

# **Ideological and Civil Liberties Implications of the Public Health Approach to Guns, Crime and Violence**

**by Raymond G. Kessler**

*Public health advocacy for severe gun control and gun prohibition has become an increasingly important part of the firearms policy debate. In this article, Raymond Kessler analyzes, from a critical or Marxist perspective, the ideology that underlies antigun public health campaign. Professor Kessler is the Chair of the Department of Criminal Justice at Sul Ross State University in Alpine, Texas.*

## **Introduction**

### **A. Background**

According to former U.S. Surgeon General C. Everett Koop, (1991: vi) “[i]dentifying violence as a public health issue is a relatively new idea.” This approach started appearing in the literature in the 1970s (see Foege 1995: viii) with a series of articles in medical and public health journals (e.g., Rushforth et al., 1975, 1977; Hirsh et al. 1973) on homicide, gunshot wounds, firearms accidents, etc. In 1979 the U.S. Surgeon General published the first national agenda for health promotion and included reducing interpersonal violence among the top 15 priorities (Prothrow-Stith and Weissman 1991: 136).

In 1990 Harries (1990: 187) wrote that “over the last decade or so, violence has increasingly become a topic of interest to the public health community, both in the United States and abroad . . .” The public health approach continues to flourish, bolstered by

involvement of the federal Center for Disease Control (CDC) (Rosenberg and Mercy, 1991: 7), and as evidenced by coverage in recent criminology textbooks (e.g., Sacco and Kennedy 1996), semi-scholarly publications such as *America* (e.g., Anderson 1995); edited scholarly works (e.g., Rosenberg and Fenley 1991) popular magazines (e.g., *Rolling Stone* 1993); and a variety of medical and public health journals such as the *Journal of Trauma* (e.g., Wintemute 1987); *American Journal of Epidemiology* (e.g., Lee, et. al 1991); *The New England Journal of Medicine* (e.g., Loftin, et al 1991); *Texas Medicine* (e.g., Zane et al. 1993), and an entire issue of the *Journal of the American Medical Association* (see Koop and Lundberg 1992: 3075).

The public health approach has been given a certain amount of legitimacy by being treated in publications of the National Institute of Justice (e.g., Roth and Moore, 1995, Hawkins 1995) and in a 1994 NIJ film (#152238) "NIJ Research in Progress: Understanding and Preventing Violence: A Public Health Perspective," which features Arthur L. Kellerman, M.D., M.P.H.<sup>1</sup> Although the film contains a disclaimer that the speaker's views do not necessarily represent government policy, Dr. Kellerman is introduced as "one of America's leading researchers" and he returns the compliment by referring to the current administration as an "enlightened" one. This approach also had a significant impact on federal Violent Crime Control and Law Enforcement Act of 1994 (Roth and Moore, 1995: 5).<sup>2</sup> Many grants for research along public health lines have been awarded (Rosenberg and Mercy 1991: 7). Dr. Deborah Prothrow-Stith, a public health perspective author (Prothrow-Stith and Weissman 1991), was appointed to President Clinton's National Commission on Crime Control and Prevention (NRA 1995: 20). Support for this approach by the CDC and NIJ suggests the public health approach is part of the Clinton administrations "ideology of crime" ( a term that will be explained below).

A statement by Dr. Mark Rosen of the CDC that "guns are first and foremost, a public health menace" (quoted in

Wilkinson 1993: 37), and similar statements by other physicians (e.g., Wintemute 1987: 534) have brought a not unexpected strong reaction from the National Rifle Association (Baker 1994). This dispute has received national coverage in at least USA Today, (Levy 1995).

Involvement of the CDC and medical profession in these issues has spawned at least two new physicians groups, Doctors for Integrity in Research in Public Policy and Doctors for Responsible Gun Ownership, which appear to be opposed to the main thrust of the public health perspective (Baker 1994), and a pro-control group called the “Handgun Epidemic Lowering Plan” (HELP) Network (Help Network 1995).

## B. Purpose

Given the increasing visibility and impact of this relatively new approach to violent crime and gun control policy, a preliminary examination of the ideological and civil liberties implications of this perspective is necessary to begin airing of its merits and demerits in the context of American society. That is the purpose of this article. The peer review, methodological, logical and other problems with the approach have been covered elsewhere (Kates *et al.*, 1995, Kopel 1995; Suter 1994) and will not be treated here.

In the sections that follow the author will: present a brief overview of the public health approach; explain the “methodology” of this article; analyze the ideological implications of the approach (Part I); and present some of the civil liberties implications of this perspective (Part II).

## C. Overview of the Public Health Approach to Violence

In an article entitled “Let’s Be Clear: Violence is a Public Health Problem” three physicians from the CDC (Rosenberg, O’Carroll and Powell (1992: 3071) state: “The public health

approach consists of a health event surveillance, epidemiological analysis and intervention design and evaluation, focused unwaveringly on a single, clear outcome—the prevention of a particular illness or injury.”

This approach was initially developed to deal with infectious diseases, and has, according to Rosenberg, O’Carroll and Powell, (1992: 3071) “been successfully applied” to other causes of premature death such as lung cancer, heart disease and motor vehicle accidents.

According to Roth and Moore (1995: 4) in a National Institute of Justice Publication, even “the leaders in the public health community find it difficult to define this particular approach . . . .” Nevertheless, according to these authors, (1995: 4) there are 7 common themes that appear in the writings of medical or public health practitioners:

1. Violence is a threat to a community’s health and social order.
2. Medical and Public Health personnel are in positions where they can see violence that is not reported to authorities.
3. Prevention and reducing harmful effects requires that attention be paid not only to the perpetrator but also to victims and witnesses.
4. The methods of epidemiology can be useful in identifying patterns and levels of violence and in identifying features correlated with violence.
5. Emphasis should be on prevention rather than amelioration. Primary prevention—measures that prevent violent events from happening in the first place and do so across a large portion of the population should be the primary focus. Secondary prevention—the early identification and improvement of situations that could lead to violence if not addressed immediately—should be the secondary priority. Tertiary prevention—responses

that repair the damage associated with violence that has already occurred—should be only the last resort.

6. There are many opportunities to prevent violence that do not depend on rehabilitating or controlling offenders. For example, just as traffic deaths can be reduced by making cars and roads safer as well as by arresting careless or drunk drivers, some violence may be preventable by making vulnerable convenience stores harder to rob, by teaching nonviolent ways to solve disputes, by deglamorizing violence in the media, or by modifying trigger mechanisms on guns.

7. It is important to involve the community in preventing violence and mobilizing political consensus for legislation.

In the sections below, other aspects of the public health approach will be discussed.<sup>3</sup>

#### **D. Methodology**

In an attempt to analyze the civil liberties and ideological implications the author has read, what, to this author's knowledge, are the first two commercially published books to appear that are totally about and are self-identified as utilizing a public health approach.

In 1991, Dr. Mark Rosenberg of the CDC and Dr. Mary Ann Fenley published an edited collection of articles in a book entitled *Violence in America: A Public Health Approach*. No information is given on Ms. Fenley.

Also in 1991 Deborah Prothrow-Stith M.D. and Michael Weissman published *Deadly Consequences*. At the time of the book, Dr. Prothrow-Stith was Assistant Dean of the Harvard School of Public Health and before that she served as Massachusetts Commissioner of Public Health. In 1989 Dr. Prothrow-Stith wrote an article in *The Criminologist* entitled "The Fight Against Adolescent Violence: A Public Health

Approach” (1989: 1). Ms Weissman is listed as a free-lance writer (Prothrow-Stith and Weissman 1991: 270). Dr. Prothrow-Stith writes (Prothrow-Stith and Weissman 1991: 10): “The more I learned, the more I was convinced that a new multi-disciplinary approach to violence, one beginning with the perception that violence is an assault on the public health was required to save the endangered lives of our young.”

There is no way of telling if these two books represent the field or not. They however, appear to be the first two books published.

To obtain additional perspective, the author perused *Index Medicus* 1990-1995 for additional articles whose listed titles suggested that they dealt primarily and directly with the subject of this paper. Attention was primarily directed toward the *Journal of the American Medical Association*, which is the official journal of the American Medical Association and the prestigious *New England Journal of Medicine*. Attention was also particularly directed toward the journal *Pediatrics* because background reading suggested this journal was heavily involved in the Public Health Approach. This was not a random or systematic search of *Index Medicus*. These articles may, or may not be, representative of the field as a whole. Also surveyed were elucidations (*e.g.*, Roth and Moore 1995) and critiques of the public health approach (Blackman 1990, 1992, 1994, 1995, Kopel, 1995; Kates *et al.*, 1995) found outside the medical and public health literature.

