." U.S. Department of Justice, Office of the Inspector General, July 2004 <http://www.justice.gov/oig/reports/ATF/e0406/exec.htm>

During calendar years (CY) 2002 and 2003, the FBI processed 8.5 million NICS [National Instant Criminal Background Check System] background checks and state POCs [points of contact] processed 8.2 million NICS background checks. ...

The FBI refers to the ATF [Bureau of Alcohol, Tobacco, Firearms and Explosives] the names of all prohibited persons who attempted to or succeeded in obtaining a firearm from an FFL [Federal Firearms Licensee].

... During CYs [calendar years] 2002 and 2003, only 154 (less than 1 percent) of the 120,000 persons who were denied during the NICS background check were prosecuted. Historically, USAOs [U.S. Attorneys' offices] have been unsuccessful in achieving convictions in many of these cases and consequently have been unwilling to expend their limited resources on prosecuting most NICS cases. ...

We believe that the number of referrals and prosecutions is low because of the difficulty in obtaining convictions in NICS cases. These cases lack "jury appeal" for various reasons. The factors prohibiting someone from possessing a firearm may have been nonviolent or committed many years ago. The basis for the prohibition may have been noncriminal (e.g., a dishonorable discharge from the U.S. military). It is also difficult to prove that the prohibited person was aware of the prohibition and intentionally lied to the FFL. We were also told that in parts of the United States where hunting historically has been part of the regional culture, juries are reluctant to convict a person who attempted to purchase a hunting rifle. ...

CALCULATIONS:

8.5 million checks processed by the federal government + 8.2 million processed by the states = 16.7 million NICS background checks

120,000 denied transactions / 16,700,000 transactions processed = 0.0072 denial rate

154 prosecutions / 120,000 denied transactions = 0.0013 prosecution rate

[77] Report: "Review of the Bureau of Alcohol, Tobacco, Firearms and Explosives' Enforcement of Brady Act Violations Identified Through the National Instant Criminal Background Check System." U.S. Department of Justice, Office of the Inspector General, July 2004.
<http://www.justice.gov/oig/reports/ATF/e0406/results.htm>

Despite the large number of Brady Act violations identified by the FBI, these violations rarely have been prosecuted. Historically, the USAOs [U.S. Attorneys' offices] have been unsuccessful in achieving convictions in many of these types of cases. Consequently, they have been unwilling to prosecute most NICS cases. ...

According to Section 1117 of the U.S. Attorneys' Criminal Resource Manual, one of the factors to be used in determining if a particular case merits federal prosecution is whether the potential defendant was "on notice" that his or her possession of a firearm was illegal.⁴⁸ Several ATF special agents stated that when they contact individuals, many said they did not realize they were prohibited from possessing a firearm. Some knew that they had been convicted of a crime, but did not realize that the charge was a felony. Others did not realize that they were subject to the prohibition of misdemeanor crimes of domestic violence because they actually were charged with another type of offense, such as assault or disorderly conduct. ...

⁴⁸ Other factors to consider are the date of the previous conviction, the circumstances under which the firearm was obtained, the existence of indicators of current potential for violence, available alternatives to federal prosecution, and whether false statements were made.

[78] Executive Summary: "Review of the Bureau of Alcohol, Tobacco, Firearms and Explosives' Enforcement of Brady Act Violations Identified Through the National Instant Criminal Background Check System." U.S. Department of Justice, Office of the Inspector General, July 2004.
<http://www.justice.gov/oig/reports/ATF/e0406/exec.htm>

The Office of the Inspector General (OIG) reviewed the Bureau of Alcohol, Tobacco, Firearms and Explosives' (ATF) enforcement of violations of the Brady Handgun Violence Prevention Act of 1993 (Brady Act) (Public Law 103-159) that are identified through the Federal Bureau of Investigation's (FBI) National Instant Criminal Background Check System (NICS). Specifically, we reviewed the extent to which the ATF investigated violations of the Brady Act referred by the FBI, whether the ATF retrieved firearms issued to prohibited persons in a timely manner, and the extent to which Brady Act violations were referred to and prosecuted by the U.S. Attorneys' offices (USAO) ...

The FBI refers to the ATF the names of all prohibited persons who attempted to or succeeded in obtaining a firearm from an FFL [Federal Firearms Licensee].

[79] Report: "Review of the Bureau of Alcohol, Tobacco, Firearms and Explosives' Enforcement of Brady Act Violations Identified Through the National Instant Criminal Background Check System." U.S. Department of Justice, Office of the Inspector General, July 2004.
<http://www.justice.gov/oig/reports/ATF/e0406/results.htm>

Despite the large number of Brady Act violations identified by the FBI, these violations rarely have been prosecuted. Historically, the USAOs [U.S. Attorneys' offices] have been unsuccessful in achieving convictions in many of these types of cases. Consequently, they have been unwilling to prosecute most NICS [National Instant Criminal Background Check System] cases. ...

NICS Subjects Are Not Considered Dangerous

The special agents we spoke with generally commented that they do not consider the vast majority of NICS referral subjects a danger to the public because the prohibiting factors are often minor or based on incidents that occurred many years in the past. For example, one group supervisor cited a retrieval case in which the person was prohibited from owning a firearm because of a felony conviction for stealing four hubcaps from a car. In another example, a Brady Operations Branch specialist cited a case where the person was prohibited due to a 1941 felony conviction for stealing a pig. We also were told that "bad guys" generally do not purchase their firearms through legitimate dealers; instead, they have someone with a clean record purchase the firearm for them (known as a "straw purchase") through an FFL, buy a firearm on the black market, or purchase the firearm at a flea market or gun show from a non-FFL.

[80] Executive Summary: "Review of the Bureau of Alcohol, Tobacco, Firearms and Explosives' Enforcement of Brady Act Violations Identified Through the National Instant Criminal Background Check System." U.S. Department of Justice, Office of the Inspector General, July 2004.
<http://www.justice.gov/oig/reports/ATF/e0406/exec.htm>

Some Denied Persons Are Subsequently Determined by the ATF Not to Be Prohibited

After performing additional research, the ATF frequently determines that the denied individual is not prohibited from possessing a firearm. Generally this occurs because the FBI could not readily determine the individual's prohibited status due to inaccurate and incomplete automated state records.

We found that 69 of the 197 (35 percent) delayed denials and 16 of the 200 (8 percent) standard denials in our sample were applicants who should not have been prohibited from purchasing a

firearm.³⁴ Special agents in each of the four divisions we visited stated that this was a common occurrence. Although the investigative files did not specify why the subjects in our sample were found not to be prohibited, our discussions with ATF personnel identified several reasons why this generally occurs: (1) the subject's firearm rights had been restored under state law, (2) the subject's prohibition for a misdemeanor crime of violence did not meet the federal criteria, or (3) a protective order had expired or was about to expire. These circumstances are discussed in detail in the following sections.

[81] "National Instant Criminal Background Check System (NICS) 2008 Operations Report." U.S. Department of Justice, Federal Bureau of Investigation.
http://www2.fbi.gov/hq/cjis/nics/ops_report2008/ops_report2008.htm

... 12,709,023 background checks [were] processed through the NICS [National Instant Criminal Background Check System] in 2008....

... 70,725 denial decisions were provided in 2008.

In 2008, the NICS Section received a total of 13,396 appeal requests....

[I]n 2008, approximately 23 percent of appealed deny transactions were overturned and proceeded.

CALCULATION: 13,396 appeal requests / 70,725 denial decisions = 0.189 appeal rate

[82] Summary: "Terrorist Watchlist Screening." Government Accountability Office, May 5, 2010.
<http://www.gao.gov/products/GAO-10-703T>

"Membership in a terrorist organization does not prohibit a person from possessing firearms or explosives under current federal law."

[83] Report: "Terrorist Watchlist Screening." Government Accountability Office, May 5, 2010.
<http://www.gao.gov/new.items/d10703t.pdf>

Page 5: "In total, individuals on the terrorist watchlist have been involved in firearm and explosives background checks 1,228 times since NICS started conducting these checks in February 2004, of which 1,119 (about 91 percent) of the transactions were allowed to proceed while 109 were denied...."

Page 4:

In May 2009, we reported that from February 2004 through February 2009, a total of 963 NICS background checks resulted in valid matches with individuals on the terrorist watchlist.⁸ Of these transactions, approximately 90 percent (865 of 963) were allowed to proceed because the checks revealed no prohibiting information, such as felony convictions, illegal immigrant status, or other disqualifying factors. Two of the 865 transactions that were allowed to proceed involved explosives background checks. The FBI does not know how often a firearm was actually transferred or if a firearm or explosives license or permit was granted, because gun dealers and explosives dealers are required to maintain but not report this information to the NICS [National Instant Criminal Background Check System] Section. About 10 percent (98 of 963) of the transactions were denied based on the existence of prohibiting information. No transactions involving explosives background checks were denied.

Pages 4-5:

For today's hearing, we obtained updated statistics from the FBI through February 2010. Specifically, from March 2009 through February 2010, FBI data show that 272 NICS background checks resulted in valid matches with individuals on the terrorist watchlist.⁹ One of the 272 transactions involved an explosives background check, which was allowed to proceed because the check revealed no disqualifying factors under the Safe Explosives Act. According to FBI officials, several of the 272 background checks resulted in matches to watchlist records that—in addition to being in the FBI's Known or Suspected Terrorist File—were on the Transportation Security Administration's "No Fly" list. In general, persons on the No Fly list are deemed to be a threat to civil aviation or national security and therefore should be precluded from boarding an aircraft. According to FBI officials, all of these transactions were allowed to proceed because the background checks revealed no prohibiting information under current law.

[84] United States Code Title 18, Part I, Chapter 44, Section 921: "Firearms, Definitions." Current as of February 1, 2010. Accessed July 31, 2010 at http://www.law.cornell.edu/uscode/uscode18/uscode18_921.htm

(a)(20) The term "crime punishable by imprisonment for a term exceeding one year" does not include—

(A) any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices, or

(B) any State offense classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less.

