

# Seeking Common Ground: Perspective of a Gun Control Supporter

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## **Introduction—How I Got Involved with the Gun Issue**

One of the first letters I wrote when I became the head of the Brady Campaign and Brady Center to Prevent Gun Violence was to Wayne LaPierre, the executive vice president of the National Rifle Association. I asked LaPierre if he'd be willing to meet with me—with or without staff; whenever and wherever he preferred; publicly or privately—to see if there were any areas where we might be able to find agreement, or areas where our positions and interests weren't that far apart, regarding gun policy. He never responded to my letter.

As a lawyer and then as a politician and mayor in Fort Wayne, Indiana, I had never shied away from conflict and controversy, but had always felt that it was better to seek common ground and find areas where adversaries could agree to move forward whenever possible rather than squander time, money, and progress on unnecessary battles. Since I did not consider myself virulently “anti-gun” or believe that we needed to “take everybody’s guns away,” it seemed to me that there might be some significant areas where potential agreement could be possible. Guns were not a part of my family life growing up, but I earned my NRA “Marksmanship” and “Pro-Marksmanship” badges at camp when I was in grade school, had

friends who went hunting with their fathers, and engaged in my share of make-believe Davy Crockett, Cowboys and Indians, and Civil War shoot-outs. My mother's father, who was a machine-gunner in World War I, and her older brother, would occasionally bring us game they had shot. My father and his father had both been elected as county prosecutor and I often heard their stories about guns used by criminals and by law enforcement.

When I was about to start high school, I was stunned to see a story on the local television news that one of my best friends from grade school had been shot and seriously wounded at a home of an acquaintance. One teenage boy found his older brother's gun and decided to "scare" Scott by pointing it at him and threatening to shoot. Scott turned to leave and was shot in the back; he survived, but an eighth of an inch either way would have led to death or paralysis. It was clear to me that the lessons I had learned about gun safety at camp were not something that others necessarily followed.

As an undergraduate majoring in Political Science at Indiana University in the late 1960s, I wrote a paper on how votes for or against the Gun Control Act of 1968 impacted the U.S. Senate races that year and followed closely the high-profile shootings and outbreaks of urban and rural violence throughout the country. While raising issues and leading rallies and protests as student body president at IU, I worried about rumors of groups bringing guns to campus and later the fall-out from the National Guard shootings and four student deaths at Kent State University.

It was not until I was elected mayor, however, that I started focusing directly on the issue of gun violence. A month after my election, but before I took office, one of our police recruits was shot and killed during a training scenario outside of the state. The city's training officer had loaded his weapon during the lunch break and forgot to unload it when the training started up again. Having an African American recruit killed by a white officer led to racial tensions in our city and showed me that even well-trained individuals could make fatal mistakes when carrying firearms.

An influx of crack cocaine and gang wars were leading to increases in violence in my city when I took office, and we responded with raids on drug houses, increased taxes to hire more police officers, instituted partnerships with neighborhood groups and faith-based institutions, responded with our versions of "broken-window" and "community-oriented policing" and "community-oriented government" strategies, and generally tried anything we thought could help make the city safer. When one of the drug dealers was killed by law enforcement in one of our first drug house raids, I started to get death threats. Still, it wasn't long before I started to

walk neighborhoods in all parts of the city and go to community meetings without protection to demonstrate the basic safety of the city.

But there were still too many shootings. I got the call from my police chief in the middle of the night when one of our police officers was shot and killed by her husband, also a police officer, when the loaded gun they kept next to their bed for their protection discharged during a domestic quarrel. I went to the hospital when a minister's son was shot in the head from a drive-by shooting when he was waiting to be picked up from a YMCA branch. I met with relatives of shooting victims and went to prayer vigils at the scenes of the violence.

As we implemented a number of law enforcement and community strategies, I learned from my police command and others how weak the gun laws were in our state and country. I decided to support the efforts of Jim and Sarah Brady to require gun sellers to perform background checks on their gun buyers to see if they were "prohibited purchasers" as defined by the Gun Control Act of 1968 and not just rely on the buyer's word concerning his or her status. When my police officers told me how they were out-gunned in responding to a bank robbery at a strip mall, I supported efforts to try and restrict access to weapons that were particularly dangerous because of the number of rounds that could be fired quickly and powerfully.