Finally, concerning the “implications,” they, like beauty, exist “in the eye of the beholder.” Implications are subjective, and thus this paper will outline the author’s basic perspective on ideology and civil liberties so the reader may understand the implications.<sup>4</sup> Those with different perspectives on ideology and civil liberties will obviously disagree with this writer’s implications. Those who agree will hopefully join with this author in supporting a non-hypocritical, expansive interpretation of *all* civil liberties, not just those that are politically correct at the time.

## Part I. Ideology

### A. Author's Perspective on Ideology

The approach to ideology in this context generally follows Kessler (1988), Walker (1985), Reiman (1990), and Miller (1973). For our purposes, and at the risk of oversimplification, ideology is composed of socio-political-economic beliefs that ultimately function to support or challenge the current distribution of resources in society. The status quo is supported by an ideology, called the “dominant ideology,” and a corollary of this is a “dominant ideology of crime” (Kessler 1988). As Kessler (1988: 1) states:

In general, those who control the economic or material forces in a society, control that society's intellectual forces thus, the ideology of the dominant classes becomes the dominant ideology (Marx and Engels, 1970: 64-67). This control of consciousness is the most important nonviolent mechanism by which elites maintain their positions and justify social and economic inequality. Ideological hegemony is sustained in part by the constant diffusion and elaboration of the dominant ideology and exclusion of competing ideologies (see Wolfe, 1974: 50; Milbrand, 1977: Ch. 3). “Ideologies foster the suppression and repression of some interests, even as they give expression to others”(Gouldner, 1976: 28). Further, the interests of the dominant class appear to be common interests of all members of society. These interests are expressed in ideal form and appear to be the only rational, universally valid one (Marx and Engels, 1970: 65-66; Gouldner, 1976: 28). However, this does not necessarily mean that there is conscious deception or manipulation by those involved in the creation and dissemination of ideas and information, including the mass media. They sincerely believe in the accuracy of

their version of reality, and because of their power, their ideology becomes that of most individuals (Reiman, 1984: 130-31).<sup>4</sup>

Contemporary American thinking about policy issues is dominated by those who support capitalism in one form or another. The consensus is, however, imperfect and there is disagreement over specific policies among various powerful procapitalist factions (Domhoff, 1978: 117-19). In the “political arena one sees not only classes, but fractions of classes and alliances of classes and class fractions” (Greenberg, 1981: 193). To the extent there is any meaningful debate about issues, it centers on the differences between liberals and conservatives over their differing version of the ideal capitalist society (Gordon, 1977: Ch. 1; Kessler, 1988).

According to Kessler (1988), one portion of the dominant ideology is an explanation of crime which is consistent with the dominant ideology. This component of the dominant ideology is an “ideology of crime” (Quinney, 1979: 194) that includes conceptions of both the causation and cure for crime. The dominant ideology of crime in America has two major forms, and a number of aspects of these “liberal” and “conservative” approaches to crime (i.e., “ideologies of crime” have been discussed elsewhere (Gordon, 1977: Ch. 6; Miller, 1978; Walker, 1986: Pt. 2, 4). Suffice it to say that while each form includes criticisms of different allegedly criminogenic details of American society, neither seriously addresses the role of the political economy of a capitalist society in the creation of violence. While liberal rhetoric focuses on the need for major social reforms to combat crime, liberal policies rarely go beyond “social tinkering” (Walker, 1986: 212, 220). For instance, “neither liberal democrats nor conservative republicans have offered a realistic program for massive job creation” (Walker, 1986: 220) or any program that seriously dealt with basic structural problems (Walker, 1986: 212) or class dominance (Kessler, 1988):

Most of the public, social scientists, and politicians subscribe to the dominant (i.e., contemporary American capitalist) ideology of crime. This ideology includes assumption that it is possible to create an effective but still humanitarian system of crime control under the present economic and political framework. Proposals for reform are invariably formulated within a structure of corporate capitalism and designed to shape new adjustments to existing political and economic conditions. Radical solutions to the crime problem are rejected and labeled “utopian” (see Platt, 1974: 357-359; Greenberg, 1981: 9; Reiman, 1984: 118-135) (Kessler 1988: 2).

Ideology is supported, propagated and elaborated because it serves personal, group and/or class interests:

Conceptions of crime and crime control are perpetuated because they serve a variety of group and individual psychological interests, not just the system-maintenance interests of élites. Analysis must extend beyond elite interests, and public support for the dominant ideology can be explained at least in part by the fact that this ideology also serves other interests including the short term interests of the public (see Bohm, 1986: 199-200; Grundy and Weinstein, 1974: 307) (Kessler 1988: 3).

### **B. Major Ideological Perspectives**

For our purposes, there are 4 ideological positions on crime. (See Kessler, 1988, Walker 1985, Miller 1973).

On the far political left is a position referred to as “radical.” This generally and roughly includes those schools of criminological thought referred to as “critical,” “Marxist,” “radical,” or “conflict” (See Senna & Siegel 1994: 222-230, e.g., Reiman 1990, App. A).

The radical position sees contemporary capitalism and its resulting evils, poverty, racial discrimination, alienation, elite dominance, etc. as the primary factors in crime. Its solutions call for radical changes in the American political economy. Major modifications, if not abolition of a capitalist economy, are advocated. Some seek a "Socialist" society.

Slightly left of center is the "Liberal" position. Liberals complain about defects in the America's political economy and urge mild reform that could be referred to as "social tinkering" and "marginal social engineering" (Walker 1985: 212). Poverty, racism, insensitive government and corporate America are blamed, but the solutions are ones which generally do not require major changes in the political economy. Examples are welfare and education programs (e.g., Head Start), and improved opportunities for the poor and minorities (e.g., affirmative action).

Slightly right of center is the "conservative" position which tends to blame the individual, or a breakdown of family or conservative values. Biological and psychological defect theories, and rational choice theory are examples (Senna and Siegel 1994: 128). Blaming the individual and the social malaise caused by liberals and radicals, does not require any major social changes. Conservatives believe that status quo capitalism is the best of all worlds and that the crime problem can be solved by quick and sure punishment, individual (rather than social) change, and/or a return to conservative values.

To the right of conservatism is a position that will be referred to as "reactionary." Reactionaries want to do more than just maintain the status quo, they want to return to an earlier time when government did not attempt to regulate business, punishments were swift, public and severe, (e.g., public hanging). A return to the values and practices of an earlier America are the solutions to all problems.

Radicals like to point to crimes of the state (such as police and prison brutality, political assassination and the death penalty) and corporations (such as pollution, death in the workplace, dangerous products).

Liberals are generally concerned, but less upset than radicals about state and corporate crime. They point to these as arguments for reform. They tend to focus on child abuse, hate-crime, and decriminalizing “victimless” crime.

Along with liberals, conservatives tend to focus on traditional crimes, but generally do not want to hear about corporate and political crime because they support the corporate and political status quo.

### C. Analysis of the Two Books

In Rosenberg and Fenley (1991) the main topics covered, as per the chapter titles, are assaultive violence, child abuse, child sexual abuse, rape and sexual assault, spouse abuse, violence against the elderly and suicide. These are certainly not radical topics. In the “Introduction” Rosenberg and Mercy (1991) set out “Year 2000 Objectives for Violent and Abusive Behavior.” None of these topics call for significant change in the political economy. They talk about reducing homicides and suicides but never state how this is to be done. In the section on “Services and Protection Objectives” (1991: 10-11), they propose liberal-style programs such as expanded battered women's shelters, teaching non-violent conflict resolution skills, etc. A radical would say these programs are “Band-Aids.” There is no talk about programs to provide punishment or deal with moral decay. The recommendations look basically liberal.

In the chapter on “Assaultive Violence,” (Rosenberg and Mercy 1991) perhaps the one most relevant to our inquiry, there is concern expressed about poverty and racial discrimination (1991: 15), but no major reforms. Their list of “potential strategies” (1991: 16) are basically liberal strategies.

In Prothrow-Stith and Weissman (1991), there is no coverage of state or corporate crime. Smoking is seen as a public health problem but there is no blame heaped on tobacco companies or the government (1991: 141-42).

