

Nos. 08-4241, 08-4243, 08-4244

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

OTIS McDONALD, ET AL., Plaintiffs-Appellants,

v.

CITY OF CHICAGO, Defendant-Appellee.

Case No. 08-CV-3645

NATIONAL RIFLE ASSOCIATION OF AMERICA, INC. ET AL., Plaintiffs-Appellants,

v.

VILLAGE OF OAK PARK, Defendant-Appellee.

Case No. 08-CV-3696

NATIONAL RIFLE ASSOCIATION OF AMERICA, INC. ET AL., Plaintiffs-Appellants,

v.

CITY OF CHICAGO, Defendant-Appellee

Case No. 08-CV-3697

Appeals from the United States District Court
for the Northern District of Illinois, Eastern Division
The Honorable Judge Milton I. Shadur

**BRIEF OF THE INTERNATIONAL LAW ENFORCEMENT EDUCATORS AND
TRAINERS ASSOCIATION, INDEPENDENCE INSTITUTE, THE HEARTLAND
INSTITUTE, PROF. DAVID BORDUA, PROF. WILLIAM TONSO, AND THE LAW
ENFORCEMENT ALLIANCE OF AMERICA AS AMICI CURIAE IN SUPPORT OF
APPELLANTS AND IN FAVOR OF REVERSAL**

David B. Kopel
Independence Institute
13952 Denver West Parkway
Suite 400
Golden, Colo. 80401
(303) 279-6536

Counsel of Record for Amici Curiae

Maureen Martin
The Heartland Institute
19 S. LaSalle St.
Suite 903
Chicago, Ill. 60603
(920) 295-6032

Co-Counsel for Amici Curiae

CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

The amicus represented herein include International Law Enforcement Educators & Trainers Association, Independence Institute, The Heartland Institute, William R. Tonso, David J. Bordua, and Law Enforcement Alliance of America.

None of the above corporations has a parent, and no publicly held company owns 10% or more of any of the above corporations' stock.

The law firms whose partners or associates have appeared for the amicus in the case or are expected to appear for the amicus in this court include David B. Kopel (solo), Maureen Martin (solo), and Wiedner & McAuliffe, Ltd.

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TABLE OF AUTHORITIES

U.S Supreme Court Cases

Butler v. Michigan, 352 U.S. 380 (1957) 20

Statutes

18 U.S.C. § 922(g) 19

Other Authorities

Brief for ILEETA et al. as Amici Curiae Supporting Respondents, District of Columbia v. Heller, 128 S. Ct. 2783 (2008)..... 9, 21, 22

Chicago Police Dept, *2006-2007 Murder Analysis in Chicago* 17, 25

Chicago Police Dept., *2004 Murder Analysis* 25

Chicago Police Dept., *2005 Murder Analysis* 25

Chicago Police Dept., *Murder Analysis 1992* 25

Does where you live affect police response time? NBC 5 WMAQ, Nov. 29, 2006 13

FBI, LAW ENFORCEMENT OFFICERS KILLED AND ASSAULTED, 2006 3

Mayhew, Pat, *Residential Burglary: A Comparison of the United States, Canada and England and Wales* (Nat’l Inst. of Just., 1987). 5

Miller, Ted et al., *Victims Costs and Consequences* (National Inst. of Just., NCJ 155282, 1996) 7

Off. of Juv. Just. & Delinq. Prev., *Report to Congress on Juvenile Violence Research* (July 1999), 20

U.S. Bureau of Justice Statistics, *Household Burglary*, BJS BULL. (1985)..... 4

Newspaper and Magazine Articles

Heilliker, Kevin, *Pistol-Whipped: As Gun Crimes Rise, Britain Is Considering Cutting Legal Arsenal*, WALL ST. J., Apr. 19, 1994 5

Town to Celebrate Mandatory Arms, N.Y. TIMES, Apr. 11, 1987, at 6..... 12

Scholarly Journals

Becker, Lance, et al., *Differences in the Incidence of Cardiac Arrest and Subsequent Survival*, 329 NEW ENG. J. MED. 600 (1993) 13

Cohn, Ellen, & David Farrington, *Who Are the Most Influential Criminologists in the English-Speaking World?* 34 BRIT. J. CRIMINOL. 204 (1994) 10

Cook, Philip et al., *Criminal Records of Homicide Offenders*, 294 JAMA 538 (2005).
..... 17

Cook, Philip J. et al., *Underground Gun Markets*, 117 ECON. J. F588 (2007)..... 25

Elliott, Delbert, *Life Threatening Violence is Primarily a Crime Problem: A Focus on Prevention*, 69 COLO. L. REV. 1081 (1998)..... 17

Hall-Smith, Paige et al., *Partner Homicide in Context*, 2 HOMICIDE STUD. 400 (1998). 18

Ikeda, Robert, et al., *Estimating Intruder-Related Firearms Retrievals in U.S. Households, 1994*, 12 VIOLENCE & VICTIMS 363 (1997). 4

Jacobs, James, *Exceptions to a General Prohibition on Handgun Possession: Do They Swallow Up the Rule?* 49 L. & CONTEMP. PROBS. 6 (1986) 3

Jacquelyn Campbell, et al., *Risk Factors for Femicide in Abusive Relationships*, 93 AM. J. PUB. HEALTH 1089 (2003). 19

Kates, Don, *The Value of Civilian Handgun Possession As a Deterrent to Crime or Defense Against Crime*, 18 AM. J. CRIM. L. 113 (1991)..... 12

Kennedy, David & Anthony Braga, *Homicide in Minneapolis: Research for Problem Solving*, 2 HOMICIDE STUD. 263 (1998) 17, 18

Kleck Gary, & Marc Gertz, *Armed Resistance to Crime: The Prevalence and Nature of Self-Defense with a Gun*, 86 J. CRIM. L. & CRIMINOL. 150 (1995) 10, 23

Kleck, Gary & Jongyeon Tark, *Resisting Crime: The Effects of Victim Action on the Outcomes of Crimes*, 42 CRIMINOLOGY 861 (2005)..... 14

Kleck, Gary & Miriam DeLone, *Victim Resistance and Offender Weapon Effects in Robbery*, 9 J. QUANTITATIVE CRIMINOL. 55 (1993)..... 14

Kleck, Gary, & David Bordua, *The Factual Foundation for Certain Key Assumptions of Gun Control*, 5 L. & POL'Y Q. 271 (1983) 12

Kleck, Gary, *Crime Control Through the Private Use of Armed Force*, 35 SOC. PROBS. 1 (1988) 6, 12, 14

Kleck, Gary, *Has the gun deterrence hypothesis been discredited?* 10 J. ON FIREARMS & PUB. POL'Y 65 (1998) 11

Kleck, Gary, *Policy Lessons from Recent Gun Control Research*, 49 J.L. & CONTEMP. PROBS. 35 (1986) 12

Kopel, David, *Lawyers, Guns, and Burglars*, 43 ARIZ. L. REV. 345 (2001) 7

Loper, Ann, & Dewey Cornell, *Homicide by Juvenile Girls*, 5 J. CHILD & FAM. STUD. 323 (1996) 20

McDowall, David, et al., *General Deterrence through Civilian Gun Ownership*, 29 CRIMINOLOGY 541 (1991)..... 12

