



7-23-1992

Handgun Article

Lewis F. Powell Jr.

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RHPMEMORANDUM (my copy - editing)

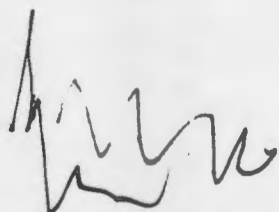
TO: Justice Powell
FROM: Rebecca
DATE: July 23, 1992
SUBJ: Handgun Article

Enclosed is the first rough draft of the handgun article. Much remains to be done, but Jeff and I hope you will find the basic structure of the article satisfactory. For my part, I have enjoyed working on the article as well as the opportunity to work with Jeff. He is simply a delight.

I look forward to your comments on the article, and trust that all is well in Richmond.

General comments:

- ① Proposal section should focus narrowly on HANDGUNS, and take stricter approach.
- ② Must address severe PENALTIES for violation of the regulatory rules proposed. Also severe penalties for unauthorized possession & sale.



HANDGUNS: A Call To Arms

[INSERT an INTRO SUMMARY P]

July 21, 1992

First Draft

The Rising Threat to Life

Random firearm violence in this country, manifested most

strikingly in our appalling murder rate, has reached crisis

proportions. ~~The statistics are stark, the trends discouraging.~~

Last year was the most violent non-wartime year in American

history. Over 25,000 murders were committed in 1991, a toll

exceeding the record of 23,440 set the year before that.¹ ~~So it is~~

~~that~~ ^{the} sum of Americans killed by Americans in ^{just} the past two

years approaches the number of Americans, 58,201, killed during the

entire Vietnam War.²

The violence, moreover, was not a function of geography; no

CITE
UNIFORM
CRIMES
STATS

¹Ellis, Time, "The Deadliest Year Yet," at 18, January 13, 1992.

² See Powell, "Capital Punishment," 102 Harvard Law Review 1035, 1045, n.59 (1989) (citing World Almanac and Book of Facts, 1989, at 756, and Sourcebook of Criminal Justice Statistics, 1987, at 337).

→ New ones are out recently w/ even more startling info.

locality was immune from it. In recent years homicide records were set in major metropolitan cities like Washington, D.C. (489) and Dallas (501), as well as in cities on the scale of Anchorage (26) and San Antonio (211).³ Statistics and new research belie the myth that major cities are the only locales exposed to the day-to-day presence of firearm violence. Says one researcher who has documented the alarming increase in the number of ^{teen students} ~~students~~ who carry guns in rural areas, ^{states that} "[A]ll the people who are taking their kids out of urban schools and moving to rural areas are living on false hope."⁴

~~What is worse,~~ the gravity of our national problem is unique among Western democracies. Consider these comparisons. In 1980, the murder rate in the United States was 10.5 per 100,000 persons, yet in Canada it was 2.1 -- five times lower. In 1986, our murder rate was six times that of the homicide rate in England and Wales.

While firearms account for approximately sixty percent of the

³Id.

⁴ Tom Morganthau, Newsweek, "It's Not Just New York...", at 26, March 9, 1992.

Rebecca - Do we have more recent dates? Ask our Librarian

Can we bring these up to date?

Rebecca, a six year old child can shoot any kind of gun.
murders committed in this country, they account for only eight percent of the murders in England and Wales.⁵

good.
Perhaps the most alarming trend of all is the spread of violence to our schools. Headlines like these are no longer uncommon: "First Grader Uses Gun to Threaten Teacher," The New York

put cites in FN.
Times, at -, March 6, 1992, and "Guns in Classes Are Newest Show and Tell," Washington Post, at 1, June 21, 1992. Studies indicate

that
teen age students, studies indicate, now carries some a weapon, and one in twenty reports having carried a gun.⁶

witness
Moreover, whether in school or out, today's youth witness more participate in

more violence than past generations. Research confirms what intuition

that's
suggests the steady diet of television violence seen witnessed consumed by

American children alters their development, increasing levels of

Rebecca 3
⁵Powell, "Capital Punishment," 102 Harvard L. Rev. 1035, 1044 [see sources cited; try to update these statistics (perhaps from more recent editions of the citations noted in the Harvard article)].

⁶The New York Times, "The Plague of Young Guns," at -, March 5, 1992 (editorial).

