

Transcript for the symposium at Cooley Law School entitled "To Bear or Not to Bear: Guns in Educational Institutions." was provided by Gun Rights Radio Network <http://gunrightsradio.com>

Transcript of **cooley_part_2**

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Announcer

To bear or not to bear guns and educational institutions was recorded February 4th 2011 at Cooley Law School Lansing Michigan recording provided by the gun rights audio network gunrightsradio.com.

Prof. Wagner

Hi folks come on in sit down we are going to launch the next part here and we are going to continue with opening statements and just make sure I'm doing this right Josh Horwitz is our next speaker again please read the bios they are extensive and they're all very impressive but Josh received his jurists doctor and he is the executive director for the coalition to stop gun violence. He has a law degree from George Washington University again check out all of his bio including his book "Guns, Democracy, and the Insurrectionist Idea" Josh. [Clapping]

Josh Horwitz

And so I'm not worried about being heard I am worried about being seen but I'm going to try to get as tall as I can for this. This is a Law School and I guess a Law School symposium I am a lawyer so I wanted to talk a little bit about some of the Jurisprudence around the guns on campus issue or the lack thereof and I think its important when we think about the debate we think about one of the constraints on the debate. One of the things I think I want you to take away if nothing else from this discussion I think the constitutional constraints are solemn on this area in other words this is something that will probably be decided by state legislatures in colleges and universities with their policy, legislatures with their statutes and I think that ultimately this is going to be a subject to the political process more so than the courts and so I think the tools of analytical reasoning in public policy will be more important than the legal tools and I want to explain why I think that so and I'll make a prediction that at some point we'll not say that's its ok to have guns on most places and campuses. There's been a number of - I've been reading for instance preparing for this talk there's been some articles and views around the Malibu rights journal about the second amendment application to the guns on campuses issue. But I think when you break the issue down its a complicated issue right because there's many places on campus there's driving through campus, there's living on campus, there's dorms, classrooms, facilities, and so those laws applying to where you are about what kinds of constitutional rights you may have. There's also I think a difference between the second amendment claims and state constitutional claims. There probably will be more protections in some state constitutions provisions than I think you'll find them in the second amendment. You have the places then you have the constitutional state

versus federal issues then off course you have the public versus private issue because private colleges like this one universities are private property owners and it's hard to see that the constitution is going to affect what they do right. When you think about rights its protecting individuals from government action well when you're a private land owner right you can say what you want you don't have to let people rent a room from your house and let them have a firearm. So that's the conditions you set as private owners in a private business there have been so many encroachments on that guns in parking lots and things like that but its a general rule private property owners get to set the rules on its subject solely to federal second amendment clients.

So I'm not going to exhaust list of what all the state constitutions do a lot of them mirrored the federal protection **[0:03:54][Indiscernible]** second amendment but then and a number of them don't. But I think its important we heard our moderator talk about Heller and McDonald but Heller just isn't second amendment right to do what you want with a gun its a specific finding in the Heller case and it says that above all of the interests right law abiding responsible citizens to use arms in defence of hearth and home that's the language they used hearth and home. Then you need to think about that statute that was struck down in DC where statutes about guns possession use in the home and so the court said the rule will take certain policy prescriptions off the table including are guns used for self defence again this is their language in the home. Heller majority going by Justice Scalia goes on to make some important qualifications like it has direct impact on the area of guns on campus. And so they say from Blackstone through the 19th century cases commentators in court routinely explain that the right was not a right to keep and carry any weapon whatsoever in any manner whatsoever for whatever purpose.

[0:05:13]

Josh Horwitz

Now I should explain that the right to define the defining is about the fore line defining hearth and home. There's argument this is what is called the dicta in other words it may not apply in other words its sort of secondary argument its not the real finding and I suspect that all these things I'm talking about will be litigated and I further suspect that the court having recognized as dicta will then later go on and say that the right doesn't expand that far. And one of those areas where they explicitly say you don't think the right goes far that far is in sensitive places so they'll say nothing in our opinion should be taken to cast doubt on long standing provisions on possession of firearms by felons meant for you were laws forbidding firearms in sensitive places such as schools and

government buildings. Now maybe true that they didn't mean that maybe true that they didn't consider all the facts maybe true that on reconsideration they'll say you know schools really weren't that sensitive. But I suspect they put it there for a purpose and that purpose is it did not want to constitutionalize this area of the law. Because I think its one thing to say people should have the right to have a gun in their home going beyond that is far different.

