

## **Gunfight in the Political Corral:**

By Mike Israel, Washington Representative of the Information and Public Policy Section, Academy of Criminal Justice Sciences

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This post on crime policy from Washington is a service to the ACJS Policy Section, and to interested criminologists and practitioners in criminal justice. Past editions and information on participation in crime policy can be found in the website, [www.crimeletter.net](http://www.crimeletter.net). For comments, email me at [israelmike@crimeletter.net](mailto:israelmike@crimeletter.net).

### **Policy makers love a story:**

As we contemplate the Virginia Tech shooting, it is an article of faith in crime policy that a dramatic headline catching event that evokes compassion for victims will lead to get tough crime legislation that shows that elected officials care deeply and are doing something. See California's problematic Three Strikes sentencing law following two horrific child murders, and New Jersey's Megan's Law following a pedophilic murder, and that state's hurriedly passed public exposure statute was quickly imitated by every state and the federal government, without evidence of its effectiveness, to this day. Savvy politicians still advise: don't ever vote against a bill with sympathetic victims' interests attached. To this day, the Three Strikes concept, Megan's law, and a progeny of mandatory minimums and ratcheted up sentences are political sacred cows rationalized in the names of those victims. Anybody remember Len Bias? You will read about him here in the future.

It is another article of faith, however, that guns have a special protected status in politics. When punishment does not appear to be the accessible remedy—for the Virginia Tech killer was already dead, and for others there is plenty of punishment available—and the problem appears to be how did the killer get the guns, an irresistible force meets an unmovable object. Indeed, the mere mention of the dreaded words *gun control* makes policy makers run for cover. This time they can run, but this bullet may catch them.

### **Some history:**

- 1934, after the attempted assassination of President-elect FDR, and prohibition era violence, Congress used the taxing power to regulate machine guns.
- 1963, the assassination of President Kennedy with a mail ordered rifle led to no immediate legislative response. [The same followed the D.C. area sniper episode four decades later.]
- 1966, a student named Charles Whitman stabbed his wife and mother and climbed the observation tower at the University of Texas in Austin and opened fire with an arsenal of rifles, killed 15 and wounded 30, before police killed him. This became the template for the motiveless act of mass gun violence, imitated at Virginia Tech, that gave policy makers a climate of fear to which they had to appear responsive, but without pressure for an immediate response.
- 1968, rising urban violence, plus the assassinations of Martin Luther King and Robert Kennedy, led to what was called "The Saturday Night Special" law. It

banned cheap handguns, mail order sales of guns and ammunition, imports of military surplus firearms and some assault weapons, and handgun sales to minors and convicted felons.

- 1981, the handgun assassination attempt of Ronald Reagan had the consequence of the narrowing of the insanity defense. That was *doing something*.
- 1986, the National Rifle Association demonstrated its lobbying strength with a bill that relaxed parts of the 1968 law, relieved ammunition dealers with record keeping requirements, legalized some interstate sales, and limited surprise federal inspections. The NRA's lobbying ability has been feared ever since.
- 1990, Congress banned gun possession within 1000 feet of a school, but five years later the Supreme Court struck it down, finding no relation to interstate commerce and hence no federal jurisdiction. Gun control groups have been wary of federal legislation ever since.
- 1993, after years of lobbying, Congress passed the Brady Bill, named after Reagan's press secretary who was paralyzed in the same shooting. It created a five day waiting period for handgun purchases, and authorized a computerized national data base of criminal and mental health risk records for background checks. The states have the option of supplying data. This regulation continues, but only 22 states comply, some only partly, and the data is incomplete. Assuming ex-felons don't try, mental health is the problematic criteria. But a 2002 GAO study found that one of every 75,000 background checks led to denying a gun. An estimated 40% of gun purchases are private, including at gun shows, without paperwork, and regulation.
- 1994, Congress prohibited the manufacture and sale of 19 specific semiautomatic assault weapons and copycat models, plus ammunition clips holding more than 10 rounds, and required federal licensing of gun dealers. There is, however, no licensing of gun owners, and gun registration is sporadic. In the mid term election, Democrats lost 52 House seats, including many targeted by the NRA.
- 1999, after two high school students in Littleton, Colorado acquired their parents' guns and killed 13 and themselves, gun control was thrust upon the political process. A month later Vice President Al Gore cast the tie breaking vote in the Senate to pass a juvenile crime bill with gun show restrictions, but it died in the House-Senate Conference. A year later Gore lost the close Presidential election arguably by losing his home state, Tennessee, and normally Democratic West Virginia on the gun issue. He even called for gun registration, after being pressured into it in his Primary campaign by the more liberal Bill Bradley.
- 2005, Congress passed a bill protecting manufacturers, dealers, and distributors from civil liability from future and pending suits. Knowing negligence is still actionable, but hard to prove. This appears to be the peak of the NRA's power.

