

# The Citizen's Guide to Gun Control at 30

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## INTRODUCTION

In 1987, Frank Zimring and his long-time collaborator, the late Gordon Hawkins, began their *Citizen's Guide To Gun Control* with a typically Zimringesque example. They imagined a resident of Detroit choosing to take a holiday to Belfast in the midst of the troubles in Northern Ireland. Although Belfast was then seen around the world as an inhospitable warzone, Zimring and Hawkins pointed out that the likelihood of a civilian being killed in the sectarian violence there was in fact lower than it was in peacetime Detroit.<sup>1</sup>

This is the kind of clear, stark example that Zimring and Hawkins brought to the many areas of criminal law and policy that they investigated: the death penalty,<sup>2</sup> pornography,<sup>3</sup> mass incarceration,<sup>4</sup> and three strikes laws,<sup>5</sup> among many others. It brings into sharp relief the fact that Americans had become inured to a level of violence that would shock those in any other developed country: what the rest of the world saw as a murderous hellscape would in fact be a peaceful respite for an American living in one of our nation's more dangerous cities.

The *Citizen's Guide*, perhaps the most user-friendly of the books the pair wrote, is designed both to describe the debate over gun control in the United States and to contribute to it. Written for a lay audience, the book eschews multivariate regression and other complicated statistical analyses in favor of paired bar graphs and simple regional and international comparisons. The book aims both to summarize the existing literature regarding gun violence and gun control and to give the reader a

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<sup>1</sup> FRANKLIN E. ZIMRING & GORDON HAWKINS, *THE CITIZEN'S GUIDE TO GUN CONTROL* 4 (1987) (“[Y]our Detroit friend would have been relatively safe in Northern Ireland at the peak of its troubles, about four times as safe as at home. The city of Detroit (population 1,513,000) had almost exactly the same population as the whole of Northern Ireland (1,536,000) in the early 1970s. Yet in 1973 alone, Detroit police reported 751 deaths from criminal homicide, 24 more than the total number of civilians killed in Ulster during the five and a half years from the beginning of the ‘troubles’ in 1969 through the end of June 1974.”).

<sup>2</sup> See, e.g. FRANKLIN E. ZIMRING & GORDON HAWKINS, *CAPITAL PUNISHMENT AND THE AMERICAN AGENDA* (1986).

<sup>3</sup> See, e.g. GORDON HAWKINS & FRANKLIN E. ZIMRING, *PORNOGRAPHY IN A FREE SOCIETY* (1988).

<sup>4</sup> See, e.g. FRANKLIN E. ZIMRING & GORDON HAWKINS, *INCAPACITATION: PENAL CONFINEMENT AND THE RESTRAINT OF CRIME* (1995).

<sup>5</sup> See, e.g. FRANKLIN E. ZIMRING, GORDON HAWKINS & SAM KAMIN, *PUNISHMENT AND DEMOCRACY: THREE STRIKES AND YOU'RE OUT IN CALIFORNIA* (2001).

means for assessing the empirical claims made by both sides.<sup>6</sup>

In particular, Zimring and Hawkins rejected many standard narratives regarding guns and gun ownership in the United States – that only a tiny fraction of guns are ever used in a crime,<sup>7</sup> that stopping the production of new guns would have no impact on crime,<sup>8</sup> and that having a gun in the house is likely to foil a burglary.<sup>9</sup> Most fundamentally, though, they rejected the idea of an American gun culture as nonsense, contrasting, for example, patterns of urban ownership of handguns with rural ownership of long guns: “[t]he myth of the single kind of gun owner may be the ultimate oversimplification in the great American gun debate.”<sup>10</sup>

Rereading the book thirty years after its publication and in light of a particularly egregious rash of mass shootings,<sup>11</sup> I wondered how its authors might update the book if it were to be reissued today. Not surprisingly, if Zimring and Hawkins were writing this book in the current era of gun violence, I believe they would describe contemporary America as having a number of gun problems, not just one.<sup>12</sup> And I think they would see the dynamics of America’s gun problems as being quite

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<sup>6</sup> ZIMRING & HAWKINS, *supra* note 1, at xii.

<sup>7</sup> See, e.g., ZIMRING & HAWKINS, *supra* note 1 at 96 (“It is simply not true that 99 percent of all guns are never involved in a crime. The *career* risk of guns being misused is very much greater. The available evidence suggests that probably more than 10 percent of all handguns are used in crime or serious violence, usually within a decade of first sale.”).