~~on the streets~~

aggressiveness and violence.⁷ Sadly, the violence children view on television programs often accurately reflects the violence they see ^{on the streets} in ~~their own backyards~~. One recent survey showed that 43 percent of a sample of inner-city children between the ages of 7 and 19 say they have ^{actually} seen a homicide.⁸ It is disheartening to consider how such exposure to violence affects the development of children.

~~at~~

^{There is agreement, of course,}
~~All agree~~ that our schools, at a minimum, should be free from this endemic violence. ~~But~~ Efforts to ensure school safety are not inexpensive. Scarce resources, once directed to books and the like, now must be diverted to costly metal detectors and other security measures. And not only are increasing portions of educational budgets siphoned away from intended uses, so also the time and talents of teachers and school administrators.

⁷ Rothberg, Effect of Television on Children and Youth, 234 JAMA 1043-1046 (1975). Brandon S. Centerwall, Television and Violence, 267 JAMA 3059-3063 (June 10, 1992).

⁸"It's Not Just New York . . .," Time, at 29, March 9, 1992 (citing study by the University of Alabama at Birmingham) [Input full cite to study.]

~~best and brightest~~ college graduates sought teaching positions,
~~armed with the promise~~^{believing} that the¹ intangible rewards of teaching
outweighed the low salaries of the profession. But because today's
educators must fear for the safety of themselves and their
students, many qualified and dedicated individuals who would
otherwise consider teaching now choose other, less perilous
professions.⁹

Firearm violence is costly in another respect. It places
heavy demands on our hospitals, at a time of dwindling health care
resources. Injuries caused by firearms are expensive to treat. ^{an} On
average gunshot ~~injuries~~^{wound} cost^s \$16,700 per patient. ^{If ~~that~~ has been estim} That initial ^{-e}
~~costs~~^{costs} layout, plus post-discharge treatment costs, comes to more than \$4
billion in annual expenditures, 86% of which the ^{federal (?)} government pays.¹⁰

~~It has been estimated that~~ the lifetime costs for firearm injuries

^{Yes} ^{Yes} ^{Yes}
⁹ A good cite here would be the New York Times article that
discusses teachers leaving the profession as a result of violence
in their schools. (I will locate this)

¹⁰Senator Chafee, "Ban Handguns?" The Washington Post, at A15,
June 9, 1992.

could be as much as
that occurred in 1985 alone ~~will be~~ \$14.4 billion.¹¹ The numbers
don't lie. As the public relations director at a Chicago Hospital
has stated, "A cheap handgun can end up costing millions."¹²

Perhaps the most portentous development is the recent
declaration by the Journal of the American Medical Association that

gun violence is a public health emergency, to be ranked with cancer
and AIDS as primary killers.¹³ The authors of the article, ^{are} former

^{and} surgeon general Dr. C. Everett Koop, JAMA Editor Dr. George

Lundberg, ^{They state that ~~is~~ if the} ~~observed~~ "If the violence report being published ~~this~~

^{AMA,} month in the Journal of the American Medical Association were due

to a virus, the American people and their leaders ^[should] would be shouting
for a cure."¹⁴

¹¹ Rice, MacKenzie, et al, Cost of Injury in the United States: A Report to Congress. Atlanta Ga.: Centers for Disease Control; 1989. (in 267 JAMA 3074)

¹² William Rectenwald, "Victims, Taxpayers Pay a High Price for Crime," Chicago Tribune, February 5, 1989.

¹³ The Washington Post, "Finding a Cure of Gunfire," editorial, June 14, 1992. [Mention caveat: this is not necessarily the AMA's view, just the view of its journal, and of Dr. Koop. Find out the AMA's reaction to the article.] ? ?

¹⁴ C. Everett Koop & George D. Lundberg, Violence in America: A Public Health Emergency, 267 JAMA 3075-3076 (June 10, 1992).

The Role of Handguns

With no end in sight to these ~~alarming~~ trends, I too think it

is time to demand a cure, ~~for the internecine scourge that afflicts~~

~~Our Nation.~~ Of course, attacking the problem is not easy; hitting

a moving target never is. The violence stems from the ready

availability of all sorts of weapons, old and new, and from all

sorts of societal ills, many unrelated to the accessibility of

guns. Poverty, drugs, urban decline, family breakdown, racial and

^{Economic}

~~class~~ tensions all contribute to the problem. Breaking the cycle

of ~~random~~ violence ~~therefore~~ is no simple task. ~~Like a jigsaw~~

~~puzzle whose image periodically takes new form, the problem seems~~

~~intractable and impervious to incremental solutions. Nonetheless,~~

in my view, one ^{important aspect} ~~piece~~ of the ^{problem} ~~puzzle~~ is -- and will continue to be --

-- handguns. While deceptively innocuous when compared to ^{the} assault

~~and semiautomatic weapons,~~ ^{that} ~~which~~ have captured the attention of the

press and many legislatures, handguns are undeniably deadly.

