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Fable I

A gun in the home makes the home less safe.

Firearms are used three to five times more often to stop crimes than to commit them,¹ and accidents with firearms are at an all-time recorded low.² In spite of this, anti-firearm activists insist that the very act of keeping a firearm in the home puts family members at risk, often claiming that a gun in the home is “43 times” more likely to be used to kill a family member than an intruder, based upon a study by anti-gun researchers of firearm-related deaths in homes in King County (Seattle), Washington.³ Although Arthur Kellermann and Donald Reay originally warned that their study was of a single non-representative county and noted that they failed to consider protective uses of firearms that did not result in criminals being killed, anti-gun groups and activists use the “43 times” claim without explaining the limitations of

the study or how the ratio was derived.

To produce the misleading ratio from the study, the only defensive or protective uses of firearms that were counted were those in which criminals were killed by would-be crime victims. This is the most serious of the study’s flaws, since fatal shootings of criminals occur in only a fraction of 1% of protective firearm uses nationwide.⁴ Survey research by award-winning Florida State University criminologist Gary Kleck, has shown that firearms are used for protection as many as 2.5 million times annually.⁵

It should come as no surprise that Kleck’s findings are reflexively dismissed by “gun control” groups, but a leading anti-gun criminologist was honest enough to acknowledge their validity. “I am as strong a gun-control advocate as can be found among the criminologists in this country,” wrote the late Marvin E. Wolfgang. “I would eliminate all guns from the civilian population and maybe even from the police. . . . What troubles me is the article by Gary Kleck and Marc Gertz. The reason I am troubled is that they have provided an almost clear-cut case of methodologically sound research in support of something I have theoretically opposed for years, namely, the use of a gun in defense against a criminal perpetrator. . . . I do not like their conclusions that having a gun can be useful, but I cannot fault their methodology.”⁶

While the “43 times” claim is commonly used to suggest that murders and accidents are likely to occur with guns kept at home, suicides accounted for 37 of every 43 firearm-related deaths in the King County study. Nationwide, 58% of firearm-related deaths are suicides,⁷ a problem which is not solved by gun laws aimed at denying firearms to criminals. “Gun control” advocates would have the public believe that armed citizens often accidentally kill family members, mistaking them for criminals. But such incidents constitute less than 2% of fatal firearms accidents, or about one for every 90,000 defensive gun uses.⁸

In spite of the demonstrated flaws in his research, Kellermann continued to promote the idea that a gun is inherently dangerous to own. In 1993, he and a number of colleagues presented a study that claimed to show that a home with a gun was much more likely to experience a homicide.⁹

This study, too, was seriously flawed. Kellermann studied only homes where homicides had taken place—ignoring the millions of homes with firearms where no harm is done—and used a control group unrepresentative of American house-

holds. By looking only at homes where homicides had occurred and failing to control for more pertinent variables, such as prior criminal record or histories of violence, Kellermann et al. skewed the results of this study. After reviewing the study, Prof. Kleck noted that Kellermann's methodology is analogous to proving that since diabetics are much more likely to possess insulin than non-diabetics, possession of insulin is a risk factor for diabetes. Even Dr. Kellermann admitted, "It is possible that reverse causation accounted for some of the association we observed between gun ownership and homicide." Northwestern University Law Professor Daniel D. Polsby went further, writing, "Indeed the point is stronger than that: 'reverse causation' may account for most of the association between gun ownership and homicide. Kellermann's data simply do not allow one to draw any conclusion."¹⁰

Fable II

The Second Amendment to the Constitution doesn't protect an individual right to keep and bear arms.

"If anyone entertained this notion in the period during which the Constitution and Bill of Rights were debated and ratified, it remains one of the most closely guarded secrets of the eighteenth century, for no known writing surviving from the period between 1787 and 1791 states such a thesis."¹

Anyone familiar with the principles upon which this country was founded and upon which it has operated for the last two centuries will recognize this claim's most glaring flaw: In America, rights, by definition, belong to individuals.

In the Declaration of Independence, Thomas Jefferson wrote that "all men are created equal" and "are endowed by their Creator with certain unalienable rights." Governments, on the other hand, derive their "powers" from the consent of the governed. The Constitution and Bill of Rights repeatedly refer to the "rights" of the people and to the "powers" of government.

In each case, rights belonging to "the people" are undeniably the rights of individuals. As the Supreme Court recognized in *U.S. v. Verdugo-Urquidez* (1990), "the people" seems to have been a term of art employed in select parts of the Constitution. The Preamble declares that the Constitution is ordained and established by "the People of the United States." The Second Amendment protects "the right of the people to keep and bear Arms," and the Ninth and Tenth Amendments provide that certain rights and powers are retained by and reserved to "the people." . . . It suggests that "the people" protected by the Fourth Amendment, and by the First and Second Amendments, and to whom rights and powers are reserved in the Ninth and Tenth Amendments, refers to a class of persons who are a part of a national community or who have otherwise developed sufficient connection with this country to be considered part of that community."

Future U.S. President James Madison introduced in the House of Representatives the amendments that became our Bill of Rights. In notes for his speech proposing the amendments, Madison wrote that "They relate first to private rights." Several days later, William Grayson wrote to Patrick Henry, telling him that "[A] string of amendments were presented to the lower House; these altogether respected personal liberty."² A

week later, Tench Coxe referred to the Second Amendment in the Federal Gazette, writing that “the people are confirmed by the next article in their right to keep and bear their private arms.”³ Samuel Adams warned that “The said Constitution be never construed to authorize Congress to infringe the just liberty of the press, or the rights of conscience; or to prevent the people of the United States, who are peaceable citizens, from keeping their own arms.”⁴

Dozens of essays have been written by the nation’s foremost authorities on the Constitution, supporting the traditional understanding of the right to arms as an individually possessed right, protected by the Second Amendment.

For example, Prof. Akil Reed Amar of the Yale Law School and Alan Hirsch, like Amar a former Yale Law Journal editor, wrote: “We recall that the Framers’ militia was not an elite fighting force but the entire citizenry of the time: all able-bodied adult white males. Since the Second Amendment explicitly declares that its purpose is to preserve a well-regulated militia, the right to bear arms was universal in scope. The vision animating the amendment was nothing less than popular sovereignty—applied in the military realm. The Framers recognized that self-government requires the People’s access to bullets as well as ballots. The armed citizenry (militia) was expected to protect against not only foreign enemies, but also a potentially tyrannical federal government. In short, the right to bear arms was intended to ensure that our government remained in the hands of the People.”⁵

By contrast, only a few law journal articles advocating the anti-firearm groups’ view have appeared, most written by those groups’ employees. (A bibliography of Second Amendment-related books, law reviews and other published works is available at www.nraila.org and from the NRA-ILA Grassroots Division.)

Gun control supporters insist that “the right of the people” really means the “right of the state” to maintain the “militia” mentioned in the amendment, and that this “militia” is the National Guard.

Such a claim is not only inconsistent with the statements of America’s early statesmen and the concept of individual rights as understood by generations of Americans, it misdefines the term “militia.”

For centuries before the drafting of the Second Amendment, European political writers used the term “well regulated militia” to refer to the citizenry on the whole, armed with privately-owned weapons, led by officers chosen by themselves.

America’s statesmen defined the militia the same way. Richard Henry Lee (who before ratification of the Constitution was the author of the most influential writings advocating a Bill of Rights) wrote, “A militia when properly formed are in fact the people themselves . . . and include all men capable of bearing arms. . . . To preserve liberty it is essential that the whole body of people always possess arms. . . .”⁶ Making the same point, Tench Coxe wrote that the militia “are in fact the effective part of the people at large.”⁷ George Mason asked, “[W]ho are the militia? They consist now of the whole people, except a few public officers.”⁸

The Militia Act of 1792, adopted the year after the Second Amendment was ratified, declared that the Militia of the United States (members of the militia obligated to serve if called upon by the government) included all able-bodied males of age. As the U.S. Supreme Court observed in *U.S. v. Miller* (1939), “The signification attributed to the term Militia appears from the debates in the [Constitutional] Convention, the history and legislation of Colonies and States, and the writings of approved commentators. These show plainly enough that the Militia comprised all males physically capable of acting in concert for the common defense . . . bearing arms supplied by themselves and of the kind in common use at the time.” The National Guard was not established until 1903. In 1920 it was designated one part of the “Militia of the United States,” the other

part remaining all other able-bodied males of age, plus some other males and females.

However, in 1990, in *Perpich v. Department of Defense*, the Supreme Court held that the federal government possesses absolute, unlimited power over the Guard. (The Court never mentioned the Second Amendment, noting instead that federal power over the Guard is not restricted by the Constitution's Article I, Section 8, Clauses 15 and 16.)

Thus, the Guard is in fact the third component of the United States Army, behind the Army and Army Reserve. The Framers' independent "well regulated militia" remains as they intended, America's armed citizenry.

The most thorough examination of the Second Amendment and related issues ever undertaken by a court is the Oct. 16, 2001, decision of the U.S. Court of Appeals for Fifth Circuit in *U.S. v. Emerson*, a case that centers around an individual indicted for possessing firearms while under a certain kind of restraining order, in violation of federal law.

The court upheld the indictment against Emerson, noting that restrictions on the right to arms are permissible if they are "limited, narrowly tailored specific exceptions or restrictions for particular cases that are reasonable and not inconsistent with the right of Americans generally to individually keep and bear their private arms as historically understood in this country."