What constitutes a conviction of such a crime shall be determined in accordance with the law of the jurisdiction in which the proceedings were held. Any conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this chapter, unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

NOTE: The term "crime punishable by imprisonment for a term exceeding one year" is used in the section of this code governing who can legally purchase and possess firearms ([see here](#)).

[85] Report: "Review of the Bureau of Alcohol, Tobacco, Firearms and Explosives' Enforcement of Brady Act Violations Identified Through the National Instant Criminal Background Check System." U.S. Department of Justice, Office of the Inspector General, July 2004.
<http://www.justice.gov/oig/reports/ATF/e0406/results.htm>

Currently, when a federal crime is the prohibiting factor, the person's firearm rights can only be restored through a presidential pardon. ...

All but two states have provisions for restoring firearm rights.³⁷ [37 Statistics on states' restorations of rights provisions used in this section were extracted from the Survey of State Procedures Related to Firearm Sales, Midyear 2002, published by the DOJ's Bureau of Justice Statistics, October 15, 2003 (revised version) and from ATF P 5300.5 State Laws and Published Ordinances - Firearms (2003 - 24th Edition). The two states that do not have provisions for restoration rights are Alabama and Vermont.] Firearm rights are restored automatically or through application. The conditions for restoration vary greatly among the states by age (juveniles versus adults), type of crime, and the time frame between release from prison or parole and restoration of rights. In some states, restoration rights specifically apply only to convicted felons, which may result in a paradoxical situation in which someone convicted of a misdemeanor crime of domestic violence is permanently barred from owning a firearm, while someone who kills his spouse has his firearm rights restored after serving his sentence.

Twenty-one states automatically restore firearm rights upon release from prison or completion of parole.³⁸ [38 In six of these states, automatic restoration only applies to juveniles.] Forty-five states have provisions for restoring firearm rights through application.³⁹ [39 In 21 of these states, restoration of firearm rights only occurs through pardons or expungements of records.]

[86] Report: "Firearms Purchased From Federal Firearm Licensees Using Bogus Identification." Government Accountability Office, March 19, 2001.

Page 3: "Bureau of Alcohol, Tobacco and Firearms (ATF) regulations implementing the Brady Act provide that before an FFL [Federal Firearms Licensee] may sell or deliver a firearm, the prospective purchaser must provide photo-identification issued by a government entity."

[87] Summary: "Firearms Purchased from Federal Firearms Licensees Using Bogus Identification." In "Counterfeit Identification and Identification Fraud Raise Security Concerns." Government Accountability Office, September 9, 2003. <http://www.gao.gov/new.items/d031147t.pdf>

Page 8:

From October 2000 through February 2001, we used counterfeit driver's licenses with fictitious identifiers to purchase firearms from federal firearm licensees in five states—Virginia, West Virginia, Montana, New Mexico, and Arizona. The weapons purchased included (1) a 9mm stainless semiautomatic pistol, (2) a .380 semiautomatic pistol, (3) a 7.62mm Russian-manufactured rifle, (4) a .22 caliber semiautomatic rifle, (5) a 9mm semiautomatic pistol, and (6) a .25 caliber semiautomatic pistol.

The five states in which we purchased firearms conformed to the Brady Handgun Violence Prevention Act of 1993 by requiring instant background checks. For the most part, the federal firearm licensees we contacted adhered to then-existing federal and state laws regarding such purchases, including the instant background checks. Because we used counterfeit driver's licenses and fictitious identities there was no negative information in the system about the names we created.

[88] Article: "Undercover Federal Probe Finds Defects in Gun Background Checks." *Associated Press*, March 22, 2001. <http://articles.latimes.com/2001/mar/22/news/mn-41268>

The background check system can determine if a potential gun buyer has a criminal history, but there is no safeguard to verify whether the name or identification being used by the buyer is valid, the General Accounting Office investigation found. ...

Officials at the GAO used off-the-shelf software and laminators to create counterfeit driver's licenses, inventing fictitious names, Social Security numbers and dates of birth. ...

The agents told committee members at a hearing that they were sold guns every time they tried.

[89] Report: "Firearms Purchased From Federal Firearm Licensees Using Bogus Identification." Government Accountability Office, March 19, 2001.

Page 1: "The five states that we selected to purchase firearms in ... conformed to the Brady Act's minimum requirements, relying on an instant background check."

Page 2: "Consistent with the Brady Act ... we found that the instant background check does not positively identify purchasers of firearms. Rather, it is a negative check that cannot ensure that the prospective purchaser is not a felon or other prohibited person...."

[90] Executive Summary: "The Bureau of Alcohol, Tobacco, Firearms and Explosives' Investigative Operations at Gun Shows." U.S. Department of Justice, Office of the Inspector General, June 2007.
<http://www.justice.gov/oig/reports/ATF/e0707/exec.htm>

[91] Executive Summary: "The Bureau of Alcohol, Tobacco, Firearms and Explosives' Investigative

Operations at Gun Shows." U.S. Department of Justice, Office of the Inspector General, June 2007.
<http://www.justice.gov/oig/reports/ATF/e0707/exec.htm>

"We found no definitive source for the number of gun shows held annually. ... Available estimates of the number of gun shows in the United States ranged from 2,000 to 5,200 annually."

[92] Executive Summary: "The Bureau of Alcohol, Tobacco, Firearms and Explosives' Investigative Operations at Gun Shows." U.S. Department of Justice, Office of the Inspector General, June 2007.
<http://www.justice.gov/oig/reports/ATF/e0707/exec.htm>

[93] Executive Summary: "The Bureau of Alcohol, Tobacco, Firearms and Explosives' Investigative Operations at Gun Shows." U.S. Department of Justice, Office of the Inspector General, June 2007.
<http://www.justice.gov/oig/reports/ATF/e0707/exec.htm>

We found that ATF does not have a formal gun show enforcement program, but conducts investigative operations at gun shows when it has law enforcement intelligence that illegal firearms activity has occurred or is likely to occur at specific gun shows. ...

ATF conducted investigative operations at gun shows based on law enforcement intelligence. ...

From fiscal year (FY) 2004 through FY 2006, ATF opened approximately 6,233 firearms trafficking investigations. During this 3-year period, ATF Special Agents conducted 202 operations at 195 gun shows.... ATF's operations at these gun shows led to 121 arrests, resulting in 83 convictions. (Some cases are still pending, so their final dispositions are unknown.) Additionally, ATF seized 5,345 firearms during investigative operations related to these shows.

Seventy-seven percent of ATF's investigative operations at gun shows were covert operations that targeted specific individuals suspected of firearms trafficking. ...

Of the 202 investigative operations conducted by ATF at gun shows, only 23 percent (46) targeted general firearms trafficking at the shows. Further, only 6 of the ATF's 23 field divisions – Columbus, Houston, New Orleans, Phoenix, San Francisco, and Washington, D.C. – conducted these types of operations. The operations were not part of investigations of specific individuals, but rather were initiated based on intelligence from law enforcement and other sources such as FFLs, that various firearms trafficking crimes were occurring at gun shows in those six divisions' geographic areas of responsibility.

[94] Report: "Firearm Use by Offenders." By Caroline Wolf Harlow, U.S. Department of Justice, November 2001. <http://bjs.ojp.usdoj.gov/index.cfm?tv=pbdetail&iid=940>

Page 2: "Data for this report are based primarily on personal interviews with large nationally representative samples of State and Federal prison inmates."

Page 13: "A total of 14,285 interviews were completed for the State survey and 4,041 for the Federal survey, for overall response rates of 92.5% in the State survey and 90.2% in the Federal survey."

Page 6, Table 8: "Source of firearms possessed during the current offense of State prison inmates, 1997 and 1991."

[95] Book: "Guns in American Society: An Encyclopedia of History, Politics, Culture, and the Law." Edited by Gregg Lee Carter. ABC-CLIO, 2002. Section: "Right-to-Carry Laws." By James A. Beckman. Page 502:

Right-to-carry laws, often also called "shall issue" laws, refer to those state laws that mandate that state law enforcement officials or courts shall issue concealed firearm-carrying permits to applicants who meet fair and minimally restrictive statewide standards established by the state legislature. The right-to-carry laws make the allocation or distribution of firearm-carrying permits mandatory upon state officials so long as the applicants meet the minimum statewide standards.

[96] Web page: "Concealed Firearm Permit Information By State." USA Carry. Accessed November 6, 2012 at http://www.usacarry.com/concealed_carry_permit_information.html

"[A]s long as you are legally able to own a firearm and [are] 21 year of age or older, you can carry concealed in the State of Arizona without a concealed weapon permit."

"Alaska Statute 11.61.220 allows anyone 21 or older, who may legally carry a firearm to also carry it concealed without having to obtain a special permit."

"It is lawful to carry a firearm [in Vermont] openly or concealed provided the firearm is not carried with the intent or avowed purpose of injuring a fellow man."

"As of July 8, 2011, anyone who meets the same requirements to obtain a Wyoming concealed weapons permit can legally carry a firearm in any place that is not specifically prohibited."

NOTES:

- Overviews of the laws in each state are provided via the clickable map.
- USA Carry was the only comprehensive, up-to-date, and easily accessible source that Just Facts was able to locate for this information. For detailed information on the laws of each state, see the report: "State Laws and Published Ordinances — Firearms, 2009-2010 — 30th Edition." U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives. Revised December 2010 <http://www.atf.gov/>

[97] Web page: "Concealed Firearm Permit Information By State." USA Carry. Accessed January 22, 2012

at http://www.usacarry.com/concealed_carry_permit_information.html

"[A]s long as you are legally able to own a firearm and [are] 21 year[s] of age or older, you can carry concealed in the State of Arizona without a concealed weapon permit."

"Alaska Statute 11 61.220 allows anyone 21 or older, who may legally carry a firearm to also carry it concealed without having to obtain a special permit."

