

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_3**

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Announcer

To bear or not to bear guns in educational institutions was recorded February 4th 2011 at Cooley Law School Lansing Michigan recording provided by the Gun Rights Audio Network <http://gunrightsradio.com>

Prof. Wagner

Way to get my discussion going too so if anybody in the audience I know you've been sitting here and hearing a lot of things on both sides of these issues feel free to come on up to one of the mics and we will see if we can get your question in. Now I have to say its really interesting how we ask questions sometimes because this isn't one question of which folks on each side disagree what we are really battling over I think is who controls the question who gets to define say what the question is because I was listening to both sides and one side framed the issue as whether the university can be forced to have guns under campuses and another side sounded like they were saying whether an individual has a right to protect themselves on the campus. So really how you frame the question really determines the answer sometimes and I think that's part of a good debate of what we've been hearing here. So if folks in the audience listening to both sides of these issues have questions along come on up to the mic. In the meantime what I'm going to do is I'm going to until I see somebody come up I'm going to involve both of these folks here if anybody has a question from this table that would like to ask this table I'll invite you to do that make amends to the tough question and you may in time answer the tough question and its always harder when you're having to answer the question from your opponent and we'll allow for a response and a reply as well. But I do see we do have a question here so why don't we start with the audience coz that's what we were hoping for.

Audience

I would like to thank Thomas Cooley Law School for having this symposium and the panellist as well. We've had a lot of discussions as far as what is reasonable gun laws as its kind of a constitutional issue for me because I believe it is an absolute right that we have the right to defend ourselves not necessarily gun thing but as a self defence thing. We talked about reasonable gun laws and it was explained to us as far as what happened in Arizona and that we need reasonable gun laws. At the time of that incident we've had those reasonable gun laws equal over 20,000 united states right now and since we had the magazine ban of the 1990s we've also had Columbine and so what exactly constitutes to you reasonable gun laws because probably whatever you say is already been addressed is already in law? Thank you.

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Prof. Wagner That sounds like a question for this table.

Josh Horwitz I would say there's a number of great state models I think our New York State, California, Hawaii, Massachusetts where people who are - you can - there's an effort to allow law abiding citizens to have guns in their home and that there are also efforts to weed out the people who shouldn't have guns and then make people who own guns responsible so they don't transfer them inadvertently or intentionally to criminals. So I think that we have a number of good models and if you look at the states that have enacted those laws I think New York is a great example, New York City is a good example. You have safest big city in America, you have states that have low rates of gun violence so I think there's some good models out there with California for instance we can soon have a fire arm you can - there's gun shows every weekend but there's a real I think effective effort to reduce guns going to the hands of criminals and you know a lot of it works some of it doesn't but I think there's some excellent models out there at state level.

Prof. Wagner Would that include a possession of a fire arm by an individual in their residence if it happened to be a college student, or law student living on campus housing. You spoke on to the constitutionality and different levels of scrutiny and so if you suggested that its reasonable that a person should be able like [0:04:24][Indiscernible] said to allow someone to possess a fire arm within their home and now I'm going to take it to the greater area what about a home of a law student or a home of a college student and that home happens to be a residence hall on campus?

Josh Horwitz If its not prohibited by state statute I think its safe universities routinely do that and as we've talked about this I'm glad we do I think the evidence is pretty strong enough to [0:04:55][Indiscernible]

John Johnson I think we - no Cooley law would allow a person to have a gun in their home the point I tried to make to the audience is that maybe its not a good idea it's kind of like lets approach this a little bit like smoking.

[0:05:13]

John Johnson Most people know that smoking is not good for your health, cigarettes are illegal the public health people tell people its not a good idea and the message I keep trying to make is that rubs only to keeping a gun in the home especially when you have children is not really a good idea unless you take various precautions I think the same thing applies to colleges and universities, it's not a good idea.