The court then devoted dozens of pages of its decision to a comprehensive examination of the Second Amendment's history and text, and court decisions and scholarship on the amendment and related issues. It began with an examination of the Supreme Court's decision in *U.S. v. Miller* (1939), which individual rights opponents commonly claim supports the notion of the Second Amendment protecting only a "collective right" of a state to maintain a militia, or a "sophisticated collective right" of a person to keep and bear arms only when in service with such a militia. The Fifth Circuit disagreed. "We conclude that *Miller* does not support the [Clinton Administration's] collective rights or sophisticated collective rights approach to the Second Amendment. Indeed, to the extent that *Miller* sheds light on the matter it cuts against the government's position."

The court then turned to the history and text of the Second Amendment. "There is no evidence in the text of the Second Amendment, or any other part of the Constitution, that the words 'the people' have a different connotation within the Second Amendment than when employed elsewhere in the Constitution. In fact, the text of the Constitution, as a whole, strongly suggests that the words 'the people' have precisely the same meaning within the Second Amendment as without. And as used throughout the Constitution, 'the people' have 'rights' and 'powers,' but federal and state governments only have 'powers' or 'authority,' never 'rights.'"

The court concluded, "We have found no historical evidence that the Second Amendment was intended to convey militia power to the states, limit the federal government's power to maintain a standing army, or applies only to members of a select militia while on active duty. All of the evidence indicates that the Second Amendment, like other parts of the Bill of Rights, applies to and protects individual Americans. We find that the history of the Second Amendment reinforces the plain meaning of its text, namely that it protects individual Americans in their right to keep and bear arms whether or not they are a member of a select militia or performing active military service or training. We reject the collective rights and sophisticated collective rights models for interpreting the Second Amendment. We hold, consistent with *Miller*, that it [the 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."

More recently, the U.S. Department of Justice officially adopted the historically

correct interpretation that the Second Amendment guarantees an individual right. In briefs filed May 6, 2002, with the U.S. Supreme Court, Solicitor General Theodore B. Olson wrote that the position of the United States is that “the Second Amendment more broadly protects the rights of individuals, including persons who are not members of any militia or engaged in active military service or training, to possess and bear their own firearms.”

Anti-gun activist groups claim that all of their proposals—including gun bans, prohibitive taxes, registration and licensing to name a few—are “moderate and reasonable.” Those who oppose such ideas, they say, are “unreasonable.” And they claim that NRA

Table III

NRA opposes moderate and reasonable gun regulations.

opposes all gun laws. The truth is, NRA supports many gun laws, including federal and state laws that prohibit the possession of firearms by certain categories of people, such as convicted violent criminals, those prohibiting sales of firearms to juveniles, and those requiring instant criminal records checks on retail firearm purchasers.¹

NRA has also assisted in writing gun laws. The 1986 federal law prohibiting the manufacture and importation of “armor piercing ammunition” adopted standards NRA helped write.² When anti-gun groups accuse NRA of opposing the law, they lie. NRA, joined by the Justice Department and Treasury Department, opposed only earlier

legislation because that legislation would have banned an enormous variety of hunting, target shooting and defensive ammunition.³ The sponsor of the earlier bill, Rep. Mario Biaggi (D-N.Y.), felt that his original goals were met by the NRA-backed bill that became law. “Our final legislative product was not some watered-down version of what we set out to do,” Biaggi said on the floor of the House. “In the end, there was no compromise on the part of police safety.”

Similarly, the anti-gun lobby also continues to falsely claim that NRA opposed all efforts to ban “plastic guns.” In truth, no “plastic” firearms existed then or now. NRA only opposed a bill that would have banned millions of commonplace handguns, and instead supported an alternative, the Hughes-McCollum bill. That 1988 legislation prohibited the development and production of any firearm that would be undetectable by airport detectors, and enhanced airport security systems to counter terrorism. In the end, the NRA-backed legislation passed Congress with wide bipartisan support and was signed into law by President Reagan.

At the state level, NRA has worked with legislators to write laws requiring computerized “instant” criminal records checks on purchasers of firearms and those who carry firearms for protection in public. Because crime can be reduced by correcting deficiencies in criminal justice laws and policies, NRA has worked with legislators and citizens’ groups in many states to increase the length of prison sentences for violent criminals, to sentence violent criminals to prison rather than probation, to prevent the parole of the most violent convicts, and to expand prison capacity.

There is nothing “moderate” or “reasonable” about the agenda of anti-gun groups. Prohibiting people from keeping guns loaded at home for protection against criminals is not “moderate” (currently the law in the District of Columbia and inherent in legislation that would require guns at home to always be locked.) A prohibition or

1,000% tax on hunting, target shooting and personal protection ammunition is also not “moderate”⁴ nor is a 1,400% increase in firearm dealer licensing fees and fingerprinting people who buy miscellaneous handgun parts, such as springs and pins.⁵

When low-income Americans are the people most likely to be attacked by violent criminals,⁶ prohibiting guns inexpensive enough for them to afford for protection⁷ is not reasonable. It is also not reasonable to prohibit people who pass criminal records checks from buying two handguns in a given month⁸ or to prohibit them from carrying a gun for protection.⁹ And when computerized criminal records checks of gun buyers can be completed in only a matter of minutes, it is unreasonable to delay their firearm purchases with a week-long waiting period.¹⁰

The siren call to bow to the demand for “reasonable” gun control is not unique to the United States. In three nations that have much in common with the United States—Australia, Canada and Great Britain—gun owners did not unify to fight the incremental imposition of restrictive gun laws touted as “reasonable and necessary.” As a result, firearms are severely restricted in Canada and Australia and almost entirely prohibited in Great Britain.

British gun owners failed to resist the passage of “reasonable” gun laws and have seen their rights almost completely disappear in the space of a few decades.¹¹ England changed from a nation with almost no restrictions on gun ownership and no crime, to a nation where all but certain rifles and shotguns are banned and crime is rising.¹² The clear lesson for American gun owners is simple: If you don’t fight for your liberties, you lose them.

So overwhelming is the evidence against this myth that it borders on the absurd for anti-gun groups to try to perpetuate it.

There are thousands of federal, state and local gun laws. The Gun Control Act of 1968 (Public Law 90-618, 18 U.S.C. Chapter 44) alone prohibits persons convicted of, or under indictment for, crimes punishable by more than a year in prison, fugitives, illegal drug users, illegal aliens, mental incompetents and certain other classes of people from purchasing or possessing firearms. It prohibits mail order sales of firearms, prohibits sales of firearms between non-dealer residents of other states, prohibits retail sales of handguns to persons under age 21 and rifles and shotguns to persons under age 18 and prohibits the importation of firearms “not generally recognized as particularly suitable for or readily

Table IV

“Gun control” laws prevent crime.

adaptable to sporting purposes.” It also established the current firearms dealer licensing system. Consider the following gun control failures.

(Unless otherwise noted, crime data are from the FBI, Uniform Crime Reports.)

Washington, D.C.’s ban on handgun sales took effect in 1977 and by the 1990s the city’s murder rate had tripled. During the years following the ban, most murders—and all firearm murders—in the city were committed with handguns.¹

Chicago imposed handgun registration in 1968, and murders with handguns continued to rise. Its registration system in place, Chicago imposed a D.C.-style handgun ban in 1982, and over the next decade the annual number of handgun-related murders doubled.²

California increased its waiting period on retail and private sales of handguns from five to 15 days in 1975 (reduced to 10 days in 1996), outlawed “assault weapons”

in 1989 and subjected rifles and shotguns to the waiting period in 1990. Yet since 1975, the state's annual murder rate has averaged 31% higher than the rate for the rest of the country.

Maryland has imposed a waiting period and a gun purchase limit, banned several small handguns, restricted "assault weapons," and regulated private transfers of firearms even between family members and friends, yet for the last decade its murder rate has averaged 53% higher than the rate for the rest of the country, and its robbery rate has averaged highest among the states.

The overall murder rate in the jurisdictions that have the most severe restrictions on firearms purchase and ownership—California, Illinois, Maryland, Massachusetts, New Jersey, New York and Washington, D.C.—is 18% higher than the rate for the rest of the country.

New York has had a handgun licensing law since 1911, yet until the New York City Police Department began a massive crackdown on crime in the mid-1990s, New York City's violent crime rate was among the highest of U.S. cities.

The federal Gun Control Act of 1968 imposed unprecedented restrictions relating to firearms nationwide. Yet, compared to the five years before the law, the national murder rate averaged 50% higher during the five years after the law, 75% higher during the next five years, and 81% higher during the five years after that.

States where the Brady Act's waiting period was imposed had worse violent crime trends than other states. Other failures of the federal waiting period law are noted in the discussion of Fable V.

The record is clear: Gun control primarily impacts upon upstanding citizens, not criminals. Crime is reduced by holding criminals accountable for their actions.