Mustard, David, *The Impact of Gun Laws on Police Deaths*, 44 J. L. & ECON. 635 (2001)..... 2

Myers, Wade & Kerrilyn Scott, *Psychotic and Conduct Disorder Symptoms in Juvenile Murderers*, 2 HOMICIDE STUD. 160 (1998)..... 20

Smith, Tom, *A Call for a Truce in the DGU War*, 87 J. CRIM. L. & CRIMINOL. 1462 (1997). 11

Southwick, Lawrence, *Self-Defense with Guns: The Consequences*, 28 J. CRIM. JUST. 351, (2000)..... 14

Waller, Julian & Elbert Whorton, *Unintentional Shootings, Highway Crashes, and Acts of Violence*, 5 ACCIDENT ANALYSIS & PREVENTION 351 (1973)..... 23

Wells, William, *The Nature and Circumstances of Defense Gun Use: A Content Analysis of Interpersonal Conflict Situations Involving Criminal Offenders*, 19 JUST. Q. 127 (2002). 14

Wolfgang, Marvin, *A Tribute to a View I Have Opposed*, 86 J. CRIM. L. & CRIMINOL. 188 (1995) 11

Books and Chapters in Books

Block, Richard, *The Impact of Victimization, Rates and Patterns: A Comparison of the Netherlands and the United States*, in VICTIMIZATION AND FEAR OF CRIME: WORLD PERSPECTIVES (Richard Block ed., 1984) 5

BREYER, STEPHEN, *BREAKING THE VICIOUS CIRCLE* (1992) 22

BROWN, MARGARET PHIPPS ET AL., *THE ROLE OF FIREARMS IN DOMESTIC VIOLENCE* (2000). 19

Browne, Angela, *Assault and Homicide at Home: When Battered Women Kill*, in 3 *ADVANCES IN APPLIED SOCIAL PSYCHOLOGY* (Michael Saks & Leonard Saxe eds., 1986)..... 19

Cook, Philip & Jens Ludwig, *Guns & Burglary* in *EVALUATING GUN POLICY* (Jens Ludwig & Philip Cook eds., 2003) 7

COOPER, JEFF, *PRINCIPLES OF PERSONAL DEFENSE* (rev. ed. 2007)..... 16

DALY, MARGO & MARTIN WILSON, *HOMICIDE* (1988) 19

FARNAM, JOHN, *THE FARNAM METHOD OF DEFENSIVE HANDGUNNING* (2d ed. 2005).. 16

KLECK, GARY, *POINT BLANK: GUNS AND VIOLENCE IN AMERICA* (1991)..... 6, 12

KLECK, GARY, *TARGETING GUNS: FIREARMS AND THEIR CONTROL* (1997).9, 10, 12, 14, 18

Kopel, David, *Comment*, in *EVALUATING GUN POLICY* (Jens Ludwig & Philip Cook eds., 2003) 7

Langford, Linda et al., *Criminal and Restraining Order Histories of Intimate Partner-Related Homicide Offenders in Massachusetts, 1991-95* in *THE VARIETIES OF HOMICIDE AND ITS RESEARCH* (F.B.I. Academy, 2000) 18

LEVITT, STEVEN, & STEPHEN DUBNER, *FREAKONOMICS* (rev. ed. 2006)..... 22

NATIONAL SAFETY COUNCIL, *INJURY FACTS 2007*..... 22

Nee, Claire, & Maxwell Taylor, *Residential Burglary in the Republic of Ireland: Some Support of the Situational Approach*, in *WHOSE LAW AND ORDER? ASPECTS OF CRIME AND SOCIAL CONTROL IN IRISH SOCIETY* (Mike Tomlinson et al. eds., 1988) 6

RENGERT, GEORGE & JOHN WASILCHICK, *SUBURBAN BURGLARY: A TALE OF TWO SUBURBS* (2d ed. 2000)..... 4

WILT, MARIE ET AL. *DOMESTIC VIOLENCE AND THE POLICE: STUDIES IN DETROIT AND KANSAS CITY* (1977)..... 18

WRIGHT, JAMES, & PETER ROSSI, ARMED AND CONSIDERED DANGEROUS: A SURVEY OF
FELONS AND THEIR FIREARMS (expanded ed. 1994)..... 8

WRIGHT, JAMES., PETER ROSSI, & KATHLEEN DALY, UNDER THE GUN: WEAPONS,
CRIME AND VIOLENCE IN AMERICA (1983)..... 6, 8

WRIGHT, RICHARD, & SCOTT DECKER, BURGLARS ON THE JOB: STREETLIFE AND
RESIDENTIAL BREAK-INS (1994). 5

Statement of Interests and Authority

Amici are law enforcement organizations, professors, and research organizations. They seek authority to file this brief pursuant to the attached Motion for Leave to File. Their interest is informing the court about law enforcement and social science issues.

Summary of Argument

Guns save lives. In the hands of law-abiding citizens, guns provide substantial public safety benefits. The legal ownership of defensive firearms is an important reason why the American rate of home invasion burglaries is far lower than in countries which prohibit or discourage home handgun defense.

By drastically reducing the rate of confrontational home invasions, the deterrent effect of U.S. home defensive gun ownership also reduces the assault rate (since there are many fewer confrontations) and thereby reduces the total U.S. violent crime rate by about 9%. Before the handgun ban, Chicago had a lower rate of burglary and aggravated assault than did the rest of the United States. In the first full year the handgun ban was in effect, Chicago's burglary and assault rates skyrocketed, and have remained much worse than the rest of the U.S. ever since.

Numerous surveys show that firearms are used (usually without a shot being fired) for self-defense at least 97,000 times a year, and probably several hundred thousand times a year.

The anti-crime effects of citizen handgun ownership help the police, because there are far fewer home invasion emergencies requiring an immediate police response, and because the substantial reductions in rates of burglary, assault, and other crimes allow law enforcement to concentrate more resources on other cases and on deterrence.

Lawful civilian handgun ownership improves police training by providing a larger body of recruits who are experienced in handgun safety and accuracy, as well as providing civilian experts whose ideas are adopted by police trainers.

Ordinary law-abiding citizens are not too hot-tempered or accident-prone to possess firearms safely for home defense.

Especially for home defense in an urban area, many people rightly prefer handguns because they are easier to maneuver, have lower recoil, and, of course, can be held with one hand—so that the other hand can be used to dial 911.

Argument

Amici police have no fears that upholding the rights of law-abiding citizens to possess handguns will endanger law enforcement officers.¹ Police in the Chicago area are killed at a rate about 42% higher than the national rate, a statistic that

¹ Cf. David Mustard, *The Impact of Gun Laws on Police Deaths*, 44 J. L. & ECON. 635 (2001) (allowing licensed, trained citizens to carry concealed handguns in public places does not increase police officer deaths, and may reduce police deaths).

hardly suggests that the ban on handgun possession by law-abiding citizens has protected the police.²

I. Efficacy and Social Benefits of Armed Self-Defense

Police carry handguns on duty and keep those guns for home protection for an obvious reason: the guns are essential, life-saving tools for defending themselves, their families, and their communities. *See James Jacobs, Exceptions to a General Prohibition on Handgun Possession: Do They Swallow Up the Rule?* 49 L. & CONTEMP. PROBS. 6 (1986)(carefully analyzed, almost all the rationales for allowing police and security guards to possess handguns show that prohibition of handguns for other persons is illogical). Empirical evidence demonstrates that the possession of firearms by law-abiding citizens also aids public safety.