One chapter is devoted to the corrupting effects of media (1991 ch. 3). Guns, especially handguns, are viewed as contributing to the crime problem (1991: 197-9) In addition to strict gun control laws (discussed below), she touts child-proof safety devices for handguns (1991: 199). There is concern about drugs (1991: ch. 7 and 8), and a liberal sounding chapter entitled “An endangered species: young Men of Color living in poverty.” Although there are concerns about poverty and the underclass mentioned (e.g., 1991: 71), there are no proposals of a radical nature to deal with them. Among the proposals are (1991: 200) universal health care, subsidized child care, nutritional services for the poor, pre-school programs for children at risk, after-school and 24 hour school programs. However, Prothrow-Stith and Weissman's main proposed solution to the problem of violence is teaching people, especially young people, to manage anger and aggression better (1991: 28). All of these proposals fall into the mainstream liberal agenda.

#### **D. Analysis of Other Literature**

Among the solutions mentioned by Roth and Moore (1995: 4) in an NIJ publication, are making convenience stores harder to rob, teaching non-violent ways to settle disputes, deglamorizing violence and safety mechanisms on guns.

In an article by Adler, et al. (1994: 1282) we find the following: “The root causes of violence, especially poverty, substance abuse and unemployment, must be addressed over the long term to deal adequately with violence in our society. A continuing, multifaceted approach is clearly required.”

Unfortunately, that is the last sentence in the article and no proposals to deal with poverty and unemployment are made or cited. Adler et al. prefer to advocate gun control.

In an article entitled Reducing Violent Injuries: Priorities for Pediatrician Advocacy, Dolins and Christoffel (1994) outline their top 3 priorities: banning corporal punishment in schools, gun

control, and addressing the needs of adolescent assault victims. No need for radical reform is seen here.

Other topics treated in the literature that suggest liberal or conservative approaches are bans on “assault weapons” (Council on Scientific Affairs, 1992, corporal punishment (Wissow and Rotr, 1994), and witnessing domestic violence during childhood (Wolfe and Korsch, 1994).

Of the articles surveyed by the author, perhaps the closest to a radical approach is one on the L.A. riots (Shoemaker, et al. 1993). In their abstract, they state that it is now time for the medical profession to “enter the debate on policies of health improvement, violence deterrence and the general field of social reconstruction.” In addition to pointing out the evils of guns and drugs, they point to inadequate health care, economic opportunities and education. They criticize the “law and order” approach yet advocate their own version—gun control. They argue that money should be shifted from the war on crime to solving social problems. “As a society, we tend to look at social ills piecemeal with a focus on cosmetically fixing the apparent result without correcting the root causes of the problem.”(Shoemaker et al. 1993, 2386).

What do they offer in the way of specific changes to correct root causes or commence “social reconstruction”—only the following vague statement:

We cannot afford to stand by and watch human resources wasted or diverted to the world of illicit commerce and its accompanying violence. With imaginative and creative approaches, it may yet be possible to fulfill the real human needs even though this may require major rethinking and overhauling of the bureaucratically driven public educational and health care apparatuses that have been designed top-down (Shoemaker *et al.*, 1993: 2386).

## E. Discussion of Ideological Implications

Although there is much moaning and groaning and gnashing of teeth about poverty, racism, etc., except perhaps for attacks on the media (which seem to be more associated with conservatives), the solutions are uniformly liberal tinkering rather than radical reform.

As Whitman pointed out (quoted in Harries 1990: 189), “if violence is a health issue, then its prevention will be pursued honestly when major medical journals begin to publish articles that cite capitalism, racism, and sexism as causes.”

Interviews with leaders of the movement also provide insight into the ideology of the perspective. CDC Director James Mason was interviewed about crime in a 1984 article in *Science* (Meredith 1984). The interviewer, Meredith, pointed out that “[s]ome researchers claim that although the concept is out of fashion, the only way to reduce homicide appreciably is to ‘do something’ about unemployment or poverty.”

According to Meredith (1984: 45):

CDC Director James Mason resists this sort of global approach. He points out that other public health measures have been successful with poverty related problems—such as venereal disease, lead poisoning and tuberculosis—without trying to alleviate the social problems related to them. “In the same way, I think we can do something about violence without having to come up with the solution to poverty.”

Meredith also notes (1984: 45) that CDC official Mark Rosenberg and others talk vaguely about improving social and cultural factors. These goals sound uncomfortably like some of those of Lyndon Johnson’s war on poverty—noble in purpose but less than impressive in effecting significant social change.

Rosenberg notes (quoted in Meredith 1984: 45) “Some people have suggested that young black men have little to live for

and that consequently their lives or the lives of their friends may not be worth much to them.”

What is Rosenberg’s solution to the problem he poses? “Maybe starting with very young kids in schools and churches and giving them the message that their lives are worth something might make a difference” (quoted in Meredith 1984: 45).

James Mercy M.D., Director of the Violence Prevention Division of the CDC, was interviewed in *America* magazine (Anderson 1995). When the topic of more attention being paid to “some of the deeper social causes of gun violence like poverty . . .” was brought up (Anderson 1995: 29) he responded that new policy approaches would be necessary, but at least with the new emphasis on gun violence as a health, regulatory and safety products issue, a beginning has been made in the search for a solution to a problem that is old and worsening (Anderson 1995: 29 paraphrase of response).

Dr. Mercy offers no proposals for dealing with the deeper social issues. He is apparently too busy with his public health agenda. Social reform can be put off. A radical would say that Mercy “fiddles while Rome burns” and is so obsessed with Band-Aids that he doesn’t have time to work on the cancer.

The failure of most of the literature to address the possibility that central features of the American political economy are among the causal factors in violence (Kopel 1995: 273), is not surprising, and illustrates the diversionary or scapegoating function of ideologies of crime, including gun control ideology (Kessler 1988). One of the nation’s wealthiest and influential occupational groups is not likely to call for radical change that could threaten their affluence and influence. A focus on gun violence and other forms also divert attention from allegations that there are thousands of deaths each year from unnecessary surgeries, unnecessary injections and prescriptions of drugs. In addition to the lives lost and

ruination of health, millions of dollars are wasted (Reiman 1990: 64-67).

## **Part II. Civil Liberties And Gun Control**

### **A. Author's Civil Liberties Perspective**

In this paper the term “civil liberties” refers to a perspective which contends that all rights enunciated in the U.S. Constitution and its amendments should be interpreted liberally in favor of the individual citizen. It argues for what LaFave and Israel (1992: 73-4) term a “preference for expansive interpretations” of constitutional protections. This perspective argues that although most rights are not absolute, currently recognized limits on government power must be respected and not reduced. However, this perspective is not limited by current Supreme Court or lower court holdings that are not expansive. A historical example would be to continue to urge in 1897 that equal protection is not satisfied by separate but equal in spite of the U.S. Supreme Court’s holding to the contrary in *Plessy v. Ferguson* (1896).

Two contemporary examples would be the Fourth and Second Amendments. For example, in *Acton v. Veronia School District* (1995) and other cases, the court has upheld searches and seizures without warrants, probable cause or any individualized suspicion. Despite these decisions, this perspective would argue that at least in the free world, a warrantless search or seizure involving a person must be based on at least some incriminating information relating to this particular individual. In the Second Amendment context, this approach would argue for an expansive, individual right to keep and bear arms in spite of extensive legal authority to the contrary.

### **B. First Amendment Freedom of Speech and Press**

## 1. Background

In 1976, at least partly in response to an article in the Journal of the American Medical Association, the American Medical Association (AMA) House of delegates passed resolution 38 which provided: “The House declares TV violence threatens the health and welfare of young Americans, commits itself to remedial actions with interested parties, and encourages opposition to TV programs containing violence and to their sponsors” (quoted in Centerwall 1992: 3059).

Other organizations such as the American Academy of Pediatrics and American Psychological Association have also condemned violence in the media (Centerwall 1992: 3059).

## 2. Analysis Of The Two Books

Prothrow-Stith and Weissman (1991: ch. 3) devote an entire chapter (“Teaching Our Kids to Kill”) to media violence. They claim that the “mass media lie about the physical and emotional realities of violence” (1991: 34), promotes sexism (1991: 37), desensitize children “to the wrongness of what they are seeing” (1991: 45), and are “one of the factors that causes some young people to behave violently (1991: 41). Her solutions are vague. Prothrow-Stith makes no calls for government intervention. This is consistent with a civil liberties perspective. On the other hand there is no cautionary statement that any government action against the media must meet First Amendment requirements. Such cautionary statements should have been included because some who read the book and are convinced that the media are a problem, may advocate government action inconsistent with the First Amendment.

Rosenberg and Fenley (1991) have no chapter on the media and violence and the issue is mentioned briefly in chapter 2,

“Assaultive Violence”, by Rosenberg and Mercy (1991). They neither call for legislation nor mention First Amendment issues.