Concealable, lethal, and all too easy to obtain, they are a fertile

source of violence. Death by handgun ^{has now become a major} ~~in short, is no longer an~~

~~aberrational~~ threat to life in this country, and the time has

come for legislative action.

good
Statistics substantiate the view that handguns have contributed to the violence epidemic. In the 1950's, handguns represented about one-fifth of new gun sales. But by the early 1970's, handgun sales had jumped to two million a year, a four-fold increase. At present, nearly one in two guns sold is a handgun.¹⁵ And of the estimated 200 million firearms that now exist in this country, approximately one-third are handguns.¹⁶

The proliferation of handguns has produced deadly results. From 1960 to 1980 the population of the United States increased by 26%; the ^{rate of firearms} homicide ~~rate due to guns~~ increased 160%.¹⁷ One study indicates that handguns are now used in 75 percent of the firearm-related homicides in this country and more than 80 percent of the firearm-related robberies.¹⁸ America's teenage boys are now more

¹⁵Eckholm, "Ailing Gun Industry Confronts Outrage Over Glut of Violence," The New York Times, at A30, March 8, 1992.

¹⁶Senator Chafee, "Ban Handguns!" Washington Post, at A15, June 9, 1992.

¹⁷ C. Everett Koop & George D. Lundberg, Violence in America: A Public Health Emergency, 267 JAMA 3075-3076 (June 10, 1992).

¹⁸ Zimring, Scientific American, "Firearms, Violence, and Public Policy," at 50, November, 1991.

Is there a better cite? Does Chaffee's office have original sources?

likely to die from a gunshot wound than from any other cause.¹⁹

The probable weapon in these teenage homicides: a handgun.

Particularly revealing -- and embarrassing -- is the contrast between the murder-by-handgun statistics of this country and those

of other countries. In 1985, the most recent year for which such statistics are available, handguns were used to murder 46 people in

Japan, 8 in Great Britain, 31 in Switzerland, 5 in Canada, 18 in Israel, 5 in Australia, and 8,092 in the United States.²⁰ To be

sure, demographics, culture, and tradition partially explain these disparities. But surely at least one explanation for the appalling

contrast is ~~this~~ ^{that} handguns are regulated more strictly in those countries than they are in the United States.²¹

^{The} ~~recent~~ ^{necessarily} study published in the New England Journal of

¹⁹ C. Everett Koop & George D. Lundberg, Violence in America: A Public Health Emergency, 267 JAMA 3075-3076 (June 10, 1992).

²⁰ The League of Women Voters, "The Sale, Use, and Possession of Firearms in Minnesota," January 1990 (citing "You Can Do Something About Handgun Violence," Handgun Control, Inc.)

²¹ Id.

?
must be more
recent stats

are we
citing
this
article?
In
this
article
needed
in order
of these recent
estimates

I think this cite is
useful.

Can we avoid relying on
direct cites to interest
groups?

Medicine discussed an even more telling comparison.²² Entitled "A Tale of Two Cities," the study compared crime and homicide rates in Seattle with those in Vancouver, Canada. The cities were chosen because of their similar population and socioeconomic composition, and indeed statistics revealed that Seattle and Vancouver suffered from comparable rates of burglary, robbery, and assault. Notably, the risk of assault involving a firearm was seven times higher in Seattle than in Vancouver. ~~Perhaps most alarming,~~ residents of Seattle are almost five times as likely to be murdered by a handgun than Canadian citizens across the border.

Such statistics cannot be ignored. The inescapable conclusion is that Vancouver's restrictive handgun laws reduce the number of handgun related homicides. The ~~only remaining~~ question is whether our society is ^{also} equipped to impose ^{reasonable} ~~similar~~ gun restrictions and ~~perhaps more the issue~~ whether Americans are willing to bear the admitted burdens of such regulation.