A. Burglary

The only national study of how frequently firearms are used against burglaries was conducted by the Centers for Disease Control and Prevention (CDC). In 1994, random digit dialing phone calls were made throughout the United States, resulting in 5,238 interviews. The interviewees were asked about use of a firearm in a burglary situation during the previous 12 months. Extrapolating the polling sample

² Chicago has approximately 1.03% of the national population (2000 census), but accounts for 1.42% of police officers murdered (8 out of 562 in 1997-2006). *See* FBI, LAW ENFORCEMENT OFFICERS KILLED AND ASSAULTED, 2006, table 1, <http://www.fbi.gov/ucr/killed/2006/table1.html> (cumulative data for 1997-2006)(murders of Chicago police officers are described in the “Summary” narratives for individual years 1997-2006, available via links from the LEOKA website).

to the national population, the researchers estimated that in the previous 12 months, there were approximately 1,896,842 incidents in which a householder retrieved a firearm but did not see an intruder. There were an estimated 503,481 incidents in which the armed householder *did* see the burglar, and 497,646 incidents in which the burglar was scared away by the firearm. Robert Ikeda et al., *Estimating Intruder-Related Firearms Retrievals in U.S. Households, 1994*, 12 VIOLENCE & VICTIMS 363 (1997).

Only 13% of U.S. residential burglaries are attempted against occupied homes. U.S. Bureau of Justice Statistics, *Household Burglary*, BJS BULL. at 4 (1985). Criminologists attribute the prevalence of daytime burglary to burglars' fear of confronting an armed occupant; burglars report that they avoid late-night home invasions because "That's the way you get yourself shot." GEORGE RENGERT & JOHN WASILCHICK, *SUBURBAN BURGLARY: A TALE OF TWO SUBURBS* 33 (2d ed. 2000)(study of Delaware County, Penn., and Greenwich, Conn.); *see also* JOHN CONKLIN, *ROBBERY AND THE CRIMINAL JUSTICE SYSTEM* 85 (1972)(some Massachusetts inmates said they gave up burglary because of "the risk of being trapped in the house by the police or an armed occupant.").

The most thorough study was a St. Louis survey of 105 currently active burglars. The authors observed, "One of the most serious risks faced by residential burglars is the possibility of being injured or killed by occupants of a target. Many of the offenders we spoke to reported that this was far and away their greatest

fear.” Hence, most burglars tried to avoid entry when an occupant might be home.

RICHARD WRIGHT & SCOTT DECKER, *BURGLARS ON THE JOB: STREETLIFE AND RESIDENTIAL BREAK-INS* 112-13 (1994).

Burglars in other nations behave differently.

A 1982 British survey found 59% of attempted burglaries involved an occupied home. Pat Mayhew, *Residential Burglary: A Comparison of the United States, Canada and England and Wales* (Nat’l Inst. of Just., 1987). The *Wall Street Journal* reported:

Compared with London, New York is downright safe in one category: burglary. In London, where many homes have been burglarized half a dozen times, and where psychologists specialize in treating children traumatized by such thefts, the rate is nearly twice as high as in the Big Apple. And burglars here increasingly prefer striking when occupants are home, since alarms and locks tend to be disengaged and intruders have little to fear from unarmed residents.³

In the Netherlands, 48% of residential burglaries involved an occupied home. Richard Block, *The Impact of Victimization, Rates and Patterns: A Comparison of the Netherlands and the United States*, in *VICTIMIZATION AND FEAR OF CRIME: WORLD PERSPECTIVES* 26 tbl. 3-5 (Richard Block ed., 1984). In the Republic of Ireland, burglars have little reluctance about attacking an occupied residence. See Claire Nee & Maxwell Taylor, *Residential Burglary in the Republic of Ireland*, in *WHOSE LAW AND ORDER? ASPECTS OF CRIME AND SOCIAL CONTROL IN IRISH SOCIETY*

³ Kevin Heilliker, *Pistol-Whipped: As Gun Crimes Rise, Britain Is Considering Cutting Legal Arsenal*, *WALL ST. J.*, Apr. 19, 1994, at A1.

143 (Mike Tomlinson et al. eds., 1988).⁴ In Toronto, where handguns are legal but rare, 44% of home burglaries take place when the victim is home. See IRWIN WALLER & NORMAN OKHIRO, *BURGLARY: THE VICTIM AND THE PUBLIC* 31 (1978).

An American burglar's risk of being shot while invading an occupied home is greater than his risk of going to prison. Presuming that the risk of prison deters some potential burglars, the risk of armed defenders would deter even more.⁵

Florida State University criminologist Gary Kleck's book *Point Blank: Guns and Violence in America* won the highest honor awarded by the American Society of Criminology: the Michael Hindelang Book Award "for the greatest contribution to criminology in a three-year period." The book details an important secondary consequence of the deterrence of home invasion. Suppose that the percentage of "hot" (occupied residence) burglaries rose from current American levels (around 13%) to a level similar to other nations (around 45%). Knowing how often a hot burglary turns into an assault, we can predict that an increase in hot burglaries to the levels of other nations would result in 545,713 more assaults every year. This by itself would raise the American violent crime rate 9.4%. GARY KLECK, *POINT BLANK: GUNS AND VIOLENCE IN AMERICA* 140 (1991).

⁴ In 1988, Ireland had a *de facto* ban on handguns, imposed by police fiat since the early 1970s. As of 2009, a few people have been allowed handguns for sporting purposes only.

⁵ JAMES WRIGHT, PETER ROSSI, & KATHLEEN DALY, *UNDER THE GUN: WEAPONS, CRIME AND VIOLENCE IN AMERICA* 139-40 (1983) (Nat'l Inst. of Just. study); see also Gary Kleck, *Crime Control Through the Private Use of Armed Force*, 35 SOC. PROBS. 1, 12, 15-16 (1988).

Thus, the American violent crime rate is significantly lower than it would otherwise be, because American burglars are so much less likely to enter an occupied home. Given that the average cost of an assault, in 2006 dollars, is \$12,032,⁶ the annual cost savings from reduced assault amounts to more than six billion dollars (\$6,566,018,816).

Interestingly, since burglars do not know *which* homes have a gun, people who do not own guns enjoy free-rider benefits because of the deterrent effect from the homes that do keep arms.⁷

As detailed in Part IV of this brief, the Chicago handgun ban was swiftly followed by an enormous, and permanent, increase in the city's burglary and assault rates relative to the rest of the U.S.

B. Deterrence

Intending to build the case for comprehensive federal gun restrictions, the Carter administration awarded a major National Institute of Justice (NIJ) research grant in 1978 to University of Massachusetts sociology professor James Wright and his colleagues Peter Rossi and Kathleen Daly. Wright had already editorialized in favor of much stricter controls. Rossi would later become president of the American

⁶ See Ted Miller et al., *Victims Costs and Consequences* 9 (Nat'l Inst. of Just., NCJ 155282, 1996), <http://www.ncjrs.gov/pdffiles/victcost.pdf> (the 1996 figures were multiplied by 1.28, to account for 1996-2006 increases in the Consumer Price Index).