"It is lawful to carry a firearm [in Vermont] openly or concealed provided the firearm is not carried with the intent or avowed purpose of injuring a fellow man."

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[99] Web page: "Concealed Firearm Permit Information By State." USA Carry. Accessed January 22, 2012 at http://www.usacarry.com/concealed_carry_permit_information.html

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[100] Connecticut law allows local police, wardens, or selectmen to issue temporary concealed carry permits to private citizens, which the state government reviews for issuance of "a state permit to carry a pistol or revolver."* † Between January 1, 2000 and December 31, 2009, the state of Connecticut issued 166,190 permits, while during almost the same period (January 1, 2000- February 24, 2010), the state denied 436 permits (2.6% of the total).‡

NOTES:

- * Report: "Gun Permit Issues." By Veronica Rose. Connecticut Office of Legislative Research, April 10, 2008. <http://www.ct.gov/bfoe/cwp/view.asp?a=1838&O=418126&PM=1>
- † Connecticut is a "may issue" state, in that the permit-issuing official has discretion to determine whether to issue or revoke a permit."
- ‡ Connecticut Law: Title 29, Chapter 529, Section 29-28(b): "Permit to carry pistol or revolver." Accessed March 17, 2010 at <http://law.justia.com/connecticut/codes/title29/sec29-28.html>
- ‡ Correspondence from the Connecticut Special Licensing & Firearms Unit to Just Facts, February 24, 2010 and March 18, 2010.

[101] Article: "The State (by State) of Right-To-Carry." By Dave Kopel. National Rifle Association Institute for Legislative Action, July 28, 2006 <http://www.nraile.org/Issues/Articles/Read.aspx?id=198&issue=003>

Do-Issue: Three states—Alabama, Connecticut and Iowa—have statutes that are not completely Shall-Issue, but that reserve some discretion to the issuing law enforcement agency. In these states, local law enforcement will generally issue a permit to the same kinds of persons who would qualify for a permit in a Shall-Issue state, and many times these states are included on Shall-Issue state lists.

Capricious-Issue: Eight coastal states have permit laws but give local law enforcement almost unlimited discretion to deny permits. Although there can be significant variation from one locality to another, permits are rarely issued in most jurisdictions, except to celebrities or other influential people. These Capricious-Issue states are Hawaii, California, Delaware (not as bad as the others, in practice), Maryland, New Jersey (the worst), New York, Massachusetts and Rhode Island.

[102] Web page: "Concealed Firearm Permit Information By State." USA Carry. Accessed January 22, 2012 at http://www.usacarry.com/concealed_carry_permit_information.html

NOTES:

- Overviews of the laws in each state are provided via the clickable map.
- USA Carry was the only comprehensive, up-to-date, and easily accessible source that Just Facts was able to locate for this information. For detailed information on the laws of each state, see the report: "State Laws and Published Ordinances — Firearms, 2009-2010 — 30th Edition." U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives. Revised December 2010. <http://www.atf.gov/>

[103] Paper: "Carrying Concealed Weapons in Self-Defense: Florida Adopts Uniform Regulations for the Issuance of Concealed Weapons Permits." By Richard Getchall. Florida State University Law Review, 1987. Pages 751-791. <http://www.saf.org/LawReviews/Getchall1.htm>

Page 777: "The concealed weapons Act is named the Jack Hagler Self Defense Act..."

Page 789: "The Jack Hagler Self Defense Act became law on October 1, 1987."

[104] Florida Law 790.06: "Weapons and Firearms, License to Carry Concealed Weapon or Firearm." Accessed August 30, 2010 at <http://law.justia.com/florida/codes/TitleXLVI/ch0790.html>

- (2) The Department of Agriculture and Consumer Services shall issue a license if the applicant:
- (a) Is a resident of the United States...
 - (b) Is 21 years of age or older;
 - (c) Does not suffer from a physical infirmity which prevents the safe handling of a weapon or firearm;
 - (d) Is not ineligible to possess a firearm pursuant to s. 790.23 by virtue of having been convicted of a felony;
 - (e) Has not been committed for the abuse of a controlled substance or been found guilty of a crime under the provisions of chapter 893 or similar laws of any other state relating to controlled substances within a 3-year period immediately preceding the date on which the application is submitted;
 - (f) Does not chronically and habitually use alcoholic beverages or other substances to the extent that his or her normal faculties are impaired. ...
 - (g) Desires a legal means to carry a concealed weapon or firearm for lawful self-defense;
 - (h) Demonstrates competence with a firearm by any one of the following:
 1. Completion of any hunter education or hunter safety course approved by the Fish and Wildlife Conservation Commission or a similar agency of another state;
 2. Completion of any National Rifle Association firearms safety or training course;
 3. Completion of any firearms safety or training course or class available to the general public offered by a law enforcement, junior college, college, or private or public institution or organization or firearms training school, utilizing instructors certified by the National Rifle Association, Criminal Justice Standards and Training Commission, or the Department of Agriculture and Consumer Services;
 4. Completion of any law enforcement firearms safety or training course or class offered for security guards, investigators, special deputies, or any division or subdivision of law enforcement or security enforcement;
 5. Presents evidence of equivalent experience with a firearm through participation in organized shooting competition or military service;
 6. Is licensed or has been licensed to carry a firearm in this state or a county or municipality of this state, unless such license has been revoked for cause; or
 7. Completion of any firearms training or safety course or class conducted by a state-certified or National Rifle Association certified firearms instructor...
 - (i) Has not been adjudicated an incapacitated person under s. 744.331, or similar laws of any other state, unless 5 years have elapsed since the applicant's restoration to capacity by court order;
 - (j) Has not been committed to a mental institution under chapter 394, or similar laws of any other state, unless the applicant produces a certificate from a licensed psychiatrist that he or she has not suffered from disability for at least 5 years prior to the date of submission of the application;
 - (k) Has not had adjudication of guilt withheld or imposition of sentence suspended on any felony or misdemeanor crime of domestic violence unless 3 years have elapsed since probation or any other conditions set by the court have been fulfilled, or the record has been sealed or expunged;
 - (l) Has not been issued an injunction that is currently in force and effect and that restrains the applicant from committing acts of domestic violence or acts of repeat violence; and
 - (m) Is not prohibited from purchasing or possessing a firearm by any other provision of Florida or federal law.

[105] Web page: "Concealed Weapon / Firearm Summary Report." Florida Department of Agriculture and Consumer Services, Division of Licensing, July 31, 2010.
http://licgweb.doacs.state.fl.us/stats/cw_monthly.html

Note: This web page is constantly updated to reflect the latest data. These are the figures as of August 31, 2010:

	10/1/87 - 07/31/10
Licenses Issued	1,825,143
Licenses Valid	746,430

[106] Calculation performed with data from the citation above and the dataset: "Estimates of the Resident Population by Selected Age Groups for the United States, States, and Puerto Rico: July 1, 2009." U.S. Census Bureau, June 2010. <http://www.census.gov/popest/states/asrh/SC-EST2009-01.html>

Florida population:

18 years and older = 14,480,196
 18-24 years = 1,667,090

CALCULATIONS:

- a) Estimate of Florida population, 21 years and older: $14,480,196 - (3/7 \times 1,667,090) = 13,765,729$ people
- b) $746,430$ valid licensees / $13,765,729$ people = 0.054

[107] Graph constructed with data from:

a) Dataset: "Uniform Crime Reporting Program, Florida, 1960-2008." Federal Bureau of Investigation, Criminal Justice Information Services Division. Data supplied to Just Facts on June 15, 2010. Data available upon request.

b) Dataset: "Uniform Crime Reporting Program, United States, 1960-2008." Federal Bureau of Investigation,

Criminal Justice Information Services Division. Data supplied to Just Facts on June 15, 2010. Data available upon request.

[108] Calculated with data from the footnote above.

NOTE: The averages were calculated by averaging the murder rates from all years in which the ban was effective for at least 6 months of the year.

[109] Web page: "Concealed Weapon / Firearm Summary Report." Florida Department of Agriculture and Consumer Services, Division of Licensing, July 31, 2010.
http://licgweb.doacs.state.fl.us/stats/cw_monthly.html

Note: This web page is constantly updated to reflect the latest data. These are the figures as of August 31, 2010:

	10/1/87 - 07/31/10
Applications Received	1,848,835
Licenses Issued	1,825,143
Licenses Valid	746,430
Applications Denied	12,648
Criminal History	4,242
Incomplete Application	8,406
Licenses Revoked	5,674
Clemency Rule Change or Legislative Change	66
Illegible Prints With No Response	10
Crime Prior to Licensure	522
Crime After Licensure	4,955
--Firearm Utilized--	[168]
Other	121
Reinstated*	633

* Statistics regarding number of licenses reinstated not maintained prior to January 1990.

[110] Article: "Guns in America: Part II: Texas Massacre, fear of crime spur concealed-gun laws." By Ralph Winingham, *San Antonio Express News*, 1997.
<http://www.chron.com/content/chronicle/nation/guns/part2/gunside1.html>

"In January 1996, a law took effect allowing Texans to carry loaded handguns if they obtain a license and complete a safety course."