Increasing incarceration rates — Between 1980-1994, the 10 states with the greatest increases in prison population experienced an average decrease of 13% in violent crime, while the 10 states with the smallest increases in prison population experienced an average 55% increase in violent crime.³

Put violent criminals behind bars and keep them there — In 1991, 162,000 criminals placed on probation instead of being imprisoned committed 44,000 violent crimes during their probation. In 1991, criminals released on parole committed 46,000 violent crimes while under supervision in the community for an average of 13 months.⁴ Nineteen percent of persons involved in the felonious killings of law enforcement officers during the last decade were on probation or parole at the time.⁵

Enforce the law against criminals with guns — The success of Richmond, Virginia's Project Exile, strongly supported by NRA, has grabbed the attention of the Administration, Members of Congress, big city mayors and criminologists. Project Exile is a federal, state and local effort led by the U.S. Attorney's Office in Richmond that sentences felons convicted of illegally possessing guns to a minimum of five years in prison. Following the implementation of Project Exile, the city's firearm murder rate was cut by nearly 40%.⁶

In 2002, the Bush Department of Justice took the Project Exile concept nationwide, targeting violent felons with guns under Project Safe Neighborhoods. Says Attorney General John Ashcroft: "In addition to prosecuting gun crime in order to take those who commit it off the streets, Project Safe Neighborhoods is working to prevent gun crime by reaching potential perpetrators before it's too late."

(Unless otherwise noted, crime data are from the FBI, Uniform Crime Reports.)

Anti-gun groups and the Clinton-Gore Administration tried to credit those two laws and, thus themselves, with the decrease. However, violent crime began declining nationally during 1991, while the Brady Act didn't take effect until Feb. 28, 1994, and the "assault weapons" law not until Sept. 13, 1994.

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Table V

It is because of the Brady Act's five-day waiting period and the "assault weapons" law that crime has decreased.

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Crime in America has declined for several other reasons. New York City, accounted for one in 10 violent crimes in the U.S. a decade ago, violent crimes significantly with widely-acclaimed crackdown on a range of crimes and implementation of new police strategies.¹ The incarceration rate has doubled nationally.² Additionally, during the 1990s the population aged and became less prone to violence—most notably the membership of drug gangs.³ The "assault weapon" law has been evant to the decrease in crime. Not did that law take effect well after the decrease began, "assault weapons"

were and are used in only a very small percentage of violent crime.⁴ "Assault weapons" are still widely available on the commercial market because of increased production before the federal law ceased their manufacture. Furthermore, the law permits the manufacture of firearms that are identical to "assault weapons" except for one or more attachments.⁵

The Brady Act's waiting period was never imposed on many high-crime states and cities, but instead was imposed on mostly low-crime states. Eighteen states and the District of Columbia were always exempt from the waiting period⁶ because they already had more restrictive gun laws when the Brady Act took effect.⁷ Those areas accounted for the majority of murders and other violent crimes in the U.S. Furthermore, during the five years the waiting period was in effect, more than a dozen other states became "Brady-exempt" as well by adopting NRA-backed instant check laws or modifying pre-existing purchase regulations.

Even in states where waiting periods have been in effect, criminals have not been prevented from obtaining handguns. Only 7% of armed career criminals and 7% of "handgun predators" obtained firearms from licensed gun shops⁸ in the 1980s and 1990s, respectively, and four of every five prison inmates get their guns from friends, family members and black market sources.⁹ Eighty-five percent of police chiefs say the Brady Act's waiting period did not stop criminals from obtaining handguns.¹⁰ According to the Bureau of Justice Statistics (BJS), handgun purchase denial statistics often cited by gun prohibitionists, "do not indicate whether rejected purchasers later obtained a firearm through other means."¹¹

Summarizing the waiting period's failure, New York University Professors James M. Jacobs and Kimberley A. Potter wrote: "It is hard to see the Brady law, heralded by many politicians, the media, and Handgun Control, Inc. as an important step toward keeping handguns out of the hands of dangerous and irresponsible persons, as anything more than a sop to the widespread fear of crime."¹²

Waiting periods and other laws delaying handgun purchases have never reduced crime. Historically, most states with such laws have had higher violent crime rates than other states and have been more likely to have violent crime and murder rates higher than national rates. Despite a 15-day waiting period (reduced to 10 days in 1996) and a ban on "assault weapons," California's violent crime and murder rates averaged 45% and 30% higher than the rest of the country during the 1990s. When Congress approved the Brady bill, eight of the 12 states that had violent crime rates higher than the national

rate, and nine of the 16 states that had murder rates higher than the national rate, were states that delayed handgun purchases.

In Brady's first two years, the overall murder rate in states subject to its waiting period declined only 9%, compared to 17% in other states. Even anti-gun researcher David McDowell has written, "waiting periods have no influence on either gun homicides or gun suicides."¹³ Handgun Control's Sarah Brady admitted that a waiting period "is not a panacea. It's not going to stop crimes of passion or drug-related crimes."¹⁴

The Brady Act waiting period also led to fewer arrests of prohibited purchasers, compared to NRA-backed instant check systems. For example, between November 1989 and August 1998, Virginia's instant check system led to the arrests of 3,380 individuals, including 475 wanted persons.¹⁵ The General Accounting Office (GAO) found that during the Brady Act's first 17 months, only seven individuals were convicted of illegal attempts to buy handguns.¹⁶ The Dept. of Justice, citing statistics from the Executive Office of United States Attorneys, stated that during Fiscal Years 1994-1997 only 599 individuals were convicted of providing false information on either federal forms 4473 (used to document retail firearms purchases) or Brady handgun purchase application forms.¹⁷

The vast majority of persons who applied to buy handguns under the Brady Act's waiting period were law-abiding citizens. The GAO reported that during the Act's first year, 95.2% of handgun purchase applicants were approved without a hitch. Of the denials, nearly half were due to traffic tickets or administrative problems with application forms (including sending forms to the wrong law enforcement agency). Law-abiding citizens were often incorrectly denied as "criminals," because their names or other identifying information were similar to those of criminals and triggered "false hits" during records checks. GAO noted that denials reported by BATF in its one-year study of the Brady Act, "do not reflect the fact that some of the initially denied applications were subsequently approved following administrative or other appeal procedures."¹⁸

Due to NRA-backed amendments that were made to the Brady bill before its passage in 1993, the Brady Act's waiting period was replaced in November 1998 by the nationwide instant check system.¹⁹ However, in June 1998, President Clinton and the anti-gun lobby announced their desire for the waiting period to continue permanently along with the instant check. White House senior advisor Rahm Emanuel (a current Congressman from Illinois) falsely claimed on June 14, 1998, that "The five-day waiting period was established for a cooling off period for crimes of passion."²⁰

As the inclusion of its instant check amendment made clear, however, the Brady Act was imposed not for a "cooling off period," but for a records check obstacle to firearm purchases by felons, fugitives and other prohibited persons. Furthermore, during congressional hearings on the Brady bill on Sept. 30, 1993, Assistant Attorney General Eleanor Acheson testified for the Dept. of Justice that there were no statistics to support claims that handguns were often used in crimes soon after being purchased.²¹

Emanuel also brazenly claimed that, "Based on police research, 20% of the guns purchased that are used in murder are purchased within the week of the murder." But this was a falsehood typical of anti-gun advocates: BATF reports that, on average, guns recovered in murder investigations were purchased 6.6 years before involvement in those crimes.²²

The Clinton-Gore Administration and anti-gun groups wanted a waiting period, because it complicates the process of buying a gun and therefore may dissuade some potential gun buyers. A waiting period also can prevent a person who needs a gun for protection from acquiring one quickly. The anti-gun lobby opposes the use of firearms for protection, claiming "the only reason for guns in civilian hands is for sporting purposes"²³ and self-defense is "not a federally guaranteed constitutional right."²⁴

To the contrary, fatal firearm accidents in the United States have been decreasing dramatically from year to year, decade to decade.¹ Today they're at an all-time low among the entire population and among children in particular, and account for only 1% of fatal accidents. More common are fatal accidents involving, or due to, motor vehicles, falls, fires, poisoning, drowning, choking on ingested objects and mistakes during medical care.² Since 1930, the U.S. population has more than doubled, the number of privately

owned firearms has quintupled, and the annual number of fatal firearm accidents has declined by 75%.³ Among children, fatal firearm accidents have declined 87% since 1975.⁴

Anti-gun activists exaggerate the number of firearm-related deaths among children more than 500%, by counting deaths among persons under the age of 20 as deaths of "children."⁵ To these activists a 19-year-old gangster who is shot by police during a convenience store robbery is a "child." In some instances, they even have pretended that persons under the age of 25 were "children," and Handgun Control, Inc., on at least one occasion, pretended that anyone under the age of 35 was a "child."⁶

Along with misrepresenting accident and other statistics in an effort to frighten people into not keeping guns in

their homes, anti-gun activists also advocate "mandatory storage" laws (to require all gun owners to store their firearms unloaded and locked away) and "triggerlock" laws (to require some sort of locking device to be provided with every gun sold.) Both concepts are intended to prohibit or, at least, discourage people from keeping their firearms ready for protection against criminals—the most common reason many people buy firearms today.

NRA opposes such laws, because it would be unreasonable and potentially dangerous to impose one storage requirement upon all gun owners. Individual gun owners have different factors to consider when determining how best to store their guns. They alone are capable of making the decision that is best for themselves. Gun safes and trigger locking devices have been on the market for years, of course, and remain available to anyone who decides that those products fit their individual needs.

Storage and triggerlock laws could also give people the false impression that it is safe to rely upon mechanical devices, rather than upon proper firearm handling procedures. Mechanical devices can fail and many trigger locking devices pose a danger when installed on loaded firearms.