⁷ David Kopel, *Lawyers, Guns, and Burglars*, 43 ARIZ. L. REV. 345, 363-66 (2001). For more, see Philip Cook & Jens Ludwig, *Guns & Burglary* and David Kopel, *Comment*, both in *EVALUATING GUN POLICY* (Jens Ludwig & Philip Cook eds., 2003)(pro/con analysis of guns/burglary relationship).

Sociology Association. Daly would later win her own Hindelang Award, for her feminist perspectives on criminology.

When the NIJ authors rigorously examined the data, they found no persuasive evidence in favor of banning handguns. JAMES WRIGHT, PETER ROSSI & KATHLEEN DALY, *UNDER THE GUN: WEAPONS, CRIME, AND VIOLENCE IN AMERICA* 294-96 (1983).

Wright and Rossi produced another study for the NIJ. Interviewing felony prisoners in 11 prisons in 10 states, they discovered that:

- 34% reported personally having been “scared off, shot at, wounded or captured by an armed victim.”
- 8% said the experience had occurred “many times.”
- 69% reported that the experience had happened to another criminal whom they knew personally.
- 39% had personally decided not to commit a crime because the victim might have a gun.
- 56% said a criminal would not attack a potential victim who was known to be armed.
- 74% agreed that “One reason burglars avoid houses where people are at home is that they fear being shot.”

JAMES WRIGHT & PETER ROSSI, *ARMED AND CONSIDERED DANGEROUS: A SURVEY OF FELONS AND THEIR FIREARMS* 146, 155 (expanded ed. 1994).

Notably, “the highest concern about confronting an armed victim was registered by felons from states with the greatest relative number of privately owned firearms.” *Id.* at 151. The authors concluded “the major effects of partial or total handgun bans would fall more on the shoulders of the ordinary gun-owning public than on the felonious gun abuser....[I]t is therefore also possible that one side consequence of such measures would be some loss of the crime-thwarting effects of civilian firearms ownership.” *Id.* at 237.

C. The Frequency of Defensive Gun Use

There have been 13 major surveys regarding the frequency of defensive gun use (DGU) in the modern United States. The surveys range from a low of 760,000 annually to a high of three million. The more recent studies are much more methodologically sophisticated. *See* GARY KLECK, TARGETING GUNS: FIREARMS AND THEIR CONTROL 149-62, 187-89 (1997). In contrast, much lower annual estimates come from the National Crime Victimization Survey (NCVS), a poll using in-person home interviews conducted by the Census Bureau in conjunction with the Department of Justice. The NCVS for 1992-2005 would suggest about 97,000 DGUs annually, with 75,000 DGUs in 2005, the last year for which data are available.⁸

A criticism of the NCVS figure is that it is too low because the NCVS never directly asks about DGUs, but instead asks open-ended questions about how the

⁸ The data are presented in Brief for ILEETA et al. as Amici Curiae Supporting Respondents, at App. 4-6, *District of Columbia v. Heller*, 128 S. Ct. 2783 (2008), <http://dcguncase.com/blog/wp-content/uploads/2008/02/07-290bsacreprintintllawenforcementeducatorstrainers1.pdf>.

victim responded. Because the NCVS first asks if the respondent has been a victim of a crime, the NCVS results exclude people who answer “no” because, thanks to successful armed self-defense, they do not consider themselves “victims.” Further, the NCVS only asks about some crimes, and not the full scope of crimes from which a DGU might ensue. KLECK, TARGETING GUNS, at 152-54.

Gary Kleck and Mark Gertz conducted an especially thorough survey in 1993, with stringent safeguards to weed out respondents who might misdescribe a DGU story. Kleck and Gertz found a midpoint estimate of 2.5 million DGUs annually. Gary Kleck & Marc Gertz, *Armed Resistance to Crime: The Prevalence and Nature of Self-Defense with a Gun*, 86 J. CRIM. L. & CRIMINOL. 150 (1995).

The Kleck/Gertz survey found that 80% of defensive uses involved handguns, and that 76% of defensive uses did not involve firing the weapon, but merely brandishing it to scare away an attacker. *Id.* at 175.

Marvin Wolfgang, “the most influential criminologist”⁹ in the English-speaking world, and an ardent supporter of gun prohibition, reviewed the Kleck/Gertz findings. Wolfgang wrote:

I am as strong a gun-control advocate as can be found among the criminologists in this country....I would eliminate all guns from the civilian population and maybe even from the police. I hate guns.... Nonetheless, the methodological soundness of the current Kleck and Gertz study is clear....

⁹ Ellen Cohn & David Farrington, *Who Are the Most Influential Criminologists in the English-Speaking World?* 34 BRIT. J. CRIMINOL. 204 (1994) (based on citations in top journals). Wolfgang was also President of the American Society of Criminology, and President of the American Academy of Political and Social Science.

....

The Kleck and Gertz study impresses me for the caution the authors exercise and the elaborate nuances they examine methodologically. I do not like their conclusions that having a gun can be useful, but I cannot fault their methodology. They have tried earnestly to meet all objections in advance and have done exceedingly well.

Marvin Wolfgang, *A Tribute to a View I Have Opposed*, 86 J. CRIM. L. & CRIMINOL. 188, 191-92 (1995).

Philip Cook and Jens Ludwig were skeptical, so they conducted their own survey for the Police Foundation. That survey produced an estimate of 1.46 million DGUs.¹⁰

The National Opinion Research Center (NORC) argues that Kleck's figures are probably too high, and the NCVS too low; NORC estimates annual DGUs to be between 256,500 and 1,210,000. Tom Smith, *A Call for a Truce in the DGU War*, 87 J. CRIM. L. & CRIMINOL. 1462 (1997).

This Court need not resolve the debate among the social scientists. All social science research shows that defensive gun use is frequent in the United States.

D. Natural Experiments

In October 1966, the Orlando Police Department began highly-publicized firearms safety training for women, because many women were arming themselves

¹⁰ PHILIP COOK & JENS LUDWIG, GUNS IN AMERICA: RESULTS OF A COMPREHENSIVE NATIONAL SURVEY OF FIREARMS OWNERSHIP AND USE 62-63 (1996). Cook and Ludwig argue that their own study produced implausibly high numbers, and they prefer the NCVS estimate. *Id.* at 68-75. *But see* Gary Kleck, *Has the gun deterrence hypothesis been discredited?* 10 J. ON FIREARMS & PUB. POL'Y 65 (1998), <http://saf.org/kleck1998.pdf>.

in response to dramatically increased sexual assaults there. Orlando rapes fell 88% from 1966 to 1967. Burglary fell 25%. Not one of the 2,500 trained women fired her weapon; the deterrent effect sufficed. As Gary Kleck and David Bordua (University of Illinois) noted: "It cannot be claimed that this was merely part of a general downward trend in rape, since the national rate was increasing at the time. No other U.S. city with a population over 100,000 experienced so large a percentage decrease in the number of rapes from 1966 to 1967...."¹¹ That same year, rape increased by 5% in Florida and by 7% nationally.¹²

In March 1982, the Atlanta exurb of Kennesaw passed an ordinance requiring all residents (with exceptions, including conscientious objectors) to keep firearms in their homes.¹³ House burglaries fell from 65 per year to 26, and to 11 the following year.¹⁴

¹¹ Gary Kleck & David Bordua, *The Factual Foundation for Certain Key Assumptions of Gun Control*, 5 L. & POL'Y Q. 271, 284 (1983); Gary Kleck, *Policy Lessons from Recent Gun Control Research*, 49 J.L. & CONTEMP. PROBS. 35, 47 (1986).