**“I hope there's not a rush to do anything:”**

So it was said by Senate Majority Leader Harry Reid and other Democratic leaders. The conventional wisdom is that the Democrats want to hold on to their legislative majorities and capture the White House but their route to power is bobby trapped by social wedge issues like gun control, which continues to be haunted by the

ghost of Al Gore's lost chance in 2000. There are other wedge issues—abortion, stem cell research, evolution--but this is the one in which they do not have public opinion behind them, or at least the public opinion that votes on single issues.

Polls show support for gun control is beginning to waiver, especially among young people, and gun ownership is declining (fewer hunters), but elections tell a different story. Ironically, 9/11 has increased the public's belief in the regulation of firearms. According to the National Opinion Research center,  $\frac{3}{4}$  believe in the right to *own* guns, but even more believe that right should be limited by some kind of permit. State referendums on the right to carry always pass by wide margins, but although evidence is sketchy, very few people actually do.

We are reminded of John Kerry's clownish attempts to look like a macho hunter in 2004, and Mitt Romney did essentially the same thing this year. Furthermore, some democrats have pro-gun voting records (14 in the Senate voted for the liability protection bill, including Reid). Congressional Democrats know that they hold 61 seats in districts that Bush carried in 2004, many in rural pro-gun areas, and Republicans need to pick up only 16 to regain the House and one in the Senate.

Gun control is probably the most volatile issue on which the Democrats want to project as centrists, and not let "liberals" like Bill Bradley push them into positions that appeal to their primary voting base, but will cost them in the general election. They are also measuring the degree of interest group support they can count on for cover if they do stick their neck out. John Kerry and his supporters have a smoldering resentment against Howard Dean, one of his pro gun competitors for the Democratic nomination. Kerry felt that gun control advocates were notably silent during the campaign, while Dean positioned himself on guns in a way that sent a signal to the political community that liberals don't really care about guns, and hence, rural working class people, but he did. *Remember Dean's statement about shotguns in pickup trucks!*

That divide between Dean, who became Democratic National Chairman, (go after the red states) and Rahm Emanuel, chair of the Democratic Congressional Campaign Committee, (focus on states we can win) roils the Democratic Party to this day. It is *play to the middle* versus *solidify the base*. They would like to dodge gun control in the interest of unity and winning the 2008 election, but which faction controls the party is also at stake.

### **This gunfight may not be stoppable:**

Like it or not, there is renewed interest by some Democrats in the assault weapons ban, including the extra ammo clips used by the Virginia Tech killer, Seung-Hui Cho. This appears to hit the gun lobby in a vulnerable point. Very few of America's 65 million handgun owners (but who knows) have assault weapons. They are expensive-- Cho paid over \$500 for each of his—and even collectors (the only rationale) have trouble arguing for the larger clips.

A bill has been introduced by Rep. Carolyn McCarthy, a gun control icon whose husband was killed by a deranged killer on a Long Island train, to assist states with financial incentives to support the federal background data base, which would have denied a gun purchase to Cho. [The Virginia governor has already brought his state into line with the federal standard of handgun background checks which applies to any mental health referral, even as an outpatient.] The NRA has indicated it might support a more

effective background check system. Rudy Giuliani has in the past supported federal registration of handgun *owners*, a stiffer requirement than registering guns. The simplicity of the gun issue (“Gore will take our guns away.”) is fading.