Because of my "law and order" and public safety concerns, I participated in news conferences in Washington, D.C., Indianapolis, and Fort Wayne with the Bradys, other mayors, law enforcement representatives, and top elected and appointed officials to try to do something about the weak and nearly non-existent laws to help reduce gun violence. I pushed these issues with elected officials at all levels of government and was happy to see the Brady Bill become law, and later to sit on the platform on the South Lawn of the White House along with other mayors like Rudy Giuliani for New York City and with the heads of groups like the National Sheriffs Association when President William Clinton signed the Crime Bill. Having legislation that provided for more police, the establishment of the Community Oriented Policing Services (COPS) office, increased efforts on domestic violence, and restrictions on "assault weapons" and high capacity ammunition magazines seemed like a good thing for my community as well as the country.

Crime rates and violence began to drop in my city and across the country in the mid-1990s, but efforts to strengthen gun laws further remained controversial and police tactics became more of a concern in Fort Wayne and elsewhere. I was often questioned about my stance on gun issues during my U.S. Senate primary campaign in Indiana in 1998. My success in

winning the Republican nomination that year showed that my positions were not as politically toxic as some argued, particularly when I explained those positions in connection with an overall crime-fighting strategy. After the Columbine shootings in 1999, I continued to speak out for stronger gun laws but national legislation failed to pass.

When I left office after twelve years as mayor at the beginning of 2000 and returned to the practice of law, I continued to follow gun violence and crime prevention issues—noticing particularly candidate George W. Bush’s support for the “assault weapon ban” and trigger locks during the presidential debates that year. After 9/11, I was more involved in matters surrounding communications interoperability for public safety providers and threat assessments for state and local governments but still followed discussions and debates concerning guns.

In 2006, with a Republican president and Congress, the Bradys and the Board of Directors for the Brady Campaign and Brady Center to Prevent Gun Violence asked me to sign on to a five-year term to head their organization beginning that July. I knew it would be tough to get legislation passed at the national level—efforts to renew the “Assault Weapon Ban” had been unsuccessful less than two years earlier—but this was still an issue that was very important to me and I hoped that my background might help lead to some progress.

### **Finding Common Ground**

And so I wrote Wayne LaPierre to see if there might be some common ground. When he didn’t respond, I’d mention the letter to his staff when I saw them at television interviews or meetings when we had been asked to present our positions on current gun issues—and still I got no response. When I finally had joint television appearances with LaPierre after the U.S. Supreme Court decisions voiding near-total gun bans in Washington, D.C., and then Chicago, I asked him directly on-air about sitting down to find common ground, particularly in view of language in those decisions indicating that many restrictions on guns were “presumptively lawful.” Once again, LaPierre ignored my request and refused to consider any attempt to identify areas of agreement.

The tragedy here is not just the continuing level of gun violence in this country—approximately 32 gun murders, 51 gun suicides, 1 or 2 fatal gun accidents, and 183 non-fatal gun injuries every day in this country, along with the related medical and hospital costs, lost wages and productivity, and continuing burden and grief for families and caregivers—but the fact that it shouldn’t be that hard to reach some level of agreement on measures

to reduce gun violence without “trampling” on anyone’s constitutional rights or unduly restricting anyone’s legitimate need or desire to hunt with guns, collect guns, or have guns for the personal protection.

Why LaPierre didn’t want to discuss trying to find common ground and why we aren’t able to reach a governing consensus on measures to reduce gun violence involves issues of organizational self-preservation and perpetuation, fundraising, politics, fear-mongering, and paranoia. Richard Feldman, in the next chapter of this volume, correctly focuses on long-held suspicions of opposing agendas and “identity politics” as additional reasons LaPierre might have had for not wanting to meet with me. This approach to the issue means that the fight will go on indefinitely and that common ground will never be found. Unlike other “hot-button” or “wedge” issues, however, as long as we make it clear that we’re not talking about “banning all guns” (which is not a position that I or any of the organizations I’ve worked with takes), or saying that there should be *no* restrictions of any sort on guns and gun ownership (which I don’t believe is the case with anyone, as far as I know, on the “other” side with whom I’ve ever debated gun issues), there should be a lot of room here for compromise.