[111] Texas Law Chapter 411, Subchapter H: "License to Carry a Concealed Handgun." Accessed August 31, 2010 at <http://law.justia.com/texas/codes/gv/004.00.000411.00.html>

Section 411.172: "Eligibility"

(a) A person is eligible for a license to carry a concealed handgun if the person:

- (1) is a legal resident of this state for the six-month period preceding the date of application under this subchapter or is otherwise eligible for a license under Section 411.173(a);
- (2) is at least 21 years of age;
- (3) has not been convicted of a felony;
- (4) is not charged with the commission of a Class A or Class B misdemeanor or an offense under Section 42.01, Penal Code, or of a felony under an information or indictment;
- (5) is not a fugitive from justice for a felony or a Class A or Class B misdemeanor;
- (6) is not a chemically dependent person;
- (7) is not incapable of exercising sound judgment with respect to the proper use and storage of a handgun;
- (8) has not, in the five years preceding the date of application, been convicted of a Class A or Class B misdemeanor or an offense under Section 42.01, Penal Code;
- (9) is fully qualified under applicable federal and state law to purchase a handgun;
- (10) has not been finally determined to be delinquent in making a child support payment administered or collected by the attorney general;
- (11) has not been finally determined to be delinquent in the payment of a tax or other money collected by the comptroller, the tax collector of a political subdivision of the state, or any agency or subdivision of the state;
- (12) has not been finally determined to be in default on a loan made under Chapter 57, Education Code;
- (13) is not currently restricted under a court protective order or subject to a restraining order affecting the spousal relationship, other than a restraining order solely affecting (14) has not, in the 10 years preceding the date of application, been adjudicated as having engaged in delinquent conduct violating a penal law of the grade of felony; and
- (15) has not made any material misrepresentation, or failed to disclose any material fact, in an application submitted pursuant to Section 411.174 or in a request for application submitted pursuant to Section 411.175. ...

(g) Notwithstanding Subsection (a)(2), a person who is at least 18 years of age but not yet 21 years of age is eligible for a license to carry a concealed handgun if the person:

- (1) is a member or veteran of the United States armed forces, including a member or veteran of the reserves or national guard;
- (2) was discharged under honorable conditions, if discharged from the United States armed forces, reserves, or national guard....

Section 411.174: "Application"

- (a) An applicant for a license to carry a concealed handgun must submit to the director's designee described by Section 411.176: ...
- (7) a handgun proficiency certificate described by Section 411.189....

Section 411.188: "Handgun Proficiency Requirement"

- (a) The director by rule shall establish minimum standards for handgun proficiency and shall develop a course to teach handgun proficiency and examinations to measure handgun proficiency. The course to teach handgun proficiency must contain training sessions divided into two parts. One part of the course must be classroom instruction and the other part must be range instruction and an actual demonstration by the applicant of the applicant's ability to safely and proficiently use the category of handgun for which the applicant seeks certification. An applicant may not be certified unless the applicant demonstrates, at a minimum, the degree of proficiency that is required to effectively operate a handgun of .32 caliber or above. The department shall distribute the standards, course requirements, and examinations on request to any qualified handgun instructor.
- (b) Only a qualified handgun instructor may administer a handgun proficiency course. The handgun proficiency course must include at least 10 hours and not more than 15 hours of instruction on...

[112] Calendar Year Report: "Active License Holders and Instructors 2009." Texas Department of Public Safety, Regulatory Licensing Service, Concealed Handgun Licensing Bureau.
[http://www.txdps.state.tx.us/administration/crime_records/...](http://www.txdps.state.tx.us/administration/crime_records/)

Active License Holders = 402,914

[113] Calculations performed with data from the citation above and the dataset: "Estimates of the Resident Population by Selected Age Groups for the United States, States, and Puerto Rico: July 1, 2009." U.S. Census Bureau, June 2010. <http://www.census.gov/popest/states/asrh/SC-EST2009-01.html>

Texas population:

18 years and older = 17,886,333
 18-24 years = 2,523,258

CALCULATIONS:

- a) Estimate of Texas population, 21 years and older: $17,886,333 - (3/7 \times 2,523,258) = 16,804,937$ people
- b) $402,914 \text{ active licensees} / 16,804,937 \text{ people} = 0.024$

[114] Graph constructed with data from:

a) Dataset: "Uniform Crime Reporting Program, Texas, 1960-2008." Federal Bureau of Investigation, Criminal Justice Information Services Division. Data supplied to Just Facts on June 15, 2010. Data available upon request.

b) Dataset: "Uniform Crime Reporting Program, United States, 1960-2008." Federal Bureau of Investigation, Criminal Justice Information Services Division. Data supplied to Just Facts on June 15, 2010. Data available upon request.

[115] Calculated with data from the footnote above.

NOTE: The averages were calculated by averaging the murder rates from all years in which the ban was effective for at least 6 months of the year.

[116] Michigan Law Section 28.421a: "Firearms, Concealed pistol licenses; issuance; creation of standardized system." Accessed September 2, 2010 at <http://law.justia.com/michigan/codes/mcl-chap28/mcl-28-421a.html>

"It is the intent of the legislature to create a standardized system for issuing concealed pistol licenses to prevent criminals and other violent individuals from obtaining a license to carry a concealed pistol, [and] to allow law abiding residents to obtain a license to carry a concealed pistol. ... Effective July 1, 2001."

[117] Michigan Law Section 28.422: "License to purchase, carry, or transport pistol; issuance; qualifications; applications...." Accessed September 2, 2010 at <http://law.justia.com/michigan/codes/mcl-chap28/mcl-28-421a.html>

Section 2:

- (1) Except as provided in subsection (2), a person shall not purchase, carry, or transport a pistol in this state without first having obtained a license for the pistol as prescribed in this section. ...
- (3) The commissioner or chief of police of a city, township, or village police department that issues licenses to purchase, carry, or transport pistols, or his or her duly authorized deputy, or the sheriff or his or her duly authorized deputy, in the parts of a county not included within a city, township, or village having an organized police department, in discharging the duty to issue licenses shall with due speed and diligence issue licenses to purchase, carry, or transport pistols to qualified applicants residing within the city, village, township, or county, as applicable unless he or she has probable cause to believe that the applicant would be a threat to himself or herself or to other individuals, or would

commit an offense with the pistol that would violate a law of this or another state or of the United States. An applicant is qualified if all of the following circumstances exist:

- (a) The person is not subject to an order or disposition for which he or she has received notice and an opportunity for a hearing, and which was entered into the law enforcement information network pursuant to any of the following...
- (b) The person is 18 years of age or older or, if the seller is licensed pursuant to section 923 of title 18 of the United States Code, 18 USC 923*, is 21 years of age or older.
- (c) The person is a citizen of the United States and is a legal resident of this state.
- (d) A felony charge against the person is not pending at the time of application.
- (e) The person is not prohibited from possessing, using, transporting, selling, purchasing, carrying, shipping, receiving, or distributing a firearm under section 224f of the Michigan penal code, 1931 PA 328, MCL 750.224f.
- (f) The person has not been adjudged insane in this state or elsewhere unless he or she has been adjudged restored to sanity by court order.
- (g) The person is not under an order of involuntary commitment in an inpatient or outpatient setting due to mental illness.
- (h) The person has not been adjudged legally incapacitated in this state or elsewhere. This subdivision does not apply to a person who has had his or her legal capacity restored by order of the court.
- (i) The person correctly answers 70% or more of the questions on a basic pistol safety review questionnaire approved by the basic pistol safety review board and provided to the individual free of charge by the licensing authority. If the person fails to correctly answer 70% or more of the questions on the basic pistol safety review questionnaire, the licensing authority shall inform the person of the questions he or she answered incorrectly and allow the person to attempt to complete another basic pistol safety review questionnaire. The person shall not be allowed to attempt to complete more than 2 basic pistol safety review questionnaires on any single day. The licensing authority shall allow the person to attempt to complete the questionnaire during normal business hours on the day the person applies for his or her license.

* NOTE: This refers to a federally licensed firearms dealer:

United States Code Title 18, Part I, Chapter 44, Section 923: "Licensing." Current as of February 1, 2010.

Accessed September 2, 2010 at http://www.law.cornell.edu/uscode/html/uscode18/uscode18.usc_sec_923.html

"(a) No person shall engage in the business of importing, manufacturing, or dealing in firearms, or importing or manufacturing ammunition, until he has filed an application with and received a license to do so from the Attorney General."

[118] Graph constructed with data from:

a) Dataset: "Uniform Crime Reporting Program, Michigan, 1960-2008." Federal Bureau of Investigation, Criminal Justice Information Services Division. Data supplied to Just Facts on June 15, 2010. Data available upon request.

b) Dataset: "Uniform Crime Reporting Program, United States, 1960-2008." Federal Bureau of Investigation, Criminal Justice Information Services Division. Data supplied to Just Facts on June 15, 2010. Data available upon request.

[119] Calculated with data from the footnote above.

NOTE: The averages were calculated by averaging the murder rates from all years in which the ban was effective for at least 6 months of the year.

[120] Dataset: "20 Leading Causes of Unintentional Injury Deaths, United States, 2007." U.S. Centers for Disease Control and Prevention, National Center for Injury Prevention and Control. Accessed September 1, 2010 at <http://webappa.cdc.gov/sasweb/ncipc/leadcaus10.html>

NOTES:

- Data from 2007 was the most recent available on September 1, 2010.
- Data available upon request.
- This top-20 list stops at item number 19, suggesting this covers all such deaths. Just Facts doubled-checked the data on total accidental deaths from another source to ensure this is the case.

[121] Dataset: "20 Leading Causes of Unintentional Injury Deaths, United States, 2007." U.S. Centers for Disease Control and Prevention, National Center for Injury Prevention and Control. Accessed September 1, 2010 at <http://webappa.cdc.gov/sasweb/ncipc/leadcaus10.html>

NOTES:

- Data from 2007 was the most recent available on September 1, 2010.
- Data available upon request.
- This top-20 list stops at item number 19, suggesting this covers all such deaths. Just Facts doubled-checked the data on total accidental deaths from another source to ensure this is the case.
- "Other Spec., classifiable" = Other Specified, classifiable
- "Other Spec., NEC" = Specified, not elsewhere classified

[122] Dataset: "20 Leading Causes of Unintentional Injury Deaths, United States, 2007." U.S. Centers for Disease Control and Prevention, National Center for Injury Prevention and Control. Accessed September 1, 2010 at <http://webappa.cdc.gov/sasweb/ncipc/leadcaus10.html>

NOTES:

- Data from 2007 was the most recent available on September 1, 2010.
- Data available upon request.
- This top-20 list stops at item number 19, suggesting this covers all such deaths. Just Facts doubled-checked the data on total accidental deaths from another source to ensure this is the case.