Now I've talked a little bit about McDonald versus Chicago that's the case study that incorporates the second amendment rights that means that applies it to the states, state government is held to the same standard as the federal government. And in the McDonald case they did not expand on the right that was another gun in the home case they expanded what type of government is sort of reigned in by the second amendment but they did not talk about a larger more expansive right we are still talking about hearth and home. So although we did hear some issues about scrutiny this is a good question about what we're talking about strict scrutiny or intermediate scrutiny do those apply to rights the part of these things that are not core to second amendment rights if its hearth and home are those the types of laws regulations the home that are subject to this elevated scrutiny? Is it every gun question that's out there or is it just things have to do with those core rights? You don't know the answers to that but again I suspect that its not going to be any time you mention gun and regulation in the same statute that you get strict scrutiny or even intermediary scrutiny. I suspect that there will be an area where the court considers what is to record of this something around hearth and home and that other parts of the right every time you mention guns it not going to be the same level of scrutiny. And so where you don't get that same level of scrutiny you're going to end up again using your straight up proper policy tools in finding what policy makers think is the right answer. I think for the second amendment its a sort of plausibly involved in the sort of guns on campuses issue you have to get to two points. And as I thought about this part I don't know which one comes first but I think you have to have 2 sort of distinct findings by the court to get to a place where there's going to be a constitutional protection a federal constitution is a second amendment constitution protection for the type of guns in campus debate that I've been having for instance I do a lot of work in Virginia legislature where we are having discussion about guns in residence halls, guns in classrooms, guns in the library. But I think there's at least 2 things that have to happen before we get there. One is the right has to be extended to carry outside of your home because right now its an open question as to whether even if I have my concealed carry permit - concealed type of licence system or do

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I have a right to bring my gun outside of the home and so the court hasn't said yeah there's an absolute right and people who have been arrested for not having CCW permits I have challenged these things I'm going to talk a little about these cases. But you have to first establish that the right - the Heller decision talks about hearth and home also extends to self defence protection while you're walking down the street while you're driving your car and that has not been found yet it very well maybe but I don't know and I think the lower courts will give us guidance but to say first it is constitutional protection for carrying a gun on campus one, there has to be constitutional protection for carrying a gun we are not there yet.

[0:10:10]

Josh Horwitz

And number two it has to be in a place that is not a sensitive place as the court started developing this doctrine. Again that doesn't mean that there's change that the state constitution don't come in to play here but I think under the federal constitution there are those two at least those two things. There has to be a right to carry in schools or in sensitive places. We are not there yet we're far from there.

On the first proof of flush when you look at the cases that are - the courts have addressed carrying out of the home the defendants will roll in Maryland there's a case where a defendant was found to have a gun in his pack without a permit law enforcement officers saw him arrested he said look I'm transferring the firearm to my house I have a secondary amendment right to carry that gun. The court said in Millersville Maryland said no you don't stream four has not extended the right that far there is no second amendment right to carry your gun there is no absolute right to carry your gun. And actually looked at some of the hearth and home language that I just discussed. There's a number of other cases these are cases out of Kansas, Illinois, DC, California, there is a ulterior finding in a case in Wisconsin where somebody was carrying a weapon outside of their home but in the court there was a right to carry that that person had a knife in somebody else's home not their own home but Wisconsin statute I think he's going to be litigated to total violation Wisconsin and I think there will be a fair amount of action on that maybe eventually get to stream 4. So what most courts are finding in the absence of the Supreme Court saying there's a right beyond hearth and home we are not going there and so it maybe that one of those cases goes to the Supreme Court and the Supreme Court expands the right it may very well be that one of those cases are denied such because the court doesn't want to go that far.

What about to the sensitive places part of this discussion. Well so far I think the lower courts have found that the Colorado court has looked at this in its statutory construction and said this is the case we heard earlier which is students versus the University of Colorado does not have a second amendment claim although I learnt it was filed prior to that so it may have been - I don't want to terrorize that completely that way but I know that again where I do an awful lot of work in Virginia there's been a very robust debate about that and we are able to sort of guess some early preliminary rule judgement from the Virginia Supreme Court which law marked is positive I bet will be followed by some other states supreme courts. Anyone heard of Ken Cuccinelli he's our Attorney General in Virginia he's the one that's bringing the help the federal chance to have Carolina individual mandate very conserved a person, very supportive of gun rights I've testified before him many times when he was in the senate. He issued - actually ended up litigating a case in favour of the guns in schools statute stand. In Virginia we have a provision - our state law says that colleges are allowed to restrict weapons as to their students and their faculty state Attorney General opinion goes on to say that its not clear for people passing through campuses. There's a George Mason policy that was challenged that George Mason Policy says that we will not allow firearms in any type of residences, any type of administrative buildings, any type of libraries and a student challenged that one to bring a gun into their libraries they were denied and brought this lawsuit. The law suit is DiGiacinto versus George Mason University and the court on a very similar analysis said under the Heller decision its explicit that schools are sensitive places this statute prevents guns in those sensitive places it does not prevent people from crossing the campus in the car with a firearm but it does prevent guns in all campus buildings it does not cover roads and carried outside the building so hypothetically if you're walking across a corner of campus to go to a friends apartment and you had a valid concealed permit you could do that.

