

Frank Zimring and Gun Control: A True American Guru

Richard Harding[†]

Half a century has gone by since the publication of Frank Zimring's seminal article, *Is Gun Control Likely to Reduce Violent Killings?*¹ This article was Frank's first marker in the area of gun control, but by no means his last. Over the last 50 years he has established himself as the supreme scholar of United States gun control policy issues. This has culminated in a consideration of the safety and vulnerability of both police members and the public they encounter, in his 2017 book, *When Police Kill.*²

My tribute to Frank's stellar career will be to briefly survey his work in this area. But before doing so, I want to say a few words about Frank as a colleague and friend.

I first met Frank in January 1971. I had recently published *Police Killings in Australia*,³ and Norval Morris, Director of the Center for Studies in Crime and Justice at the University of Chicago Law School had invited me to be a Visiting Scholar for a semester. The purpose of my appointment was to look at killings by Chicago police, and the work I did in Chicago resulted in the 1973 publication of *Killings by Chicago Police 1969-70: An Empirical Study.*⁴

DOI: <https://doi.org/10.15779/Z38NS0KZ1Z>

Copyright © 2018 Regents of University of California

[†] The author is Emeritus Professor of Law at the University of Western Australia. His previous appointments include: Director of the Australian Institute of Criminology; Commissioner of the Australian Law Reform Commission; Chairman of the Western Australian Law Reform Commission; Director of the Australian Broadcasting Corporation; Founder and Director of the Crime Research Centre at the University of Western Australia; and inaugural Inspector of Custodial Services for Western Australia.

¹ Franklin E. Zimring, *Is Gun Control Likely to Reduce Violent Killings?*, 35 U. CHI. L. REV. 721 (1968).

² FRANKLIN E. ZIMRING, *WHEN POLICE KILL* (2017).

³ R.W. HARDING, *POLICE KILLINGS IN AUSTRALIA* (1970).

⁴ Richard W. Harding & Richard P. Fahey, *Killings by Chicago Police 1969-70: An Empirical Study*, 46 S. CAL. L. REV. 284 (1973).

When I arrived at the bleak and snow-covered Hyde Park campus, one of the first people I met was Frank. His reputation had preceded him via my great friend, Gordon Hawkins. He was, Gordon had told me, a “lethally bright Young Turk who took no prisoners in academic debate.”

Gordon’s presence at Chicago was also at the behest of Norval Morris, with whom he was finalizing the manuscript of the delightfully whimsical and scholastically cogent book, *The Honest Politician’s Guide to Crime Control*.⁵ Frank was something of Norval’s protégé. Norval had recognized that, with the fecundity of Frank’s thoughts and insights about crime and justice, it might be prudent and productive to team him up with an “old hand” – someone off whom Frank could bounce his teeming ideas and who wrote with elegance and superb clarity.

It was, I have to say, a master-stroke. Frank and Gordon subsequently co-authored nine books, not to mention numerous journal articles. The partnership not only survived the move from Chicago to Berkeley, but also thrived even more at this new venue. I shall never forget witnessing the Claremont Resort pre-lunch poolside discussions about deterrence, rehabilitation, pornography, the scale of imprisonment, drug use in crime and so on. By next morning Gordon would have produced a draft reflecting the ideas that had been batted around the previous day. The Zimring/Hawkins partnership was one of the pearls of late 20th century criminology.

Let me now return to gun control, a topic that throughout his career has never been far from Frank’s scholarly concerns. In his 1968 article, he posed a question so seemingly elementary, yet so blindingly perceptive, about gun use – a question that no scholar had previously attempted to explore. He said:

The question is: Do a significant proportion of homicides result from a less deliberate and determined intention [than single-minded desire to kill the victim at all costs]? If this question may be answered in the affirmative, and if the probable substitute for firearms in these situations is less likely to lead to death, then the elimination of guns would reduce the number of homicides.⁶

⁵ NORVAL MORRIS & GORDON J. HAWKINS, *THE HONEST POLITICIAN’S GUIDE TO CRIME CONTROL* (1972). Gordon remarked to me that, with such a target audience, sales were sure to be minimal, and he was surprised that a publisher would take on such a project. In the event, the book sold well, and has been very widely cited over the years.