Mandatory storage laws also would be virtually impossible to enforce without violating the Fourth Amendment's protection against unreasonable searches. American gun owners and civil libertarians are keenly aware that in Great Britain, a mandatory storage law was a precursor to that country's prohibition on handgun ownership.

Most states provide penalties for reckless endangerment, under which an adult found grossly negligent in the storage of a firearm can be prosecuted for a criminal offense. Responsible gun owners already store their firearms safely, in accordance with their personal needs. Irresponsible persons are not likely to undergo a character change

Table VI

Since firearm accidents are a large, growing problem, we need laws mandating how people store their firearms.

because of a law that restates their inherent responsibilities.

NRA recognizes that education has been the key to the decline in firearm accidents. NRA's network of 48,000 Certified Instructors and Coaches nationwide trains hundreds of thousands of gun owners each year. Separately, NRA's award-winning Eddie Eagle® Gun Safety Education program for children pre-K through 6th grade has reached more than 17 million youngsters nationwide. NRA's Home Firearm Safety Manual advises: "The proper storage of firearms is the responsibility of all gun owners," and that gun owners should "store guns so they are not accessible to untrained or unauthorized persons."

Anti-gun rhetoric is its most outlandish when the subject turns to Right-to-Carry laws, under which people obtain permits to carry firearms concealed for protection against criminals. For years, gun control supporters have tried to convince the public that the average person is neither smart enough, adept enough nor responsible enough to be trusted with firearms, especially where using firearms for protection is concerned.

In his book, *More Guns, Less Crime*,¹ Prof. John R. Lott, Jr. provides the most comprehensive study of firearm laws ever conducted. With an economist's eye, Lott examined a large volume of data ranging from gun ownership polls to FBI crime rate data for each of the nation's 3,045 counties over an 18-year period. He included in his analysis many variables that might explain the level of crime—factors such as income, poverty, unemployment, population density, arrest rates, conviction rates and length of prison sentences.

With 54,000 observations and hundreds of variables available over the 1977 to 1994 period, Lott's research amounts to the largest data set that has ever been compiled for any study of crime, let alone for the study of gun control. And, unlike many gun control advocates who masquerade as researchers, Lott willingly made his complete data set available to any academic who requested it.

"Many factors influence crime," Lott writes, "with arrest and conviction rates being

the most important. However, nondiscretionary concealed-handgun laws are also important, and they are the most cost-effective means of reducing crime."

Nondiscretionary, or "shall-issue" carry permit laws reduce violent crime for two reasons. They reduce the number of attempted crimes, because criminals can't tell which potential victims are armed and can defend themselves. Secondly, national crime victimization surveys show that victims who use firearms to defend themselves are statistically less likely to be injured. In short, carry laws deter crime, because they increase the criminal's risk of doing business.

Lott's research shows that states with the largest increases in gun ownership also have the largest decreases in violent crime. And, it is high-crime urban areas and neighborhoods with large minority populations that experience the greatest reductions in violent crime when law-abiding citizens are allowed to carry concealed

Fable VII

Allowing people
to carry guns
for protection
will lead to
more violence
and injuries.

handguns.

Lott found “a strong negative relationship between the number of law-abiding citizens with permits and the crime rate—as more people obtain permits there is a greater decline in violent crime rates.” Further, he found that the value of carry laws increases over time. “For each additional year that a concealed handgun law is in effect the murder rate declines by 3%, rape by 2% and robberies by over 2%,” Lott writes.

“Murder rates decline when either more women or more men carry concealed handguns, but the effect is especially pronounced for women,” Lott notes. “An additional woman carrying a concealed handgun reduces the murder rate for women by about three to four times more than an additional man carrying a concealed handgun reduces the murder rate for men.”

While Right-to-Carry laws lead to fewer people being murdered (Lott finds an equal deterrent effect for murders committed with and without guns), the increased presence of concealed handguns “does not raise the number of accidental deaths or suicides from handguns.”

The benefits of concealed handguns are not limited to those who carry them. Others “get a ‘free ride’ from the crime fighting efforts of their fellow citizens,” Lott finds. And the benefits are “not limited to people who share the characteristics of those who carry the guns.” The most obvious example of what Lott calls this “halo” effect, is “the drop in murders of children following the adoption of nondiscretionary laws. Arming older people not only may provide direct protection to these children, but also causes criminals to leave the area.”

How compelling is John Lott’s message? How threatening is his research to those who would disarm the American people? He devotes an entire chapter of his book to rebutting attacks leveled at his research and at him personally. He recalls how Susan Glick of the radical Violence Policy Center publicly denounced his research as “flawed” without having read the first word of it.

This type of unfounded and unethical attack unfortunately is not uncommon. Criminologist Gary Kleck explains why: “Battered by a decade of research contradicting the central factual premises underlying gun control, advocates have apparently decided to fight more exclusively on an emotional battlefield, where one terrorizes one’s targets into submission rather than honestly persuading them with credible evidence.”²

Law professor and firearms issue researcher David Kopel notes, “Whenever a state legislature first considers a concealed-carry bill, opponents typically warn of horrible consequences. Permit-holders will slaughter each other in traffic disputes, while would-be Rambos shoot bystanders in incompetent attempts to thwart crime. But within a year of passage, the issue usually drops off the news media’s radar screen, while gun-control advocates in the legislature conclude that the law wasn’t so bad after all.”³

Thirty-eight states now have Right-to-Carry laws. Sixty-four percent of the U.S. population live in Right-to-Carry states. Twenty-eight states have become Right-to-Carry states since 1987. Whenever Right-to-Carry legislation is proposed, anti-gun activists and politicians predict that allowing law-abiding people to carry firearms will result in more violence. Typical of this sort of propaganda, Florida State Rep. Michael Friedman said, “We’ll have calamity and carnage, the body count will go up and we’ll see more and more people trying to act like supercops.”⁴ Similarly, Broward County Sheriff Nick Navarro said, “This could set us back 100 years to the time of the Wild West.”⁵ But since Florida adopted Right-to-Carry in 1987, its murder rate has decreased 52%, while nationwide the murder rate has decreased 32%.⁶ Less than two one-hundredths of 1% of Florida carry licenses have been revoked because of firearm crimes committed by licensees, according to the Florida Division of Licensing.

Before Gov. George W. Bush was able to sign Texas' carry law, predictions of a return to the Wild West were also made. But honest public servants who initially opposed the law have stepped forth to admit they were wrong. John B. Holmes, Harris County's district attorney, said that he thought the legislation presented "a clear and present danger to law-abiding citizens by placing more handguns on our streets. Boy was I wrong. Our experience in Harris County, and indeed statewide, has proven my initial fears absolutely groundless." And this from Glen White, president of the Dallas Police Association: "All the horror stories I thought would come to pass didn't happen. . . . I think it's worked out well, and that says good things about the citizens who have permits. I'm a convert."⁷

Contrary to the picture painted by anti-gun groups, evidence supporting the value of Right-to-Carry laws and the high standard of conduct among persons who carry firearms lawfully is overwhelming and continues to mount.

Gun control activists pretend that there are such things as "illegitimate" and "legitimate" guns, then claim to be "reasonable" in wanting to outlaw only the former group—those that they, the national media and cynical politicians demonize as "assault weapons," "Saturday Night Specials" or "junk guns."

The pretense has an obvious flaw: Any firearm, regardless of type, size, caliber, cost or appearance, can be, and is most often by far, used for legitimate purposes.

Despite the powerful images cast by nightly news broadcasts and violence-oriented TV programs, guns of all sorts are put to good use far more often by the tens of millions of upstanding gun owners than they are misused by evil or irresponsible people. And despite protestations to the contrary by anti-gun groups, there is no gun or type of gun that criminals generally prefer.¹

One long-time gun control supporter, criminologist Philip Cook, has rejected the "illegitimate" gun theory. "Indeed, it seems doubtful that there are any guns that are 'useless' to legitimate owners, yet useful to criminals," Cook wrote. "Any gun that can be used in self-defense has a legitimate purpose, and therefore is not 'useless.' Similarly, any gun that can be used in crime

Fable VIII

We should ban
all firearms
that have no
legitimate,
'sporting' purpose.

can also be used in self-defense."²

Why do today's anti-gun groups campaign to outlaw only certain, often arbitrarily defined groups of guns? Because they have seen the incremental approach to civilian disarmament work in other countries, such as Australia and England.

First targeted were handguns, portrayed as the guns of criminals, versus rifles and shotguns, portrayed as the guns of sportsmen. (This is despite the widespread use of handguns for personal protection and sports.) Failing in their attack upon all handguns, anti-gun activists later focused upon compact, small-caliber handguns, which they labeled "Saturday Night Specials."

Then, in the late 1980s, the leader of one anti-gun group called upon his peers to downplay handguns in favor of a new target of opportunity. "[T]he issue of handgun restriction consistently remains a non-issue with the vast majority of legislators, the press and public," wrote anti-gun crusader Josh Sugarmann. "Assault weapons" are a

new topic. The weapons' menacing looks, coupled with the public's confusion over fully-automatic machine guns versus semi-automatic assault weapons—anything that looks like a machine gun is presumed to be a machine gun—can only increase the chance of public support for restrictions on these weapons. . . . Efforts to restrict assault weapons are more likely to succeed than those to restrict handguns.” (Emphasis in the original.)³

Sugarmann noted that gun control groups get a boost when “something truly horrible happens.” Then, in 1989, a drifter who had slipped through the criminal justice system numerous times used a semi-automatic rifle in a multiple shooting in Stockton, California. Anti-gun activists, politicians and reporters put handguns on the back burner and launched a campaign against a new target of opportunity.