[0:15:01]

Josh Horwitz

As far as guns in dorms, buildings etc that statute was recently upheld by the Virginia Supreme Court and said you know look this is a sensitive place there is no second amendment right on this state or the federal constitution to carry guns in sensitive places I will note because of this that the Virginia there was a statute originally passed to change that policy to prevent universities from having prohibitions that consider carry permits and that actually was called a pass definitely or I killed this morning in the Virginia sentence. So this is an issue that is really on going in response of this decision that said schools can keep guns off their

campuses there are certain people who want to change that in Virginia legislature says no and Supreme Court has said even the schools are within their right to issue those policies or the state is within their right to issue those policies because they can do it because those places the second amendment does not constrain states from regulating the sensitive places.

We have a lot about students for concealed carry versus University of Colorado I think that's extremely important now with some of these very issues - I don't know much about the make up of the school of Colorado but it would be interesting to see if they follow the Virginia case law but I think it is interesting that the constitution claim from what I can tell correct me if I'm wrong seems relatively narrow about guns in colleges and campuses its not about for instance trained concealed weapon into a classroom. So as lawyers I think the law suits its going to be very interesting question will the concealed carry will we get the second amendment right to be extended to protect carry outside the home and then will the sensitive places dicta stand up as actual law. Again I predict that it will but is part of a law school audience its something close to interesting to watch but my thought is as we debate this then we do not get into heavy second amendment to protect all these things then I think its not clear that it does and it is unlikely that it will.

I want to make a couple of notes what I call personal privilege outside of the scope of this sort of academic **[0:17:31][Indiscernible]** and that is that I've become very close with a number of the students who shot at Virginia Tech I know one of them works for Sanigan, one of the mothers of the daughter who was shot twice in the head works for me, fortunately both of those people their daughter who lived **[0:17:51][Indiscernible]** in Sanigan I was with both of them last night lobbying the Virginia assembly they both support restrictions in some places especially trying to keep guns out of the hands of criminals they both support the ban on carry on campus they are both people obviously who were injured very passionate about the idea their firearms would not have helped them its too tight chaotic the element of surprise was too much for them and that it would have been worse to have guns in that room. There's another point of privilege I'd like to say I in 1981 especially in a little college down the road called the University of Michigan. Some of you may have heard of it and I'm east Lansing now at Lansing so I might be careful about what I say. One night, one Saturday night I was sitting in my room and off course back then I wasn't doing anything necessarily illegal we were allowed to have alcohol in our dorms and things like that I was just sitting around with friends having a good

time when students who lived across the hall off me who I didn't know well I knew who he was staggered into my room and said I just drunk half a bottle of Vodka and took a lot of pills he was trying to commit suicide and he sat for about 40 minutes before he came into my dorm. I was there I personally took him to the hospital and got his stomach pumped he was gone from school after that. To this day I thank God that he didn't have a firearm you just don't know what's going to happen but I can remember back to those days and it was volatile and these kids if I wasn't abusing any laws he probably could have had a firearm but I think its a tight time in your life when there are people that can handle it but there's a lot of people who can't. I was glad that I was there for that young man that night but I was also glad that he didn't have a firearm. [Clapping]

Prof Wagner

Josh I've seen a few people new faces coming here [0:20:15] to and to very quickly bring you up to date we have a spirited opening statements back and forth going on about this point. I've been listening carefully I think its fair to say that both sides want to keep guns out of the hands of criminals. I think its fair to say that beyond that there hasn't been a lot of agreement about the best way to look at what we have to deal with now that we have got the Supreme Court saying that the second amendment gives a right to an individual to bear arms for the purposes of self defence in a case that involved the context of home. I appreciate the fact that we now have brought the constitution and brought the discussion of the cases into the discourse here because that along with all the arguments that we're hearing both for gun control and for being able to protect yourself and trying to use both sides words that they would use. We now have a serious constitutional question that we have to answer as well. What does the Supreme Court mean in the Heller case and so I'll leave that for the debate that we'll have in a little while after I'll ask the speakers but our next speaker is Professor Steve Dulan and he actually teaches a gun control seminar here at this law school as a Jurist Doctor and he's at the board of directors at Michigan Coalition for Response for gun owners and is an author of a weekly firearms publication that reaches 30,000 subscribers and is a dominant member of the National Rifle Association, Dr. Steven Dulan. [Clapping]