⁶ Zimring, *supra* note 1, at 721–22.

To answer this question, Frank analyzed the 533 homicides that had occurred in Chicago in 1967 – a data set sufficient to be statistically robust. Of course, the perpetrators could not be interviewed to try to ascertain their precise intent. But surrogate factors were available on the record: the relationship between victim and attacker; the situations in which the attack occurred; the victim’s gender and race; the police-nominated motive of homicide; the location of most serious wound; the apparent commitment to the objective of killing, as indicated by single or multiple use of the weapon in the attack situation; and the rates and typology of both fatal and non-fatal attacks with a firearm or a knife. These factors were carefully analyzed, as was the kill-rate of the next most dangerous weapon used by offenders – a knife.

Weaving all these factors together, Frank was able to state: “[A]n investigation of patterns of knife and gun wounding has suggested that a roughly equal proportion of both knife and gun attacks appear to be of a class likely to produce ambiguously motivated homicide.”⁷ On that basis,

The beginning of the present exercise is found in a crude but suggestive set of ratios: the rates of homicide per 100 police reported attacks in Chicago is about five times as great for firearms as for knives, the next most dangerous weapon available in Chicago’s homicide experience. Since a very substantial part of Chicago’s homicide rate appears to be attributable to ambiguously motivated deadly attacks, it seems clear that the deadliness of a particular weapon in an attack situation is a significant determinant of the homicide rate. If this is true, then the killing per 100 attack ratio cited above is a conclusive demonstration that the absence of firearms would depress the otherwise expectable homicide rate.⁸

Thus, half a century ago Frank demolished – even before it was formulated in such crass terms – the slogan, “Guns don’t kill. People do.”

This work was done at a time when handguns were the type of firearm most frequently used in homicides. It was before mass attack killing became so much a part of American life. Self-evidently, the argument was likely to be even more valid with the increasing availability and use of automatic and high capacity firearms within American society – a point Frank focused upon in his 1989 article, *The Problem of Assault*

⁷ *Id.* at 735.

⁸ *Id.* (emphasis added).

*Firearms.*⁹

I have summarized that seminal paper at some length, as I believe it is one of the most remarkable pieces of scholarship, foreshadowing intractable problems and laying the groundwork for rational policy development, that could have been done at that time. Zimring, let us remember, was 23 when he began that work and 25 when it was published!

Frank's next foray into gun control issues was his report, with George Newton, for the National Commission on the Causes and Prevention of Violence, *Firearms and Violence in American Life*.¹⁰ In the copy that he presented to me, Frank wrote: "Let this stand as a document of the potential power of data in American public policy." That sentiment encapsulates virtually everything that Frank has ever sought to achieve – not only in gun control but also in all his other scholarly activities.

The report itself is a model of all the factors one needs to take into account in understanding how gun ownership and use works its way into community expectations, social patterns, fears, activities, and events.¹¹ Perhaps the most notable point is that the Report goes way beyond criminal use to accidents, suicide, self-defense, and legal and constitutional matters.

Another emerging characteristic of Frank's work is his readiness to set out a map of how to reform laws or practices, so as to bring about the evidence-based outcome. This is found in the 1969 Report, and regularly features in his gun control work and his other writings.

Frank has always lived in the world of practical policy, and is not

⁹ See Franklin E. Zimring, *The Problem of Assault Firearms*, 35 CRIME & DELINQ. 583 (1989). On October 2, 2017, the greatest mass shooting in US civilian history occurred in Las Vegas, with 58 deaths and many hundreds of injuries. In response, President Trump declined to talk about the role of firearms and possible gun control measures, stating that the shooter was "a sick man, a demented man – a lot of problems We're dealing with a very, very sick individual." Two years earlier he stated that mass shootings are a fact of US life. David Jackson & Heidi M. Przybyla, *Trump: Las Vegas shooting suspect is 'a sick man, a demented man'*, USA TODAY (Oct. 3, 2017), <https://www.usatoday.com/story/news/politics/2017/10/03/trump-las-vegas-shooting-suspect-a-sick-man-demented-man/726471001/>. Evidently, the "guns don't kill" slogan possesses remarkable resilience in the face of all contrary evidence.