Putting their “illegitimate” gun theory into practice, anti-gunners claimed that semi-automatic rifles were the “weapons of choice” of criminals, despite reports from state and local law enforcement agencies showing that such guns were used in very small percentages of violent crime.

The Federal “assault weapons” law took effect in September 1994, prohibiting manufacturers from including features such as bayonet mounts and flash suppressors on various semi-automatic rifles, with similar restrictions on shotguns and handguns. Considering that there had been no crimes committed previously with bayonets affixed to rifles, and criminals in no way benefit from any of the features prohibited, the irrational law was purely political in motivation and consequence.

With the “assault weapons” law on the books until its scheduled expiration in September 2004, gun control advocates—who since 1989 had claimed that those guns were the “weapons of choice” among criminals—changed their tune overnight. They began claiming, as they had during the early and mid-1980s, that compact handguns were the “weapons of choice.” The “Saturday Night Special” term, with its racist roots,⁴ was dropped in favor of “junk guns,” implying that the next guns targeted for prohibition were only the least expensive, poorly made handguns. In fact, their proposals would ban compact handguns irrespective of price or quality.

Criminologists on both sides of the gun control debate have rejected the notion that compact handguns are the weapon of choice of criminals and that they have no legitimate purpose. Early in the debate, The Police Foundation reported that the “evidence clearly indicates that the belief that so-called ‘Saturday Night Specials’ (inexpensive handguns) are used to commit the great majority of these felonies is misleading and counterproductive” and “seems to contradict the widespread notion that so-called ‘Saturday Night Specials’ are the favorite crime weapon.”⁵

More recently, criminologist Gary Kleck observed that “most SNSs are not owned or used for criminal purposes. Instead, most are probably owned by poor people for protection.” Laws directed specifically at SNSs, Kleck says, “would have their greatest impact in reducing the availability of defensive handguns to low income people.”⁶

Refuting the idea that compact handguns are somehow useless for protection, James J. Fotis, Executive Director of the 65,000-member Law Enforcement Alliance of America has said: “Small-caliber handguns have been carried by law enforcement officers for years, often as backups to their primary handguns. These handguns are useful for protective purposes because of their concealability and serve the primary function of ‘backup’ if a disarming occurs or if you have no time to reload. There is no reason to believe that small-caliber handguns are any less useful for protection when in the hands of other law-abiding citizens.”⁷

Aside from other objections to prohibiting certain kinds of guns, there is also the issue of the futility of such a policy. As a study for the National Institute of Justice concluded, “There is no evidence anywhere to show that reducing the availability of

firearms in general likewise reduces their availability to persons with criminal intent, or that persons with criminal intent would not be able to arm themselves under any set of general restrictions on firearms.”⁸ Additionally, a law restricting certain guns, even if successful, might be counter-productive. As Gary Kleck has noted, criminals deprived of specific guns would merely switch to other, perhaps more effective, guns.⁹

Webster’s dictionary defines an “epidemic” as something that is “prevalent and spreading rapidly among many individuals in a community at the same time” Obviously, gun violence is neither an epidemic nor anything approaching one. It is not prevalent; it does not affect all segments of the population equally, and, rather than rising rapidly, it has been declining for more than a decade.

Similarly, guns do not cause gun violence. Only a fraction of 1% of firearm owners ever use their guns in crimes and only a fraction of 1% of guns are used to commit crimes. Also, the number of privately owned firearms has increased to an all-time

high while the violent crime rate has decreased every year since 1991 and is now at a 27-year low.¹ Additionally, a comparison of FBI crime statistics and firearms ownership surveys reveals that firearm-related violence is less prevalent in many states and cities where firearms ownership is greatest.

In fact, guns deter gun violence. This is demonstrated both by decreasing crime rates in states that allow citizens to carry firearms for protection² and by surveys of felons indicating that fear of encountering armed citizens causes them to not commit some crimes.³ Furthermore, research in the 1990s indicated that there were as many as 2.5 million self-defense uses of firearms annually—three to five times⁴ the number of crimes committed with firearms.⁴

Nevertheless, gun control advocates in the public health field try to frame the gun debate as one about a disease and its causes, and thus one that they are best equipped to solve. In the 1980s, these advocates recognized that little medical or public health research existed on gun-related violence. Because criminological research failed to support their anti-gun biases, they encouraged like-minded public health researchers to provide the scientific basis to support those prejudices. Concurrently, anti-gun criminologists whose own research efforts had failed to justify massive restrictions on firearms owners’ rights saw new hope for such restrictions in “science” that treated gun-related violence not as a crime problem but as a public health problem.

What has followed is a substantial body of politically-motivated, scientifically inept, anti-gun health advocacy literature published in medical journals, and thereafter widely and unsketchily reported by the media. Familiar soundbites derived from this literature include those alleging that the negative uses of firearms outweigh the positive ones by various ratios (i.e. 43:1, 22:1, 3:1, 6:1, 18:1), depending on what is being compared.

The political bias and pro-control agenda of the federal Centers for Disease Control and Prevention (CDC) and of private entities—such as the Joyce Foundation—funding these writings are partly responsible for their low academic standards. As civil rights attorney Don B. Kates has observed, “The anti-gun health advocacy literature is

Fable IX

Gun violence is an epidemic than can be cured by public health measures.

a 'sagecraft' literature in which partisan academic 'sages' prostitute scholarship, systematically inventing, misinterpreting, selecting, or otherwise manipulating data to validate preordained political conclusions."⁵

In contrast to spokesmen from most anti-gun activist groups who have learned to moderate their rhetoric for political expediency, anti-gun public health advocates make little attempt to hide their feelings about guns. As Gary Kleck has noted, "Among medical researchers, advocacy of pro-[gun-]control political positions is openly proclaimed in editorials published in professional journals and in the official position statements of the associations to which researchers belong. . . ."⁶

Some examples are instructive. In the *Journal of the American Medical Association (JAMA)*, former Surgeon General, Dr. C. Everett Koop and JAMA editor, Dr. George D. Lundberg proposed "a system of gun registration and licensing for all gun owners and users," including an Orwellian requirement that gun owners somehow "be monitored in the firearm's use."⁷ *New England Journal of Medicine* editor, Jerome P. Kassirer, mused, "Despite the limitations of the Brady bill, it is a reasonable beginning. Might passage of this bill be the beginning of a series of more restrictive statutes? Yes, it could be and should be." Suggesting for gun control groups a tactic thereafter adopted in part by Handgun Control, Inc., Dr. Kassirer wrote, "Gun-control advocates should not be unrealistic, however. Rather than set their sights next on a total ban on gun possession, they might try first to craft proposals that would receive wide public support."

Included among Kassirer's proposals were mandatory design standards for firearms, mandatory locks on guns, registration of firearms and licensing of all gun owners, outlawing the sale of semi-automatic firearms, and other measures now pushed by the anti-gun lobby. "If such laws were implemented we could assess their efficacy; if we still found them wanting we would be justified in supporting even more stringent sanctions,"⁸ Kassirer said.

The clear bias of public health professionals involved in firearm-related research—and the hospitals who fund their research—is also demonstrated by their near-universal association with the HELP [Handgun Epidemic Lowering Plan] Network which supports outlawing handguns. The response of that group's founder, Dr. Katherine Kaufer Christoffel, to a request by Dr. Edgar Suter, chair of Doctors for Integrity in Policy Research, to attend a 1993 HELP Network meeting attended by CDC representatives is telling. "The HELP Network will use a public health model to work toward changing society's attitude toward guns so that it becomes socially unacceptable for private citizens to have handguns," Dr. Christoffel wrote. "Your organization clearly does not share these beliefs, and, therefore, does not meet the criteria for attendance at the meeting."⁹ More recently, Dr. Christoffel responded to an open letter from Dr. Suter criticizing the *American Journal of Public Health* by suggesting that people "dig up some dirt" on Dr. Suter's group.

Congress has held hearings on the CDC's use of taxpayer funds to fund politically motivated anti-gun research and in 1996 passed legislation restricting the CDC from spending money on anti-gun advocacy.

The Clinton-Gore Administration tried to circumvent congressional action restricting CDC funding of anti-gun research. By providing research grants through the National Institutes of Justice to the same biased anti-gun researchers who previously had been financed by the CDC.

In late 2003 the CDC released the results of a broad-ranging federal review of the nation's gun-control laws. A CDC task force—made up of 14 academic, business and government health experts—reviewed 51 studies to determine whether gun laws do, in fact, prevent violent crimes, firearm-related accidents, or suicides. Included in the laws reviewed were bans on specific firearms or ammunition, mandatory registration

and licensing, mandatory waiting periods, Right-to-Carry and restrictions on firearm purchases.

In every case, the CDC task force found “insufficient evidence to determine the effectiveness of any of the firearms laws.” In short, a thorough review of 51 published studies concerning the effectiveness of eight different types of gun control laws found no conclusive proof that these measures reduce violent crimes, accidents or suicide.

Commenting on the task force’s findings, Dr. Suter said: “It’s certainly a quantum leap in the right direction. It has been as plain as the nose on my face that disarming innocent victims is not a policy that saves lives. The real benefit of defensive firearm use is the lives that are saved, injuries that are prevented, property that is saved and medical costs that are eliminated.”