Prof. Dulan

Thanks I'd like to start by saying I am not armed today and in my opinion that makes us all just slightly less safe. I'm not running screaming from the room because I know the statistical likelihood of somebody bursting through the doors and starting to shoot up the places is quite small. But we're used to doing something in law that's called balancing. Balancing likelihood of harm and severity of harm and the fact that I'm not armed

today makes us just slightly less safe because I know how to shoot back. And the truth is the only way to stop somebody who is bent on committing a crime its violence its going to involve death and in the case of these multiple victim shootings almost always is focused on the final death of the perpetrator. These folks go in planning to die one way or the other for the most part there's tonnes of research to support that. So if we had that type of situation we would all be just a little less safe because I'm not armed. And I got a little laugh and I appreciate that but the truth is I'm going to make myself the Martha like Jim was doing it was Martha, Martha he personalized this in terms of Colorado State University that individual student who is disarmed right. I'm not a student and prohibitions on guns in campuses or in schools don't just disarm students they disarm faculty. And I'm probably the guy you want armed if something happens I'm a former US Infantry Sergeant I'm a fair shot with the pistol and I've never committed a crime that would disqualify me from carrying this pistol. Infact none of us who have concealed pistol licences have committed any serious crimes atleast in Michigan and most of the other states have similar situations. We have to go through a full FBI background check we have to show that we haven't committed a long list of crimes including some crimes that aren't remotely violent and that just in order to get the licence. Then in order to keep the licence we have to subject ourselves to the discretion of a local county gun boards. Michigan has a county gun boards system that predates what we call shall issue carry by a long time infact the gun board system arguably one of our fellow board members an MCRGO who is retired professor from Yuval actually Josh. He actually did a tonne of research and finds out that the gun board system for those of you who do not know the gun board consists of the county prosecutor, the county sheriff and a representative from Michigan state police. That entire system is put into place in Michigan as part of our racist past after an African American doctor successfully defended himself during an attack on his home by people intent on killing him and his family and there was sort of an outcry among the majority population that how did this black guy get a gun. So what we are going to do is we're going to create a gun board system and we are going to culture in racially neutral terms but it grants broad discretion to these 3 folks these 2 elected officials and one member of the Michigan state police in each of the 83 counties in Michigan and they're going to decide who gets to have a gun permit and who does who has a concealed pistol licence and who doesn't.

[0:25:14]

Prof. Dulan

But that's know as may issue we had may issue in Michigan up until year 2000 since then we've had shall issue and the difference there is now

when you want to get a permit in Michigan you just show that you're not disqualified and you get the permit not surprising what's happened in the intervening 10 years as we've had a large explosion in the number of concealed permit licensees because the gun boards lost most of their discretion they still have discretion once we get licensed stuff if they have any evidence that is in their minds credible that we are a danger to ourselves or others we get disarmed. One of the things that was written into the law annual report from the Michigan State Police on all crimes charged and or convicted by concealed pistol licensees 173 pages per year and you can go right to the Michigan Police website and look it up. And this is it it's substantial. And this is the entire Michigan penal code this isn't just gun crimes this isn't violent crimes this all crime and what we found is that the totals were a 1,000 crimes of all types committed by about 250,000 Michigan licensees for the most recent year which ended right midway through 2010 that boils down to about 250 crimes of any type kind or sort committed by concealed pistol licensees per 100,000. When you look at the general population of Michigan we've got just under 10 million you probably are aware we lost some population recently we are down under 10 million again but the total number of crimes committed during the same year according to the FBI unified crime report was 3,300 per 100,000 its a dramatic difference so what we're talking about when we're talking about prohibition of guns in schools we are not talking about actually keeping guns out of schools because guns exist by the way there's about one for every person in the United States approximately and guns last almost for ever. Some of the earliest guns ever built are still in firing condition a gun will last several human life times with minimum maintenance. So guns exist gun bans don't keep guns out of so called gun free zones we know this for a fact and not to take away from tragedy of Virginia Tech or any place else and these folks know people who suffered that tragedy and it is tragic and its terrible but obviously gun bans don't keep guns out of so called gun free zones so the only people who are affected by gun ban are people like me. People who are law abiding people who have gone through the background check done the training and infact we do in Michigan get a couple hours on deadly force I'm actually one of the instructors who teaches the legal portion of the required course to get a Michigan concealed pistol licence. So the quarter million of us adults in Michigan who add up to about 4% a little bit north of 4% of the non institutionalized adult population we commit virtually no crime versus the general population and a ban on guns in schools and that includes the ones all the way down to age 21 a ban on guns in schools doesn't affect some crazy person who is going to commit a crime it doesn't affect a drug dealer who is already violating several rules in his daily life that law is

irrelevant to that person. This law is aimed squarely at me and those like me any law that bans guns in a specific location and by the way schools are about the last place in Michigan because we have a pre-emption statute in Michigan. The pre-emption statute going back to the 1990 says no local unit of government can make a gun law the goal there is to have a comprehensive system across the entire state to make everything easier for enforcement officers mainly so that there's a clear understanding of what the law is. Some states are work on home rule states they have a variety of gun laws they have a municipality county can make up their own rules and that's how we end up with about 20,000 gun laws in the US its a minefield out there for people trying to exercise the basic right to self defence because of all these invisible lines and all the different laws that exist as you cross these invisible lines. So back in the 90s the legislature in Michigan decides to create a comprehensive system and they didn't mention universities and colleges in the list. They listed townships counties and cities but they didn't list universities and we've got a very interesting situation in Michigan in terms of the different flavours of university we have private schools we're in a private school right now and that's why I'm not acting today that's a condition of employment a condition of entry onto this private property that I don't have my gun so I don't. We also have state sponsored schools community colleges there are tonnes of community colleges and many four year universities that are state sponsored schools with those its less sure whether they have a right to disarm licence concealed pistol licensees because we don't have any case law on it.