<sup>8</sup> *Id.* at 53 (reporting that “samples of handguns confiscated in a variety of urban areas implicate newer handguns as a disproportionate contributor to the offenses that lead to gun confiscation and that “there appear to be significant links between general handgun availability and the use of handguns in violent crimes.”).

<sup>9</sup> *Id.* at 35 (“The preventive effects of gun ownership and use on household crime are not measurable and probably small. It almost never pays to confront an armed criminal, because the extra risk to the victim’s life is more important than the chance of saving property.”).

<sup>10</sup> *Id.* at 77.

<sup>11</sup> See, e.g., *Las Vegas Shooting: At a Loss on Motive, FBI Turns to Billboards for Leads*, N.Y. TIMES (Oct. 6, 2017), <https://www.nytimes.com/2017/10/06/us/las-vegas-shooting.html>.

<sup>12</sup> If there is a fair criticism to be leveled at the book, it is that it does not identify the problem that gun control would address. That is, it does not describe the nature of the gun problem in America other than providing numbers on the use of firearms in connection with crimes such as assault and robbery. It is difficult to get a full sense of the metes and bounds of the role that guns play in American violence – who is killed by guns, by whom, in what contexts?

different from those they described a quarter of a century ago.

Zimring and Hawkins describe the gun problem in the *Citizen's Guide* mostly as it relates to the commission of other crimes – the ways in which robbery and assault are affected by the presence of a firearm, for example.<sup>13</sup> Today the gun control debate is largely focused elsewhere. First, it has become clear in the years since the *Citizen's Guide* was written that guns play an important, perhaps crucial, role in suicide rates in the United States, a topic Zimring and Hawkins touched upon only in passing.<sup>14</sup> While in 1987 there were approximately five gun suicides for every four gun killings, by 2013-2016 the ratio had risen to more than seventy-four.<sup>15</sup> With regard to homicides, I identify a number of uniquely American gun trends – the rise in mass killings, the problem of intimate violence, and killings by police officers – as issues deserving of fuller discussion than they received in the original book. Finally, I point out that accidental killings, though they are often an important part of the policy debate around gun control, play a very small part in the gun problem today.<sup>16</sup>

Just as Zimring and Hawkins rejected the idea of a single gun culture or a single gun problem in 1987,<sup>17</sup> they rejected the idea of a single gun control solution.<sup>18</sup> Given the various forms the gun problem takes in the United States today, I believe they would offer multiple solutions to the problems of twenty-first century gun violence. I close with some thoughts on how each of the gun problems I identify could be addressed.

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<sup>13</sup> ZIMRING & HAWKINS, *supra* note 1, at 23-27.

<sup>14</sup> There is only a single entry in the Index to the CITIZEN'S GUIDE for the phrase "suicide." The page referred to lists a number of important questions regarding the role that firearms play in national suicide rates followed by the sentence: "To these and other relevant questions we do not have answers. The relationship between firearms and suicide is an important story waiting to be told" *Id.* at 62-63.

<sup>15</sup> See Figure 1, *infra*, and surrounding text.

<sup>16</sup> See Part I.D., *infra*.

<sup>17</sup> See *Id.* at 81 ("[G]un owners are 'disproportionately rural, southern, male, Protestant, affluent, and middle class,' but most of these relationships are fairly weak and there are 'substantial numbers of weapons owners in all regions, all city sizes, and among all social, racial, and religious groups.'") (quoting WRIGHT, ET AL., UNDER THE GUN (1983)).

<sup>18</sup> *Id.* at 119 ("A system of firearms control will involve a number of different laws, each with a separate purpose, that operate together. In the United States, different laws will involve different levels of government, with local controlling the place and manner of gun use, most licensing schemes being operated either by states or by cities.").