¹² See Don Kates, *The Value of Civilian Handgun Possession As a Deterrent to Crime or Defense Against Crime*, 18 AM. J. CRIM. L. 113, 153 (1991).

One article argued that the drop in Orlando rapes was statistically insignificant, being within the range of possibly normal fluctuations. David McDowall et al., *General Deterrence through Civilian Gun Ownership*, 29 CRIMINOLOGY 541 (1991). However, the authors' statistical model was such that even if gun-based deterrence had entirely eliminated rape in Orlando, the model would have declared the result to be statistically insignificant. KLECK, TARGETING GUNS, at 181.

¹³ *Town to Celebrate Mandatory Arms*, N.Y. TIMES, Apr. 11, 1987, at 6.

¹⁴ Kleck, 35 SOC. PROBS. at 13-15. The McDowall article (*supra* note 12) claims no statistically significant change in the Kennesaw burglary rate. But the article improperly combined household burglaries (which did decline) with other forms of burglary, such as unoccupied businesses. KLECK, POINT BLANK, at 136-38.

E. 911 Is Insufficient

America's police officers work hard to rescue crime victims. But the police often cannot arrive quickly enough to protect the victims and interrupt the crime. *See Does where you live affect police response time?* NBC 5 WMAQ, November 29, 2006, <http://web.archive.org/web/20061210093454/http://www.nbc5.com/unit5investigates/10417034/detail.html> (Some Chicago neighborhoods have long periods when no police are available for 911 emergencies. "Gussie Townsend, a 75-year-old schoolteacher...arrived home during a burglary in progress. Townsend said she did not see a police car for two hours, six minutes."); *cf.* Lance Becker, et al., *Differences in the Incidence of Cardiac Arrest and Subsequent Survival*, 329 NEW ENG. J. MED. 600 (1993)(mean time of ambulance arrival for Chicago 911 call for cardiac arrest is 6 minutes; range is 1-22 minutes.)

Even if 911 responses were instant, a criminal in control of a crime scene will not permit his victim to call the police; meanwhile, neighbors may be unaware of the crime in progress. In contrast, when the victim of a home invasion has a handgun, she can prevent the criminal from gaining control, and use her free hand to dial 911.

F. Self-Defense Does Not Make Victims Worse Off

It is sometimes claimed that a victim who resists with a gun will have the weapon taken away, or that resistance will enrage the criminal into a fatal attack.

Yet data from the National Crime Victimization Survey (NCVS) show that a victim's weapon is taken away, at most, in one percent of cases when the victim uses a weapon. *See* KLECK, *TARGETING GUNS*, at 168-69. Data from NCVS and other sources also show “There is no sound empirical evidence that resistance does provoke fatal attacks.”¹⁵ Nor does resistance with a firearm increase the chance of victim injury.¹⁶ Instead, “The use of a gun by the victim significantly reduces her chance of being injured....”¹⁷

G. Police Benefits of Citizen Self-Defense

Law enforcement officers care deeply about public safety. Accordingly, when armed citizens deter or thwart crime, they help create the safe society to which the law enforcement officers have dedicated their careers.

The deterrent effect of armed citizens—particularly in reducing hot burglaries and the assaults and rapes that often result—substantially reduces the number of

¹⁵ Gary Kleck & Jongyeon Tark, *Resisting Crime: The Effects of Victim Action on the Outcomes of Crimes*, 42 *CRIMINOLOGY* 861, 903 (2005).

¹⁶ Kleck, 35 *SOC. PROBS.* at 7-9; Gary Kleck & Miriam DeLone, *Victim Resistance and Offender Weapon Effects in Robbery*, 9 *J. QUANTITATIVE CRIMINOL.* 55, 73-77 (1993)(study of NCVS robbery data 1979-85; most effective form of resistance—for thwarting the crime, and for reducing victim injury—is with a gun); Kleck & Gertz, at 174-75; William Wells, *The Nature and Circumstances of Defense Gun Use: A Content Analysis of Interpersonal Conflict Situations Involving Criminal Offenders*, 19 *JUST. Q.* 127, 152 (2002).

¹⁷ Lawrence Southwick, *Self-Defense with Guns: The Consequences*, 28 *J. CRIM. JUST.* 351, 362, 367 (2000)(NCVS robbery data, pertaining to situations where the robber has a non-gun weapon; if the robber has a gun, or has no weapon, victim gun possession did not seem to affect injury rates. If 10% more victims had guns, serious victim injury would fall 3-5%).

emergencies to which police must respond. Consequently, the police have more resources for other emergencies, and for investigation and prevention.

Further, the lawful availability of handguns for citizens provides the police with a much larger pool of recruits who have experience with handgun safety, and the basics of (or proficiency in) handgun accuracy.

A citizen with experience in handgun hunting or target shooting acquires the habit of keeping his finger off the trigger until the last instant before the shot. For a police officer, this is a life-or-death skill; staying off the trigger while drawing the weapon in an emergency prevents accidental shootings.

Likewise, a police recruit who has enjoyed target shooting as a civilian knows how to hold a handgun with a strong but not over-tight grip, and how to keep the gun steady while firing, avoiding the muzzle flip that causes missed shots.

There are only so many hours in a police academy for firearms training. A trainee who is a handgun novice must acquire elementary familiarity with mechanical operations—such as flipping the safety off while drawing the gun, or reloading quickly. Extensive practice time is needed for these actions to become ingrained in muscle memory. A new police recruit who already has basic handgun experience can spend more training time on advanced skills, such as engaging multiple targets.

Significantly, many police firearms instructors are civilians. Many innovations in police firearms training have been created by civilian trainers, who themselves

train police officers and police instructors. Civilian experts have more time to dedicate to the subject than do almost all police instructors—because many police instructors do not train full-time, and those that do must teach a variety of subjects. Civilian Jeff Cooper’s “The Modern Technique” is the foundation for defensive handgun instruction for an enormous number of departments. *See* JEFF COOPER, PRINCIPLES OF PERSONAL DEFENSE (rev. ed. 2007); *see also* JOHN FARNAM, THE FARNAM METHOD OF DEFENSIVE HANDGUNNING (2d ed. 2005).

II. Law-Abiding Gun Owners Are Not Incipient Murderers

The law-abiding gun owners of Chicago are not the cause of Chicago’s crime problems. That an infinitesimal number of registered gun owners might misuse their guns does not justify barring all law-abiding persons from owning handguns, just as the fact that an infinitesimal number of police misuse their guns does not justify disarming all the police. Likewise, the fact that law-abiding citizens and police officers are sometimes the victims of gun thefts does not justify banning either group from possessing handguns. The problem of gun theft can be addressed by a narrowly tailored law, such as a requirement that guns be locked up when no one is home.

Handguns do not turn law-abiding citizens into murderers. The large majority of murderers have prior criminal records. “Homicide offenders are likely to commit their murders in the course of long criminal careers consisting primarily of nonviolent crimes but including larger than normal proportions of violent crimes.”