Gun control advocates continue promoting lawsuits that seek to hold firearm manufacturers and sellers strictly liable for injuries resulting from the misuse, by third parties, of firearms that operate properly and have no defect in design or manufacturing. The purpose of such lawsuits is to achieve huge monetary judgments against firearms manufacturers and sellers, to drive them out of business, or force them to raise firearm prices beyond the budgets of most Americans. Through early 2004, firearms manufacturers had spent over \$150 million to defend themselves from these unwarranted suits.

The concept of using lawsuits to destroy a lawful and constitutionally protected activity violates

long-standing American principles. Tort law, as Michael I. Krauss, a professor of law at George Mason University, notes, “is common law built up over hundreds of years of collective wisdom, by accretion, by courts, to deal with disputes between private parties. . . . The common law should not be arrogantly swept away to satisfy

Table X

Firearms manufacturers should be financially liable for the actions of criminals who misuse guns.

politicians’ addiction to money.”¹

In *New York Times v. Sullivan* (376 U.S. 254, 1964), the U.S. Supreme Court held that civil lawsuits cannot be used to make it impossible for a free press to survive. That decision was based on the intent of the Framers, with respect to the First Amendment, that citizens should not be punished or suffer financially for criticizing public officials.

In his concurring opinion, Justice Hugo Black applied the principle to the right to keep and bear arms as well. Quoting “America’s Blackstone,” St. George Tucker, Justice Black noted, “Whenever . . . the right of the people to keep and bear arms is, under any color or pretext whatsoever, prohibited, liberty, if not already annihilated, is on the brink of destruction.”

Plaintiffs may sue a manufacturer or seller of a product for compensation for injuries sustained because a product is defective, the defect poses an unreasonable danger to the user, and the defect caused the injury. A product may be considered “defective” if it does not operate as a reasonable manufacturer would design and make it, as a reasonable consumer would expect, or as other products of its type.

However, manufacturers cannot be held liable for injuries that occur merely

because a properly operating product is criminally or negligently misused. Courts have uniformly held that some defect must exist in the product at the time it was sold, and that the plaintiff's injury must have been the result of that defect:

"The three necessary elements needed to properly state a good cause of action in strict liability are (1) that the injury resulted from a defective condition of the product, (2) that the defective condition made the product unreasonably dangerous, and (3) that the defective condition existed at the time the manufactured product left the manufacturer's control."—*Riordan v. International Armament Corp.*, 477 N.E.2d 1293, 1298 (Ill. App. Ct., 1985)

Undaunted, anti-gun litigators and activists have tried to advance various "defectless" product liability theories alleging that firearm manufacturers and sellers are liable for injuries resulting from the misuse of firearms that are not defective. Under such theories, it is irrelevant that an injury resulted because a firearm was criminally or negligently misused. Firearms are alleged to be "inherently defective," because they function as intended. Manufacturers are alleged to be liable, because they should have known a criminal could misuse a gun. Firearms are alleged to be "socially unacceptable" products whose risk to the public outweighs their social utility.

Courts have correctly rejected these theories, noting that firearms are not defective if they perform as intended; that the purpose of firearms is understood by reasonable people; that the manufacture, sale and ownership of firearms is lawful and attempts to outlaw firearms have been rejected by legislatures;² and that misuse of a firearm is an intervening factor when assessing blame for firearm-related injuries. The following court decision excerpts are on point:

"[I]t is for the Legislature to decide whether manufacture, sale and possession of firearms is [sic] legal. To date, manufacture, sale and ownership of [firearms] have been legally permitted."—*Forni v. Ferguson, et al*, 648 N.Y.S.2d 73, 73-74 (N.Y. App. Div. 1996)

"One should never point a gun at another, thinking it is unloaded. And one should never compound the felony by pulling the trigger. When these cardinal rules are violated, the victim has an airtight negligent suit against the shooter. He has no case against the gun maker."—*Eichstedt v. Lakefield Arms*, No. 91-C-832, slip op. at 14 (E.D. Wis. Apr. 22, 1994)

"[A] majority of the legislators thinks such a ban would be undesirable as a matter of public policy. The inference that the court should draw from this is clear: the legislature does not think handgun manufacturers act unreasonably (are negligent per se) when they market their product to the general public."—*Richman v. Charter Arms Corp.*, No. 82-1314 (E.D. La., 1983)

In a 1998 case, an Oakland, California, family brought suit against Beretta U.S.A. Corp., claiming that the accidental shooting death of their son by a friend was the result of the absence of "personalized" or "smart gun" technology—which could prevent a gun from being fired by an unauthorized person. The case also incorrectly claimed that the firearm did not have a loaded chamber indicator and included inadequate safety warnings in the operator's manual. Beretta showed in its defense that the gun did have a loaded chamber indicator and that the gun owner had failed to follow the safety procedures outlined in the manual provided. By a vote of 9 to 3, the jury agreed with Beretta, finding that the gun had no defect and that included safety warnings were adequate. It found that the sole significant cause of the accident was the negligence of the gun owner and his son.—*Dix v. Beretta U.S.A., Corp.* #750681-9 (California Superior Court, Alameda County)

With "defectless" theories universally rejected by the courts, one anti-gun litigator recently conceived of an even more preposterous twist of tort law: "collective liability."

Under this concept, lawsuits would be waged against all firearm manufacturers as a group, alleging that when a given firearm is misused, each manufacturer should pay a percentage of the total damages awarded a plaintiff, commensurate with its share of the firearms market.

In 1998, several cities starting with Chicago and New Orleans sued gun makers as a group for past sales that comply with existing gun laws. These cities are using the courts to sidestep the democratic process in order to enact de facto gun bans.

In March 2002, Boston became the first city to voluntarily abandon its baseless lawsuit against the firearm industry. Mayor Thomas Menino claimed the cost of going to trial was too high, and that the growing list of court rulings rejecting similar cases limited the “evidence” the city would be able to present.³

Menino attempted to “spin” the failure of Boston’s nearly three-year legal harassment campaign by claiming the suit forced gun makers “to take small steps to address our concerns.” That allegation was swiftly challenged by the National Shooting Sports Foundation, Inc. (NSSF)—a defendant in the case. “No concessions were made in exchange for the city’s actions,” said NSSF’s general counsel. “We are extremely pleased with the suit’s dismissal, but it is unfortunate and inappropriate that Boston Mayor Thomas Menino mischaracterizes industry safety efforts as being prompted by the city’s suit. The truth is that industry has been actively promoting nationwide safety efforts for decades, a fact previously acknowledged by the mayor.”⁴

Unfortunately, some other cities don’t seem to be learning anything from the repeated failures of the reckless lawsuit campaign. Even though the frivolous cases brought against firearms makers are a parody of tort law, the danger to the rule of law and to the Second Amendment rights of American citizens persists.

“[G]un makers and other industries have reason to be concerned about the unholy alliance between government and the plaintiffs’ bar,” Prof. Krauss writes. “Although the gun suits are based on different legal theories than the tobacco suits, they enjoy a common lineage. Both series of suits were concocted by a handful of private attorneys who entered into contingency fee contracts with public officials. In effect, members of the private bar have been hired as government subcontractors, but with a huge financial interest in the outcome. Imagine a state attorney general corralling criminals on a contingency basis, or private state troopers paid a commission for every traffic stop. The potential for corruption is enormous.”⁵

Legislation to stop these lawsuits was introduced during the 108th Congress. In the U.S. House of Representatives H.R. 1036 passed by the overwhelming vote of 285-140 on April 9, 2003. That legislation, along with its Senate companion, S. 1805, had broad bipartisan support and would have protected the firearms industry from politically motivated lawsuits while protecting the rights of consumers to sue over defective products and where criminal negligence existed. However, in spite of the fact S. 1805 had 55 cosponsors, NRA had to urge its defeat on March 2, 2004, after anti-gun Senators narrowly added “poison pill” anti-gun amendments to the bill including the reauthorization of the Clinton gun ban and federal regulation of private sales of firearms at gun shows.

A quarter-century ago, anti-gun activists, disillusioned with the refusal of Congress and most state legislatures to prohibit, or severely restrict, firearms ownership, conceived the idea of subjecting the manufacture of firearms to the dictates of a federal bureaucracy. They believed that anti-gun policies that had been rejected by lawmakers and voters could be imposed anyway, by empowering federal agencies to regulate firearms design under the guise of “consumer products safety.”

Their concept includes two obvious flaws: first, that firearms can be designed by

bureaucrats with no technical knowledge of firearms engineering, firearms uses, or the preferences of consumers. Second, that firearms should be designed the same, without concern for the varied needs of individual gun owners and the purposes for which firearms are used.

Table XI

Firearms are
unsafe
because they are
not regulated
under consumer
protection laws.

Congress settled the question in 1976, voting overwhelmingly (76-8 in the Senate and 313-86 in the House) to exempt the firearms and ammunition industries (and certain other industries) from the Consumer Safety Protection Act of 1972. Congress recognized that firearms aren't traditional "consumer products." Like the tools of a free press, firearms are among the few products that the Bill of Rights specifically protects the right of the people to own, possess and use. Congress clearly stated its intent: "The Consumer Product Safety Commission shall make no ruling or order that restricts the manufacture or sale of firearms, ammunition, including

black powder or gun powder, for firearms."