²² Sloan, Kellermann, Reay, Ferris, Koepf, Rivara, Rice, Gray & LoGerfo, "Handgun Regulations, Crime, Assaults, and Homicide: A Tale of Two Cities," 319 New England Journal of Medicine 1256-62 (1988).

DON'T WE NEED TO ADDRESS WHAT THE GUN CONTROL POLICIES OF THESE OTHER COUNTRIES TYPICALLY ENTAIL?

The Constitutional Status of Firearms

~~Assuming handguns themselves are a component of the problem of~~
The evidence is now overwhelming that handgun policy must be a major part of any real effort to bring violent crime under control. In asking what violence in this country, as I think they are, what should be done, can be done, it is appropriate first to discuss the status of firearms under our Constitution. ~~As with any effort to control crime, the provisions of the what can be done? Let me begin with what can be done, by which I Bill of Rights place some limits on legislative freedom to act. In the context of gun control, however, I cannot accept the view that the Constitution mean to say, what can be done in a constitutional sense.~~
requires us to stand idly by and watch the carnage mount. The Constitution

The authors of the Bill of Rights addressed the right of the is not a suicide pact [CITE].

people to keep and bear arms in the Second Amendment. It reads: "A well regulated Militia, being necessary to the security of a free State, the right of people to keep and bear Arms, shall not be infringed." Gun advocacy groups contend that the Second Amendment prohibits all federal and state regulations of guns. Gun control proponents counter that the Amendment is no bar to government regulation of firearms as the amendment was intended only to prohibit federal government suppression of state militias.

Supreme Court interpretations of the Second Amendment have ^{few} been ~~episodic and laconic~~. ~~The Supreme Court has discussed the Second Amendment in only a handful of cases.~~ ^{Perhaps} ²³ The "leading"

²³ Some have postulated that the Supreme Court has refused to take cases that would force the Court to recognize the right of an individual to bear arms under the Second Amendment. See N. Lund, "The Second Amendment, Political Liberty, and the Right to Self-

This is a key point that should get more emphasis. Given LTT views on federalism, a call for STATE action may be appropriate. See recent CA9 decision on incorporation of 2d amend. Of course, there is no principled basis to argue against incorporation of 2d Amend under current law, so case is United States v. Miller, 307 U.S. 174 (1939).²⁴ There the the benefit of this pt. is limited.

Court held that the National Firearms Act, as applied to a defendant charged with transporting a shotgun in interstate commerce in violation of requirements under the Act, did not violate the Second Amendment. The Court had this to say about whether the shotgun in question fell within the ambit of the Second Amendment: "Certainly it is not within judicial notice that this weapon is any part of the ordinary military equipment or that its use could contribute to the common defense."²⁵ Absent evidence indicating that the shotgun at issue had some "reasonable

Preservation, 39 Ala. L. Rev. 103, 103-04 (1987).

²⁴ In three late nineteenth-century opinions, the Court held that the Second Amendment operates as a limitation only on the actions of the federal government, not on the actions of private individuals or states. See United States v. Cruikshank, 92 U.S. 542, 553 (1875); Miller v. Texas, 153 U.S. 535, 536 (1894); Presser v. Illinois, 116 U.S. 252, 264 (1886). The Court held that the Amendment did not restrict state regulation of firearms on the grounds that the Bill of Rights did not apply to the states. While the continuing validity of these decisions may be questioned in light of subsequent Court decisions incorporating selective portions of the Bill of Rights into the Fourteenth Amendment, Presser and Miller v. Texas are still the Court's last pronouncements on the subject. In any event, these cases did not discuss the scope of the right guaranteed under the Second Amendment, but rather to whom or to which governmental entities the restrictions under the Amendment applied.

See 60 USLW 2759 for an interesting but indefensible CA9 decision.

²⁵ Id.

This focus on the nature of the weapon is difficult to explain. The Miller Court was ~~also~~ probably wrong about shotguns, given their wide use in WWI as trench weapons.

We must make clear that it was not saying proof of military utility
invalidates regulation, merely that this is a threshold for 2d Amend
coverage.

relationship to the preservation or efficiency of a well regulated militia," the Court refused to "say that the Second Amendment guarantees the right to keep and bear such an instrument." ²⁶ In arriving at that conclusion, the Court stated that the amendment must be interpreted in view of its "obvious purpose," which was to "assure the continuation and render possible the effectiveness of such [militia] forces."²⁷

Central to the Miller Court's analysis, then, was the purpose for which the weapon was to be used, not the nature of the weapon itself.²⁸ Interestingly, nothing in Miller directly supports the argument that the Second Amendment should be read to guarantee an individual's right to bear arms for purposes of self-defense or for

²⁶ Miller, 307 U.S. at 178.