If anything, the decisions by the U.S. Supreme Court in *Heller* and *McDonald* should make it easier to find common ground. Those decisions make it clear that “[like] most rights, the right secured by the Second Amendment, is not unlimited” and that some restrictions on who gets guns, how guns are sold, how guns are stored, where guns can be taken, when guns can be carried, and what kinds of guns are available are “presumptively lawful.” Where we draw the specific lines on these categories described by Justice Scalia in Section III of the *Heller* case and reinforced by Justice Alito in the *McDonald* case might still be subject to court scrutiny, but they are also good topics for discussion, debate, and potential compromise.

## Background Checks

Perhaps the area where it should be easiest to reach agreement is with regard to background checks—Brady’s signature issue. If we all (or nearly all) agree that not everyone should be able to possess or buy a gun, then we should want to design and develop a system to try and keep these particular people from easily getting guns. For a good background check system to have any chance of being effective, we need to look at: (1) who should be on the list of “prohibited purchasers”; (2) how we get that list of individuals into an accessible database; and (3) how we make sure that data base is checked before nearly all guns are sold or transferred.

### Prohibited Purchasers:

The current list of “prohibited purchasers” is focused mainly on felons, mentally dangerous individuals, and those subject to domestic violence restraining orders. In addition, there are restrictions on individuals dishonorably discharged from the military, non-citizens, and drug abusers. The main issue here is how these different categories are defined, and whether new categories should be added or current categories deleted or redefined.

For example, it might make sense to add some violent misdemeanants to the list of prohibited purchasers since an individual who has been convicted of being violent is not someone most of us would want to have a gun. Conversely, while a convicted felon has arguably shown a blatant disregard for following the law, an argument might be made that tax evaders or some other felons might not be the sorts of individuals who we need to bar from gun ownership. It is encouraging that Richard agrees that we need a “more intelligent standard” here.

The mentally dangerous category (described in the statute as “mental defective”) has received a lot of attention in recent years. Many people don’t realize that the category currently is basically concerned with only those who have been found officially by a court or a court-like body to be a danger to themselves or others or have been similarly declared or found to be incompetent. The category does not include those who have only sought treatment for different types or levels of mental illness. As Richard points out, more money is needed to deal with mental health issues. At the same time, instead of blaming mental illness for most of our gun violence problems, we need to be aware of studies showing that only 4 percent of the violence is tied to mental health issues. While a number of high-profile mass shooters have been described as mentally dangerous, very few of them technically fit this legal category at the time they did their shooting. How to write a definition that includes these types of potential killers is one of the challenges we should be facing.

Another major issue with the mentally dangerous category is how someone gets off the prohibited purchaser list once the individual is no longer considered dangerous. Unless one considers being mentally dangerous always incurable, there should be some process for individuals to get off the prohibited list. How that change in status should be determined (by a doctor or a court or some other way), and how the removal process should work, is another area where parties to the gun violence debate should be able to find some common ground. Restraining orders in domestic violence cases are sometimes challenged because of questions about notice and opportunities to be heard, as well as by steps some law enforcement personnel

use to enforce the orders by seizing guns. Absent gun registration provisions, it is often difficult to know who really “owns” a gun that may have been moved or transferred to a different person or place in response to a restraining order. Whether or not a restraining order has been issued or is still in place and its correct status reflected in the data base can cause problems in making this category of prohibited purchaser effective.

The “drug abuser” category is one that could be the most effective in keeping questionable people from being able to buy a gun legally depending on how the category is defined. Indeed, the studies on the connection between mental health problems and shootings show that alcohol abuse and drug use (and past violent behavior) are much more important as predictors of future gun violence. There have been some proposals to expand the regulatory definition from anyone who has been arrested for a drug offense in the last year to anyone arrested in the last five years. While I have concerns with equating arrest with guilt, particularly when there has been plenty of time for a court disposition of an arrest, there may be other ways to tighten up the definition here. Maybe ask if anyone has used illegal drugs (particularly since the statute uses the phrase “unlawful user of . . . any controlled substance”) within a certain time period or been arrested within a certain time period and then require a drug test of some sort for those individuals? Maybe do something similar for individuals who fit other criteria indicating drug use or alcohol abuse? There may be issues here with effectiveness and time delays, but tighter definitions could make a positive difference.