Today's anti-gun activists are trying to revitalize their predecessors' regulatory agenda. Their common refrain: "In America, Teddy bears are more regulated than guns." But the analogy is a fraud. U.S. firearms makers not only comply with a tangled web of federal, state and local laws, their manufacturing standards are reviewed by the FBI, the U.S. Customs Service, various other public and private agencies, and even the Royal Canadian Mounted Police.

Industry standards are set by the Sporting Arms and Ammunition Manufacturers Institute (SAAMI), an organization founded in 1926 at the request of the federal government. Today, SAAMI publishes more than 700 voluntary standards related to firearm and ammunition quality and safety.¹

SAAMI is an accredited standards developer for the American National Standards Institute (ANSI). These standards are reviewed by outside parties, such as the National Institute of Standards and Technology, and every five years the validity of the standards is re-affirmed. The U.S. Armed Forces, the FBI and many other state and local agencies frequently require that their firearms are manufactured in accordance with SAAMI specifications.

Anti-gun activists also claim that the technology exists to make a "smart" or "personalized" gun that can be fired only by a single user and that consumer protection laws could mandate that technology be added to guns.

In fact, the technology does not exist. In 1994 the National Institute of Justice (NIJ) funded a "Smart Gun Technology Project" to study the issue for law enforcement use. The study concluded that the technology was still not in a reliable and marketable form and even stated: "It may take a generation of smart gun systems to come and go before a smart gun is not only common but is favored over a non-smart gun. . . . To accomplish this goal a great deal of time and resources will have to be expended for the smart gun application."²

On Oct. 7, 1999, Andrew J. Brignoli, vice president of Colt's Manufacturing Co.—which has received federal grants to research "smart" guns—told a special commission in Maryland: "No technology exists in a form that has been proven to be safe.

We cannot support any effort to mandate this technology.”³

More recently, in 2001, extensive research conducted at the New Jersey Institute of Technology found “no proven technology in development or in open scientific literature that satisfies requirements for an automated firearm whose design allows discharge only by an authorized person or class of people and blocks discharge by those outside the class.”

“Specifically, no firearm meets the following NJIT specification for a personalized weapon, i.e., a gun endowed with an authentication system which:

- senses distinctions between authorized and unauthorized users
- allows only authorized users the ability to discharge the weapon
- possesses a power system to energize its electronic and electromechanical components.”⁴

More importantly, however, no mechanical device should ever be relied upon as a substitute for safe gun handling practices. And no one should be fooled by “smart” gun rhetoric. Anti-gun groups push for a “smart” gun mandate, because it would add several hundred dollars to the price of a handgun, placing the most effective means of self-defense beyond the reach of less fortunate citizens—those who are most often forced to live in high-crime areas.

After several isolated firearm crimes committed by children on school grounds during the late 1990s, anti-gun activists falsely suggested that such crimes were common and attributable not only to guns, but to hunting and the so-called “gun culture.” They even tried to fault the “Southern culture” in particular, for a shooting in Arkansas, until it was reported that the primary suspect in the crime had been raised in a Northern state.

Several recent studies conducted for the federal government tell a different story than one hears from those who spin the news to promote gun control. Among the findings: Boys who learn about firearms and their legitimate uses from family members and who own firearms legally have much lower rates of delinquency than those who own firearms illegally and those who do not own firearms.¹ Only 1% of public

school principals consider weapons a serious or moderate problem on school grounds.² Ninety percent of schools had no serious violent crimes during 1996-1997 and 43% had no crime at all. Between 1992-2000, violent crime at school decreased 46%. Former Secretary of Education, Richard Riley has said, “the vast majority of America’s schools are still among the safest places for youngsters to be.”³

Many factors have been identified as contributing to the likelihood of

homicides, including poverty and unemployment, as well as population size, density, age, and the percentage of people living in urban areas. Merely being in the South, however, is a statistically insignificant factor.⁴ And while persons who live in rural areas are more likely to be hunters, the total violent crime rate and murder rate in rural counties are 63% and 36% lower, respectively, than those found in metropolitan areas.⁵

False stereotypes of gun owners have been an article of faith in some anti-gun circles for years. Professor William R. Tonso, head of the Department of Sociology, Criminal Justice, and Anthropology at the University of Evansville, attributed the ongoing clash over gun ownership to a cultural conflict between people who, by virtue

Table XII

Hunting and the “gun culture” teach our kids to be violent.

of their upbringing and lifestyle, have little knowledge of firearms and their legitimate uses, and people who are familiar with firearms and associate them with freedom, security and recreation.⁶

Those whose loathing of guns stems from a fear of the unknown might have a change of heart if they knew that hunting not only teaches youngsters how to be safe with firearms, it provides them valuable character-building lessons that will serve them throughout their lives. Hunting has a longstanding code of ethics built upon respect for the rights of others. And hunters, more than any other group, are responsible for protecting wildlife and their natural habitat through a variety of conservation programs they fund.

Additionally, NRA has been the nation's leader in firearm safety training and hunter education for decades. Our 48,000 Certified Instructors and Coaches train hundreds of thousands of people each year in a variety of programs of study. Additionally, the Eddie Eagle GunSafe® Program, which does not use guns, teaches children in grades pre-K through 6th that if they encounter a gun while unsupervised, they should "STOP! Don't touch. Leave the area. Tell an adult." The award-winning program, used by 22,000 police departments and schools, has been provided to more than 17 million children.

Actually, we can learn a lot from the British experiment with gun control. Britain's licensing of gun owners and registration of their firearms made it possible for the government to demand mass forfeitures of registered pump and semi-automatic shotguns in 1988, following the murderous rampage by a deranged individual in the town of Hungerford. Within a decade, British politicians had criminalized possession of first large caliber handguns, then all handguns. Licensed gun owners were told to turn in their handguns; the final deadline was Feb. 27, 1998.

The British government declared legal private property to be contraband and then set about confiscating it. Curbing violence was the promise; a wholesale loss of liberty was the price. And what of that promise? According to the International Crime Victims Survey carried out by the Dutch Ministry of Justice, England—together with Australia

and Wales, where anti-gunners have also been at work—has the highest burglary rate and highest rates for crime of violence among the top 17 industrialized nations.¹ As the Guardian put it, the study "shows England and Wales as the top of the world league with Australia as the countries where you are most likely to become a victim of crime."²

And then on Oct. 13, 2002, London's Sunday Times reported that: "Britain's murder

rate has risen to its highest level since records began 100 years ago, undermining claims by ministers that they have got violent crime under control."³

Of course embarrassed British politicians have reacted to the irrefutable failure of their gun control schemes by calling for more of the same. But they have already criminalized possession of most firearms (air guns are the next target) by honest people.⁴

Fable XIII

Foreign countries have
much less crime than
the U.S. because of their
stronger gun laws.

What is left for them? The answer became chillingly clear in July 2002, with the release of a government “white paper” titled “Justice for All.”⁵ It might have been more appropriately titled “Less Civil Liberties for All.”

After first disarming the British people and thereby making them more attractive to criminal predators, the government is now recommending that centuries of English Common Law be eviscerated. Among other things, the government seeks to:

- allow the use of hearsay evidence in trials
- retroactively remove the double jeopardy rule for serious cases
- eliminate the right to trial by jury in many cases
- “modernize” the exclusionary evidence rule.

As shocking as these British infringements on liberty are to Americans who cherish our Bill of Rights, they will hardly faze the people of Japan, another nation that American gun prohibitionists hold in such high esteem. Japan does have severe gun control laws and low crime, but as the Independence Institute’s David Kopel noted in a work voted 1992 Book of the Year by the American Society of Criminology’s Division of International Criminology, Japanese-style gun control requires measures that could not be imposed in the U.S.

In Japan, citizens have fewer protections of the right to privacy and fewer rights as criminal suspects than in the United States. Japanese police routinely search citizens at will and twice a year pay “home visits” to citizens’ residences. Suspect confession rate is 95% and trial conviction rate is more than 99.9%.

The Tokyo Bar Association has said that the Japanese police routinely engage in torture or illegal treatment. Even in cases where suspects claimed to have been tortured and their bodies bore the physical traces to back their claims, courts have still accepted their confessions. Amnesty International, Kopel noted, calls Japan’s police custody system “a flagrant violation of United Nations human rights principles.”

But, Kopel wrote, “Without abrogating the Bill of Rights, America could not give its police and prosecutors extensive Japanese-style powers to enforce severe gun laws effectively. Unlike the Japanese, Americans are not already secure from crime, and are therefore less likely to surrender their personal means of defense. More importantly, America has no tradition like Japan’s of civil disarmament, of submission to authority, or of trust in the government.” Thus, “Foreign style gun control is doomed to failure in America. Foreign gun control comes along with searches and seizures, and with many other restrictions on civil liberties too intrusive for America. . . . It postulates an authoritarian philosophy of government and society fundamentally at odds with the individualist and egalitarian American ethos.”⁶

Perhaps Don. B. Kates, a noted civil rights lawyer, best put the international comparison myth in perspective, writing, “In any society, truly violent people are only a small minority. We know that law-abiding citizens do not commit violent crimes. We know that criminals will neither obey gun bans nor refrain from turning other deadly instruments to their nefarious purposes. . . . In sum, peaceful societies do not need general gun bans and violent societies do not benefit from them.”⁷

This fraudulent claim came from the Brady Campaign (formerly Handgun Control, Inc.), early in 2004, when the U.S. Senate considered whether to retain the ban past its scheduled expiration. But like the group’s claim of a decade earlier, that “assault weapons” were then the “weapons” of choice of criminals, the 2004 claim was false. Both claims are based upon a mischaracterization of BATFE firearm commerce traces.