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Dennis Henigan Let me just add one more thought which is Josh is right there are some great state models the problem is that inherently when you have a state law the effectiveness of that law is subject to being undercut by the movement of guns from weak states with weak gun laws into the states with strong gun laws. So that's why ultimately we need a federal solution and at the federal level we have incredibly weak gun laws. And I'll give you just a specific example we have the Brady law which has been a great success in stopping the sale of guns from licensed gun dealers to prohibited gun buyers it's stopped over 1.9 million of these sales since it was enacted. However, it only applies to sales by licensed dealers one thing we clearly ought to do is we ought to extend those required Brady background checks to all gun transactions including sales between private citizens certainly those are the current gun shows because a lot of them do but even overall we should have a policy of no background check no sale no excuses. Now that's a reasonable reform that could be made it doesn't take the guns out of hands of any law abiding citizens and there's a consensus even among gun owners 80% of gun owners recently surveyed favoured that kind of reform that's what I'm talking about when I talk about reasonable gun laws at the federal level.

Prof. Wagner Thank you very much now the constitution doesn't speak to cigarette smoking for example but it does speak to gun so I imagine there's some folks on this side that would like a response.

Steven Dulan I've got a very quick point on cigarettes I don't think a cigarette could ever save my life.

John Lott There are two general areas I'd like to make points about one is the Brady Act when its done I wish there was a simple way that we could keep criminals from going and getting guns. The Brady Act though Denis mentions 1.9 million initial denials since it started in 1994 the thing is what he doesn't say is that over 99.9% of those denials were false positives so for example you may know about the late Senator Ted Kennedy when he was trying to fly on a plane a couple of times he got on the no comply list and they denied him from being able to fly even though obviously he should have been able to go and fly on a plane. That problem exists in states when you're talking about the Brady Act you look at the numbers for 2008 for example there were 79,000 initial denials the Government believed that people were illegally acquiring the gun and had not filled out the form properly and 143 of those cases they thought there was sufficient evidence to go and prosecute 105 of those in of those they've resulted in 43 convictions and its not just that if you look at the 43 cases

really none of those 43 cases may involve what you call career criminal the vast majority of people who had some misdemeanour number of cases where you had one case a guy is 65 his wife is being threatened at work he tried to buy her a gun he had a misdemeanour from 40 years earlier where he got into a fight with his brother in their front yard the police had arrested him he pleaded to misdemeanour domestic violence and he didn't realize it was a covered offence that prevented him from buying a gun he got convicted he's in jail for 3 years for falsely filling out the form now. Those are now the types of cases you have plus the Brady Act 8% of the cases are not of the checks are not done instantly 5% of them take up to 3 days to do another 3% take longer than 3 days to do. When you're talking about people who maybe somebody whose been stalked or threatened and wants to get a gun quickly all those false positives they can take months for somebody to go and get around the bureaucracy that's there and just the other delays.

[0:10:09]

John Lott

But the bottom line to me is not just the inconvenience the bottom line to me is the impact on crime and I don't know of one single academic study by any criminologist or economist that's looked at the Brady Act or any of the individual state waiting periods that's found that they've reduced firearm crime. One thing that was brought up a couple of times in the answer now was about this claims about the risk of having guns in the home and it was also brought up in the initial talk over there. There's a series of studies done by Arthur Kellerman at Armoury and some co authors that he's had well go and look at people who died in a near city over the course of the year on one case of a few years' people who died in or near residence. I'm just say so you understand how this study works so go and find people who died near a residence ask the relatives of the deceased whether gun that was owned in the home there and then assume that it was that gun that was used in the death. Infact when academics have gone back and looked at the data more carefully we found that even including suicides 86% of those deaths were being incorrectly attributed to the gun that was in the home. They were actually due to weapons that were being brought in from the outside. The other thing big problem with that's 86% of the number was falsely attributed. The other big problem is when they're comparing benefits they would say the probability of you killing yourself or somebody else that you know or killing the attacker the problem is that the vast majority of times that people use guns defensively the killer isn't the intended criminals that kill infact its like one less out of 1,000 times that people use guns defensively is that criminal killed. 7 or 8 times were frequently wounded but the huge vast majority of times we're talking about people