[0:30:15]

Prof. Dulan

And one of the fascinating things when you start digging into gun laws is the fact that its ever changing anyway its not well settled law. As I tell the students in my course whatever the law is now is probably going to change anyway so ultimately this is a public policy debate and what you've heard is public policy arguments and you've heard some arguments about how guns are bad essentially. A lot of the information we heard from Mr. Johnson wasn't about guns on campus it was about guns. Are guns good or bad? Well guns exist it doesn't matter whether they're good or bad they are out there Pandora's box is open we cannot close it and make guns disappear no stroke of the pen is going to disarm all of us and it turns out that when you disarm guns excuse me - when you outlaw guns only only outlaws have guns its neat bumper sticker but its actually true. So the only folks who are affected by these laws that exist on the campuses the private schools can do what they want to do the community colleges its less clear but the constitution universities which is Michigan, Michigan Main State have different approaches.

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Michigan State University one of the constitution universities in Michigan allowed Michigan law to control as of summer of 2009 and they've had no outbursts of violence meantime our University of Michigan maintains that they have a right to do a complete prohibition in primary it looks about the same University Michigan Campus and Michigan State Campus so one allows those of us who are licensed to carry and the other one doesn't. We've got a proposal 2 proposals right now one in the senate one in the house and this fulfils my promise to my students that these laws are ever changing that would eliminate schools K212 schools from the pistol free zones for those of us who are licensed. Personally I support it because its one of the few places where I can't carry with my concealed pistol licence and the one thing I know is that's the place I'm disarmed is on a school campus K212 or in an institution like this that has a prohibition whether its a private or whether its one of the public schools and I know that the bad guys, if we are going to stick with that term I'm using all day, don't care. They're going to be armed regardless no matter where they go because they've already determined they're going to commit crimes. Thank you. [Clapping]

Prof. Wagner

We have our last opening statement and its the enviable position of being last because you've heard everybody else and but hang tight everybody as after this open statement then we are going to take a very short break again and move immediately into a debate and it will be an interaction between each side where each side can answer not just the questions they want to answer but answer the questions that the other side would like them to also address. So before we get there though Dennis Henigan received his undergrad degree from Oberlin College and his law degree just after it at the University of Virginia School of Law prior to joining the Brady Centre in 1989 he was a partner of a law firm of Foley & Lardner. Currently he is the president of the Brady Centre to prevent gun violence and the founder of its legal action project. He also has authored a book "Lethal Logic: Exploding the Myths that Paralyze American Gun Policy" and I will point you to the again the hand out that has the full impressive bio of this speaker as well as all the others. So Dennis can you come on up here and bring to close for us. [Clapping]

Dennis Henigan

Thank you Professor Wagner and thanks to Cooley Law School for inviting me to join this excellent program. Thanks to all of you for hanging in here I hope you can handle one more talk about guns and also thanks for the book quote I don't get that all that often so that's very nice. There hasn't been much talk about so far about what this nation went through around a month ago this nation is still reeling in many ways from the horrible shooting that occurred in Tucson 6 innocent people were killed

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including a 9 year old child including a federal judge 13 injured the most seriously are a very well wide well respected member of the United States congress Gabrielle Gifford's.

[0:35:00]

Dennis Henigan

This event I think has occasioned a new and much needed national conversation about guns and violence in our country and it certainly has made this symposium even more timely. You heard from John Johnson about the campaign to force colleges and universities to accept guns on their campuses in effort to oppose that campaign. I want to also recommend that you all take a look at one of the hand outs that I have offered the Brady Centre report I think kind of cleverly and titled "No gun left behind sub titled the gun lobby's campaign to push guns into colleges and schools." That kind of has an expansion of a lot of what John was talking about. In my remarks I want to step back a moment and address our topic from a broader perspective and that is the issue on guns on campus is really part and parcel of the broader clash between 2 fundamentally different visions of America. One vision and you've had this vision promoted by this side of the podium is guns in every corner of American society. More guns and more America owns more guns on the streets, more guns in the restaurants, coffee houses, in bars in front of grocery stores at political events and at places like Cooley Law School. Guns everywhere reportedly to deter criminals from attacking and enable the rest of us to shoot back when they do. There is a competing vision though I suggest and it isn't a vision of banning guns at all it is a vision of reasonable laws allow responsible citizens to own guns in the home. And yet make it harder for dangerous people to be armed. And this is a vision that I think as Josh Horwitz pointed out is entirely consistent with Supreme Courts decision in the Heller case and the real world consequences of these competing visions I think were made starkly apparent in the Tucson shooting. Arizona is a state which has largely realized the vision of guns everywhere. First of all it's a state with incredibly weak gun laws. The Brady Centre rates state gun laws in terms of their strength I think we gave Arizona 2 points out of a possible 100 we gave them those 2 points because they have as yet not passed a law requiring colleges and universities to allow guns on campus. Years ago Arizona moved into that the may issue excuse me the shall issue column on concealed carry licences eliminating all police discretion over whether someone could get a concealed carry licence. Even more recently Arizona became one of 3 states in the union to eliminate all permitting requirements when it came to concealed carry. Arizona's gun laws are so weak that even if Jared Loughner Tucson's shooter even if his community college had reported all of his bizarre and dangerous behaviour to the