Since 9/11, there have been proposals to add some of the different lists of individuals of concern to the Department of Homeland Security to the list of individuals prohibited from buying and owning guns. If someone is on a “terrorist watch list” or even a “no-fly” list, is this really a person who we should let buy guns easily though legal channels? As Richard indicates, the objection to these proposals is that no one knows for sure who is on these lists and why, whether we want to let these people know that they are on the lists, mistakes on the lists, and no clear procedures for challenging the list and getting off the list. This isn’t a “simple” issue, but it is an area that should be discussed to see if some agreement can be reached so known terrorists can’t easily amass arsenals to be used against us.

### **Database Records**

Even with a good list of people we consider too dangerous, that list does no one any good unless the names are submitted to and readily accessible in a database available to gun sellers. One of the major lessons we learned

from the Virginia Tech massacre on April 16, 2007, was how our background check system does not work properly when the names of prohibited purchasers are not submitted to the database by the states. The Virginia Tech shooter had been found by a Virginia court to be a danger to himself or others. Virginia did not submit his name to the database, however, because they had a state policy to submit only the names of those found to be dangerous by a court and ordered to undergo in-house treatment, which had not been ordered for this individual. The shooter twice (because Virginia had a one-gun-a-month law) went to buy a gun from a federally licensed dealer and both times he passed the background check because of the state's failure to submit the information. If the information had been submitted, the sales would not have occurred.

After this information came out, we learned that only an estimated 10–20 percent of the records of mentally dangerous individuals had been submitted by the states to the background check database. My home state of Indiana had submitted only one such record at this time. New York State had submitted only four such records. In addition, it was estimated that 20–25 percent of the felon records were missing along with a significant number of individuals subject to restraining orders. Background checks cannot work properly if the records of prohibited purchasers are not in the database checked by gun sellers.

Following Virginia Tech, the Brady Campaign and I supported legislation proposed by Representative Carolyn McCarthy from New York to create incentives to the states to have them submit more records along with disincentives if they didn't. Many in the Gun Violence Prevention (GVP) movement were opposed to this legislation because it also established procedures for individuals to get off the prohibited-person list, particularly individuals in the Veterans Administration system who had been declared incompetent to manage their own affairs and directly receive their VA checks. At the same time, the NRA remained silent or gave token tepid support to the legislation. My support was based on the fact that I did not consider mental dangerousness to be a permanent condition, and because I felt that getting significantly more names of prohibited purchasers into the data base outweighed any problems with a much smaller number of individuals possibly coming out of the system. The legislation passed the House a few months after the shootings in Blacksburg and finally made it through the Senate eight months after that tragic day. Senator Edward Kennedy called me in December before agreement was reached to make sure I was happy with the final compromise worked out by Senator Tom Coburn on behalf of the NRA and Senator Chuck Schumer and Kennedy's office on behalf of the GVP movement. The legislation went

through on a voice vote and was signed quietly by President George W. Bush in early January of 2008.

Because of this legislation, many more records have been added to the background check data base. Much more needs to be done, but now there is a stronger framework on which to build. Both Brady and the NRA were involved in allowing this to be passed. If the GVP movement had not been able to help get anything passed after Virginia Tech, and if we had been unwilling to work with Congresswoman McCarthy, one of our strongest allies on the Hill, I'm not sure if we would ever have been able to advance any legislation for a number of years. Compromise can be controversial and messy, but is needed to make progress.

### **"Private Seller" Loophole**

Even with a good list of potentially dangerous individuals, and even if all those records are in a readily accessible data base to gun sellers, a background check system will be ineffective if a significant number of sellers are not required to perform these background checks. Since no records are kept of sales that occur without background checks, we have to rely on estimates but most of those who have examined the issue have concluded that somewhere close to 40 percent of all gun sales occur without a background check.

The big loophole here is that only federally licensed dealers are covered by the Brady Law on background checks. So-called private sellers who transfer guns from their own "collections" are not required to do background checks. Since the passage of the Brady Law, this loophole has been exploited, particularly at gun shows in many states, to allow sellers to transfer hundreds of guns week after week without any paperwork or background checks. While federally licensed gun stores who do background checks have brick-and-mortar places of business, and have to do their own advertising and pay the normal costs of daily operations, these "private sellers" can rely on gun show promoters to provide them a venue, advertising, and a walk-in clientele, all with less paperwork for (and fewer taxes collected from) their customers.