[123] Dataset: "Unintentional Firearm Gunshot Nonfatal Injuries, 2007, Disposition: All Cases." U.S. Centers for Disease Control and Prevention, National Center for Injury Prevention and Control. Accessed September 1, 2010 at <http://webappa.cdc.gov/sasweb/ncipc/nfirates2001.html>

Firearm = 15,698

NOTE "Disposition" is defined as "Where the injured person went when released from emergency department"

[124] Dataset: "Unintentional All Nonfatal Injuries, 2007, Disposition: All Cases." U.S. Centers for Disease Control and Prevention, National Center for Injury Prevention and Control. Accessed September 1, 2010 at <http://webappa.cdc.gov/sasweb/ncipc/nfirates2001.html>

Number of injuries = 27,731,818

NOTE: "Disposition" is defined as "Where the injured person went when released from emergency department"

[125] Dataset: "20 Leading Causes of Nonfatal Unintentional Injury, United States, 2007, Disposition: Hospitalized." U.S. Centers for Disease Control and Prevention, National Center for Injury Prevention and Control. Accessed September 1, 2010 at <http://webappa.cdc.gov/sasweb/ncipc/nfilead2001.html>

Firearm = 5,045

[126] Dataset: "Unintentional, All Injury Causes, Nonfatal Injuries, 2007, Disposition: Hospitalized." U.S. Centers for Disease Control and Prevention, National Center for Injury Prevention and Control. Accessed September 1, 2010 at <http://webappa.cdc.gov/sasweb/ncipc/nfirates2001.html>

Total hospitalizations = 1,420,190

[127] Constructed with data from the following sources:

a) Dataset: "20 Leading Causes of Nonfatal Unintentional Injury, United States, 2007, Disposition: Hospitalized." U.S. Centers for Disease Control and Prevention, National Center for Injury Prevention and Control. Accessed September 1, 2010 at <http://webappa.cdc.gov/sasweb/ncipc/nfilead2001.html>

NOTE: Data available upon request.

b) Dataset: "Unintentional, All Injury Causes, Nonfatal Injuries, 2007, Disposition: Hospitalized." U.S. Centers for Disease Control and Prevention, National Center for Injury Prevention and Control. Accessed September 1, 2010 at <http://webappa.cdc.gov/sasweb/ncipc/nfirates2001.html>

Total hospitalizations = 1,420,190

[128] Ruling: *District Of Columbia v. Heller*. U.S. Supreme Court, June 26, 2008. Case 07-290. Decided 5-4. Majority: Scalia, Roberts, Kennedy, Thomas, Alito. Dissenting: Stevens, Souter, Ginsburg, Breyer. <http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=...>

Opinion: "Justice Breyer, with whom Justice Stevens, Justice Souter, and Justice Ginsburg join, dissenting." Section IV, A, 1.

[129] Report: "Firearms control regulations act of 1975, Council act no. 1-142 : hearing and disposition before the Committee on the District of Columbia, House of Representatives, Ninety-fourth Congress, second session on H. Con. Res. 694." August 25, 1976. <http://www.archive.org/stream/firearmscontrol00coluugooq/...>

[130] Paper: "Estimating intruder-related firearm retrievals in U.S. households, 1994." By Robin M. Ikeda and others. *Violence and Victims*, Winter 1997. <http://www.ncbi.nlm.nih.gov/pubmed/9591354>

Page 363:

To estimate the frequency of firearm retrieval because of a known or presumed intruder, the authors analyzed data from a 1994 national random digit dialing telephone survey (n = 5,238 interviews). ... National projections based on these self-reports reveal an estimated 1,896,842 (95% CI [confidence interval] = 1,480,647-2,313,035) incidents in which a firearm was retrieved, but no intruder was seen; 503,481 (95% CI = 305,093-701,870) incidents occurred in which an intruder was seen, and 497,646 (95% CI = 266,060-729,231) incidents occurred in which the intruder was seen and reportedly scared away by the firearm.

Page 364: "A specified random selection procedure was used to ensure that approximately one half of respondents were male and one half were female. If more than one eligible individual was in the selected gender category, the interviewer asked for the respondent with the most recent birthday. Households occupied by minorities were oversampled to ensure adequate minority representation and then weighted to adjust for unequal selection probabilities."

[131] Calculated with data from the following sources:

a) Dataset: "Unintentional Firearm Gunshot Nonfatal Injuries, 2001, Disposition: All Cases." U.S. Centers for Disease Control and Prevention, National Center for Injury Prevention and Control. Accessed September 1, 2010 at <http://webappa.cdc.gov/sasweb/ncipc/nfirates2001.html>

Number of injuries = 17,696

NOTE: "Disposition" is defined as "Where the injured person went when released from emergency department"

b) Dataset: "Unintentional Firearm Deaths, 2001." U.S. Centers for Disease Control and Prevention, National Center for Injury Prevention and Control. Accessed September 1, 2010 at http://webappa.cdc.gov/sasweb/ncipc/mortrate10_sv.html
Number of Deaths = 802

CALCULATION: $17,696 + 802 = 18,498$

[132] As of September 1, 2010, CDC's "Web-based Injury Statistics Query and Reporting System" (<http://www.cdc.gov/injury/wisqars/>) has accidental death rates from 1994 (the year that would be ideal to compare to the CDC survey regarding the number of Americans who use guns to frighten away intruders who are breaking into their homes). However, it does not have nonfatal, accidental injury rates for any earlier than 2000, and the 2000 data is not reliable: "Annualized national estimates are based on emergency department visits from 7/1-12/31 2000. Therefore, estimates may be affected by seasonality." Thus, Just Facts is using the earliest year possible, which is 2001.

[133] CALCULATION: $498,000 / 18,498 = 26.9$

NOTE: In keeping with Just Facts' Standards of Credibility, we are giving preferentiality to figures that are contrary to our viewpoints by citing all gun-related accidents (within and outside the home) for comparison with the D.C. council committee's claim that, "[f]or every intruder stopped by a homeowner with a firearm, there are 4 gun-related accidents within the home."

[134] Adapted from the NRA, a firearms safety course, and the article: "So You've Bought Yourself a Gun." By Sunni Maravillosa. *Sierra Times*, November 27, 2001.
<http://www.sunnimaravillosa.com/guns/boughtagun.html>

[135] Web page: "Gun Rights: Long-Term Contribution Trends." Center for Responsive Politics. Accessed September 2, 2010 at <http://www.opensecrets.org/industries/totals.php?cycle=2010&ind=Q13>

NOTE: The data presented is from the Federal Election Commission and is current as of August 22, 2010.

[136] Web page: "Gun Control: Long-Term Contribution Trends." Center for Responsive Politics. Accessed September 2, 2010 at <http://www.opensecrets.org/industries/totals.php?cycle=2010&ind=Q12>

NOTE: The data presented is from the Federal Election Commission and is current as of August 22, 2010.

[137] Web pages: "Top Industries Giving to Members of Congress, 2008, 2006, 2004, 2002, 2000 Cycles." Center for Responsive Politics. Accessed September 5, 2010 at <http://www.opensecrets.org/industries/mems.php>

Who's got the most juice on Capitol Hill? Here's a list of the top industries contributing to members of the 111th Congress during the 2009-2010 election cycle. The first list shows the overall 50 biggest industries. The other two highlight the top 25 industries giving to members of each of the two major parties. In all cases, the Top Recipient listed is the individual member of the 111th Congress who received the most from the industry. Totals shown here include only the money that went to current incumbents in Congress.

NOTE: Neither gun rights nor gun control interest groups appear in these lists for any of the years.

[138] Web page: "Gun Rights: Long-Term Contribution Trends." Center for Responsive Politics. Accessed September 5, 2010 at <http://www.opensecrets.org/industries/totals.php?cycle=2010&ind=Q13>

2008 Total Contributions = \$2,397,743

NOTE: The data presented is from the Federal Election Commission and is current as of August 22, 2010.

[139] Web page: "Lawyers / Law Firms: Long-Term Contribution Trends." Center for Responsive Politics. Accessed September 5, 2010 at <http://www.opensecrets.org/industries/totals.php?cycle=2010&ind=K01>

2008 Total Contributions = \$233,916,242

NOTE: The data presented is from the Federal Election Commission and is current as of August 22, 2010.

CALCULATION: $\$2,397,743 / \$233,916,242 = 0.010$

[140] Web page: "Gun Control: Long-Term Contribution Trends." Center for Responsive Politics. Accessed September 5, 2010 at <http://www.opensecrets.org/industries/totals.php?cycle=2010&ind=Q12>

2008 Total Contributions = \$57,919

NOTE: The data presented is from the Federal Election Commission and is current as of August 22, 2010.

CALCULATION: $\$57,919 / \$2,397,743 = .024$

[141] "2008 Republican Party Platform." Republican National Committee, September, 2008.
<http://www.gop.com/2008Platform/>

Page 51:

We uphold the right of individual Americans to own firearms, a right which antedated the Constitution and was solemnly confirmed by the Second Amendment. We applaud the Supreme Court's decision in *Heller* affirming that right, and we assert the individual responsibility to safely use and store firearms. We call on the next president to appoint judges who will similarly respect the Constitution. Gun ownership is responsible citizenship, enabling Americans to defend themselves, their property, and communities.

[142] "2008 Democratic Party Platform." Democratic National Committee, August 25, 2008. <http://www.democrats.org/e/party/platform.html>

Page 48:

We recognize that the right to bear arms is an important part of the American tradition, and we will preserve Americans' Second Amendment right to own and use firearms. We believe that the right to own firearms is subject to reasonable regulation, but we know that what works in Chicago may not work in Cheyenne. We can work together to enact and enforce common-sense laws and improvements – like closing the gun show loophole, improving our background check system, and reinstating the assault weapons ban, so that guns do not fall into the hands of terrorists or criminals. Acting responsibly and with respect for differing views on this issue, we can both protect the constitutional right to bear arms and keep our communities and our children safe.