Tucson police department they would have been legally powerless to do anything about it. They would have been legally powerless to take his gun away or prevent him from carrying it in public places. And I think its safe to say that all those law abiding Arizonans carrying their concealed weapons neither deterred or stopped that shooting. Now proponents of concealed carry and I think I have heard John Lott make this statement as well they like to claim that mass shootings always occur in gun free zones. I hear this claim over and over again. It was never true it's certainly is not true after Tucson. The side walk in front of that Tucson Safeway was not a gun free zone it was an area where Arizonans with concealed carry licences legal carriers of concealed weapons were perfectly allowed to carry their guns. And in fact there was a legal concealed carrier on the scene his name was Joseph Zamudio and unfortunately he arrived on the scene a little bit late the shooter had already been tackled he had been separated from his gun Zamudio came and he was told the precincts then that he's at the safety of his gun he was ready to draw he was both ready to shoot whoever had the gun but by the time he got there the person with the gun was one of the heroes who had tackled the shooter and separated him from the gun.

[0:40:23]

Dennis Henigan

And infact Zamudio said that he came apparently close to shooting the guy unfortunately he exercised enough judgement that he didn't but he said one of the reasons that he didn't draw his gun was he was afraid when the police arrived on the scene they would think that he was the assailant. So I mention these facts because there is this idealized view of how self defence in public places with guns is supposed to go. You've got bad guy he's shot by the good guy nobody else gets hurt here we have an example that shows the real world is a little bit more complicated than that. Now the gun lobby will say that they only want law abiding citizens to carry concealed weapons that what it's all about. Law abiding citizens but as far as the state of Arizona was concerned Jared Loughner was a law abiding citizen until he pulled the trigger he had committed no crime in Arizona until he pulled the trigger. These guns everywhere approach is based on the premise that the world is neatly divided into good guys and bad guys and we can identify the difference between the two but its not so black and white its a little bit more complicated than that. Jared Loughner passed the background check and he was allowed by Arizona law to carry concealed he was not a good guy infact if the effort to force colleges and universities to allow guns on campus had succeeded in Arizona Loughner would have sat in his lounge of the class terrifying his classmates with his bizarre and threatening behaviour and he would have packing heat and they could have done nothing about that until he finally

got so bad that he was expelled from that school. Now there is an alternative vision to the Arizona vision and that is a vision of reasonable restrictions to try to reduce the violence and still allow law abiding citizens to have guns. If that vision had been in place in Arizona there at least would have been a law on the books that would have limited the fire power of the gun that he had access to he had a block 9 mm equipped with a 33 round ammunition magazine the size of that magazine allowed him to shoot 32 times in less than 15 seconds all that death and injury was inflicted in less than 15 seconds. Now we had a law in place in this country for about 10 years that expired in 2004 that limited the size of magazines to 10 rounds Loughner was subdued only after he had exhausted his magazine and was changing magazines that allowed those people to subdue him if he had only a 10 round magazine accessible to him he would have been tackled earlier and there's no question that lives would have been saved and grievous injuries avoided. That's an example of where a reasonable restriction that used to be in place and didn't cost any hunter a day in the field could have saved lives. Well does these guns everywhere vision of America ensure a safer America? The theory here is that criminals prefer to attack unarmed victims so if a lot of law abiding citizens are armed they will be able to deter from attacking and if they attack the law abiding citizens would shoot back. Now how does the theory work out in the real world? Well first of all it is not difficult to think of instances in which where those with violent intentions were not deterred by the heavy presence of guns. I work for [0:44:46][Indiscernible] grader. Jim Brady was a victim of another horrendous happening when he was President Reagan's Press Secretary he was on the scene when there was an assassination attempt against President Reagan when John Hankly started firing there were a number of heavily armed secret service agents right there they could not deter or prevent that attack.