brandishing a gun or firing a warning shot not killing the attacker and so you're attributing zero benefit to all those other defensive gun users that are there. Fixing either of those two mistakes flips the results dramatically near the direction to show much more benefits from owning guns in the home than not. And finally there's a third problem with this its just a logical problem because what they do is in these calculations they look at people who died in or near residence and ask relatives of the deceased in a neighbour comparison group they have people who live within a mile of the deceased who are the same age, sex and race and then they ask them if they own a gun and they run the aggression on whether you owned a gun or whether you died. Let me give you a simple comparison and that is in all this points apply to the university of Pennsylvania study that was brought up earlier about people carrying concealed lets say we look at the efficacy of health hospital care so I do the exact same study I find people who died in a city over the last year I asked relatives of the deceased whether the person had been to the hospital and then I find somebody who is the same, age, sex and race who lives in a mile from the deceased and I ask them if they'd been to the hospital and then I run a regression on whether you die or whether you've been to the hospital what do you think you're going to find? You're going to find that people who went to the hospital were more likely to die but that's I assume we won't go to Washington and say we've got to get rid of hospitals. There's an obvious problem with it and the comparison you're making is you want two equally sick people one who went to the hospital and one who didn't. A lot of people who didn't go to the hospital they had no reason to go to the hospital they weren't sick like the ones who did so makes no reasonable comparison to compare all those healthy people when they die versus people who are sick and whether they die. And so in a **[0:14:10][Indiscernible]** way but the problem with these studies is they don't take into account this kind of difference there in terms of what's determinant is comparing to actually similar people and just looking at some people may be more likely to be victims of crime, some other people must have been gang members. Denis was saying he couldn't figure out before why gang members would be using their guns and weren't deterred by other gangsters there's something very valuable there you call drugs. And if you can go and their fighting over something valuable and you can see as the profits for drug sales go up or down over time you can actually see big changes in murder rates in the United States going up or down. Does anybody know what the highest murder rate was in the United States history? It was 1932 the last year provision within 2 years after the fall I got other things to respond to **[0:15:02][Indiscernible]**

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[0:15:02]

Prof. Wagner

You need to reply as you go next

Dennis Henigan

Obviously I'm not going to reply to that entire monologue but I have to correct one thing which is John's very very misleading statements about the Brady Law. What he was suggesting was that 99% of the cases are those 1.9 million people who were blocked from buying guns by the Brady Law were not really prohibited buyers that's the impression he just created that's an absolutely false impression the vast majority of those individuals who were blocked from buying guns were convicted felons. In less than 10% of those initial denials were there successful appeals where the individuals established that he's not a member of a prohibited class. What John here is confused about is he is signing the relative small number of cases in which individuals who were identified by Brady background check as having given false information on the form that they filled out and said they weren't a criminal when in fact they were he's talking about the small number of cases in which those folks were successfully prosecuted for lying on a federal form. They're lots of reasons for that prosecutorial discretion it is very difficult to prove the state of mind necessary to show that someone intentionally lied on the form but that has nothing to do with the number of prohibited buyers who were blocked from buying guns from licensed dealers by the Brady Law that's almost 2 million people and that is a success we ought to extend that success to all gun transactions.

Prof. Wagner

I do know we have folks that have flights if you see someone get up and leave they're not getting angry or anything they're just catching their planes so... --

John Lott

Can I ask one question? Denis can you name for me one study by criminologists or an economist that's found that the Brady Act has been associated with reductions in crime just one? I can name you lots that haven't but just one?

Dennis Henigan

You want me to answer

Jonh Lott

One journalist --

Dennis Henigan

James you have all these qualifications its got to be a criminologist, its got to be this you exclude the entire public health community

Dennis Henigan

Which is the severest critics of your work because their work doesn't count so much for example

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Dennis Henigan But let me give you an answer. James M Lovell writing in the criminal justice policy review in 2007 found -- he collected data from 10 different American cities and found that the Brady Law causes successfully significant decrease in crime. You want a study there's a study.