[143] Constitution of the United States. Signed September 17, 1787. Enacted June 21, 1788. <http://justfacts.com/constitution.asp#Constitution>

Article 2, Clause 2, Section 2: "[The President] with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court...."

[144] Report: "Filibusters and Cloture in the Senate." By Richard S. Beth & Stanley Bach. Congressional Research Service. Updated March 28, 2003. <http://www.senate.gov/reference/resources/pdf/RL30360.pdf>

Summary (page 2 in pdf):

The filibuster is widely viewed as one of the Senate's most characteristic procedural features. Filibustering includes any use of dilatory or obstructive tactics to block a measure by preventing it from coming to a vote. The possibility of filibusters exists because Senate rules place few limits on Senators' rights and opportunities in the legislative process. ...

Senate Rule XXII, however, known as the "cloture rule," enables Senators to end a filibuster on any debatable matter the Senate is considering. Sixteen Senators initiate this process by presenting a motion to end the debate. The Senate does not vote on this cloture motion until the second day after the motion is made. Then it usually requires the votes of at least three-fifths of all Senators (normally 60 votes) to invoke cloture. Invoking cloture on a proposal to amend the Senate's standing rules requires the support of two-thirds of the Senators present and voting.

Page CRS-10:

Invoking cloture usually requires a three-fifths vote of the entire Senate—"three-fifths of the Senators duly chosen and sworn." If there are no vacancies, therefore, 60 Senators must vote to invoke cloture. In contrast, most other votes require only a simple majority (that is, 51%) of the Senators present and voting, assuming that those Senators constitute a quorum. In the case of a cloture vote, the key is the number of Senators voting for cloture, not the number voting against. Failing to vote on a cloture motion has the same effect as voting against the motion: it deprives the motion of one of the 60 votes needed to agree to it.

There is an important exception to the three-fifths requirement to invoke cloture. Under Rule XXII, an affirmative vote of two-thirds of the Senators present and voting is required to invoke cloture on a measure or motion to amend the Senate rules. This exception has its origin in the recent history of the cloture rule. Before 1975, two-thirds of the Senators present and voting (a quorum being present) was required for cloture on all matters. In early 1975, at the beginning of the 94th Congress, Senators sought to amend the rule to make it somewhat easier to invoke cloture. However, some Senators feared that if this effort succeeded, that would only make it easier to amend the rule again, making cloture still easier to invoke. As a compromise, the Senate agreed to move from a maximum of 67 votes (two-thirds of the Senators present and voting) to a minimum of 60 votes (three-fifths of the Senators duly chosen and sworn) on all matters except future rules changes, including changes in the cloture rule itself.¹¹

[145] "Standing Rules of the Senate: Rule XXII: Precedence Of Motions." Accessed September 9, 2010. <http://rules.senate.gov/public/index.cfm?p=RuleXXII>

2. Notwithstanding the provisions of rule II or rule IV or any other rule of the Senate, at any time a motion signed by sixteen Senators, to bring to a close the debate upon any measure, motion, other matter pending before the Senate, or the unfinished business, is presented to the Senate, the Presiding Officer, or clerk at the direction of the Presiding Officer, shall at once state the motion to the Senate, and one hour after the Senate meets on the following calendar day but one, he shall lay the motion before the Senate and direct that the clerk call the roll, and upon the ascertainment that a quorum is present, the Presiding Officer shall, without debate, submit to the Senate by a yea-and-nay vote the question:

"Is it the sense of the Senate that the debate shall be brought to a close?" And if that question shall be

decided in the affirmative by three-fifths of the Senators duly chosen and sworn — except on a measure or motion to amend the Senate rules, in which case the necessary affirmative vote shall be two-thirds of the Senators present and voting — then said measure, motion, or other matter pending before the Senate, or the unfinished business, shall be the unfinished business to the exclusion of all other business until disposed of.

Thereafter no Senator shall be entitled to speak in all more than one hour on the measure, motion, or other matter pending before the Senate, or the unfinished business, the amendments thereto, and motions affecting the same, and it shall be the duty of the Presiding Officer to keep the time of each Senator who speaks. Except by unanimous consent, no amendment shall be proposed after the vote to bring the debate to a close, unless it had been submitted in writing to the Journal Clerk by 1 o'clock p.m. on the day following the filing of the cloture motion if an amendment in the first degree, and unless it had been so submitted at least one hour prior to the beginning of the cloture vote if an amendment in the second degree. No dilatory motion, or dilatory amendment, or amendment not germane shall be in order. Points of order, including questions of relevancy, and appeals from the decision of the Presiding Officer, shall be decided without debate.

After no more than thirty hours of consideration of the measure, motion, or other matter on which cloture has been invoked, the Senate shall proceed, without any further debate on any question, to vote on the final disposition thereof to the exclusion of all amendments not then actually pending before the Senate at that time and to the exclusion of all motions, except a motion to table, or to reconsider and one quorum call on demand to establish the presence of a quorum (and motions required to establish a quorum) immediately before the final vote begins. The thirty hours may be increased by the adoption of a motion, decided without debate, by a three-fifths affirmative vote of the Senators duly chosen and sworn, and any such time thus agreed upon shall be equally divided between and controlled by the Majority and Minority Leaders or their designees. However, only one motion to extend time, specified above, may be made in any one calendar day.

[146] Constitution of the United States. Signed September 17, 1787. Enacted June 21, 1788.
<http://justfacts.com/constitution.asp#Constitution>

Article III, Section 1: "The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour...."

Article II, Section 4: "The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors."

Article I, Section 2, Clause 5: "The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment."

Article I, Section 3, Clause 6: "The Senate shall have the sole Power to try all Impeachments. ... And no Person shall be convicted without the Concurrence of two thirds of the Members present."

[147] Ruling: *District Of Columbia v. Heller*. U.S. Supreme Court, June 26, 2008. Case 07-290. Decided 5-4. Majority: Scalia, Roberts, Kennedy, Thomas, Alito. Dissenting: Stevens, Souter, Ginsburg, Breyer.
<http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=...>

[148] Web page: "Shifting Median: An Obama Supreme Court." *Wall Street Journal*. Accessed September 5, 2010 at <http://online.wsj.com/public/resources/documents/scotus...>

NOTE: Stevens was appointed by Ford. Scalia and Kennedy were appointed by Reagan. Thomas and Souter were appointed by G.H. Bush. Ginsburg and Breyer were appointed by Clinton. Alito and Roberts by were appointed by G.W. Bush.

[149] Article: "McCain Promises Judges Like Roberts, Alito." *Associated Press*, May 6, 2008.
<http://www.cbsnews.com/stories/2008/05/06/politics/main4073792.shtml>

"Obama, on the other hand, voted against Roberts and Alito."

[150] Article: "Obama, McCain talk issues at pastor's forum." By Ed Hornick. *CNN*, August 17, 2008.
http://www.cnn.com/2008/POLITICS/08/16/warren_forum/index.html

"Neither candidate shied away from a question about which current Supreme Court justice they would not have nominated. Obama's reply: Clarence Thomas."

[151] Article: "Obama: I Would Not Have Nominated Clarence Thomas." By Sam Stein. *Huffington Post*, August 16, 2008. <http://www.huffingtonpost.com/2008/08/16/...>

[Quoting Obama:] "I would not have nominated Justice Scalia ..."

[152] Article: "Obama, McCain talk issues at pastor's forum." By Ed Hornick. *CNN*, August 17, 2008.
http://www.cnn.com/2008/POLITICS/08/16/warren_forum/index.html

"McCain said he would have never nominated Justices Ruth Bader Ginsburg, Stephen Breyer, David Souter and John Paul Stevens."

[153] Web page: "Associate Justice of the U.S. Supreme Court - Sonia Sotomayor." United States Senate. Accessed September 5, 2010 at <http://judiciary.senate.gov/nominations/SupremeCourt/SotomayorIndex.cfm>

"On May 26, 2009, President Obama announced that he would nominate Judge Sonia Sotomayor to be an

Associate Justice of the United States Supreme Court."

[154] Vote Number 262: "Confirmation of Sonya Sotomayor to be an Associate Justice of the Supreme Court." United States Senate, August 6, 2009. http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_lists.cfm

[155] Article: "Senate confirms Sonia Sotomayor for Supreme Court." *CNN*, August 06, 2009. <http://articles.cnn.com/2009-08-06/politics/sonia.sotomayor...>

"Sotomayor was easily confirmed in a 68-31 vote. Nine Republicans joined a unanimous Democratic caucus in supporting her nomination."

[156] Ruling: *McDonald v Chicago*. U.S. Supreme Court, June 28, 2010. Case 08-1521. Decided 5-4. Majority: Alito, Roberts, Scalia, Kennedy, Thomas. Dissenting: Stevens, Ginsburg, Breyer, Sotomayor. <http://www.law.cornell.edu/supct/html/08-1521.ZS.html>

Breyer dissent (<http://www.law.cornell.edu/supct/html/08-1521.ZD1.html>):

Justice Breyer, with whom Justice Ginsburg and Justice Sotomayor join, dissenting. ...

The Court ... asks whether the Second Amendment right to private self-defense is "fundamental" so that it applies to the States through the Fourteenth Amendment.* ...

... the use of arms for private self-defense does not warrant federal constitutional protection from state regulation....

In sum, the Framers did not write the Second Amendment in order to protect a private right of armed self-defense.

NOTE: Fourteenth Amendment to the Constitution of the United States. Ratified July 9, 1868.

<http://justfacts.com/constitution.asp#Amendment14>

"Section 1. ... No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

[157] Web page: "Associate Justice of the U.S. Supreme Court – Elena Kagan." United States Senate. Accessed September 5, 2010 at <http://judiciary.senate.gov/nominations/SupremeCourt/KaganIndex.cfm>

"On May 10, 2010, President Obama nominated Solicitor General Elena Kagan to be an Associate Justice of the United States Supreme Court."