¹⁰ GEORGE D. NEWTON, JR. & FRANKLIN E. ZIMRING, FIREARMS & VIOLENCE IN AMERICAN LIFE: A STAFF REPORT SUBMITTED TO THE NATIONAL COMMISSION ON THE CAUSES AND PREVENTION OF VIOLENCE (1969).

¹¹ It was indeed a model I unashamedly replicated in the title in my own book. RICHARD HARDING, FIREARMS AND VIOLENCE IN AUSTRALIAN LIFE: AN EXAMINATION OF GUN OWNERSHIP AND USE IN AUSTRALIA (1981).

free of frustration about those academics who do not live in that world and those politicians and practitioners who fail to heed academics who do live in that world.¹² There has probably never been a time in US history when the body politic needed more urgently to absorb and implement the work of leading scholars, such as Zimring, in trying to address the acute social problems facing the country.

The next foray was a 1972 article that convincingly associated deaths from firearms use with the caliber size of the weapon.¹³ The significance of the technology of violence, explored in the earlier work, is something that Frank has always understood. In 1989, his article, *The Problem of Assault Firearms*,¹⁴ picked up on the issue I have mentioned above – the additional lethal capacity of automatic and military-style weapons.

Numerous articles and books have followed over the years. These include: *Firearms and Federal Law: The Gun Control Act of 1968*¹⁵ published in 1975; *Street Crime and New Guns*¹⁶ published in 1976; *The Citizen's Guide to Gun Control*¹⁷ (with Gordon Hawkins) published in 1987; *Firearms, Violence and Public Policy*¹⁸ published in the *Scientific American* in 1991; *Concealed Handguns: The Counterfeit Deterrent*¹⁹ (with Gordon Hawkins) published in 1997 in *The Responsive Community*; *Crime Is Not the Problem: Lethal Violence in America*²⁰ (with Gordon Hawkins) published in 1997; and *Firearms, Violence, and the Potential Impact of Firearms Control*²¹ published in 2007 in the

¹² See generally Franklin E. Zimring, *Is There a Remedy for the Irrelevance of Academic Criminal Law?*, 64 J. LEGAL EDUC. 5 (2014).

¹³ Franklin E. Zimring, *The Medium is the Message: Firearm Caliber as a Determinant of Death from Assault*, 1 J. LEGAL STUD. 97 (1972).

¹⁴ Zimring, *supra* note 9.

¹⁵ Franklin E. Zimring, *Firearms and Federal Law: The Gun Control Act of 1968*, 4 J. LEGAL STUD. 133 (1975).

¹⁶ Franklin E. Zimring, *Street Crime and New Guns: Some Implications for Firearms Control*, 4 J. CRIM. JUST. 95 (1976).

¹⁷ FRANKLIN E. ZIMRING & GORDON HAWKINS, *THE CITIZEN'S GUIDE TO GUN CONTROL* (1987).

¹⁸ Franklin E. Zimring, *Firearms, Violence and Public Policy*, 265 SCI. AM. 48 (1991).

¹⁹ Franklin E. Zimring, *Concealed Handguns: The Counterfeit Deterrent*, *THE RESPONSIVE COMMUNITY*, Spring 1997, at 46.

²⁰ FRANKLIN E. ZIMRING & GORDON HAWKINS, *CRIME IS NOT THE PROBLEM: LETHAL VIOLENCE IN AMERICA* (1997).

²¹ Franklin E. Zimring, *Firearms, Violence, and the Potential Impact of Firearms Control*, 32 J.L. MED. & ETHICS 24 (2004).

Journal of Law, Medicine & Ethics.²²

Thus, there has been a continuous and coherent line of analysis and publication since the 1968 seminal article. Widespread firearms ownership poses risks to society. These can be identified and quantified. It is possible to manage and reduce these risks within a broad framework of public policy. Frank is indeed the guru of gun control in the US, and by no means the favorite person of the NRA establishment.

I want to flesh out this tribute by referring now to the 2017 book, *When Police Kill*.²³ The research for this excellent book was stimulated by the August 2014 shooting of an 18 year-old African-American citizen, Michael Brown, by a white police officer in downtown Ferguson, Missouri.²⁴ Brown, who was unarmed, was shot twelve times. The circumstances of the killing spread quickly through the community. With the racial overlay of the event, protests and rioting broke out which lasted on and off for some days. Several months later, after a grand jury hearing, it was announced that the police officer would not be indicted.