[0:45:12]

Dennis Henigan

And I've always wondered if this deterrent theory is right how do you account for armed criminals attacking other armed criminals something that happens all the time. Drug gangs have gun battles with other drug gangs they have tough wars, Mexican cartels battling with other Mexican cartels very heavily armed. If you go to down town Detroit that's not a gun free zone there are a lot of guns down there they are illegal guns and the criminals are attacking other heavily armed criminals why does that happen if criminals are deterred from attacking people who are likely to be armed. Now can it possibly be that criminals are deterred from attacking law abiding citizens but they're not deterred from attacking criminals I don't think it makes much sense and in fact one study done in

2009 done by Charles Grena and his colleagues at the University of Pennsylvania shows that individuals in possession of a gun are 4.6 times more likely to be shot in an assault than those not in possession of guns. So there's something wrong with this deterrent theory. Infact if criminals believe that more potential victims are armed they are simply more likely to arm themselves. There have been surveys of prisoners that have found that 62% of those who used a gun to commit their crime said the possibility of encountering an armed victim was important to their decision to use a gun. And apart from the absence of any deterrent or protective effect there is off course also the increased risk of lethal violence from simply having more guns in more public places. You've heard John Johnson talk about this talk about some of the statistics there are scores of incidents in which legal concealed weapon holders have shot and killed people in incidents of road rage arguments between neighbours and relatives or they've shot people unintentionally. And the issue isn't whether concealed carry holders has a group or more or less law abiding than the rest of us after all in most states they are subjected to back ground checks that ought to ensure they are somewhat more law abiding than the general population not subject to background checks. The issue is; are they safe enough? These are the people who the gun laws lobby says are protecting the rest of us by being able to legally carry their concealed weapons in public and yet we've seen time and time again that it is very difficult to predict that someone will not turn violent simply because they have the subject to evaluate background check and passed. So what has been the effect of these shall issue laws that have been passed in many many states many of them citing John Lott's research in support of making that change what has been the effect of the passage of these laws. One thing we know is that it seems like whenever the press takes a look at the way these shall issue systems are working they find that there are a lot of concealed carry licences issued to a lot of dangerous people who then commit a lot of crimes. I'll give you an example a couple of years ago the Florida Sun-Sentinel did an expose of Florida's law which appeared to be John Lott's favourite one of these shall issue laws and the Sun-Sentinel found that the CCW holders included 200 with active arrest warrants against 128 with domestic violence restraining orders and 1400 who had pledge no contest to felony charges. These were the people who had concealed weapon licences one of the reasons why the revocation rate is so low in Florida is the Florida system is so messed up that they don't revoke the licences when people commit these crimes that's why you have a small revocation rate and what tends to happen is after the press takes a look at these laws and how they actually work the gun lobby goes in to shut down access to the records so nobody knows who has a concealed weapon. And you can't

compare the CCW holders with the people who have committed crime to see whether it is all law abiding citizens who are carrying the concealed and that's what happens in Florida.

[0:50:11]

Dennis Henigan

Don't expect anymore press exposes of the Florida law the gun lobby has taken care of that. Now a lot of this cut short told shall issue law has been fuelled by John Lott's research and I just want to make a few brief remarks about it because it has been influential in a number of state legislatures around the country. John basically compared for a period ending in 1992 he compared states that had inaccurate shall issue laws with states that had not and he concluded that if all states had enacted these laws there would have been far less violent crime and actually the effect on crime was quite dramatic according to John. I just on that status issue I'm not going to run regressions for you today I just want you to know that John's research was long ago discredited by economists, public health scholars and a very credible who's who major research universities including Harvard, Yale, Stanford, Berkeley, George Town, Johns Hopkins, Carnegie Mellon and others. And these researchers found multiple problems with John's analysis but the over acting problem was simply the failure to control for important variables that are associated with the changes in the crime rates. And it is difficult it is difficult there are so many cause or factors that play out when you're talking about increases and decreases in violent crimes but I will simply say another researcher who is one of the favourites of the NRA they are constantly citing him Gary Clarke of Florida state and Clarke found that it is very likely that John Lott's claimed effect from the shall issue laws was attributable to other factors not controlled for study. But I think the most devastating critique of John's work has come from 2 economists at the Yale Law School John Donahue and inherent who basically have - they've looked at the data not 1992 but the data to 2006 encompassing a lot more of the shall issue laws that were passed over that period of time and they concluded not only is there no weapons that these was in any way diminished crime but they are actually associated with substantial and statistically significant increases in aggravated assault. I hear the claim made all the time that no study shows that these laws led to more crime that is absolutely untrue there are studies that show this its just that the proponents of concealed liberalized concealed weapons laws ignore the evidence to the contrary. So there really has been a consensus I think in the research community that this brand experiment with liberalized concealed carry has been a grand failure I would also mention that John's research for elating these shall issue laws was reduced to risk of mass shootings in public places its also been refuted