### 3. Analysis of Other Literature

As in the two books, Rosenberg, O'Carroll and Powell (1992: 3072) note that among the “distinctive features of American society” that are “impediments” to reducing violence is the depiction of violence in the media. They note (1992: 3072) that:

Exposure, especially of impressionable children and youths, to the creatively captivating scenes of aggression and violence depicted in the media fosters our acceptance and expectation of violence in America and probably contributes to the frequency of aggressive acts themselves.

Nowhere in the article, not even in a footnote, is there any expression of concern about the need for media control to conform to First Amendment requirements.

On the other hand, at least two articles do mention the First Amendment. Another critic of media violence, Brandon Centerwall (1992) calls for voluntary citizen action and a rating system for violence and expresses concern for First Amendment values. Sege and Dietz (1994) criticize media violence and, like Centerwall, recognize the First Amendment problem.

### 4. Discussion

The record examined above is a mixed one. There is some reluctance to utilize the government to control the media and some discussion of First Amendment issues. On the other hand, there is also some failure to recognize the issues. In general, the civil liberties implications for the First Amendment are very troubling given the current atmosphere in which First Amendment

values are under attack. The massive communications bill signed by President Clinton on Feb. 8, 1996 contains many provisions for “cleaning up” TV and the Internet (Beck: 1996). Key portions of the act were found in violation of the First Amendment by the U.S. Supreme Court in *Reno v. American Civil Liberties Union* (1997). Many of these provisions raise troubling First Amendment issues (Beck 1996, Bash 1996, Zoglin 1996). Equally troubling is the move by gun control advocates to use federal law and the federal trade commission against advertisements for firearms for self-defense. The move to stop the advertisements is based in part on public health studies which attempt to show that guns kept at home are more likely to cause harm to innocent family members than they are to intruders (Odessa American 1996). Among the sponsors of the action was the American Academy of Pediatrics (Silver City Daily Press 1996).<sup>5</sup>

### **C. Gun Control, Second Amendment and Enforcement Issues**

#### **1. Background**

Consistent with the definition of a “civil liberties” perspective, for this paper it is assumed that, contrary to the weight of most legal authority, (but consistent with the weight of most scholarly authority Kates 1995: 242 and n 48) that the Second Amendment is incorporated against the states and gives individuals *some* rights to purchase, keep, possess and utilize commonly owned firearms. It is assumed the Amendment would allow laws limiting access by children, the mentally ill, retarded or impaired, and convicted felons. It is not necessary to flesh out the contours of this right as most of the public health literature assumes that there are no rights granted to individuals under the Amendment.

Enforcement of gun laws often involves privacy, search and seizure, due process and entrapment issues which implicate civil

rights (See Kessler 1980, Walker 1985: 157). Some examples are discussed below.

In 1993 the Chicago Housing authority began warrantless, suspicionless searches of public housing apartments and their tenants for weapons. A U.S. District Judge overturned the policy (Grossman: 1994).

An example of insensitivity to privacy issues comes from President Clinton's Interdepartmental working group on violence that took a public health approach to violence and suggested, in part, a mental health background check as part of the Brady Bill's five-day waiting period. Wright (1995: 50) points out the problems with a "mental health background check":

Unlike felony records, which are public by definition, mental health records are highly privileged and extremely confidential. The same is true of alcohol and drug histories. A national data system containing everybody's "mental health background" and directly accessible to every gun dealer in the country poses some serious privacy issues to say the least.

Many of the problems we face in the "War on Drugs" will surface in a "War on Guns" (See Bovard 1994: ch. 7). The U.S. Senate Subcommittee on the Constitution investigated BATF enforcement tactics and concluded that "enforcement tactics made possible by current firearms laws are constitutionally, legally and practically reprehensible" (quoted in Bovard 1994: 221).

In January 1994 the ACLU, NRA and other groups jointly sent a letter to President Clinton about specific documented cases of federal law enforcement abuse and expressing concern about civil liberties. Among the incidents cited were the infamous siege at Waco and the Ruby Ridge incident—both of which involved alleged violations of federal gun laws (NRA 1994; See Appendix A for a copy of the letter).

Finally, a U.S. Circuit Court Judge (Wilkey: 1977) called for abolition of the exclusionary rule and wrote that the exclusionary rule has made unenforceable the gun control laws we have and will make ineffective any stricter controls that may be revised.

## 2. Analysis of the Two Books

Prothrow-Stith writes: “My own view on gun control is simple. I hate guns and cannot imagine why anyone would want to own one. If I had my way, gun for sport would be registered and all other guns would be banned.” (Prothrow-Stith and Weissman 1991: 198).

She is not optimistic about seeing her program put into legislation, but is more optimistic about a ban on assault weapons (later enacted by Congress) and making handguns childproof (1991: 199). She writes that “. . . a connection between the proliferation of handguns and the mounting homicide rate seems hard to deny (1991: 18).

In the Introduction to *Violence in America*, Rosenberg and Fenley contend that “Violence is a Public Health Problem” and that reducing firearms injuries are “A Public Health Priority” (1991: 3, 5). In terms of specific recommendations, they (1991: 9) seek a goal of reducing weapons carrying by adolescents and reducing the proportion of firearms that are stored in an unsafe fashion.

In the Chapter on “Assaultive Violence,” Rosenberg and Mercy (1991: 44) suggest that we create “strategies to reduce injuries associated with firearms.” They write (1991: 46):

Common approaches to the prevention of firearms injuries include: (1) strict licensing, (2) prohibitions against buying, selling or possessing guns, (3) prohibitions against carrying (but not owning) guns; and (4) mandatory penalties for the use of a gun in the felony and for carrying unlicensed firearms. There is little scientific evidence to show definitively that legislative approaches

such as those listed above are effective in controlling firearms injuries.

In contrast to Prothrow-Stith, these authors seem to take a more agnostic approach on gun control.

### 3. Analysis of Other Literature

Although there are exceptions (*e.g.*, Caruth 1994, Faria, 1994, Pratt 1994), it appears that the dominant position in the literature is anti-gun. (Kates, 1995). For instance, three editors of the prestigious *New England Journal of Medicine*, have endorsed further gun control (Kassirer 1991: 1649).

According to Kates *et al.* (1995: 234):

In 1979 the federal government's public health forces adopted "the objective to reduce the number of handguns in private ownership," the initial target being a 25 percent reduction by the year 2003. Based on studies and leadership from the Centers for Disease Control and Prevention (CDC), the objective has been broadened so that it now includes: banning and confiscation of all handguns, and restrictive licensing of owners of other firearms, with the goal of eventually eliminating firearms from American life, excepting (perhaps) only an elite of wealthy collectors, hunters or target shooters (footnotes omitted).

In a "Commentary" in the *Journal of the American Medical Association*, (Adler *et al.*, 1994: 1281), 19 physicians and public health officials call for a number of gun control strategies. They recommend that "a national firearms control program should be implemented to focus on restricting firearms ownership through limitations of licensing to those who can rigorously justify a purpose for owning a gun." They would also ban civilian access to "military-style assault weapons."

In an article entitled “Toward Reducing Pediatric Injuries From Firearms: Charting a Legislative and Regulatory Course,” Christoffel (1991: 297-9) discusses the pros and cons of various gun control strategies. Among the options discussed is a Handgun ban (1991: 302). There is no discussion of possible difficulties or constitutional problems in enforcing these proposals.

In a 1992 editorial in the *Journal of the American Medical Association*, former U.S. Surgeon General C. Everett Koop and another physician (1992: 3075) recommend, among other things, registration and licensing of gun ownership.

None of the sources consulted above even mentioned possible Second Amendment issues or the inevitable search and seizure and privacy-related problems that would accompany such strict measures (see Kessler 1988).

#### 4. Treatment Of The Second Amendment In The Medical And Public Health Literature.

In the materials on gun control discussed above, there is no treatment at all of the Second Amendment. Those authors apparently feel it is irrelevant.

Christoffel (1991: 295) argues that the Second Amendment does not grant any individual rights. Dolins and Christoffel (1996: 648) apparently feel the Second Amendment is no problem for gun controllers and attribute the idea to the “gun lobby”.

Vernick and Teret (1993) concluded:

At some time in the future, the Supreme Court may, in fact, overrule *Presser* and *Miller* and grant to the NRA and others the interpretation of the Second Amendment they seek. Until that time, however, public health advocates should understand that the Second Amendment poses no real obstacle to the implementation of even broad gun control legislation.