Over 2.2 million prohibited purchases have been stopped by the Brady Law since the start of the instant check data base in 1998. While I agree with Richard that much more needs to be done to penalize those who have attempted to buy guns and have been stopped, the process still has made it harder for people we've defined as dangerous from getting weapons. Why we allow an easy alternative for prohibited purchasers to get guns from "private sellers" makes no sense to me.

This problem could be fixed by requiring background checks for nearly all sales (perhaps with exceptions for immediate family members and other limited categories). States like California have figured out how to make this work operationally, and fears that requiring these background checks would put gun shows in California out of business have been proven to be unfounded. For other non-exempt private sales, ways can certainly be found to get a background check done at nearby gun stores or through other means in a timely fashion that don't unnecessarily burden any of involved parties. This is where the different sides to this issue could work together to close some of the current loopholes and fix some of the current problems. Richard's proposed "Gun Show Preservation and Protection Act" is a good example of something that both sides might be willing to support. Again, there might be arguments about the details and the definitions, but it has the potential of reducing the easy access to guns by individuals society considers dangerous without unduly burdening legitimate purchasers. If the NRA let elected officials know that something like this was acceptable, we'd start seeing real progress on this issue.

One of the most frustrating things for me is to read statements from some of the elected officials saying they are voting against an effort to improve the background check system by saying that there are problems with the existing system. Yes, there are problems. It has done good things but needs strengthening. So let's try to fix these problems, not perpetuate them.

Yes, even with a strong improved background check system, dangerous people may still find ways to get guns. But we put laws on the books not just to stop bad people from doing bad things, but also to make a point as to what a civilized society expects from its members and also so we have something additional to charge them with when they get caught. And, as Richard points out, these gun charges needed to be treated seriously by prosecutors and courts. The fact that people break laws is not a good argument for getting rid of those laws, but should be the reason for constantly looking at ways to strengthen those laws and make them more effective.

## **Public Gun Carrying**

One of the biggest issues pushed by the gun rights movement over the past 20 years has been expanding concealed carry to more states, changing "may issue" states with regard to carry permits to "shall issue" states, fighting restrictions on places where guns are not allowed, and promoting and encouraging "open carry" of guns. While efforts to fight this have been largely unsuccessful in most states, the GVP community has been able to

block the push in the U.S. Congress for automatic national reciprocity of concealed carry permits. This issue is unlikely to go away soon and is one where finding common ground might be possible.

As I write this, the courts have not ruled definitively on whether or not there is a constitutional right to carry guns outside the home. Both the *Heller* and *McDonald* cases dealt just with having a gun in the home for self-defense, and the language in those decisions seems to indicate that most limits on carrying guns in public would be approved. References to “19th-century courts” finding “prohibitions on carrying concealed weapons” to be “lawful under the Second Amendment or state analogues,” as well as specific support for restrictions on bringing guns to “sensitive places” tends to make this a policy issue rather than a constitutional one.

Much of the policy debate here revolves around whether having more guns being carried in public makes us safer or puts us more at risk. To those in the GVP movement, the risks of having more guns in public places clearly outweigh the benefits. We cite research showing that those who carry guns are four times more likely to be attacked than those without a gun (although this may be an indicator that those who carry are often in neighborhoods or businesses with increased risks) and highlight every story about an accidental or negligent shooting by a legal gun carrier. Gun rights activists argue that “gun-free zones” become targets of opportunity for bad people and that states with permissive gun carry laws have less crime, often ignoring or marginalizing any information to the contrary.

My biggest concern with gun carriers is whether they fully understand the risks and responsibilities involved in bringing that gun into the public sphere. If someone has a gun at home, they may put the residents of and visitors to that home at increased risk (since a gun in the home, according to some studies, is twenty-one times more likely to harm someone legitimately in the home than an intruder), but individuals can choose not to go to these homes. When the gun owner brings the gun out of the home, all of us have to live with the consequences.

The problem is that some states require little or no training on gun safety, gun laws, gun use and misuse, when to shoot, and so on. I’ve known people who have been able to get concealed carry permits without ever touching a gun. Some states do little more than requiring an application and a processing fee. This is bad enough policy for those who live in or visit these states, but when other states give reciprocity to those permits, the situation gets even worse.