David Kennedy & Anthony Braga, *Homicide in Minneapolis: Research for Problem Solving*, 2 HOMICIDE STUD. 263, 276 (1998).¹⁸ Of Illinois murderers in 2001, 43% had Illinois felony convictions and 72% had Illinois arrests within the last 10 years.¹⁹ In Chicago in 2007, 89.9% of murderers (and 72.6% of victims) had an arrest record that was known to the Chicago police. Chicago Police Dept, *2006-2007 Murder Analysis in Chicago*, 35, 44. “The vast majority of persons involved in life threatening violence have a long criminal record with many prior contacts with the justice system.” Delbert Elliott, *Life Threatening Violence is Primarily a Crime Problem*, 69 COLO. L. REV. 1081, 1093 (1998)(summarizing studies); *see also* Kennedy & Braga, 2 HOMICIDE STUD. at 267 (among the well-established “criminological axioms” of homicide is that a “relatively high proportion of victims and offenders have a prior criminal record (about two thirds of offenders and half of victims)”) (parentheses in original).

A. Domestic Violence

Criminals have acquaintances, relatives, homes, and arguments. Thus, the perpetrators of “argument” or “domestic” homicide are, like other homicide perpetrators, overwhelmingly persons with extensive criminal records (who are

¹⁸ The article’s analysis of 1988 national data on homicide in 33 large cities showed that 54% of killers had a prior adult criminal record, 2% had a juvenile record only; no information was available on 25% and 20% did not have criminal record; so 74% of killers for whom records were available had a prior criminal record.

¹⁹ Philip Cook et al., *Criminal Records of Homicide Offenders*, 294 JAMA 538 (2005)(study did not examine criminal records from other states).

therefore barred by Illinois and federal law from possessing any firearm):

- About 18% of homicides involve boyfriends/girlfriends, friends, or family members. It is misleading to combine these homicides with “acquaintance” homicides (which are about 28% of homicides), because the most common way that the “acquaintances” met was through “prior illegal transactions,” such as drug dealing.²⁰
- A Police Foundation study of Kansas City revealed that in 90% of homicides among family members, the police had been called to the home within the past two years. The median number of previous calls was five.²¹
- Another study found that 72% of domestic murderers had prior criminal history; 40% had been under restraining orders.²²
- “A history of domestic violence was present in 95.8%” of the intra-family homicides studied.²³

Thus, “Homicides are likely to be part of a pattern of continuing violence—especially, but not exclusively, for domestic homicide.”²⁴

Significantly, many domestic shootings involve lawful self-defense. Data from Detroit, Houston, and Miami, showed that very large majorities of wives who killed

²⁰ KLECK, TARGETING GUNS, at 236, analyzing data from US DOJ, *Murder Cases in 33 Large Urban Counties in the United States 1988*, webapp.icpsr.umich.edu/cocoon/ICPSR-STUDY/09907.xml, and FBI, *Supplementary Homicide Reports* (1995).

²¹ MARIE WILT ET AL. DOMESTIC VIOLENCE AND THE POLICE 23 (1977).

²² Linda Langford et al., *Criminal and Restraining Order Histories of Intimate Partner-Related Homicide Offenders in Massachusetts, 1991-95* in THE VARIETIES OF HOMICIDE AND ITS RESEARCH (FBI Academy, 2000), www.icpsr.umich.edu/HRWG/PDF/hrwg99.pdf.

²³ Paige Hall-Smith et al., *Partner Homicide in Context*, 2 HOMICIDE STUD. 400, 410 (1998).

²⁴ Kennedy & Braga, at 267.

their husbands were not convicted, or even indicted, because they were “act[ing] in self-defense against husbands who are abusive to themselves, their children, or both.” MARGO DALY & MARTIN WILSON, HOMICIDE 15, 199-200 (1988); *see also* Angela Browne, *Assault and Homicide at Home: When Battered Women Kill*, in 3 ADVANCES IN APPLIED SOCIAL PSYCHOLOGY 61 (Michael Saks & Leonard Saxe eds., 1986)(FBI data show that 4.8% of U.S. homicides are women killing a mate in self-defense). In a study of domestic violence victims in West Virginia shelters, “26.5% reported that they believed they would have to use a gun to protect themselves.” MARGARET PHIPPS BROWN ET AL., THE ROLE OF FIREARMS IN DOMESTIC VIOLENCE 31 (2000).

An abused woman is at much greater risk if her abuser has a gun. However, there is *no* heightened risk for an abuse victim who has her own gun and lives apart from the abuser. An *abuser's* being armed creates a 7.59 odds ratio for increased risk of femicide. The *victim* living alone and having a gun yields an odds ratio of 0.22, far below the 2.0 level necessary for statistical significance. Jacquelyn Campbell et al., *Risk Factors for Femicide in Abusive Relationships*, 93 AM. J. PUB. HEALTH 1089, 1090-92 (2003).

Federal and Illinois laws ban the possession of any firearm by persons subject to a domestic violence restraining order, or convicted of a domestic violence misdemeanor, or of any felony. 18 U.S.C. § 922(g).; ILL. COMP. STAT. 65/4.

B. Juveniles

As Justice Frankfurter stated, it is unconstitutional to infantilize the public by restricting adults to possessing only items suitable for children. *Butler v. Michigan*, 352 U.S. 380 (1957)(literature for adults cannot be censored in order to protect children from seeing inappropriate materials). Likewise, the fact that some teenage gangsters misuse handguns is no reason to ban handguns for law-abiding adults. Besides, ordinary American teenagers are, like ordinary American adults, not incipient murderers. The vast majority of young murderers are, like their older counterparts, established criminals:

- A Los Angeles study found that gangs had a role in 80% of all adolescent homicides.²⁵
- 57% of homicides perpetrated by male youths are committed in the course of another crime, such as robbery or rape.²⁶
- A study of young murderers found that 89% had psychotic symptoms.²⁷

C. Body Count Statistics

Some gun prohibitionists compare the number of criminals killed by armed citizens with the number of deaths from gun misuse, and claim that since the

²⁵ Off. of Juv. Just. & Delinq. Prev., *Report to Congress on Juvenile Violence Research* 14 (July 1999), www.ojjdp.ncjrs.org/pubs/jvr/contents.html.

²⁶ Ann Loper & Dewey Cornell, *Homicide by Juvenile Girls*, 5 J. CHILD & FAM. STUD. 323, 326, 330 (1996)(also noting that males constitute 94% of juvenile homicide perpetrators).

²⁷ Wade Myers & Kerrilyn Scott, *Psychotic and Conduct Disorder Symptoms in Juvenile Murderers*, 2 HOMICIDE STUD. 160 (1998)(also noting prior studies showing young murderers to be distinguished by “neurological abnormalities,” “criminally violent family members” and “gang membership”).

former number is smaller than the latter, guns must be too dangerous for home defense.

The comparison falsely combines two separate groups: law-abiding gun owners (who are disarmed by Chicago and Oak Park) and illegal criminal gun owners (who are not, and who perpetrate the vast majority of murders).

More fundamentally, a tally of criminal deaths is a very inappropriate measure of anticrime utility. Amici strongly oppose making the number of justifiable homicides into a positive metric for the performance of police forces or individual officers.