These authors interpret the *Presser* and *Miller* cases in a fashion inconsistent with an individual right to keep and bear arms. However, there are other equally rational interpretations of those two cases that lead to opposite conclusions (*e.g.*, Halbrook 1984: ch. 6). The fact that there is an impressive amount of scholarly authority that supports an individual rights interpretation (Kates 1995: 242 and n. 48, *e.g.*, Halbrook 1984) is not mentioned. Their narrow reading is inconsistent with the expansive reading that a civil liberties perspective would demand.

On the other hand, four articles in 1994 the *Journal of the Medical Association of Georgia*, (Caruth 1994, Faria, 1994, Pratt 1994, Suter, 1994) take an individual rights position.

## 5. Discussion

The potential civil liberties problems in enforcement of stringent gun control are generally ignored. Although there are some few and far between exceptions, most of the literature seems to feel that the Second Amendment is irrelevant, thus implicitly denying that it grants any rights to individuals. When the Amendment is specifically discussed, which appears to be a rarity, opinion is split but, on balance, appears to deny individual rights under the Second Amendment.

Another disturbing sub-theme in the literature is the contention that firearms are useless for protection and are much more likely to result in harm to innocent people than criminals (*e.g.*, Kellerman and Reay 1986, Kellerman *et al* 1993). (This was one of the main points in the NIJ film discussed above). This is the basis of the attempt to ban certain firearms advertising (Odessa American 1996). Subject to serious methodological problems (Suter 1994: 136-37), this research is used to justify handgun bans or other severe restrictions, and serves to reduce resistance to civil liberties abuses. As the ability of people to defend themselves is reduced and they become more and more dependent on government for protection (and other services), the

likelihood that they will challenge abuses of government power are diminished (Kessler 1984: 460-62).

Finally, as Suter (1994: 145-46) points out:

The deceptions in the medical literature are not restricted to scientific issues. The insurmountable practical and constitutional impediments to gun control are either offhandedly or deceptively discounted. Neither practical matters, such as the massive expense and civil rights violations necessary to enforce gun bans, nor historic matters such as the racist and oppressive roots of gun control are discussed by medical politicians who advocate gun bans.

### **Part III. Conclusion**

By and large, the public health perspective is ideologically liberal. There is much anguish expressed about poverty, lack of opportunity, etc., but no significant solutions are proposed. Crimes of the medical profession and state are generally ignored. This serves the interests of a powerful and wealthy profession.

In general, protecting civil liberties and the values of a free society are not high priorities. There is some concern about First Amendment values, but probably not enough given the current attack on the First Amendment values. The civil liberties problems of enforcing gun bans, background checks, etc. are virtually ignored. Second Amendment rights are denigrated or ignored in most of the literature.

The overall picture is one of advocacy of more top-down federal government programs and laws that do more to foster dependence than to empower those who need help (See Walker 1985: 223).

In this authors opinion, the public health approach should appeal to those with liberal leanings who lack a broad-based

commitment to civil liberties. Those who prefer a safe and orderly society controlled by a massive government over a free society should find this approach congenial.

## ENDNOTES

The author would like to acknowledge assistance in the way of materials provided by the American Civil Liberties Union and the National Rifle Association. The views expressed herein are not necessarily those of these organizations or the author's employer. Any errors are the sole responsibility of the author.

1. This same film has also been released by NIJ under the title "Kellerman: Violence a Public Health Perspective." The actual title of Dr. Kellerman's presentation was "A Public Health Perspective on Firearms Violence." It is disturbing that NIJ has not released a film by equally or better qualified researchers whose research is in some respects inconsistent with Dr. Kellerman's (e.g., Dr. Gary Kleck). If NIJ is really seeking knowledge in a disinterested fashion (rather than becoming a mouthpiece for the administration's pet theories) they should seek to provide balance in their coverage.

2. The American Civil Liberties Union branded the bill "draconian and poorly conceived," a "civil liberties nightmare come true," full of "constitutional defects" and a response to "public hysteria." (American Civil Liberties Union 1994: 2). The U.S. Supreme Court has already found one portion of the act unconstitutional *U.S. v. Lopez*, 115 S.Ct. 1624 (1995).

3. Other overviews can be found in Prothrow-Stith and Weissman (1991: ch. 9) Anderson (1995) and Meredith (1984).

4. See also Kessler (1980, 1984). In response to Kates 1995: 263, n. 165, and to clarify a misunderstanding between Kates and this author, the following is offered. Although the author believes a "Marxist" or "critical" or "conflict" approach is currently the best one to *understand* ideology, and political economy, the author is a "Marxist" to that extent only. The author is not a "Marxist" in the political advocacy sense. A Marxist perspective provides useful analytical tools. However, in the real world of political, Marxism is authoritarian and utopian. It is inconsistent with a sincere commitment to civil liberties (as witnessed by the Russian and Chinese experiences). The massive government apparatus necessary to carry out socialist or Marxist reforms will inevitably weaken, if not destroy, civil liberties. An imperfect capitalist democracy is preferable to a repressive Socialist or Communist regime. Politically,

the author would describe himself as a “liberal” on some issues (supporting Head Start and Social Security) who also believes that an expansive interpretation of all civil liberties (including the Second Amendment) such that these rights must take precedence over liberal social engineering.

With regard to the causation of crime, the issue for those interested in ideology is not what actually causes crime, but what people *think* causes crime. What people think cause crime will be consistent with their ideology. For analytical purposes, this paper starts with the left-wing assumption that certain features of a capitalist political economy “cause” crime. However, it should be obvious that crime is a feature of all types of political economies. The political economy probably shapes the form of crime rather than causing it. For instance, in the old Soviet Union there probably wasn’t much big-time private sector white-collar crime as compared to the U. S. In terms of “causation” this author believes that family and socialization experiences are the key “causes” of crime. However, this does not authorize large-scale government intrusion into the lives of families.

5. For some background on this FTC action see Anderson 1995: 28.

## References

- Adler, Karl P., *et al.*, Firearm Violence and Public Health. Limiting the Availability of Guns. *Journal of the American Medical Association*. 271 (16), 1281-82.
- American Civil Liberties Union (1994) *Memorandum re: Analysis of Major Civil Liberties Abuses in the Crime Bill Conference Report As Passed by the House and Senate* (Sept. 1, 1994).
- Anderson, George N. (1995, March 11). Approaches. *America*, 26-29.
- Baker, James Jay. (1994, February). Gun Control is Bad Medicine. *American Rifleman*. pp. 40, 41, 76-79.
- Bash, Alan (1996) “Violence Study Adds Fuel to Vchip Debate” *U.S.A. Today*, Feb. 12, 1996 p. 3-D.
- Beck, Joan (1996) “Morality won’t be legislated” *Odessa American*, Feb. 14, 1996, p. 6-A.

Blackman, Paul H. (1990, November). *Criminology's Astrology: The CDC Approach to Public Health Research on Firearms and Violence*. Paper presented at the annual meeting of the American Society of Criminology, Baltimore, Maryland.

Blackman, Paul H. (1992, November). *Children and Firearms: Lies the CDC Loves*. Paper presented at the annual meetings of the American Society of Criminology, New Orleans, Louisiana.

Blackman, Paul H. (1994, March). *The Federal Factoid Factory on Firearms and Violence: A Review of CDC Research and Politics*. Paper presented at the annual meeting of the Academy of Criminal Justice Sciences, Chicago, Ill.

Blackman, Paul H. (1995, November). *The Epidemiologic Study of Firearms and Violence: The Need for Basic Science*. Paper presented at the annual meeting of the American Society of Criminology, Boston, Mass.

Bovard, James (1994). *Lost Rights: The Destruction of American Liberty*. New York: St Martins Press.

Callahan, Charles M. (1992). Urban High School Youth and Handguns: A School-Based Survey. *Journal of the American Medical Association* 267. (22), 3038-42.

Caruth, W.W. III. (1994) Guns: Health Destroyer or Protector? *Journal of the Medical Association of Georgia*, 83, 157-59.

Centers for Disease Control. (1992). Firearm-Related Deaths-Louisiana and Texas, 1970-1990, *Journal of the American Medical Association*. 267. (22), 3008-09.

Centerwall, Brandon S. (1992). Television and Violence: The Scale of the Problem and Where to Go From Here. *Journal of the American Medical Association*, 267, (22), 3059-63.

Charren, Peggy., Arnold, Milton., & Gelber, Andrew. Media, Children, and Violence: A Public Policy Perspective. *Pediatrics*. 94 (4), 631-37.

Christoffel, Katherine Kaufer. (1991, August). Toward Reducing Pediatric Injuries From Firearms: Charting a Legislative and Regulatory Course. *Pediatrics*, 88 (2), 294-305.