[158] Article: "Kagan Was 'Not Sympathetic' as Law Clerk to Gun-Rights Argument." By Greg Stohr and Kristin Jensen. *Bloomberg*, May 13, 2010. <http://www.bloomberg.com/apps/news?pid=20601087&sid=aPI35t8uR6Gj>

Elena Kagan said as a U.S. Supreme Court law clerk in 1987 that she was "not sympathetic" toward a man who contended that his constitutional rights were violated when he was convicted for carrying an unlicensed pistol.

Kagan, whom President Barack Obama nominated to the high court this week, made the comment to Justice Thurgood Marshall, urging him in a one-paragraph memo to vote against hearing the District of Columbia man's appeal.

NOTE: A copy of the memo can be seen at http://www.cbsnews.com/htdocs/pdf/Kagan_guns.pdf?tag=...

[159] Vote Number 229: "Confirmation of Elena Kagan to be an Associate Justice of the Supreme Court." United States Senate, August 5, 2010. http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_lists.cfm

[160] Second Amendment to the Constitution of the United States. Ratified December 15, 1791. <http://justfacts.com/constitution.asp#Amendment2>

[161] Web page: "The Second Amendment: No Right to Keep and Bear Arms." Violence Policy Center, 1998. Accessed September 4, 2010 at http://www.vpc.org/fact_sht/secondfs.htm

"The purpose of the Second Amendment is to guarantee the states' ability to maintain independent militias composed of state residents available to be called upon to defend the country should its security be threatened."

[162] Article: "Appeals Court Says Gun Ban Violates 2nd Amendment." By Adam Liptak, *New York Times*, March 9, 2007. <http://query.nytimes.com/gst/fullpage.html?res=...>

"Most federal appeals courts have said that the amendment, read as a whole, protects only a collective right of the states to maintain militias — in modern terms, the National Guard."

[163] Ruling: *Silveira v Lockyer*. United States Court of Appeals, Ninth Circuit, December 05, 2002. Case 01-15098. Before: Reinhardt, Magill, and Fisher, Circuit Judges. <http://caselaw.findlaw.com/us-9th-circuit/1464183.html>

In any event, it is clear that the drafters believed the militia that provides the best security for a free state to be the permanent state militia, not some amorphous body of the people as a whole, or whatever random and informal collection of armed individuals may from time to time appear on the scene for one purpose or another. ...

The debates of the founding era demonstrate that the second of the first ten amendments to the Constitution was included in order to preserve the efficacy of the state militias for the people's defense -- not to ensure an individual right to possess weapons. Specifically, the amendment was enacted to guarantee that the people would be able to maintain an effective state fighting force -- that they would have the right to bear arms in the service of the state.

[164] Article: "A Primer on the Constitutional Right to Keep and Bear Arms." By Nelson Lund. Virginia Institute for Public Policy, June 2002. http://www.virginia institute.org/publications/primer_on_const.php

"The Second Amendment unambiguously and irrefutably establishes an individual right to keep and bear arms. This conclusion, which is dictated by the language of the Constitution, is confirmed by an abundance of historical evidence. Nor is it contradicted by anything yet discovered in the Constitution's legislative history or in the historical background that illuminates the intentions of those who adopted the Bill of Rights."

[165] Ruling: *United States v. Emerson*. United States Court of Appeals, Fifth Circuit, October 16, 2001. Case 99-10331. Decided 3-0. Before: Garwood, Demoss, and Parker, Circuit Judges. <http://caselaw.findlaw.com/us-5th-circuit/1332436.html>

"We reject the collective rights and sophisticated collective rights models for interpreting the Second Amendment. We hold, consistent with *Miller*, that it protects the right of individuals, including those not then actually a member of any militia or engaged in active military service or training, to privately possess and bear their own firearms...."

[166] Book: *The Bill of Rights and the States: The Colonial and Revolutionary Origins of American Liberties*. Edited by Patrick T. Conley & John P. Kaminski. Madison House Publishers, 1992. Pages 461-514: "The Bill of Rights: A Bibliographic Essay." By Gaspare J. Saladino. Page 484:

The best historical treatments of the legislative history of the Bill of Rights in the first federal Congress are... [six works mentioned]. All agree that James Madison, against considerable odds, took the lead in the House of Representatives, and that without his efforts there probably would have been no Bill of Rights. Madison's amendments, a distillation of those from the state conventions (especially Virginia's) were, for the most part, those that the House eventually adopted.

[167] Article: "Madison, James." Contributor: Robert J. Brugger (Ph.D., Editor, Maryland Historical Magazine, Maryland Historical Society). *World Book Encyclopedia*, 2007 Deluxe Edition.

Madison, James (1751-1836), the fourth president of the United States, is often called the Father of the Constitution. He played a leading role in the Constitutional Convention of 1787, where he helped design the checks and balances that operate among Congress, the president, and the Supreme Court. He also helped create the U.S. federal system, which divides power between the central government and the states.

[168] The Federalist Papers. By Alexander Hamilton, John Jay and James Madison. October 27, 1787- May 28, 1788. <http://www.gutenberg.org/dirs/etext98/feder10a.txt>

Federalist Paper 1: "General Introduction." By Alexander Hamilton. From the *Independent Journal*. October 27, 1787.

"Yes, my countrymen, I own to you that, after having given it an attentive consideration, I am clearly of opinion it is your interest to adopt it. I am convinced that this is the safest course for your liberty, your dignity, and your happiness."

[169] Book: "The Federalist." Edited with an introduction and notes by Jacob E. Cooke. Wesleyan University Press, 1961.

Page xi: "The Federalist, addressed to the People of the State of New York, was occasioned by the objections of many New Yorkers to the Constitution which had been proposed.... [T]he pages of New York newspapers were filled with articles denouncing the new frame of government. ... The decision to publish [the] series of essays... was made by Alexander Hamilton."

Pages xiv-xv:

The first edition, printed by J. and A. McLean and corrected by Hamilton, is the source from which most editions of The Federalist have been taken. ... McLean, having observed "the avidity" with which the "Publius" essays had been sought after by politicians and persons of every description," announced plans for the publication of "The FEDERALIST, A Collection of Essays, written in favour of the New Constitution, By a Citizen of New-York, Corrected by the Author, with Additions and alterations. [The first 36 essays were collectively published in a book dated March 22, 1788. On May 28 of the same year, the rest of the essays that appeared in newspapers were published in book form along with eight more written by Hamilton. These last eight essays were subsequently published in newspapers.]

[170] The Federalist Papers. By Alexander Hamilton, John Jay and James Madison. October 27, 1787- May 28, 1788. <http://www.gutenberg.org/dirs/etext98/feder10a.txt>

Federalist Paper 46: "The Influence of the State and Federal Governments Compared." By James Madison. From the *New York Packet*, January 29, 1788.

The only refuge left for those who prophesy the downfall of the State governments is the visionary supposition that the federal government may previously accumulate a military force for the projects of

ambition. The reasonings contained in these papers must have been employed to little purpose indeed, if it could be necessary now to disprove the reality of this danger. That the people and the States should, for a sufficient period of time, elect an uninterrupted succession of men ready to betray both; that the traitors should, throughout this period, uniformly and systematically pursue some fixed plan for the extension of the military establishment; that the governments and the people of the States should silently and patiently behold the gathering storm, and continue to supply the materials, until it should be prepared to burst on their own heads, must appear to every one more like the incoherent dreams of a delirious jealousy, or the misjudged exaggerations of a counterfeit zeal, than like the sober apprehensions of genuine patriotism. Extravagant as the supposition is, let it however be made. Let a regular army, fully equal to the resources of the country, be formed; and let it be entirely at the devotion of the federal government; still it would not be going too far to say, that the State governments, with the people on their side, would be able to repel the danger. The highest number to which, according to the best computation, a standing army can be carried in any country, does not exceed one hundredth part of the whole number of souls; or one twenty-fifth part of the number able to bear arms. This proportion would not yield, in the United States, an army of more than twenty-five or thirty thousand men. To these would be opposed a militia amounting to near half a million of citizens with arms in their hands, officered by men chosen from among themselves, fighting for their common liberties, and united and conducted by governments possessing their affections and confidence. It may well be doubted, whether a militia thus circumstanced could ever be conquered by such a proportion of regular troops. Those who are best acquainted with the last successful resistance of this country against the British arms, will be most inclined to deny the possibility of it. Besides the advantage of being armed, which the Americans possess over the people of almost every other nation, the existence of subordinate governments, to which the people are attached, and by which the militia officers are appointed, forms a barrier against the enterprises of ambition, more insurmountable than any which a simple government of any form can admit of. Notwithstanding the military establishments in the several kingdoms of Europe, which are carried as far as the public resources will bear, the governments are afraid to trust the people with arms. And it is not certain, that with this aid alone they would not be able to shake off their yokes. But were the people to possess the additional advantages of local governments chosen by themselves, who could collect the national will and direct the national force, and of officers appointed out of the militia, by these governments, and attached both to them and to the militia, it may be affirmed with the greatest assurance, that the throne of every tyranny in Europe would be speedily overturned in spite of the legions which surround it. Let us not insult the free and gallant citizens of America with the suspicion, that they would be less able to defend the rights of which they would be in actual possession, than the debased subjects of arbitrary power would be to rescue theirs from the hands of their oppressors. Let us rather no longer insult them with the supposition that they can ever reduce themselves to the necessity of making the experiment, by a blind and tame submission to the long train of insidious measures which must precede and produce it.

[171] Article: "A History of D.C. Gun Ban." Compiled by Meg Smith and Leah Carliner. *Washington Post*, June 26, 2008 <http://www.washingtonpost.com/wp-dyn/content/article/...>

June 1976: [T]he D.C. Council votes 12 to 1 in favor of a bill restricting city residents from acquiring handguns. The law exempts guards, police officers and owners who had registered their handguns before it took effect. Under the bill, all firearms (including rifles and shotguns, which were not restricted by the law) must be kept unloaded and disassembled, except those in business establishments.