A 2016 book written by Gary Younge, *Another Day in the Death of America*,²⁵ had taken at random one day in 2013 – 23rd November – and described the ten fatal shootings of children and teenagers that had occurred that day.²⁶ The date was at the halfway point between the shooting of another black youth, Trayvon Martin, by a white member of the neighborhood watch in Sanford, Florida, and the shooting of Michael Brown.

As it happened, none of the victims killed on 23rd November, 2013 had been shot by the police. On another randomly selected day, the case might well have been different. All arose out of interpersonal disputes or criminal activity. The author characterized these events as mundane.²⁷ They did “not intrude on the accepted order of things but conformed to it.”²⁸

In much the same way, Michael Brown’s death conformed to the

²² It can be seen from the list of cited publications that Frank has often targeted audiences in cognate disciplines, not just lawyers and criminologists.

²³ ZIMRING, *supra* note 2.

²⁴ *See id.* at ix–x.

²⁵ GARY YOUNGE, *ANOTHER DAY IN THE DEATH OF AMERICA* (2016).

²⁶ Over the course of a year, the daily average of fatal shootings of children or teenagers was 6.75. Randomly selected, November 23rd happened to be above that average rate. *Id.* at 2.

²⁷ *See id.*

²⁸ *Id.*

order of things. Lethal use of force by police was commonplace, to the point of being “mundane” in media coverage. There were, Frank estimated, about 929 to 1,217 fatal shootings by police annually in the US in the period 2003-2009, but this had never, in public perception, coalesced into a national problem.²⁹ Yet, somehow, on this occasion it seemed to do so. This killing seemed to “provoke a firestorm of national attention when so many others had escaped notice.”³⁰ In particular, media coverage of similar events henceforth increased exponentially.

Frank’s analysis of this issue follows his lifetime model – always evidence-based – of teasing out what data can be found, finding the patterns, cross-referring to other relevant material, and, above all, suggesting a practicable way forward.³¹

Thus, “Killings by Police: The Numbers Game” (Chapter 2) examines the available official data, identifies the hiatuses and deficiencies, draws in other data, and without hyperbole suggests what the true figures are likely to be.³²

Chapter 3 – “Who Dies, Where, and Why?” – follows the same rigorous structure, throwing up many surprises.³³ On the basis of the cases that seemed to turn police killings into a national issue, it would have been tempting to think that young, male African-Americans caught up in criminal activity were overwhelmingly the victims. Yet older males (over 40) are the most frequent victims and teenagers are significantly under-represented in comparison to their arrest rates.³⁴ Also, “non-criminal justice” events, such as “domestic disturbance calls and traffic stops,” contribute about half of the fatal interactions.³⁵

Chapter 4 – “Only in America” – looks to other jurisdictions (the UK and Germany) for comparisons.³⁶ What predictably emerge are the crucial differences in gun-carrying and gun ownership by the civilian population.³⁷ This observation is setting up the debate about police perceptions of their own safety in a nation where the “widespread ownership and use of handguns increases the vulnerability of police to

²⁹ See ZIMRING, *supra* note 2, at 39, 9–10.

³⁰ *Id.* at 4–5.

³¹ See *id.* at ix–xii.

³² See *id.* at 23–40.

³³ See *id.* at 41–73.

³⁴ See *id.* at Table 3.2, 48.

³⁵ See *id.* at 53.

³⁶ See *id.* at 74–90.

³⁷ See *id.*

life-threatening assault.”³⁸

And, indeed, in Chapter 5, there is a discussion of police safety.³⁹ Quite rightly, Frank recognizes the legitimacy of this concern. But, following where his data leads him, he is able to demonstrate the stunning reduction over time of police deaths in the line of duty, and also that “the substantial decline in the killing of police was not matched by any parallel drop in killings by police.”⁴⁰

There is much more. The whole analysis ties back in with the 1968 comparative analysis of the lethality of guns and knives. Frank is able to demonstrate that only two police deaths occurred as a result of a knife attack,⁴¹ yet about one-sixth of killings by police were of persons who were brandishing or carrying a knife.⁴²