- Council on Scientific Affairs, American Medical Association. (1992, June 10). Assault Weapons as a Public Health Hazard in the United States, *Journal of the American Medical Association* 267 (22), Chicago, Ill.
- Dolins, Judith Cohen., Christoffel, Katherine Kaufer. (1994, October). Reducing Violent Injuries: Priorities for Pediatrician Advocacy. *Pediatrics*. 94 (4), 638-651.
- Faria, Miguel A. (1994). On the *Journal's* New Look and the Right to Self-protection. *Journal of the Medical Association of Georgia*. 83. 129-31.
- Fingerhut, Lois A., Ingram, Deborah D., Feldman, Jacob. (1992). Firearm and Nonfirearm Homicide Among Persons 15 Through 19 Years of Age: Differences by Level of Urbanization, United States, 1979 Through 1989. *Journal of the American Medical Association*, 267, (22). 3048-53.
- Foege, William (1975). Preface. In Mark L. Rosenberg & Mary Ann Fenley (Eds.), *Violence in America: A Public Health Approach* (pp. vii-xi). Oxford, New York: Oxford University.
- Gottfredson, Michael R. and Hirschi, Travis. (1995) National Crime Control Policies. *Society*. (Jan./Feb.) 30-36.
- Hanlon, John J., (1964). *Principles of Public Health Administration* (4th ed.). Saint Louis: C.V. Mosby Company.
- Harries, Keith D. (1990). *Serious Violence: Patterns of Homicide and Assault in America*. Springfield, Ill.: Charles C. Thomas.
- Halbrook, Stephen P. (1984) *That Every Man Be Armed*. Oakland Calif.: The Independent Institute.
- Hawkins, J. David. (1995). Controlling Crime Before It Happens: Risk-Focused Prevention. *National Institute of Justice Journal*, (Issue 229). 10-18.
- Ingelfinger, F. J. (1968). Therapeutic Action for a National Ill. *The New England Journal of Medicine*, 278, (25). 1399-1400.
- Kassirer, Jerome P. (1992). Editor's Reply. *The New England Journal of Medicine*, 326, (17). 1160-61.
- Kassirer, Jerome P. (1991). Firearms and the Killing Threshold. *The New England Journal of Medicine*, 325, (23). 1647-50.
- Kassirer, Jerome P. (1993). Guns in the Household. *New England Journal of Medicine*, 329, (13). 1117-19.

- Kates, Don B. *et al.* (1995). *Bad Medicine: Doctors and Guns*. In David B. Kopel (ed.) *Guns: Who Should Have Them?* (pp. 233-308). Amherst, New York: Prometheus Books.
- Kellerman, Arthur L. and Reay, Donald T. (1986). Protection or Peril?: An Analysis of Firearm-Related Deaths in the Home. *New England Journal of Medicine*, 314, (24). 1557-60.
- Kellerman, Arthur L., et al. (1993). Gun Ownership as a Risk Factor for Homicide in the Home. *New England Journal of Medicine*, 329 (15) 1084-91.
- Kessler, Raymond G. (1980). Enforcement Problems of Gun Control: A Victimless Crimes Analysis. *Criminal Law Bulletin* 16 (1980) 131-49.
- Kessler, Raymond G. (1984). The Political Functions of Gun Control, pp. 457-88 in Don B. Kates, (ed). *Firearms and Violence*. New York: Ballinger Pub. Co.
- Kessler, Raymond G. (1988). Ideology and Gun Control. *Quarterly Journal of Ideology*. 12 (2). 1-10.
- Koop, C. Everett., Lundberg, George D. (1992). Violence in America: A Public Health Emergency. *Journal of the American Medical Association*, 267, (22). 3075 -3076.
- Kopel, David B. (1994). The Allure of Foreign Gun Laws. *Journal of the Medical Association of Georgia*, 83, 153-55.
- Kopel, David B. (1995). Guns, Germs, and Science: Public Health Approaches to Gun Control. *Journal of the Medical Association of Georgia*, 84, 269-73.
- LaFave, Wayne R. and Jerold H. Israel (1992). *Criminal Procedure*. (2nd ea.) St. Paul, Minn: West Publishing.
- Levy, Doug. (1995, August 25). Doctors, NRA Take Aim at CDC's Anti-violence Program. *USA Today*. p. 3A.
- Lee, Roberta K., Waxweiler, Richard J., Dobbins, James G., and Paschetag, Terri. (1991). Incidence Rates of Firearm Injuries in Galveston, Texas, 1979-1981. *American Journal of Epidemiology*, 134, (5). 511-21.

- Loftin, Colin., McDowall, David., Wiersema, Brian., and Cottey, Talbert J. (1991). Effects of Restrictive Licensing of Handguns on Homicide and Suicide in the District of Columbia. *New England Journal of Medicine*, 325, (23). 1615-20.
- Marwick, Charles. Guns, Drugs Threaten to Raise Public Health Problem of Violence to Epidemic. (1992). *Journal of the American Medical Association*, 267, (22). 2993.
- Meredith, Nikki. (December 1984). The Murder Epidemic. *Science*, 84, 43-48.
- Miller, Walter B. (1973). Ideology and Criminal Justice Policy: Some Current Issues. *Journal of Criminal Law and Criminology*, 64, (2). 14-62.
- National Rifle Association (1995a). ILA Report. *American Rifleman*, Sept. 1995, p. 20.
- National Rifle Association (1995b). *NRA Backgrounder: Words-and In-action*. Fairfax, Va: National Rifle Association.
- Odessa American*, Lobby Shoots Down Gun Advertisements, Feb. 19, 1996, p. 3-A.
- Pratt, Larry. (1994). Health Care and Firearms. *Journal of the Medical Association of Georgia*, 83, 149-52.
- Prothrow-Stith, Deborah. (1989). The Fight Against Adolescent Violence: A Public Health Approach. *The Criminologist*, 14, (1). p. 1, p. 15-17.
- Prothrow-Stith, Deborah and Michaela Weissman (1991). *Deadly Consequences*. New York: Harper Collins.
- Reiman, Jeffrey (1990). *The Rich Get Richer and The Poor Get Prison*. (3rd ed.). New York: Macmillan Publishing.
- Relman, Arnold S. (1977). More Than Sutures and Transfusions. *New England Journal of Medicine*, 297, (10). 552-53.
- Rosenburg, Mark L. & Mary Ann Fenley (1991). (Eds.) *Violence in America: A Public Health Approach*. Oxford: Oxford University.
- Rosenburg, Mark L. & James A. Mercy (1991). In Mark L. Rosenberg & Mary Ann Fenley (Eds.) Introduction. *Violence in America: A Public Health Approach*. (pp. 3-13). Oxford: Oxford University.

- Rosenburg, Mark L., O'Carroll, Patrick W., Powell, Kenneth E. (1992). Let's Be Clear: Violence is a Public Health Problem. *Journal of the American Medical Association*, 267, (22). 3071-72.
- Roth, Jeffrey A. and Mark H. Moore (October 1995). *Reducing Violent Crimes and Intentional Injuries*. (NCJ Pub. No. 156089)(Wash.: U.S. Dept. of Justice).
- Rushforth, et al. (1975). Accidental Firearm Fatalities in a Metropolitan County (1958-1973). *American Journal of Epidemiology*, 100, (6). 499-538.
- Sacco, Vincent, Kennedy Leslie, W. (1996). *The Criminal Event*. Belmont: Wadsworth Publishing Company.
- Saltzman, Linda E., Mercy, James A., O'Carroll, Patrick W., Rosenberg, Mark L., and Rhodes, Phillip H. (1992). Weapon Involvement and Injury Outcomes in Family and Intimate Assaults. *Journal of the American Medical Association*, 267, (22). 3043-47.
- Sege, Robert, Dietz, William. (1994, October). Television Viewing and Violence in Children: the Pediatrician as Agent for Change. *Pediatrics*, 94, (4). 600-07.
- Siegel, Larry J. and Joseph J. Senna (1994). *Juvenile Delinquency: Theory, Practice and Law*. (5th ed.). St Paul: West Publishing.
- Silver City Daily Press (1996). Group Demands FTC Ban Firearms Advertisements. Feb. 15, p. 5, col 1-6.
- Spivak, Howard. (1994, October). Violence Prevention: A Call to Action. *Pediatrics*. 94. (4). 577-87.
- Suter, Edgar A. (1994). Guns in the Medical Literature-A Failure of Peer Review. *Journal of the Medical Association of Georgia*. 83. 133-48.
- Shoemaker, William C., James, C. Boyd, King, Lewis M., Hardin, Eugene, and Ordog, Gary J. (1993). Urban Violence in Los Angeles in the Aftermath of the Riots: A Perspective from Health Care Professionals with Implications for Social Reconstruction. *Journal of the American Medical Association*, 270, (23). 2833-37.
- Slaby, Ronald G. and Stringham, Peter. (1994) Prevention of Peer and Community Violence: The Pediatrician's Role. *Pediatrics*, 94, (4) (Oct). 608-16.