Prof. Wagner Next question

Audience Thank you I appreciate everything you men have said I guess we go towards the panel with Mr. Horwitz

Prof. Wagner Try to make it quicker

Audience I will do that. I believe this is a free country I don't believe that we should force universities, colleges schools etc to allow gun carrying under campuses classroom etc however, to the best of my knowledge does not the constitution limit the powers of the government rather than say what the government can let us do that's the way I understand our constitution, it limits government powers not what our rights are?

Josh Horwitz Right, but I think we have to think about where they're limited that's what I was trying to get across to my talk. They're limited its certainly by colour in hearths and homes and not in your house

Josh Horwitz The question is whether the limitations apply outside the house?

Audience Keep of arms shall not be infringed, period sir.

Audience That's pretty basic

Josh Horwitz I know I know do you know what though you have to talk Justice Scalia about that he wrote it not me, ok. Second of all it was Justice Scalia that put out the sentence to replace the doctrine not me so you have those two requirements. Right has to apply outside Hartsfield does it apply outside hearths and home? And is there protection sensitive places and those things

Audience That's not the protection seeing we are protection from the government intruding on our rights

Josh Horwitz That's what I'm saying but the issue is those are unanswered questions in Heller and I predict that they'll find that second member protections do not extend to carry on college campuses

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Prof. Wagner He raises a good question I'm quoting Lidl. Lidl when he introduces the McDonald Opinion now Heller's already happened Lidl who is writing for the majority in the second opinion now says we held in Heller the second amendment protects the rights to keep and bear arms for purposes of self defence, karma. What the gentleman at the mic was saying that's what we're talking about and what I think you're hearing from the table here is after the karma and we struck down a district Columbine that banned possession of handguns in the home then now we have the context in case we have the right and then we have the context and the questions that are going to come before the court are new situations and factual situations involving different contexts that's why I asked you the tough question earlier. What about the residents and that resident happens to be on a university does that mean [Crosstalk]

[0:20:24]

Josh Horwitz I think as I said before the landlord right I think you its the landlord who is going to give special rights in that situation and I think its only Government Landlord who is going to be able to do those things.

Prof. Wagner And so it's going to be fun watching this spring forth too. One more question and...--

James Manley Wait can I chime in there just a second. We should look at what Justice Scalia actually said and what he said was that "whatever else the second amendment leaves the future evaluation it surely elevates above all other interests the right of law abiding responsible citizens to use arms in defence of hearth and home" so that's the bare minimum. Now the court went on to say that "the second amendment guarantees the individual right to possess and carry weapons in case of confrontation". So its hard to say that Heller is limited to the home off course on the facts of Heller submitted to the home that's what they were talking about but...

Prof. Wagner You didn't think these guys are going to agree did you?

James Manley So the court went beyond the home even though it didn't really have to in Heller so to say there's no right to carry outside the home I do agree that we're going to have to figure out exactly what the second amendment protects but I predict that it will protect the right to carry on campus but certainly Heller went beyond the home even though it was limited to the home on its facts.

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Prof. Wagner One last question

Audience One question I have is it seems like among - I agree with people on both sides who said there are two different world views I see that a lot in this debate and one view is very extreme it shall not infringe that means what it says is I can take any weapon - anyone should be able to take any weapon anywhere if they feel that they need it for self defence and those people feel very passionately I understand that people who support like reasonable restrictions don't this isn't central to their world view they don't go around every day thinking about guns thinking about what gun law should be so you've got a very passionate group on one side and somewhat indifferent group on the other side because guns aren't central to their world view but one question I have is for the people who are on the very passionate program side are there any limits that they do accept on their right to carry guns and I'll give two examples? I have two specific questions one is;