His broad conclusion is that “the inherent anarchy and lack of accountability we find in the animating principles of police use of deadly force”⁴³ has in effect led to “a system that essentially decriminalizes police shootings in the US.”⁴⁴ This is a conclusion that I reached in my 1970 book with regard to Australia and also in my 1973 work relating to Chicago.⁴⁵

But, true to form, Frank does not dwell on the negative criticism. This question is: how can we go forward? The criminal law will play only a small part,⁴⁶ though Frank does tip his hat to one of his intellectual heroes, Johannes Andanaes, in acknowledging “the educative effect of the criminal law.”⁴⁷

In Chapter 11 – “The Heart of the Matter” – Frank suggests some “Restrictive Protocols on Deadly Force,” each one of which would reduce

³⁸ See *id.* at xi, 95 (noting that firearms are used in more than 90% of fatal attacks upon police).

³⁹ See *id.* at 91–104.

⁴⁰ *Id.* at 117.

⁴¹ In each case the death was caused by a concealed small knife, revealed for the first time and used in the close-up physical confrontation. The normal situation in which police use deadly force against knife-users is when the knife is a known weapon, being brandished by the person who is then killed. *Id.* at 97.

⁴² *Id.* at 57.

⁴³ *Id.* at 100–101.

⁴⁴ *Id.* at 168.

⁴⁵ See generally HARDING, *supra* note 3; Harding, *supra* note 4.

⁴⁶ ZIMRING, *supra* note 2, at 200.

⁴⁷ *Id.* at 173. Another scholar who was something of a mentor and for whom Frank had great admiration was Hans Zeisel, whose work is acknowledged. *Id.* at 56. I mention this as Frank has always been generous in acknowledging those who have guided and influenced him.

citizen vulnerability without in any way increasing the risk to police personnel.⁴⁸ These include: limiting firearms use in any situation in which the officer is alone and the citizen is not armed with a firearm; any situation where the citizen possesses merely a knife or other cutting instrument or a non-blade weapon such as a club, hammer, baseball bat, or other blunt object; any situation where a citizen is fleeing in an automobile and has not fired shots or has a hostage; and a situation where the citizen is attempting to flee on foot.⁴⁹

Frank also addresses the issue of multiple shots – “emptying one’s gun” at the citizen.⁵⁰ We are back to the technology of violence; multiple shots are more likely to be fatal than single shots.

Frank also raises the issue of police leadership, citing in particular the cases of New York and Philadelphia where reductions in police use of fatal force have been achieved at various times.⁵¹ He also explores the importance of video cameras and of body armament for police.

However, it is not enough for Frank to throw up these various ideas simply on the basis of the evidence he has been able to elicit from partial and unverified data. The essence of the book comes down to the need for comprehensive data collection on a national basis; how this could be achieved; what agency should be responsible; and who should fund it. None of the suggestions are unpractical or disruptive; all would be easily implementable, if the will existed in official circles.

If these suggestions were put in place, the continuing validity of his suggested restrictive protocols for the use of deadly force could be rigorously evaluated. The mechanisms for change and development, to the benefit of both police personnel and citizens, would be in place.

When Police Kill is the best book yet written on police operational use of deadly force. What makes it so good is that it follows the model that Frank has perfected over a lifetime of outstanding scholarship:

- Identify the problem;
- Measure it as best you can on the basis of available data;
- Identify missing data from the point of view of constructing collection systems that will enable the issues to be better addressed and understood in the future;

⁴⁸ See *id.* at 227–30.

⁴⁹ See *id.*

⁵⁰ See *id.* at 231.

⁵¹ *Id.* at 235–38.

- Cross-tabulate the available data to identify the key aspects of the problem;
- Estimate the risks and benefits of possible changes of policy and practice;
- Relate each of these matters to broad community priorities and interests;
- Put forward a viable model for addressing the problems and achieving the desirable crime and justice outcomes consistent with common sense, decency and good governance.

The phrase “evidence-based” must have found its way into the lexicon to enable Frank’s *modus operandi* to be succinctly described. His has been a career of true excellence, and I am proud to have intersected with it from time to time. His dry wit, warmth, and wisdom have been a delight during our long friendship.