The lack of a rush to pass feel good legislation may lead to a serious nuanced discussion of pragmatic legislation before the next election. The gun issue is an impediment not only of Democratic electoral majorities, but it also may obstruct other enlightened crime policy legislation that awaits a place on the agenda of the majority party. Pressure has been building for criminal sentencing reform and programs to help re-entering prisoners, but something has been holding them up. There seem to be enough votes in Congress, but these crime issues are denied a priority. The plain fact is, Democrats are afraid of crime, especially around elections, and in America, there are always elections.

The Third Way is a Democratic centrist think tank known for its caution, but James Kessler, a policy and gun control specialist, says avoiding a salient issue like this must not be a long term strategy. “I don’t think that a candidate will be punished for supporting gun safety measures this time around,” he says.

### **The gun issue—is there anything to it?**

No. There is no good debatable issue there. The arguments are tiresome, like “supporting the Second Amendment,” and constant talk of “rights.” [Can any public official admit to not supporting the Constitution?] Anti-gun rhetoric doesn’t argue much of anything, except the body count (for example, 3,000 babies are killed a year, a favorite) and to urge “standing up to the gun lobby.” Scholarly research does not come to the rescue, except to refute other research.

As for the law, the Supreme Court has been silent on a personal right to own or carry a gun since 1939, but about 90% of scholarship and 70% of court cases are consistent with the text of the amendment, which posits a collective state “well regulated militia.” But there is some movement in legal thinking toward the individual right theory, presumably for self defense.

A federal court in the District of Columbia recently found a personal right to possess a gun in ones home, but nothing was said about a “right to carry,” which is the area of the most heat. The Supreme Court may accept the D.C. case—maybe around election time—and any finding could be a catalyzing event for both sides. It is doubtful that there will be any Constitutional findings on the salient pieces of public policy gun control, like regulation with permits, tracing gun purchases, or background checks. Civil liberties groups are concerned about the dissemination of mental health records as a threat to privacy rights, and that issue could be heading toward adjudication. The right to carry, even in bars, churches, schools, parking lots, government buildings, is the contentious issue on the national agenda.

Of course, the most common pro-gun argument is for a right of self defense. After Virginia Tech, a blogger wrote: *“I see no problem with a university advertising that their students and staff are armed and ready to protect themselves and their campus. (And) teach gun use and how to spot someone who is unbalanced.”* Note to faculty: better not give any low grades.

According to a study in the New England Journal of Medicine, guns kept in the home for self-protection are 43 times more likely to kill a family member or friend than to kill an intruder. And for every justifiable handgun homicide, there are more than 50 handgun murders, according to the FBI. Data like this, often from the public health community, has been consistent for many decades.

Typically, states require something like a half day course to acquire a handgun license, which teaches the basics of gun safety with some rudimentary target practice. They do not prepare for a life-threatening assault, and to imagine that gun ownership prepares for that is as realistic as a grade-B western movie, which is the model for the self defense argument. After all, we are a country with a frontier mentality, without a frontier. So we have to use our imagination.

There is a body of research that concludes that carrying handguns for self defense does indeed reduce the murder rate (only), but much of it is by John Lott, research director of the conservative American Enterprise Institute, who argues that *brandishing* a gun is effective. He relies heavily on self reports (he has heard “many stories”), and national data without controls. Right to carry laws are passed, violent crime goes down (but also in non-gun states). There are criminologists who have argued there are between 1 and 2.5 million “defensive gun uses” a year, again by self reports. This is not supported by the most credible academic research; and from my reading I find it hard to believe that many people actually carry guns in this country.

This piece of data is illuminating. Texas, possibly the number one gun state, has a population of 23.5 million, let’s say 15 million adults. There are 72,000 concealed weapons permits, or about ½ of one percent. Texans are eager to vote for the right to carry, but very few want to do it.

The National Academy of Science has reviewed the data and found no credible evidence of any relationship between “shall issue” laws and protecting citizens. It doesn’t matter much because very few people do carry handguns, where permitted. Guns kept in the home, however, clearly are more a danger than a protection.