Prof. Wagner Very quickly

Audience Concealed pistol licensing in Michigan you can carry any weapon that is 30 inches or less so if this view of campus carry a gun enacted into law if you had a federal license to carry a machine gun you could as a concealed pistol licensee carry a machine gun on campus most people wouldn't want that I don't think most gun owners would want that. Would that be a restriction that the gun groups would support no machine gun carry on campus? [Crosstalk] The other one is open carry - the same group that's pushing for concealed carry are also pushing for open carry and for open carry you have we have a case right now in Lansing at the public library of a young man who is not old enough for a concealed pistol licensing so he hasn't had that kind of training and background check and according to his own writings online is having trouble getting a hand gun license from Lansing police so I don't know what it is in his background that won't allow him to get a - be a licensed hand gun owner. He's now strapping on a shotgun and walking around in our public library and the people who support that and they're many many people who say yes that young man is asserting his right to self defence I'm wondering if they even would support a law that would allow the law enforcement officials when they see someone openly carrying a shotgun in a public library to stop and ask them see are they a licensed carrier because the answer I hear from the gun community all the time is no I don't have to give my name, I don't have to its illegal, its harassment for the police to even ask me who I am and to ask me anything about my - so I'm worrying about machine gun carrying on campus and whether we could have laws if these

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developments continue along the way they are now if law enforcement could ask someone who is carrying a shotgun [Crosstalk] lawful owners or not. Thank you

Steven Dulan

Regarding open carriers quickly review the current city Michigan law article 1 section VI of the Michigan constitution states, "every citizen has the right to keep and bear arms for defence of himself and the state".

[0:25:03]

Steven Dulan

I've got that one memorized coz it's engraved on the slide of a 45 hanging over my desk and that is a constitutional right but state constitutional rights aren't quite as absolute as the US constitutional rights in the sense that the state has police power. So its well recognized that there are reasonable restrictions allowed on state constitutional rights as of right now we have no statute prohibiting open carry so the rule of lenity except for a very short list of places the rule of lenity which some institutions learn as a basic rule which statutory construction says that what's not prohibited is allowed so the current state of the law of Michigan is open carry is allowed and there are literally thousands of people who do it with some frequency and regularity infact I've seen a couple of them in here today not carrying but I've seen some faces and these folks have shown that they can open carry without creating danger to themselves or others time and time again it is the current state of the law in Michigan. As far as machine guns go machine guns became legal with the stroke of a pen in Michigan by Attorney General Mike Cox he sent the over ruled the Attorney General Frank Kelly who was the Attorney General for about the same time Johnny Carson was on TV about 30 years same time frame. And it was just an interpretation of law but machine guns are lawful in Michigan as long as they're federally licensed there are about 180 something thousand federally licensed machine guns in the US and actually machine gun owners have an exemplary record machine gun owners commit essentially zero crime with their machine guns and the truth is it doesn't matter whether someone gets shot with a machine gun or semi automatic or bolt action or any other type of firing mechanism the truth is a gun is a tool designed to punch holes in things at a distance and it doesn't really matter whether its machine gun or not honestly and so you're just as in danger either way and organ control is essentially based on a logical fallacy which is that the people who are bound to commit crimes are going to be deterred by the gun control law when they're not deterred by the crimes against assault and murder and that means that as far as what restrictions are reasonable we can argue about certain individuals whether they should have the same rights as the rest of us but the truth

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is guns exist they're out there and the only folks who are controlled by most gun control are law abiding people who by definition are no threat. So I wouldn't mind if everyone of you had a machine gun right now I'm comfortable in that environment I'm an ex infantry sergeant. [Crosstalk]

Prof. Wagner I'm sorry we're out of time

James Manley Just very quickly students for concealed carry on campuses the group that I represent its the largest grass root organization that's pushing for these reforms their position is license concealed carry on campus licensed and concealed that's it. I don't know that any one is looking to concealing machine guns.

Prof. Wagner Let me close where we thank all our panellists I will address one thing I will point out that I'll tell you I've worked and had the privilege of seeing folks on both sides of this issue trust me both of your views they're very very passionate there's not one that's reasonable there's not one that's wouldn't be there they're both passionate and that's the way debate over constitution should be and its civil in the way it was today and so I want to thank all of our participants and a large audience for putting this together. [Clapping]

Announcer This concludes to bear or not bear guns in educational institutions.

[0:28:49] **End of audio**