Besides, the survey evidence of defensive gun use (detailed in Part I) is unanimous that the large majority of DGUs consist only of brandishing a gun, rather than firing a shot, let alone a fatal one.

D. Accidents

The per capita death rate from firearms accidents has declined by 86% since 1948, while the per capita firearms supply has risen by 158%.²⁸ One reason is that handguns have replaced many long guns as the firearm kept in the home.²⁹ The gun

²⁸ ILEETA *Heller* brief, at App. 12-15 (annual data).

²⁹ Another reason may be expert-led safety programs: Project ChildSafe (created by the National Shooting Sports Foundation, partly funded by DOJ, partnered with National Lieutenant Governors Association, and promoted by local law enforcement) (www.projectchildsafe.org), and Eddie Eagle Gun Safety (created by NRA, winner of two National Safety Council awards, and taught by many police and sheriffs' departments) (www.nrahq.org/safety/eddie/awards.asp).

accidental death rate for children has fallen even more sharply, by 91%.³⁰ Handguns are generally more difficult for a small child to accidentally discharge than are long guns. The trigger on a rifle or shotgun is easier to pull than the heavier trigger on a revolver or the slide on a self-loading pistol. Handguns can be hidden from inquisitive children more easily than long guns.

For all ages, the fatal gun accident rate is at an all-time low, even as the per capita gun supply is at an all-time high. The annual risk for a fatal gun accident is 0.22 per 100,000 population—about the risk for taking two airplane trips a year, or for whooping cough vaccination.³¹

Swimming pools cause many more accidental child fatalities than do firearms. NATIONAL SAFETY COUNCIL, INJURY FACTS 2007, at 133, 144 (in 2003, there were 7 accidental firearms deaths for children aged under 5, and 49 for ages 5-14; for the combined age groups that same year, there were 86 bathtub deaths, and 285 in swimming pools); STEVEN LEVITT & STEPHEN DUBNER, FREAKONOMICS 135-36 (rev. ed. 2006)(swimming pool accidents cause more deaths of children under 10 years than all forms of death by firearm combined. “The likelihood of death by pool (1 in 11,000) versus death by gun (1 in 1 million-plus) isn’t even close.”)(parentheses in original).

³⁰ ILEETA *Heller* brief, at App. 7-10.

³¹ *Id.* at App. 15 (2004 gun data); STEPHEN BREYER, BREAKING THE VICIOUS CIRCLE 5, 7 (1992)(airplane and vaccine data).

To ban airplanes, swimming pools, whooping cough vaccines, or handguns based on a microscopic rate of fatal accidents would be absurd, and cannot pass rational basis review.

Adults who cause gun accidents tend to have high rates of “arrests, violence, alcohol abuse, highway crashes, and citations for moving traffic violations.” Julian Waller & Elbert Whorton, *Unintentional Shootings, Highway Crashes, and Acts of Violence*, 5 ACCIDENT ANALYSIS & PREVENTION 351, 353 (1973). Unlike in 1973, many such people are now prevented from buying a gun by the National Instant Check System.

It is true, and trivial, that homes with guns have more gun accidents, just as homes with lawnmowers have more lawnmower accidents.

III. Long Guns are Inadequate Substitutes

Handguns are generally preferred for self-defense *especially* in urban environments. That is why 80% of defensive uses of firearms are with handguns. Kleck & Gertz, at 175. That is why almost all police officers use handguns when entering a building, and why so many police officers use handguns for defense of their homes and families when off-duty:

- A handgun is much easier to hold while phoning (or for police, radioing) for help.
- The ability to summon help while simultaneously keeping the gun pointed at the criminal reduces the chance that the home-owner or the police officer will

have to shoot the criminal; it is preferable that criminals be captured rather than killed.

- Especially in a home, a long gun is harder to maneuver (*e.g.*, around corners), and, because of its length, is easier for a criminal to grab. Thus, handguns can be far superior as defensive arms in small urban spaces such as apartments.
- Persons who have relatively weak upper body strength (such as the elderly, small persons, or some women) often find that a handgun is much easier to hold, control, and aim accurately.

Handguns have been called “equalizers”³² because they are frequently the best tool for defense against larger or more numerous attackers.

IV. Chicago Data

In a study of the illegal underground gun market in Chicago, scholarly gun control advocates Jens Ludwig and Philip Cook found that obtaining illegal guns was easy for gang members, but somewhat more troublesome and time-consuming for criminals who did not belong to a gang. They concluded that “the apparently high transaction costs in Chicago’s gun market are due to the city’s low overall rate of household gun ownership and relatively intensive anti-gun policing emphasis.”

³² “Be not afraid of any man,
No matter what his size.
When danger threatens, call on me
And I will equalize.”

Late 19th century advertisement for the Equalizer, a Colt handgun (which is now antique, but banned in Chicago).

They specifically rejected the notion that the handgun ban in Chicago (or the ban that existed at the time in D.C.) deserved even indirect credit for reducing gun ownership: “The fact that Chicago and DC have low gun ownership rates, now and in the past, may be more the cause than the consequence of restrictive gun laws.” Indeed, the Chicago ban had not even changed the fraction of suicides committed with firearms (FSS): “the available evidence does not support a conclusion that the imposition of handgun bans has reduced FSS.” Philip Cook, et al., *Underground Gun Markets*, 117 *ECON. J.* F588 (2007).

Similarly, the percentage of Chicago murders perpetrated with handguns did not decrease after the ban. From 1965-1981, the percent of Chicago murders with handguns ranged from 40% to 55.98%; the rate fell steadily from 53.88% in 1978 to 42.65% in 1981 to 38.02% in 1982. In 1983-86, the rate was in the 38-39% range, dipped slightly to 37.63% in 1987, and soared to 56.21% in 1988, and is now over 70%. *See* Chicago Police Dept., *Murder Analysis 1992*, 14 (1965-92 data); *2003 Murder Analysis*, 27-28 (73%); *2004 Murder Analysis*, 27-28 (70%); *2005 Murder Analysis*, 26 (71%); *2006-2007 Murder Analysis*, 24-25 (79% in 2006; 71% in 2007).

The Table on page 27 compares Chicago crime rates, from 1979 to 2006, with rates for the same year in the rest of the United States. The “%” figure is how much greater Chicago’s crime rate is than the rate in the non-Chicago United States.

Before the ban, Chicago’s violent crime rate was about 50% higher than the rest of the U.S., while Chicago’s property crime rate was about equal. After the ban,

Chicago got much worse. In 1983, the Chicago violent crime rate soared to 150% higher than in the U.S.; thereafter, Chicago's violent crime rate (relative to the rest of the U.S.) has fluctuated in the 150%-300% worse range.

Notably, before the ban, Chicago had a far *lower* burglary rate and a slightly lower aggravated assault rate than the rest of the nation. In 1983, the first full year that the ban was in effect,³³ Chicago burglary rose to 21% above the U.S. rate. The aggravated assault rate sky-rocketed. As detailed in Part I.A of this brief, because defensive gun ownership so greatly deters home invasion burglary, it also substantially reduces assault, because burglars avoid confronting victims in the home.

³³ The law banned handguns purchased after April 9, 1982, but first-time registration of a handgun was allowed until Dec. 30, 1982.

Table. How much greater are Chicago crime rates than rates in the rest of the United States?