²⁷ Id.

²⁸ Some have maintained that Miller can be read to grant Second Amendment protection to all weapons which have a military use. The absurdity of this argument is captured by the observation that such a reading would "accord constitutional protection to machine guns, bazookas, hand grenades, and other military hardware of staggering destructive potential." Keith A. Ehrman & Dennis A. Henigan, The Second Amendment in the Twentieth Century: Have You Seen Your Militia Lately?, 15 U. Dayton L.Rev. 5, 42 (1989). Moreover, the focus of the Miller Court's analysis was whether a particular weapon would further the "preservation or efficiency of a well regulated militia," not whether a weapon is suitable for military uses.

good
but should we deal w/ fact that ¹³"militia" was understood to include all able-bodied males of certain ages?

hunting, in other words for purposes unrelated to participation in a "well regulated militia." Faced with Second Amendment challenges to federal firearms statutes, lower courts have held unanimously that federal statutes regulating firearms do not offend the Second Amendment unless the statutes interfere with the maintenance of an organized state militia.²⁹ In short, no federal court has ever read the Second Amendment to provide for an individual right to bear arms for purposes unrelated to militia service.

Potential Solutions

Supposing that the Constitution does not prohibit firearms regulation by the federal government, as distinct from the separate more difficult question of the Constitution's application to a firearms bar, it must be determined what amount of federal involvement is desirable. Reactions to the recent Los Angeles riots are characteristic of the chasm separating the opposing perspectives on this issue. Those supporting aggressive federal gun control, even to the point of eliminating certain weapons, say

²⁹ See e.g. United States v. Johnson, 497 F.2d 548 (4th Cir. 1974); Stevens v. United States, 440 F.2d 144 (6th Cir. 1971); United States v. Tot, 131 F.2d 261 (3d Cir. 1942);

Are we
certain
this is
correct?

This omits
the question
of what
BURDEN
on a right
is const'l
short of a
ban

that the availability of guns fueled the riots. Those opposing firearm regulation claim that the riots illustrate the citizenry's need to have ready access to guns for self-protection. For instance, a representative of Handgun Control, Inc. commented: "The lesson we learned is that everybody with a gun is not the answer"; while a spokesman for the National Rifle Association said: "This proves that law-abiding people ought to have the means of defending themselves."³⁰

What should be done? Here I speak not as a Retired Associate Justice of the United States Supreme Court, but as a concerned citizen, husband, father, grandfather, and gun owner convinced that the devastating consequences of firearm violence must end. In short, it is my view that further federal regulation of handguns is needed.

~~To begin with,~~ I find persuasive the analogy suggested by Drs. Koop and Lundberg between regulation of automobiles and regulation

³⁰See Sanchez, "Looting's Legacy: More Guns for Gangs," The Washington Post, at A28, May 7, 1992.

firearms or handguns? Why not
keep focus on handguns?

of guns. Owners of firearms, they suggest, should be licensed just
as operators of automobiles are. ^{licensed} Only those ~~consumers~~ of a certain
age, physical and mental fitness, and level of training should be
allowed to purchase firearms in the first place. ^{Of course, gun purchases should be off-limits to convicted criminals,} Subsequent to
purchase, firearm use should be monitored, and licenses lifted if
gun owners fail to comply with certain rules. [¶] Likewise, I see no
reason why registration of the instrumentality itself, the firearm,
need be any less comprehensive than registration of automobiles,
nor the requirements under law for safe firearms. Remarkably,
while the Gun Control Act of 1968 establishes safety requirements
for some imported firearms, no similar requirements exist for
domestically-made guns.³¹ I see no justification for failing to
ensure that such hazardous products meet certain standards, some no
more demanding than the assurance that a loaded model does not
discharge when dropped to the floor.³² As Koop and Lundberg point

³¹Freedman, "Behind the Cheap Guns Flooding the Cities Is A California Family," The Wall Street Journal, at - , February 28, 1992. [Check this in U.S.C. The Minnesota firearms article lists the firearms statutes.]