### **If guns don’t protect citizens, do they protect pro-gun politicians?**

Until the 2006 election, the answer would have been “yes.” The NRA’s four million members apparently represent four million voters (and their families) that they can get to the polls, on this single issue, in strategic states and districts. Voters who support the Brady Campaign Against Gun Violence have multi issues and are therefore dispersed. The intensity of the gun vote has provided a powerful leverage, which, along with the thinning out of gun control allies, although quite possibly in larger numbers, has meshed to provide what by reputation has been the most powerful interest group force in the criminal justice system.

The NRA is not one of the richest interest groups in Washington, but it out-spends the Brady Campaign by 10 to one, in both lobbying and election campaigns, including a reported \$20 million in 2004 (although that includes some other allied groups). It also mobilizes its forces for letter writing and media campaigns, targeting races that it believes it can win. The rhetoric, interestingly, sometimes only barely mentions guns. For example, in opposing Senatorial candidate Jon Tester in Montana, the NRA press release said about this Democrat: “He voted with radicals in Montana 92% of the time,

extremists who would cut and run. . . (with) an extreme agenda to oppose your gun rights.” *And Tester was against gun control!* They know their constituency.

In 2006, however, in races where the Brady Campaign endorsed candidates went head-to-head with NRA candidates, Brady won 5 of 5 Governorships, 4 of 4 U.S. Senate races, and 95% of all other races. Even with little or no Brady support, candidates endorsed as “A” rated by the NRA lost 109 U.S. House seats and 18 in the Senate. [The Brady Campaign didn’t beat them, but being pro-gun did not automatically win for the,] In two years, 2004 – 2006, the NRA went from the peak of its political power to its lowest point.

It is hard to say why this happened, except to note that another issue that used to be a death sentence for candidates--being against the death sentence--is no longer the case. Many candidates, virtually all Democrats, have been abolitionists and won, although they don’t emphasize it, and there is the obligatory “I will apply the law,” if they run for Governor. In short, the pro-gun constituency has become absorbed into the Republican conservative coalition, and carries the political baggage of all Republicans, spelled B-U-S-H.

Presidential candidates from both parties next year may have to reassure the political center that they support gun safety, and Democrats arguably will be freer to defy the NRA than Republicans, who rely more heavily on their pro gun base.

### **Is there an agenda, and for what?**

Let’s keep in mind the irony that the 32 gun victims at Virginia Tech, the highest number in a gun incident in U.S. history, represents about one-tenth of one percent of the 30,000 American gun deaths in one year. We have the policy choice of living with that, but it seems so unnecessary. About half are suicides. Some would find another way, but many would not, work out their problems and live. Some murderers would find another implement, but many would not, thus saving two lives at least. Scholars in the criminology community don’t like to hear about common sense, but common sense should tell us that we don’t have to pay that price.

The crime agenda is backed up, waiting substantive reforms in prisoner reentry, sentencing policy, including mandatory minimums and the crack-powder cocaine discrepancy, among others, but they are all blocked by the Democrats’ fear of appearing soft. Carrying a gun is tough, not carrying is soft, being a victim. This is ideology, and a fantasy, rooted in American frontier values which are no longer the reality of our modern culture. We all know the urban mythology that even a slight affront is disrespect, which demands retaliation, which is most satisfactory with a gun.

Responsible scholars have called for an agenda of “sensible gun control.” This could realistically mean federal dollars to improve the national background data base, with careful safeguards for former mental health patients, and develop the technology that would allow quick checks for gun show sales. Law enforcement’s ability to trace guns could be facilitated without compromising ongoing investigations, with the target partly of identifying and de-certifying rogue dealers, and partly finding the sources of guns for gangs. Much can, and will, be done administratively, without legislation. We should expect a better debate than: *no guns* versus *guns anywhere*.

The mystique of the power of the gun lobby is in remission. In the present political climate of caution, there can now be an anti violence agenda that is not the

simplistic longer sentences, read: preventing opportunities for violence. We all know that the moderate agenda will have at best only a modest effect on gun violence, for changing the culture will have to be gradual, but even a start is worthwhile. Ask everyone at Virginia Tech! Perhaps the most significant effect will be to break the crime policy logjam and make reentry and sentencing reform accessible.