Teir, Robert, Grossman, Harvey. (1994, July). Public Safety and Crime. *American Bar Association Journal*, 80, 40-41.

Teret, Stephen P., Wintemute, Garen J. and Beilenson, Peter L. (1992). The Firearm Fatality Reporting System. *Journal of the American Medical Association*, 267, (22). 3073-74.

Vernick, Jon S. and Teret, Stephen. (1993). Firearms and Health: The Right to Be Armed with Accurate Information about the Second Amendment. *American Journal of Public Health*, 83, (12). 1773-75.

Walker, Samuel (1985). *Sense and Nonsense about Crime: A Policy Guide*. Monterey, California: Brooks/Cole Publishing.

Webster, Daniel W. and Wilson, Nodena E.H. (1994) Violence among Youth and the Pediatrician's Role in Primary Prevention. *Pediatrics*, 94, (4). 617-22.

Wilkey, Malcolm Richard. (1977, October 7). Why Suppress Valid Evidence? *Wall Street Journal* p. 12.

Wilson-Brewer, Renee, and Spivak, Howard. (1994) Violence Prevention in Schools and Other Community Settings: The Pediatrician as Initiator, Educator, Collaborator, and Advocate. *Pediatrics*, 94, (4). 623-30.

Wissow, Lawrence S. and Roter, Debra. (1994). Toward Effective Discussion of Discipline and Corporal Punishment During Primary Care Visits: Findings From Studies of Doctor-Patient Interaction. *Pediatrics*, 94, (4). 587-93.

Wintemute, Garen J. (1987). Firearms as a Cause of Death in the United States, 1920-1982. *The Journal of Trauma*, 27, (5). 532-36.

Wilkinson, Francis. (1993, December 9). Gunning For Guns: Clinton Calls for Ideas on Confronting Violence. *Rolling Stone*. 36-37.

Wolfe, David A., and Korsch, Barbara. (1994, October). Witnessing Domestic Violence During Childhood and Adolescence: Implication for Pediatric Practice. *Pediatrics*, 94, (4). 594-99.

Wright, James D. (1995, March 6). Bad Guys, Bad Guns. *National Review*. 50-51.

Weil, Douglas S., Hemenway, David. (1992). Loaded Guns in the Home: Analysis of a National Random Survey of Gun Owners. *Journal of the American Medical Association*, 267, (22). 3033-37.

Zane, David F., Preece, Mary Jo, Patterson, Patti J., and Svenkerud, Erik K. (1991, November). Firearm-Related Mortality in Texas (1985-1990). *Texas Medicine*, 87, (11). 63-65.

Zane, David F., Preece, Mary Jo, Patterson, Patti J., Elerian, Nagla, Svenkerud, Erik, and Perrotta, Dennis M. (1993). Firearms are Leading Cause of Injury Mortality in Texas . . . Again. *Texas Medicine*, 89, (5). 26-27.

Zoglin, Richard, "Chips Ahoy," *Time*, Feb. 19, 1996, pp. 58-61.

### **Cases Cited**

Reno v. American Civil Liberties Union, 117 S.Ct. 2329, 1997.

Acton v. Veronia School District, 115 S. Ct. 2386, 1995.

U.S. v. Lopez, 115 S. Ct. 1624, 1994.

Plessy v. Ferguson, 163 U.S. 537, 1896.

Miller v. Texas, 153 U.S. 535, 1894.

Presser v. Illinois, 116 U.S. 252, 1886.

### **APPENDIX A**

SOURCE: NRA 1994

#### ON THE ISSUE OF GOVERNMENT VIOLENCE AND THE NEED FOR A NATIONAL OVERSIGHT COMMISSION

January 10, 1994

President William J. Clinton  
The White House  
1600 Pennsylvania Ave.  
Washington, D.C. 20500

Dear Mr. President:

We are writing to you to urge you to appoint a national commission to review the policies and practices of all federal law enforcement agencies and to make recommendations regarding steps that must be taken to ensure that such agencies comply with the law. This review is necessitated by widespread abuses of civil liberties and human rights committed by these agencies and their failure to undertake meaningful and ameliorative reforms.

Federal police officers now comprise close to 10 percent of the nation's total law enforcement force. Today, some fifty-three separate federal agencies have the authority to carry firearms and make arrests. This represents an enormous expansion in recent years in terms of both personnel and jurisdiction. What has led to numerous cases of serious abuse—some well-publicized and some relatively unknown—in which the following problems have been evident:

- improper use of deadly force;
- physical and verbal abuse;
- use of para-military and strike force units or tactics without justification;
- use of “no knock” entrances without justification;
- inadequate investigation of allegations of misconduct;
- use of unreliable informants without sufficient verification of their allegations;
- use of “contingency payments” to informants, giving them an incentive to fabricate information since payment is usually contingent upon a conviction;
- entrapment;
- unnecessary inducement of criminal activities as an investigative technique;
- inappropriate and disproportionate use of forfeiture proceedings to obtain financing for law enforcement equipment and activities;
- use of military units and equipment in the course of domestic law enforcement;
- pretextual use of immigration laws and Immigration and Naturalization Service personnel for non-immigration law enforcement.

There is a precedent for the appointment of a national commission to look into such abuses. In 1929, after a decade of corruption and lawlessness in federal law enforcement, President Hoover appointed the eleven-member National Commission on Law Observance and Enforcement under the chairmanship of

George Wickersham, a former U.S. Attorney General. The 1931 Wickersham Commission Report, "Lawlessness in Law Enforcement," exposed a pattern of pervasive police brutality and helped stimulate major reforms in federal law enforcement practices.

We propose the appointment of a national commission similar to the Wickersham Commission: an independent body, appointed by the President and staffed by some of the nation's most prominent experts on law enforcement. Such a commission would be charged with reviewing the problematic federal law enforcement policies and practices noted above. These problems are graphically illustrated by the following cases, among many others, that have come to our attention:

### **DONALD CARLSON**

On August 25, 1992 at about 10: 30 p.m., Donald Carlson returned to his home in Poway, California, opened his garage door with a remote control device, simultaneously illuminating the garage so that Drug Enforcement Administration agents conducting surveillance from nearby could see inside. Just after midnight, when Carlson was asleep, a group of DEA agents burst into his home. Thinking they were robbers, Carlson grabbed his pistol to defend himself. He also dialed 911 for help. The agents shot Carlson three times, twice after he was down and clearly disabled. Carlson spent seven weeks in intensive care, fighting for his life. No drugs were found on the premises.

It was later learned that the Federal Customs Service, the DEA and the U.S. Attorney's Office in San Diego had relied on an informant who was known to be untrustworthy and who claimed Carlson's garage contained 2,500 kilograms of cocaine (a large amount which would have taken up most of the garage) and four armed guards. The agents conducted the raid in spite of the fact they could see the informant's information was erroneous.

As of this writing, none of the federal agents involved in the incident have been sanctioned, nor has Mr. Carlson been compensated for his injuries.

### **SINA BRUSH**

Just after dawn on September 5, 1991 some sixty agents from the DEA, U.S. Forest Service, Bureau of Alcohol, Tobacco and Firearms (BATF), and National Guard, complete with painted faces and camouflage and accompanied by another twenty or more National Guard troops with a lighted armored vehicle, raided the homes of Sina Brush and two of her neighbors near Montainair, New Mexico. Brush and her daughter were still asleep. Hearing noises outside, Ms.

Brush got up and was only halfway across the room when the door was

kicked in by agents. Clad only in their underwear, Ms. Brush and her daughter were handcuffed and forced to kneel in the middle of the room while the agents searched the house. No drugs were found. Just as in the Carlson case, the police had obtained a warrant using information furnished by an unreliable informant and had entered Brush's home without knocking first.

### **DONALD SCOTT**

On October 2, 1992 DEA agents and the Los Angeles Sheriff's Department staged a raid on the Scott ranch in the Santa Monica Mountains near Malibu, California. When Scott emerged carrying a gun, a deputy sheriff shot and killed him. Although the agents claimed they were searching for marijuana plants, none were found. The Border Patrol, which had participated in the investigative work leading up to the raid, later claimed they were looking for undocumented aliens. None were found.