³²See id.

this is
cryptic
-expand

out, "[d]efining motor vehicle casualties as a public health issue and initiating intervention activity succeeded in reversing the upward trend of such fatalities, without banning or confiscating automobiles."³³

FN { Such has been the experience in Texas. The Texas Department of Health indicates that in 1990 firearm deaths exceeded automobile deaths, a result attributed primarily to automobile deaths falling than to firearm deaths rising.³⁴

The call for federal action is good, but let's give some boost to STATE action as well! The states can serve as "laboratories" etc.

Although our federal system provides opportunities for local and national initiatives, I am of the view that even strict state regulatory efforts will be rendered meaningless absent some federal controls. ^{One} ~~The~~ principal benefit of establishing a national ^{good} ~~regulatory~~ floor in this area is that such measures frustrate smuggling from States with lax restrictions to States with strong ones. Have we now shifted away from handguns

The ideal gun-control measure would reduce the use of firearms for violent and illegal means without impairing their use for

³³"Guns Are a Health Hazard," editorial, The New York Times, June 28, 1992. [Replace w/ citation to the JAMA article.]

³⁴Id.

legitimate purposes by law-abiding citizens. A point-of-purchase computer check for the possible criminal background of a purchaser is one such proposal. While a feasibility study undertaken by the U.S. Department of Justice estimates that the establishment of a national data base will take time and several billion dollars, the price tag does not seem prohibitive when the extensive societal costs that result from firearm violence are considered.³⁵

There also is merit to extending regulation beyond the point of sale. Each year, several million used guns are transferred, although it is difficult to be sure about that since most private exchanges are exempt from record-requirements established by the Federal government.³⁶ It being fair to assume that many of these transfers end up in the hands of persons otherwise unqualified to own a gun we may want to subject even private transfers to registration requirements. Legislation in this area, if initiated, should not include "grandfather clauses" that immunize domestic

35

³⁶Eckholm, "Ailing Gun Industry Confronts Outrage Over Glut of Violence," The New York Times, at A30, March 8, 1992.

again, why not focus on the real problem, HAND guns

① Virginia has this, and it works. ¹⁸ There should be ample material available from the state or newspapers,

Handguns

owners of the 200 million guns now in circulation from registration requirements.

Guns do not work without ammunition, and it is appropriate to place reasonable restrictions

The focus, ~~moreover~~, need not be confined to weaponry. ~~It~~ ^{for} ~~on its~~ ^{sale.}

~~one, find frustrating the inattention to ammunition sales.~~ Felons, to use one example, are prohibited by law from buying ammunition. But, according to one report, ammunition retailers are under no requirement to make any special effort to determine if purchasers have a criminal record, and they rarely do.³⁷

Screening systems and ownership prohibitions are only helpful to the extent that they keep firearms out of the hands of minors and convicted felons. Homicides are committed most often, however, not by convicted felons, but by individuals who can purchase a gun legally.³⁸ The homicide rate for one particular class of these homicides—firearm related deaths in the home—might best be reduced through education. (*)

³⁷Feder, "As Debate Over Guns Rages, Ammunition Makers Hum Along Unnoticed," The New York Times, at A20, March 20, 1992.

³⁸ Zimring, "Firearms, Violence, and Public Policy," 265 Scientific American 48, 52 (November 1991).

Note: ¹⁹ Requiring a mandatory education certificate for handgun ownership would both increase safety and provide a disincentive to purchase for marginal buyers.

The risks associated with keeping firearms in the home include accidental gunshot wounds, wounds inflicted during domestic altercations, and the availability of a highly efficient means of suicide.³⁹ Concerned only with having a ready method of self-protection, many ^{handgun} gun owners remain ignorant as to the potential hazards. Gun manufacturers and the gun lobby itself, ~~it seems to~~

To be fair, should mention NRA safety courses, ~~no,~~ have a role to play here as well. Whether "[r]evered as a bulwark of American freedom, [or] reviled as accomplices in murder, gun makers [and the gun lobby],"⁴⁰ bear some responsibility for the hazardous uses of the products they create or endorse. They can, for example, do a better job in educating gun owners about elementary safety precautions. The recently-released study by the Journal of the American suggests safety is no small matter. The study revealed that out of 605 gun owners surveyed, ^{one-third} kept

Why need this quote?