One possible way to find common ground on gun carry would be to agree to some minimum training and testing standards for anyone who

wanted to carry a gun outside of the home. I am happy that Richard appears to agree with this for individuals wishing to carry “in other states under federal law” as part of an “enhanced” state carry license.” Having stricter requirements to get a permit would make it more likely that the gun would not be misused. Combine this with a more extensive background check than what is required just to buy a gun, and regular renewals, and most of those on opposing sides of the gun issue might feel somewhat satisfied.

One of the related issues here is what role local law enforcement should have in granting a carry permit. When I was mayor, there were people the police knew were involved in selling drugs or running gangs, or were dangerous in some other way, but whom we never had enough evidence against for an arrest. It seems we would want these law enforcement professionals to be able to provide some say and input, whether final or advisory, on whether someone could legally carry a gun in public. For those who are concerned that no one would ever get a permit unless they were well-connected, we could establish some sort of review or appeal procedure. Otherwise, we may be giving passes for dangerous people to carry guns legally in public. While Richard says he is confused by this position, arguing that criminals and “[c]razy people” won’t bother with getting a permit, it still makes no sense to me for government agencies to issue permits to people whom local law enforcement have legitimate reason to believe have been engaged in violent criminal enterprises or are dangerously mentally ill.

Another issue raised here is whether the procedures for granting a permit to carry might also be translatable in some degree to buying guns. Many gun rights advocates strongly oppose licensing of gun owners and registration of guns, but many of these people seemingly have no problem with obtaining a carry permit. If we had licensing of gun owners, we could help make sure that individuals with guns knew the risks and responsibilities of gun ownership. If we required guns to be registered, then we would know which individual actually owned and was responsible for which gun.

Even with an agreed-upon process for permitting gun carry, there is still an issue whether there are places that should be off-limits to guns. Gun rights advocates argue that so-called gun-free zones have become targets of opportunity for mass shooters. GVP advocates argue that we need to keep all guns not in the hands of law enforcement or private security out of these places for safety reasons.

There are a number of problems with allowing guns in places like schools and government buildings (the two specific areas mentioned in the *Heller* decision as locations where guns could presumptively be prohibited). These are both areas where it may be difficult to keep a gun secure.

School and building lockers, dorm rooms and business offices, student backpacks and lobbyist briefcases, teachers' or legislators' desks provide very little secure storage for a gun. In the event of a shooting, law enforcement would have real problems in these venues knowing who the "good guys with guns" were and who the "bad guys" were. Without real up-to-date training, the "good guy" could easily end up being an early victim or end up injuring innocent bystanders. After all, even police officers only hit their target 20 percent of the time in active shooter situations—and this is something they practice. There are concerns too with the gun being taken—approximately 20 percent of the time when a police officer is shot, it is with that officer's or his or her partner's gun. No one wants to be a "helpless" victim, but adding another shooter to a chaotic and traumatic situation has the potential to add more injuries and deaths for the innocent.

It is not clear how the "open carry" debate fits into this whole discussion. Historically there were fewer restrictions on those who carried openly than those who concealed their weapons. Those who promote "open carry" now seem to have as their main objective getting others used to and comfortable with guns in public. It seems that this actually might be a counter-productive. GVP groups have gotten good publicity by pressuring retailers like Starbucks and Target to keep guns out of their properties. Police are very likely, with good reason, to be suspicious and concerned about individuals displaying guns in public places.

The continuing battles on gun carry could be resolved if there were basic criteria for who should be allowed to take guns into public places, what places could be placed off limits to these guns, and how those guns could be carried. Absolutist approaches have not worked well so compromise makes sense.

### Limits on Types of Guns and Ammunition

The most controversial topic in the gun debate has always seemed to be efforts to limit specific types of guns. The so-called Assault Weapons Ban, which was in effect from 1994 to 2004, spurred a lot of debate, evasion, and criticism. The gun rights movement mocked opponents by saying they just were opposed to "scary looking" guns. Definitions were problematic because gun manufacturers could change or modify features to take their guns out of the ban. The grandfathering of existing weapons meeting the definition meant that the effectiveness of the ban was always going to be called into question.