September 1976: Attempts in Congress to block the District law fail, clearing the way for it to go into effect.

[172] Legal brief 07-290: "District of Columbia and Adrian M. Fenty, Mayor of the District Of Columbia, Petitioners, v. Dick Anthony Heller, Respondent. In the Supreme Court of the United States." By Linda Singer (Attorney General for the District of Columbia) and others. January 4, 2008. <http://www.abanet.org/publiced/preview/briefs/pdfs/07-08/...>

Pages 1-2:

Relevant portions of the D.C. Code provide:

§ 7-2502.02. Registration of certain firearms prohibited.

(a) A registration certificate shall not be issued for a:

- (1) Sawed-off shotgun;
- (2) Machine gun;
- (3) Short-barreled rifle; or
- (4) Pistol not validly registered to the current registrant in the District prior to September 24, 1976, except that the provisions of this section shall not apply to any organization that employs at least 1 commissioned special police officer or other employee licensed to carry a firearm and that arms the employee with a firearm during the employee's duty hours or to a police officer who has retired from the Metropolitan Police Department.

(b) Nothing in this section shall prevent a police officer who has retired from the Metropolitan Police Department from registering a pistol.

§ 7-2507.02. Firearms required to be unloaded and disassembled or locked.

Except for law enforcement personnel described in § 7-2502.01(b)(1), each registrant shall keep any firearm in his possession unloaded and disassembled or bound by a trigger lock or similar device unless such firearm is kept at his place of business, or while being used for lawful recreational purposes within the District of Columbia.

[173] Ruling: *District Of Columbia v. Heller*. U.S. Supreme Court, June 26, 2008. Case 07-290. Decided 5-4. Majority: Scalia, Roberts, Kennedy, Thomas, Alito. Dissenting: Stevens, Souter, Ginsburg, Breyer. <http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=...>

[174] First Amendment to the Constitution of the United States. Ratified December 15, 1791.
<http://justfacts.com/constitution.asp#Amendment1>

[175] Fourth Amendment to the Constitution of the United States. Ratified December 15, 1791.
<http://justfacts.com/constitution.asp#Amendment4>

[176] Ruling: *Barron v Baltimore*. U.S. Supreme Court, January Term, 1833.
<http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=...>

The plaintiff in error contends, that it comes within that clause in the fifth amendment to the constitution, which inhibits the taking of private property for public use, without just compensation. He insists, that this amendment being in favor of the liberty of the citizen, ought to be so construed as to restrain the legislative power of a state, as well as that of the United States. If this proposition be untrue, the court can take no jurisdiction of the cause.

The question thus presented is, we think, of great importance, but not of much difficulty. The constitution was ordained and established by the people of the United States for themselves, for their own government, and not for the government of the individual states. Each state established a constitution for itself, and in that constitution, provided such limitations and restrictions on the powers of its particular government, as its judgment dictated. The people of the United States framed such a government for the United States as they supposed best adapted to their situation and best calculated to promote their interests. The powers they conferred on this government were to be exercised by itself; and the limitations on power, if expressed in general terms, are naturally, and, we think, necessarily, applicable to the government created by the instrument. They are limitations of power granted in the instrument itself; not of distinct governments, framed by different persons and for different purposes.

If these propositions be correct, the fifth amendment must be understood as restraining the power of the general government, not as applicable to the states.

[177] Fourteenth Amendment to the Constitution of the United States. Ratified July 9, 1868.
<http://justfacts.com/constitution.asp#Amendment14>

[178] Supplemental materials for Brest, Levinson, Balkin, Amar and Siegel, *Processes of Constitutional Decisionmaking* (5th ed. 2006): "Senator Jacob Howard, Speech Introducing the Fourteenth Amendment." Speech delivered in the U.S. Senate, May 23, 1866. [http://www.yale.edu/lawweb/ibalkin/conlaw/...](http://www.yale.edu/lawweb/ibalkin/conlaw/)

[Senator Jacob Howard of Michigan was a member of the Joint Committee on Reconstruction that drafted the Fourteenth Amendment. He was the floor manager for the Amendment in the Senate. In this speech, he introduces the Amendment on the floor of the Senate and explains its purposes.]

I can only promise to present to the Senate, in a very succinct way, the views and the motives which influenced th[e] committee, so far as I understand those views and motives, in presenting the report which is now before us for consideration, and the ends it aims to accomplish. ...

The first section [of the 14th Amendment] ... relates to the privileges and immunities of citizens of the several States, and to the rights and privileges of all persons, whether citizens or others, under the laws of the United States. ...

To these privileges and immunities, whatever they may be—for they are not and cannot be fully defined in their entire extent and precise nature—to these should be added the personal rights guarantied and secured by the first eight amendments of the Constitution; such as the freedom of speech and of the press; the right of the people peaceably to assemble and petition the Government for a redress of grievances, a right appertaining to each and all the people; the right to keep and to bear arms; the right to be exempted from the quartering of soldiers in a house without the consent of the owner; the right to be exempt from unreasonable searches and seizures, and from any search or seizure except by virtue of a warrant issued upon a formal oath or affidavit; the right of an accused person to be informed of the nature of the accusation against him, and his right to be tried by an impartial jury of the vicinage; and also the right to be secure against excessive bail and against cruel and unusual punishments.

Now, sir, here is a mass of privileges, immunities, and rights, some of them secured by the second section of the fourth article of the Constitution, which I have recited, some by the first eight amendments of the Constitution; and it is a fact well worthy of attention that the course of decision of our courts and the present settled doctrine is, that all these immunities, privileges, rights, thus guarantied by the Constitution or recognized by it, are secured to the citizen solely as a citizen of the United States and as a party in their courts. They do not operate in the slightest degree as a restraint or prohibition upon State legislation. States are not affected by them, and it has been repeatedly held that the restriction contained in the Constitution against the taking of private property for public use without just compensation is not a restriction upon State legislation, but applies only to the legislation of Congress.

Now, sir, there is no power given in the Constitution to enforce and to carry out any of these guarantees. They are not powers granted by the Constitution to Congress, and of course do not come within the sweeping clause of the Constitution authorizing Congress to pass all laws necessary and proper for carrying out the foregoing or granted powers, but they stand simply as a bill of rights in the Constitution, without power on the part of Congress to give them full effect; while at the same time the States are not restrained from violating the principles embraced in them except by their own local constitutions, which may be altered from year to year. The great object of the first section of this amendment is, therefore, to restrain the power of the States and compel them at all times to respect these great fundamental guarantees....

[179] Ruling number 1-95-1779: *Hunt v Daley*. Appellate Court of Illinois, First District, Third Division, February 19, 1997. <http://caselaw.findlaw.com/il-court-of-appeals/1056110.htm>

This proceeding involves the 1982 Chicago Weapons Ordinance, passed by the Chicago City Council on March 19, 1982 ... rendering certain firearms unregistrable in the City of Chicago. Under that ordinance, several categories of firearms, including handguns, became unregistrable in the City of Chicago. ... However, pursuant to a grandfathering provision provided in the 1982 ordinance, handgun owners whose handguns were validly registered prior to the effective date of the handgun ban could continue to re-register their handguns. ... The 1982 ordinance also required that such re-registration take place every two years. ... [It was] ... amended and recodified in 1994 to require annual re-registration.... The failure to re-register firearms every two years after the enactment of the 1982 ordinance rendered such firearms permanently unregistrable, and thereby caused handgun owners to forfeit their right to possess such firearms within the City of Chicago.

[180] Ruling number 83-1431: *Sklar v Byrne*. United States Court of Appeals, Seventh Circuit, February 8, 1984 (as amended April 17, 1984). <http://openjurist.org/727/724/633>

On March 19, 1982, the Chicago City Council passed an ordinance amending Chapter 11.1 of the Municipal Code of the City of Chicago which regulates the sale, possession and registration of firearms and ammunition. The ordinance requires that all firearms in Chicago be registered with the city. ... The ordinance also classifies some firearms as "unregistrable," thus making illegal their possession in the City of Chicago. Among the categories of "unregistrable" firearms are "Handguns, except those validly registered to a current owner in the City of Chicago prior to the effective date of this Chapter." ... The effective date of the Chapter was April 10, 1982.

[181] Case file: *McDonald v Chicago*. Plaintiff's complaint. Filed June 26, 2008. <http://www.chicagoguncase.com/wp-content/uploads/2008/...>

"Chicago Municipal Code § 8-20-200 provides: (a) Every registrant must renew his registration certificate annually. Applications for renewal shall be made by such registrants 60 days prior to the expiration of the current registration certificate. (b) The application for renewal shall include the payment of a renewal fee as follows: 1 firearm ... \$20.00...."

[182] Ruling: *McDonald v Chicago*. U.S. Supreme Court, June 28, 2010. Case 08-1521. Decided 5-4. Majority: Alito, Roberts, Scalia, Kennedy, Thomas. Dissenting: Stevens, Ginsburg, Breyer, Sotomayor. <http://www.law.cornell.edu/supct/html/08-1521.ZS.html>

Two years ago, in *District of Columbia v. Heller* ... we held that the Second Amendment* protects the right to keep and bear arms for the purpose of self-defense, and we struck down a District of Columbia law that banned the possession of handguns in the home. The city of Chicago (City) and the village of Oak Park, a Chicago suburb, have laws that are similar to the District of Columbia's, but Chicago and Oak Park argue that their laws are constitutional because the Second Amendment has no application to the States. ... Applying the standard that is well established in our case law, we hold that the Second Amendment right is fully applicable to the States.

NOTE: * Second Amendment to the Constitution of the United States. Ratified December 15, 1791. <http://justfacts.com/constitution.asp#Amendment2>

"A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms shall not be infringed."

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