there has been scholars who have said the methodology was wrong on that one and if you actually use the right methodology you get no deterrent effect on mass shootings in public places. So I'm not a status issue but I will say that even a cursory look at state violent crime rate provides very little evidence that criminals in these shall issue states are cowering in fear of law abiding citizens carrying guns well they don't seem to be cowering in fear of criminals carrying guns and let me go back to Florida John's favourite state. Florida which the NRA says has more concealed carry overs than any other state passed its shall issue law in 1987 every year since 1987 Florida has ranked in the top 5 state in the country in violent crime most of those years have ranked in the top 3. There is simply no evidence that these laws have reduced violent crime and as I say there is an alternative vision and that is reasonable laws like background checks for example, like limitations on magazine capacity that can reduce gun deaths and injury and still allow law abiding citizens to have guns. Thank you very much. [Clapping]

[0:55:00]

Prof. Wagner

We are going to take a break here but I am going to - I just want to give John an opportunity because he invoked the name personally out of my rule as a moderator my personal rule is you can go after anybody's research or talk specifically about numbers but if you invoke a name then I always give the opportunity a minute or two to respond and if you would like to do so.

Dr. Lott

Well there's been a lot of work that's been done since my original paper with David Mustard and that work we did look at data from 1977 through 92 second issue my book through 96 4th edition of my book looked at the city county and state that appeared 2005. What I can say is if you look across all the academic work there I don't think Dennis still was very accurate presentation if you look at referee general publications there are 18 studies that have found statistics dropped in violent crime even larger than what I found. There's 10 that claim to find either small drops or net change and there's zero repeat studies among the economists and criminologists that have found a bad effect. If you look at 9 referee papers there's 3 that claim to find a drop, there's one that claims to find no statistics significant change and there's two that claim to find what Dennis was saying. I wish I could have a PowerPoint work here but basically if you take the 2 law reviews times that Dennis is talking about you find kind of small temporary increase in crime and the way to think about this is as if crime is falling and an increase in rate even if you look at the year by year measures that they have in their paper they find a drop there's no increase. They tend to find a temporary increase but

even they say after the second year it falls and the reason why they get an increase is as if they're sitting in a straight line to curve data so over predicts the beginning and under predicts the middle and over predicts at the end and then they're looking at the net impact of the first 5 years of the law where faced through this kind of straight line while predicting why its safe. I think that's the reason why the vast majority work of Referee work represents their paper was published is not found detective **[0:57:50][Indiscernible]** and I would say on the multiple victim shooting stuff that paper that he is talking about claims to find a drop but not statistically significant from the present statistics of concealed hand guns. The big difference between the Land that I did and what they did is they would allow for combinations that measure multiple victim shootings they only look at the case involving four or more people killed. The problem is it's hard to solve cases like that. And when you're talking about trying to control hundreds of factors you can get a drop but its not statistically significant when you look at 3 more people killed 2 more people killed 4 more people killed or wounded 3 more people killed or wounded 2 more people killed or wounded all those other ones get statistically significant results the parallel is the same but there's just a lot more data that you're able to get there and you're able to go and get statistical results but its the finding trying to control for things you know its interesting I tried to control for lots of different types of gun control laws lofty the paper that he referred to **[0:59:03][Indiscernible]** I also have tried to control to contain you know its a weird debate and I really don't even know what to do with this if anybody has my first edition of my book and for those who have it here you'll find a discussion there which I tried to cut the pertain what the paper had 2nd edition here, 3rd edition here long discussions about this but if you're going to ask Dennis to identify they claim I haven't tried to account for its Caucasian in the impact there. We tried to do it in lots of different ways one of the ways we tried to do it its not just half measures the crisis for cocaine or the need base we tried is still prone to **[0:59:42][Indiscernible]** that we have American economic review look at all counties that boarder each other and opposite side of state boarders also and see what happens to the primary to one county if its in a state that adopts the law relative to the other county touching it right across the state boarder without. What we found was that if one state adopts this law over counties right on that side of the boarder see a drop and there's about a decrease of about 20% drop in the neighbouring county. Well the thing is if you look at urban counties that are right next to each other it's pretty hard to say that counties that are right next to each other the cocaine can affect one and not the other.

Transcript for the symposium at Cooley Law School entitled “To Bear or Not to Bear: Guns in Educational Institutions.” was provided by Gun Rights Radio Network <http://gunrightsradio.com>

[1:00:20]

Dr. Lott

You going to have some spill over that's going to be there. And its actually pretty powerful test the fact that its the change in the carry law that cocaine is actually driving and its not like you go through many of them **[1:00:37][Indiscernible]** Thank you [Clapping]

Prof. Wagner

It sounds like I intended it, it sounds like we've launched the debate perhaps and started it and lets just stand up and have a very short break stretch out maybe grab a quick drink don't leave come back we'll start debate going back and forth in 5 minutes.

Announcer

This ends the 2nd part of to bear or not to bear guns in educational institutions.

[1:01:24]

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