Again, the constitutionality of any similar "ban" is a bit unclear, although Justice Scalia's opinion in *Heller* did endorse restrictions on "dangerous and

unusual” weapons. How this squares with his comments about weapons in “common use” is yet to be seen, but the Court seems to have squarely rejected an “any weapon is okay” approach. Historically, there have been restrictions—but not bans—on fully automatic weapons and machine guns since the 1930s. Given the changes in guns since the Depression Era, the question now should be whether there are any guns which should be treated more like machine guns than handguns or hunting rifles. If the opposing sides on these issues could sit down and discuss which guns are particularly “dangerous and unusual” and should be treated differently, and what those differences should be, then maybe this issue too could get resolved.

We’ve placed some limits on plastic guns because they are easier to hide. When this issue came before Congress in the late 1980s, the support was overwhelming. Technology has made this a concern once again. With advances in 3-D printing, we need to look more at how and if we can keep these weapons out of circulation.

The main objection to “assault weapons” (and gun sellers have long used that phrase as well as those seeking to place limits on these guns) is the number of rounds they are able to fire quickly. Many of the public don’t understand the difference between semi-automatic and fully-automatic weapons, and that is seen as helping those who want restrictions, but being able to fire thirty rounds with a trigger-twitch in fifteen seconds is something that is a legitimate topic of concern. The question is whether these semi-automatics are more like machine guns or traditional hunting rifles. If we agree that they are somewhere in-between, maybe we need a commensurate level of restriction.

While Justice Scalia dismissed concerns about whether “small arms could be useful against modern day bombers and tanks,” there are some in the gun rights movement who want a lot more than traditional “small arms.” Where do .50-caliber rifles capable of incapacitating a helicopter or a plane on the ground at long range fit into the discussion? As technology increases the range, lethality, and speed of weapons, do we continue to treat them not just like the flintlocks of the Founders’ era, but even the guns of the 1930s or 1960s when gun restrictions first started being adopted by Congress?

Perhaps one specific topic for review is the size of the ammunition magazine. Many forget that the 1994–2004 “Assault Weapons Ban” also limited new ammunition magazines to ten rounds. Again, there were issues with grandfathered items, but these restrictions may have had more impact than the restrictions on various types of guns. Those guns could be modified, but a size restriction on the magazine impacted all of the guns. Since the main concern with the “assault weapon” was the number of rounds that

could be fired quickly, the magazine limits meant there had to be at least some break in shooting after ten bullets.

The Tucson shootings in January 2011 that left Congresswoman Gabby Giffords seriously injured help show the significance of magazine limits. The shooter in that instance had a magazine that held thirty-one bullets. He was tackled when he went to change magazines. While gun enthusiasts talk about how quickly and easily these magazines can be changed, not every “bad guy” is a gun expert, and even if they are skilled, the process is a lot harder when people are dying and screaming and running and there is blood on the ground. The nine-year-old girl and some of the other victims may well have survived if the shooter had been forced to put in a new magazine after ten rounds rather than thirty-one. Similarly, it has been reported that ten or eleven students were able to escape harm at Sandy Hook in December 2012 when the shooter there had to change ammunition magazines.

When we tried to publicize this issue at Brady, we talked about putting restrictions on “assault clips.” I got criticism from those who said that phrase was inaccurate, but most of the public thinks of *TIME* or *Sports Illustrated* when someone mentions “magazines,” and we felt the use of “assault” not only recalled “assault weapons” but also accurately described what was happening when someone could fire thirty rounds at a target or targets in close to fifteen seconds. In our view at Brady, the only reason someone needed to be able to fire more than ten rounds quickly was if they were trying to kill a lot of people. If they were just concerned about self-defense, they had more than enough fire power with a ten-round magazine.

One of the arguments against this proposal that Richard advances is that an individual could just carry another gun (or two) and thus have more rounds to fire. As with many of these topics and proposals, there is no perfect or foolproof solution. But I’ve always argued that just because someone can find a way around a restriction doesn’t mean we should make it easy for them. Multiple guns may be more difficult to carry and shoot. It might make sense to argue about the exact number of rounds we allow in a magazine, but right now there is no limit. There should be room for some compromise on this issue.

People can be killed and injured in a lot of different ways and that is always going to be the case. But some methods are more lethal and dangerous than others. I always tell people we had people injured by drive-by shootings when I was mayor, but never by drive-by knifings. There are differences in things that can and do cause harm. We should be able to reach agreement to limit some guns and some ammunition magazines to

make it a little less likely that more people can be killed at a distance very quickly from modern weapons.