A trace is a process by which BATFE identifies the commercial path of a firearm, from the manufacturer or importer to the wholesaler, retailer and, if possible, a retail purchaser. Generally, the purpose of a trace is to identify an individual who might be

involved in illegal gun trafficking. Most firearms that BATFE traces have not been used to commit violent crimes, and traces are conducted only on whatever guns that law enforcement agencies request BATFE to trace.

During the late 1980s and early 1990s, when “assault weapons” were a hot political issue, law enforcement agencies tended to request traces on them more frequently than on other guns. But that didn’t mean that the guns were often used to commit violent crimes.

Table XIV

BATFE firearm commerce traces prove that the Clinton Gun Ban reduced the use of “assault weapons” in crime.

Ever since the “assault weapon” issue arose, state and local law enforcement agency reports and periodic felon surveys conducted by the Department of Justice’s Bureau of Justice Statistics have shown that “assault weapons” have been used in only about 1%-2% of violent crimes.¹

Crime victim surveys indicate the figure is only 0.25%.² Murders with knives, clubs and hands have always outnumbered those with AWs by over 20-to-1.³

The congressionally-mandated study of the federal “assault weapon” law concluded “the banned weapons and magazines were never used in more than a modest fraction of all gun murders,”

and that the law’s magazine limit isn’t a factor in multiple-victim or multiple-wound crimes.⁴

Traces on “assault weapons” have decreased during the last decade, but not for the reasons claimed by anti-gunners. Instead, traces on those guns have decreased in number, and as a share of total traces, because: 1) crime has decreased significantly during the last decade; 2) “assault weapons” are not as hot an issue today as they were a decade ago and police interest in them has waned; 3) and BATFE now encourages law enforcement agencies to request traces on other firearms.

Sadly, even before they voted to impose the federal “assault weapons” law, anti-gun politicians knew that anti-gun groups’ claims about traces were false. In 1992, the Congressional Research Service reported to Congress that:

- “The [B]ATF tracing system is an operational system designed to help law enforcement agencies identify the ownership path of individual firearms. It was not designed to collect statistics.”
- “Firearms selected for tracing do not constitute a random sample and cannot be considered representative of the larger universe of all firearms used by criminals, or of any subset of that universe.”
- “A law enforcement officer may initiate a trace request for any reason. No crime need be involved. No screening policy ensures or requires that only guns known or suspected to have been used in crimes are traced.”
- “Trace requests are not accurate indicators of specified crimes . . . traces may be requested for a variety of reasons not necessarily related to criminal incidents. . . . It is not possible to identify how frequently firearm traces are requested for reasons other than those associated with violent crimes.”
- “[B]ATF does not always know if a firearm being traced has been used in a crime.

For instance, sometimes a firearm is traced simply to determine the rightful owner after it is found by a law enforcement agency."

Unfortunately, it is not only on the "assault weapon" issue that "gun control" supporters mischaracterize traces. At other times, they have pretended that traces support their efforts to ban "Saturday Night Specials," regulate gun shows into oblivion, impose a limit on the frequency of handgun purchases, and drive firearm dealers out of business.

Equally unfortunate, traces are not the only things that "gun control" supporters mischaracterize. But those are other stories, some of which are addressed elsewhere in this brochure.

There is no gun show "loophole." Since 1938, any person "engaged in the business of selling firearms" must register with the federal government. In 1968 all such persons were required to obtain a federal firearms license. Since 1998, dealers have been required to submit all prospective gun buyers to a National Instant Check System (NICS) background check conducted by the FBI or a state agency. This requirement applies at gun shows and all other locations, all of the time.

A person who is not engaged in the business of selling firearms, but who occasionally sells firearms under limited circumstances including "for the enhancement of a personal collection," is not required to obtain the federal license required of gun dealers, or to complete a background check. In 2001, legislation was introduced in Congress to extend the NICS requirement to non-dealer sales of firearms at gun shows. That legislation was defeated, however, because Members of Congress who support the anti-gun lobby's agenda would only accept a much more restrictive bill.

The gun show legislation they support instead is less about gun shows than it

Table XV

A gun show
"loophole" exists
that allows many
criminals and
terrorists to
purchase guns.

is about much more invasive aspects of the anti-gun lobby's agenda. It would effectively require gun show attendees to register themselves on ledgers that would be provided to the BATF. It would impose massive red tape requirements on gun show operators and would grant the federal government unqualified access to records they would be required to maintain. Thus, a gun show operator (who doesn't sell guns) would be granted far less protection than a federally-licensed firearms dealer. The gun show operator would be subject to limitless BATF inspections, whereas the licensed dealer may only be inspected once a year (plus inspections related to actual criminal

investigations). Because of abusive and repeated BATF inspections, Congress created the limit on dealer inspections in the Firearms Owners Protection Act. Anti-gunners also have attempted to define "gun shows" so broadly as to include sales of firearms that occur in people's homes, even between friends and family members.

Under current federal law, engaging in the business of selling guns without a license is a federal felony. A tour of any gun show reveals that the overwhelming

majority of guns offered for sale are from federally licensed dealers. Guns sold by private individuals (such as a gun collector selling or trading a gun or two over the weekend) are the distinct minority. If someone claiming to be a gun collector is actually operating a firearms business and does not have an FFL, he is guilty of a federal felony—with every separate gun sale constituting a separate crime.

Gun control advocates allege gun shows are a major source of guns used in crimes despite the fact that multiple government studies prove they are not. A Bureau of Justice Statistics report indicates that less than 1% of criminals obtain guns from gun shows.¹ This study was based on interviews with 18,000 prison inmates and is the largest such study ever conducted by the federal government. It is also entirely consistent with previous federal studies, such as another BJS study which found only 1.7% of federal prison inmates obtained their guns from gun shows.² Similarly, a National Institute of Justice (NIJ) study reported less than 2% of criminals' guns came from gun shows.³

Thousands of gun shows each year are frequented by millions of law-abiding citizens, collectors, hobbyists, hunters, target shooters, law enforcement officers and memorabilia shoppers. Gun shows are an important First Amendment forum for exchanging ideas on Second Amendment rights and for discussing common interests.

The anti-gun group that styles itself Americans for Gun Safety (AGS) misuses BATF tracing reports to attack gun shows. AGS corrupts BATF tracing reports to claim that states without special restrictions on gun shows are “flooding” other states with crime guns. BATF tracing figures, in actuality, tell nothing about gun shows. In addition, the interstate trafficking of guns is already illegal.

In a shameful attempt to capitalize on the fear evoked by the events of September 11, 2001, AGS reports that terrorists obtained guns via a “gun show loophole.” What AGS does not report is that in all cases cited, the laws already on the books worked and the criminals were caught, convicted and sent to prison.

The campaign against gun shows by anti-gun groups makes little sense from a crime control viewpoint. It is aimed at the rights of free-speech and assembly of Second Amendment advocates and would effectively violate the rights of law-abiding citizens. The use of the “terror card” by anti-gun activists is a blatant attempt to manipulate the American people and their emotions in the wake of the terrorist attacks. Proposed legislation to close a fabricated “loophole” in the law is merely a fear-based guise to end gun shows as a step toward banning all private gun transfers.

NOTES:

FABLE I: A gun in the home makes the home less safe.

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5. Akil Reed Amar and Alan Hirsch, *For the People: What the Constitution Really Says About Your Rights*, N.Y.: Simon & Schuster, Inc., 1998.
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2. 18 U.S.C. 921(a)(17)(B)(i) and (C). See also 922(a)(7) and (8) and (b)(5).
3. The bill was H.R. 2280, in the 97th Congress. Associate Attorney General Rudolph Giuliani and Deputy Assistant Secretary for Enforcement of the Treasury Robert Powis testified during hearings before the Subcommittee on Crime, Committee on the Judiciary, House of Representatives, on May 12 and March 30, 1982, respectively.
4. S. 136 and S. 137 ("Real Cost of Handgun Ammunition Act of 1997"), both introduced by Sen. Daniel Patrick Moynihan (D-N.Y. during the 105th Congress).
5. H.R. 3932, "Brady II," introduced by Rep. Charles Schumer (D-N.Y.) during the 103rd Congress.
6. Bureau of Justice Statistics, "Changes in Criminal Victimization, 1994-1995," April 1997, NCJ-162032, p. 7.

7. S. 70, "American Handgun Standards Act of 1997," introduced by Sen. Barbara Boxer (D-Calif.) during the 105th Congress.
8. H.R. 12, "Twelve is Enough Anti-Gunrunning Act," introduced by Rep. Charles Schumer during the 105th Congress.
9. S. 707, "Concealed Weapons Prohibition Act of 1997," introduced by Sen. Frank Lautenberg (D-N.J.) during the 105th Congress.
10. Advocated by President Clinton and Handgun Control, Inc., June 1998.
11. David B. Kopel, *Lost Battles, Lost Rights*, National Rifle Association, 1998, p.1.
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4. Department of Justice, "Probation and Parole Violators in State Prison, 1991."
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13. "Preventative Effects of Firearm Regulations on Injury Mortality," prepared for the annual meeting of the American Society of Criminology, 1993.
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