An independent investigation by the Ventura County District Attorney's Office concluded that the Sheriff's Department was motivated, in part, by a desire to seize and forfeit Scott's ranch. The investigation also questioned the DEA's claim that marijuana was observed through aerial surveillance.

### **BUREAU OF INDIAN AFFAIRS POLICE**

In the fall of 1993, the Associated Press reviewed 17 complaints of brutality filed in six Western reservations against the Bureau of Indian Affairs Police. They included complaints of choking, improper use of mace, and broken limbs. After this six month investigation the AP found that "BIA police officers routinely use force when arresting suspects and are rarely disciplined for assaulting them."

In another case which occurred in 1991, Milton Trosper, an Arapaho Indian, was seriously injured by BIA police who broke his arm during an incident on the Wind River Indian Reservation in Wyoming. Charges of disorderly conduct and resisting arrest against Trosper were dropped by the Shoshone and Arapaho Tribal Court, and in 1993 Trosper's civil suit against the government was settled for damages.

According to the Civil Rights Division of the U.S. Justice Department, although the BIA, with only 412 officers, is the smallest federal police force, it engenders the second highest number of complaints of misconduct. The BIA has no internal affairs unit and no complaint procedure.

### **IMMIGRATION LAW ENFORCEMENT OFFICERS**

The Justice Department receives the largest number of complaints of federal police misconduct against Immigration and Naturalization Service (INS) agents, particularly Border Patrol Officers. A 1992 report by Americas Watch, entitled "Brutality Unchecked," documented "appalling" levels of misconduct in which "(b)eatings, rough physical treatment, and racially motivated verbal abuse are routine." Acts of abuse included unjustified shootings, torture and sexual abuse. In a second report issued in May 1993, Americas Watch found that "the abuses continue and current mechanisms intended to curtail abuses and discipline officers are woefully inadequate."

### **THE BRANCH DAVIDIANS**

Last year's tragic confrontation between the Branch Davidians and federal agents has been reviewed by both the Treasury and Justice Departments. While these reviews find fault with the planning and execution of the government's attack on the Waco compound, they both accept the notion that armed confrontation was unavoidable. This is in spite of the fact that several independent experts who participated in the reviews seriously questioned the assault's inevitability.

For example, Alan Stone, a Harvard Professor of Psychiatry and Law, disagreed with "the view within the FBI and in the official reports that suggests the tragedy was unavoidable. n In his report, he noted that the FBI's own behavioral experts on the scene advised against the use of "all-out psycho-physiological warfare" and the abandonment of "any serious effort to reach a negotiated solution. n But the FBI ignored this advice, and launched a paramilitary attack that jeopardized the lives of the very children whose health and safety it claimed it wanted to protect. In particular, Professor Stone criticized the use of toxic levels of CS gas over a period of 48-hours in a building occupied by so many children. As Professor Stone writes, "The question is: did a 'military' mentality overtake the FBI?"

Another independent expert, Professor Nancy Ammerman of Princeton University, pointed out in her report that the FBI did not consult "a single...expert on the Branch Davidians or on other marginal religious movements..." She also noted that the psychological warfare tactics employed by the FBI, including the sounds of dying rabbits, the use of flood lights, and helicopters hovering overhead, were not favored by the Bureau's own Behavioral Science Services Unit. In fact the Unit advised that the "ever increasing tactical presence...could eventually be counter productive and could result in loss of life."

A third independent expert, New York University Professor of Psychiatry Robert Cancro, questioned whether the military model used by the federal agents for the assault was “an appropriate model for dealing with a group such as the Branch Davidians.”

At this time it is not clear that the reviews conducted by the Treasury and Justice Departments will lead to any meaningful changes in the way the FBI or Bureau of Alcohol, Tobacco and Firearms (BATF) will handle such situations in the future.

### **RANDY WEAVER**

Randy Weaver became a fugitive in 1992 after the BATF tried to compel him to infiltrate a neo-Nazi organization. BATF agents originally targeted white separatist Weaver, a veteran with no criminal record, because they erroneously believed him to be a member of the organization. A BATF informer convinced Weaver to saw off two shotguns and then sell them to him. The BATF then told Weaver he would be indicted on the gun charge unless he served as a government informant. After receiving inconsistent information concerning his trial

date from the court clerk, and fearful that the government intended to harm his family, Weaver failed to appear in court, remaining with his family in his isolated mountain cabin in Idaho.

The U.S. Marshal's Service attempted to apprehend Weaver. In August 1992 the Weaver's dog began to bark at six camouflaged marshals in the vicinity of the cabin who were carrying fully automatic assault weapons. When Weaver's fourteen-year-old son went to investigate, the marshals shot the dog. In an exchange of gun fire, Weaver's son was shot in the back and killed, and a deputy marshal was killed.

The FBI Hostage Rescue Team arrived the following day and issued extraordinary orders to its agents to shoot any armed adult on sight whether or not he posed an immediate danger. no attempt was made to talk with Weaver. When Weaver, his teenage daughter and a friend went from their cabin to an outbuilding where the son's body lay, an FBI sharpshooter opened fire, killing Weaver's wife as she stood in the cabin doorway holding her 10-month old daughter. Nine days later Weaver and his friend, Kevin Harris, surrendered and were charged with the murder of the U.S. Marshal and criminal conspiracy.

Ultimately, a federal jury acquitted Weaver and Harris of all charges, except for Weaver's failure to appear for trial on the original gun charges. Judge Edward J.

Lodge fined the FBI, charging that the Bureau's conduct had "served to obstruct the administration of justice" and that "(t)he actions of the Government, acting through the FBI evidence a callous disregard for the rights of the defendants and the interests of justice."

We recognize that the majority of federal officers strive, often under dangerous and demanding circumstances, to carry out their duties in a restrained, lawful and professional manner. But the cases described above demonstrate the need for leadership and accountability in order to prevent future incidents of abuse.

Therefore, we urge you to appoint a national commission composed of law enforcement experts, constitutional scholars, criminal defense lawyers and prosecutors, judges, representatives of federal law enforcement professional and labor organizations, and representatives of organizations that monitor police practices. Several of the undersigned organizations can provide you with the names of potential commission members for your consideration.

For more than fifty years the federal government has provided leadership, training and resources in the ongoing effort to improve the nation's system of law enforcement. The creation of a high level national commission will contribute greatly to the continued improvement of federal police agencies by helping to ensure that federal police not only enforce the law in an effective, humane and constitutional manner, but that they also serve as models. for local and state law enforcement agencies.

Sincerely,

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## **A JOINT LETTER FROM A COALITION OF DIVERSE ORGANIZATIONS CONCERNED ABOUT CIVIL RIGHTS**

April 26, 1995

In the current climate of understandable fury at the bombing in Oklahoma City and of justifiable pride in the accomplishment of the FBI and other law enforcement organizations, we urge you to examine any new counterterrorism proposals with calm deliberation and in light of their constitutional implications.

Our hearts go out to the people of Oklahoma. Like all Americans, we want to see all those responsible for the bombing brought to justice and a quick rebuilding of the Oklahoma community affected by this disaster. The national government has a responsibility to provide for the safety of the American people, but you are now considering measures that threaten our basic freedoms.

We are strongly opposed to provisions of the Omnibus Counterterrorism Act of 1995, H.R. 896 or S. 390, which allow the government to engage in activities contrary to constitutional principles of due process, free speech, and freedom of association. We are also strongly opposed to proposals to increase the government's authority to monitor groups, domestic and international in the absence of reasonable suspicion of criminal activity.

We are fully supportive of law enforcement, but history is clear that when the nation has overreacted in moments of crisis, the results have been bad for basic freedoms and have diverted law enforcement from its basic mission of apprehending criminals.

If federal law enforcement agencies need more resources, we support that, as long as they are well thought-out, focused on criminal conduct and otherwise consistent with constitutional principles. We urge you not to act rashly. We urge you to allow full public participation in your hearings and deliberations on any legislation. Finally, we urge you to avoid undermining constitutional protections.

This joint statement was endorsed on April 26 by officials from the following organizations:

American Civil Liberties Union.  
Americans for Tax Reform.  
American Friends Service Committee.  
American Immigration Lawyers Association.  
Center for Democracy and Technology.  
Citizens Committee for the Right to Keep and Bear Arms.  
Gun Owners of America.  
Law Enforcement Alliance of America.  
National Association of Criminal Defense Lawyers.  
National Rifle Association of America.  
Presbyterian Church (SA) Washington Office.  
Second Amendment Foundation.