### **Safer Guns**

While new technology has made guns more dangerous in many ways, it also has the potential to make guns safer if folks would be willing to work together. Possibilities for safer guns include “smart guns” that can be fired only by an owner-authorized user, new versions of trigger locks, and bullet-in-the-chamber indicators. Technology also helps make “micro-stamping” a real possibility so markings on ejected cartridges can be used to help identify the last legal owner of guns used at crime scenes.

The main objection to these and other new features is that they are unworkable or unreliable, but that usually can be said about almost any new feature connected to any product. This is where testing and innovation should come into play. Instead, the gun lobby reflexively opposes anything new that might be considered a safety feature, perhaps because they are afraid it might lead to a higher cost for the gun or new legal requirements regarding guns.

We should stop being afraid of new innovations, just as we should stop choking research on gun violence and possible interventions to reduce current levels of violence. The trench warfare over any new idea or product or topic of research ends up serving only the status quo. We would all benefit from new looks at some of these old battles.

### **Gun Trafficking Laws**

Individuals who traffic in the illegal sale of guns shouldn't have the support of anyone involved in the debate over gun policy. But still, the laws to fight illegal gun sales are notoriously weak. When we view proposals or suggestions on changes to existing laws with automatic opposition because of the source of the idea, we help guarantee the continuance of an ineffective enforcement program.

There was legitimate outrage over the “Fast and Furious” operation involving attempted “sting” sales on guns going from border states to Mexico a few years ago, and the hidden video shown on network television of individuals carrying boxes of guns out to their cars and trucks shocked many people. Part of the tragedy here, however, is that it was totally legal to buy all these guns as long as the buyer was not a prohibited purchaser and totally legal to resell them to others as long as the seller had no actual knowledge that the buyer was not a prohibited purchaser. It may have

been illegal to take the guns across the border, but it was not illegal to take them to the border.

When we allow someone to buy dozens of similar weapons at one time, are we really surprised that those guns get sold out of the trunk or “off the books” to all sorts of purchasers? When someone can buy any number of guns one day, saying they are for their own possession, and then sell them to someone else the next day saying that they changed their mind, are we surprised that we don’t do a better job stopping “straw purchasers”? When we have no way of clearly proving who owns a gun because the guns do not need to be registered in anyone’s name and private sales do not require any paperwork, are we surprised when it is almost impossible to show that a prohibited person has a gun illegally, or that a gun traced to a crime belonged to the last owner of record?

We could look at restricting the number of guns that could be bought at one time. Some might argue that “one gun a month” is too restrictive, but are they willing to suggest another number instead of continuing to have no limits? We could require mandatory reporting of lost or stolen guns, not to hassle legal gun owners, but as a way to frustrate gun trafficking. We could work to develop standards of practice, if not regulations, for gun dealers to help stop straw purchasing.

While Richard argues against proposals to limit multiple sales, he does make an important proposal which would help stop gun trafficking with his discussion of stolen firearms. In my talks about gun violence prevention, I make the point that one of the main things burglars look for in homes are guns—arguably making homes with a gun a more attractive target (assuming an empty house) than those without a gun. Richard’s suggestion that firearm retailers check the list of reported stolen guns when buying used guns as a way to make it harder for thieves and fences to “unload” these “hot” firearms” could go a long way to combating gun trafficking. These are the sorts of ideas that could be brought to the table and perhaps become policy if more individuals and groups involved with the gun issue were willing to sit down and try to find common ground.

## Conclusion

If Wayne LaPierre isn’t willing to sit down to discuss whether we can find common ground, then NRA members, elected officials who seek the NRA’s endorsement, and gun owners in general need to pressure their leaders at the NRA and in other groups to do this for them. Gun violence is a serious problem in this country. While we will never be able to end all violence, we can take steps to reduce it.

Guns are legal and are here to stay. The challenge is how to make it harder for those guns to go from being a legal product to something that easily gets into the hands of dangerous people. Different strategies may be needed for individuals who want guns for criminal purposes, those who are dangerously mentally ill, and those who are likely to use guns negligently and irresponsibly. No system is perfect, but if we are willing to sit down and seek common ground, we can make our country a safer place.

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