Year	Violent Crime	Property Crime	Violent crime				Property crime		
			Murder & Non-Neg. Mansl.	Forcible Rape	Robbery	Aggrvtd. Assault	Burglary	Larceny/Theft	Motor Veh. Theft
1979	67%	4%	195%	57%	120%	24%	-28%	3%	106%
1980	62%	5%	190%	21%	120%	15%	-32%	9%	108%
1981	44%	-7%	204%	16%	110%	-16%	-40%	-7%	108%
1982	55%	3%	149%	9%	131%	-5%	-28%	-1%	127%
1983	150%	45%	200%	124%	271%	59%	21%	32%	208%
1984	282%	61%	220%	113%	384%	235%	46%	40%	242%
1985	262%	58%	186%	62%	349%	230%	37%	40%	234%
1986	263%	56%	197%		379%	232%	40%	35%	227%
1987	263%	41%	182%		387%	232%	27%	28%	153%
1988	255%	51%	167%		357%	234%	33%	38%	163%
1989	264%	51%	193%		374%	238%	36%	38%	148%
1990	301%	63%	232%		445%	258%	47%	47%	171%
1991	323%	61%	245%		503%	257%	49%	46%	160%
1992	287%	55%	266%		440%	237%	49%	37%	156%
1993	275%	58%	226%		415%	232%	50%	44%	143%
1994	288%	58%	281%		433%	246%	51%	44%	145%
1995	284%	58%	275%		417%	250%	49%	46%	138%
1996	280%	59%	299%		403%	254%	56%	46%	139%
1997	281%	64%	315%		412%	255%	61%	51%	144%
1998	295%	71%	320%		430%	273%	52%	63%	156%
1999	240%	70%	312%		397%	203%	39%	57%	209%
2000	224%	58%	306%		379%	188%	35%	49%	153%
2001	211%	43%	321%		341%	180%	21%	35%	124%
2002	210%	39%	303%		347%	178%	17%	34%	101%
2003	179%	40%	273%		334%	134%	17%	39%	83%
2004	166%	39%	188%		316%	126%	16%	37%	89%
2005	159%	34%	182%		307%	117%	21%	27%	89%
2006	153%	37%	193%		281%	115%	16%	33%	93%
2006	156%	37%	184%		280%	120%	22%	35%	83%

Data derived from FBI Uniform Crime Reports (UCR) & U.S. Census Bureau. After 1985, the UCR stopped including forcible rape data from Chicago, because Chicago's data did not meet UCR standards. The raw data from which these figures are derived are available from 1985 onward at <http://bjsdata.ojp.usdoj.gov/dataonline/Search/Crime/Local/LocalCrimeLarge.cfm>. Before that, they are available in the annual printed editions of the FBI's Uniform Crime reports.

We are not claiming that the handgun ban is the sole reason why Chicago in 1983 deteriorated drastically compared to the rest of the country. But the

Kennesaw, Georgia data (discussed in Part I.D of this brief), show that there can be an “announcement effect.” When Kennesaw enacted its mandatory gun ownership ordinance, gun ownership in the already well-armed town did not change much. Yet media coverage of the new ordinance informed burglars that Kennesaw was a very well-armed community; home invasion burglaries dropped precipitously.

Conversely, the 1982 Chicago ban, and its attendant publicity also appear to have had an announcement effect. That effect was to tell criminals that Chicagoans are not allowed to own the most effective self-defense tool. The ban amounted to an advertising campaign that promised: “Hey criminals! Do you worry about getting shot by a victim? In Chicago, we make sure your victim won’t have a handgun.” Today, the handgun ban continues to advertise Chicago as the lone city in America where a home invasion burglar enjoys the security of knowing that when he confronts law-abiding victims in their homes, they will have no handgun.

Conclusion

The decisions below should be reversed.

Respectfully submitted,

/s/ David B. Kopel

David B. Kopel

Counsel of Record

Independence Institute

13952 Denver West Parkway

Suite 400

Golden, Colo. 80401

(303) 279-6536

Maureen Martin

Senior Fellow for Legal Affairs

The Heartland Institute

19 South LaSalle Street

Suite 903

Chicago, Ill. 60603

(920) 295-6032

Local counsel

James W. Ozog

Wiedner & McAuliffe, Ltd.

One North Franklin, Suite 1900

Chicago, Illinois 60606

(312) 855-1105

**Certificate of Compliance with
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1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 6,996 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2007 Century 12 point (and 11 point for footnotes).

/s/David B. Kopel

David B. Kopel

Attorney for Amici International Law Enforcement Educators & Trainers Assoc., et al.

Dated: Feb. 4, 2009

CERTIFICATE OF SERVICE

The undersigned, local counsel for the International Law Enforcement Educators & Trainers Association et al., hereby certifies that on Feb. 5, 2009, he served three (3) copies of the **Amicus International Law Enforcement Educators & Trainers Association's Motion for Leave to File, and Amicus Brief**, along with this certificate of service, to the addresses listed below by first-class mail deposited at 1 North Franklin Street, Chicago, Illinois 60606. The undersigned further certifies that on February 5, 2009, the original and fourteen (14) copies of the **Amicus International Law Enforcement Educators & Trainers Association's Motion for Leave to File, and Amicus Brief**, were hand-delivered to the United States Court of Appeals for the Seventh Circuit at Everett McKinley Dirksen United States Courthouse, 219 South Dearborn Street, Chicago, Illinois 60604.

/s/James W. Ozog
James W. Ozog

The undersigned, Counsel of Record for Amici, certifies that on the Feb. 4, 2009, electronic copies of the aforesaid documents were served via e-mail to the addresses listed below, and that a copy of the Brief was uploaded via the Seventh Circuit website.

Counsel for Defendant City of Chicago
Susan Loose
Assistant Corporation Counsel
City of Chicago Department of Law
30 N. LaSalle Street, Suite 1230
Chicago, Illinois 60602
312-744-9010, sloose@cityofchicago.org

Counsel for Defendant Oak Park
Alexandra E. Shea
Mayer Brown LLP
71 S. Wacker Dr.
Chicago, Illinois 60606
312-782-0600, AShea@mayerbrown.com

Local Counsel for Plaintiffs in McDonald v. City of Chicago
David G. Sigale
Law Firm of David G. Sigale, P.C.
Corporate West 1
4300 Commerce Court, Suite 300-3
Lisle, Illinois 60532
630-452-4547, dsigale@sigalelaw.com

Alan Gura
Gura & Possessky, PLLC
101 N. Columbus Street, Suite 405
Alexandria, Virginia 22314
703-835-9085
alan@gurapossessky.com

Local Counsel for Plaintiffs in NRA v. Oak Park
William N. Howard
Freeborn & Peters
311 South Wacker Drive
Suite 3000
Chicago, IL 60606
(312) 360-6000
whoward@freebornpeters.com

Local Counsel for Plaintiffs in NRA v. Chicago
Stephen A. Kolodziej
Brenner, Ford, Monroe & Scott, Ltd.
33 North Dearborn Street
Suite 300
Chicago, Illinois 60602
312-781-1970
skolodziej@brennerlawfirm.com

Stephen P. Halbrook
3925 Chain Bridge Road
Suite 403
Fairfax, Virginia 22030
703-352-7276
protell@aol.com

/s/David B. Kopel

David B. Kopel