³⁹ Kellerman & Reay, "Protection or Peril: An Analysis of Firearm-Related Deaths in the Home," 24 New Eng. J. Med. 1557 (June 12, 1986).

⁴⁰Eckholm, "Ailing Gun Industry Confronts Outrage Over Glut of Violence," The New York Times, at 1, March 8, 1992.

²⁰ There are many gun articles suggesting handguns are a particularly poor ~~off~~ home-defense weapon — shotguns are better.

their guns loaded, and more than one-half kept them unlocked.⁴¹

[Justice Powell: Jeff and I have several ideas of other regulations you could mention or endorse in this section assuming you are comfortable with the general approach of the article.

These suggestions include:

1. A waiting period for the purchase of *handguns* firearms (similar to the various versions of the Brady Bill which have been under Congressional consideration).

2. A call for leadership from the NRA and other advocacy groups to support moderate gun control efforts so that more draconian legislation might be avoided. *Yes, might mention NRA's misstep w/ cop-killer bullets*

boring
3. Establishment of a reliable and comprehensive national reporting system to isolate and identify the causes of firearm violence—such a system would facilitate the enactment of appropriate remedies and no such national reporting system now

⁴¹LaFraniere, "Gun Violence Called Health Emergency," The Washington Post, at 19, June 10, 1992.

exists.

4. Discussion, without endorsement, of Senator Chafee's proposal to ban all handguns.

Conclusion

I am perhaps an unlikely advocate for ^{fire ar} ~~the stringent~~ regulation, ~~of firearms~~. My mother gave me my first gun, a shotgun, when I was eight years old. After teaching me how to operate it safely, she taught me how to hunt. Duck and pheasant hunting became one of my favorite pastimes, sustaining many a weekend trip with family and friends. During World War II, my experience with guns took a more serious turn. I was issued several weapons, including a handgun and a rifle, and I was taught how to fire a machine gun. The handgun, which I kept as a memento of the war, was recently passed on to my son. Like me, he learned to appreciate hunting from his parents. Together we have enjoyed many hunting trips, including a safari to Kenya. Guns, in short, whether as instruments of my favorite hobby, as antiques, or as tools of war, have played a significant part in my life and in most respects have given me

great pleasure.

But ^{as} much as my own experience with guns has been a positive one, I have come to be persuaded by those who argue that something must be done about their ready availability and irresponsible use. One consequence of these developments -- an alarming murder rate -- has reached crisis proportions. As Americans kill more and more Americans each year, it becomes apparent that this problem like so many others plaguing us today -- drugs, ^{the breakdown of the} family, poverty, race, ~~the~~ ~~economy~~ education, AIDS -- threatens us from within.

Now we are back to handguns | Something must be done. As someone who values the privilege of law-abiding Americans to own firearms, I think it preferable to avoid an outright ban on handguns. While perhaps constitutionally permissible, a ban would strike at the core of our culture. Guns occupy a revered place in our national history. Once necessary to combat the perils of frontier life and for protection against the forces of tyranny from which the colonists had fled, guns became to many a symbol of the pioneering spirit and individualism that contributed to this country's greatness. Our culture is different from those of other Western democracies with ²³ long traditions of gun control. In those countries, first there was law, then guns. Here guns had an established place before law arrived.

Those on both sides of the gun control issue must recognize the fears and the legitimate concerns of the other. The now famous slogan "guns don't kill people, people do" is a correct, yet incomplete assessment of the issue. True, regulation of handguns cannot alleviate firearm violence without a corresponding effort to identify and address the underlying causes of societal violence. Yet gun advocacy groups would do well to admit what the statistics show: people with guns kill more people than people without guns.

There are essentially three possibilities for the regulation of handguns: balanced legislation which reflects the competing interests at stake, drastic legislation, or continued legislative inaction and deadlock. ^{Failure to enact} ~~The refusal to concede to~~ reasonable ^{that} regulation which strikes a compromise between the interests of citizens to use firearms legitimately and the interest of society in limiting ^{violence} ~~the destructive capacity of firearms~~ will thus produce one of two disastrous results. ⁹ ~~One result,~~ Drastic legislation banning handguns and other weapons, ~~a development that, as gun~~ ^{world be regrettable} ~~owner, I would regret,~~ ^{But we simply cannot live with the ~~other~~ alternative} ~~The alternative, however,~~ is untenable. ^{possibility of} ~~24~~ ever increasing carnage.