## I. THE DYNAMICS OF GUN VIOLENCE TODAY

### A. Patterns of Gun Ownership

Zimring and Hawkins dedicate an entire section of their book to patterns of gun ownership in the United States.<sup>19</sup> At the time they wrote, approximately half of all households owned guns,<sup>20</sup> and an estimated 130 million guns circulated in a population of approximately 247 million.<sup>21</sup> In 1987 there were slightly more than half as many guns in circulation as there were people in the United States.<sup>22</sup> As Zimring and Hawkins note, this was a significant increase in the number of guns – particularly handguns – in civilian hands; the period from 1959 to 1968 saw a significant increase in the number of guns entering the market.<sup>23</sup>

By 2017, the percentage of households with at least one gun had actually fallen from 49 percent to 42 percent,<sup>24</sup> but both the total number of guns in circulation and the number of guns per capita had increased dramatically. The Washington Post reports that 2009 was the first year that there were as many guns in circulation as there were people in the United States (approximately 300 million of each) and that by 2013, guns significantly outnumbered people in this country.<sup>25</sup> Thus, while there were more than twice as many guns in circulation in 2013 as 1987 (357 million compared with 140 million thirty years earlier), they were held in relatively fewer hands – the average number of guns per household more than doubled while the percentage of households including at least one

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<sup>19</sup> *Id.* at 65-107.

<sup>20</sup> *Id.* at 78.

<sup>21</sup> *Id.* at 77.

<sup>22</sup> See ZIMRING AND HAWKINS at 77 (reporting that approximately 125 million guns were in circulation); Statistical Abstract of the United States (1988) xvii (reporting a United States population in 1987 of 243,400,000).

<sup>23</sup> *Id.* at 85, Figure 9-2 (showing that the number of firearms added to the domestic market rose from 2.2 million per year in 1959 to 5.3 million per year in 1968).

<sup>24</sup> *Guns*, GALLUP POLL (Nov. 8, 2018), <http://news.gallup.com/poll/1645/guns.aspx>.

<sup>25</sup> Christopher Ingraham, *There Are Now More Guns than People in the United States*, WASH. POST (Oct. 5, 2015), <https://www.washingtonpost.com/news/wonk/wp/2015/10/05/guns-in-the-united-states-one-for-every-man-woman-and-child-and-then-some/>. Some associated a spike in gun ownership to the election of Barack Obama as president in 2008 and concerns that he would institute anti-gun policies. See, e.g., Philip Bump, *Barack Obama Has Likely Given a \$9 Billion Boost to the Gun Industry (At Least)*, WASH. POST (Mar. 11, 2015), <https://www.washingtonpost.com/news/the-fix/wp/2015/03/11/barack-obama-may-have-been-at-least-a-9-billion-boon-to-the-gun-industry-so-far/>.

gun fell by almost 15 percent.<sup>26</sup> In households with just a single gun (just 32 percent of all gun-owning households), that gun was likely a handgun.<sup>27</sup> 62 percent of single-gun households owned a handgun as compared to just 22 percent for rifles and 16 percent for shotguns.<sup>28</sup>

While there is much that could be drawn from the concentration of larger and larger arsenals in fewer and fewer hands, the focus in this essay is on the problem of gun *violence* in America. As Zimring and Hawkins point out, the problem of guns in America is not with gun ownership itself, but with the tangible harms that gun ownership can cause.<sup>29</sup> Although one could speak in depth about the scope of gun injuries,<sup>30</sup> it is really gun *deaths* that occupy the public imagination when considering the harms that guns do in our country. In 2015, in the United States, 36,252 people died as a result of firearms,<sup>31</sup> and these gun deaths can be divided into three very uneven categories: suicides, homicides, and accidents.<sup>32</sup> Because each category has its own dynamics and makes a very different impact on the overall gun death rate in this country, I discuss each separately.

### B. Suicide

Zimring and Hawkins wrote in 1992 that suicide was one of the most under-explored aspects of gun violence in the United States.<sup>33</sup> In the intervening years, it has become clear that it is impossible to discuss the impact that firearms have on premature death in the United States without

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<sup>26</sup> Ingraham, *supra* note 25.

<sup>27</sup> Kim Parker et al., *The Demographics of Gun Ownership*, PEW RES. CTR. (June 22, 2017), <http://www.pewsocialtrends.org/2017/06/22/the-demographics-of-gun-ownership/>.

<sup>28</sup> *Id.*

<sup>29</sup> ZIMRING AND HAWKINS at 105 (quoting Sanford Kadish for the proposition that the objective of gun control laws is the saving of human lives) (quoting Sanford H. Kadish, *More on Overcriminalization: A Reply to Professor Junker*, 19 UCLA L. REV. 719-22 (1972)).

<sup>30</sup> For every person who is killed by a firearm, another is hospitalized for a firearm-related injury and a third is treated and released from an emergency room. Katherine A. Fowler, et al., *Firearm Injuries in the United States*, 79 PREVENTIVE MED. 5, 6 (2015).

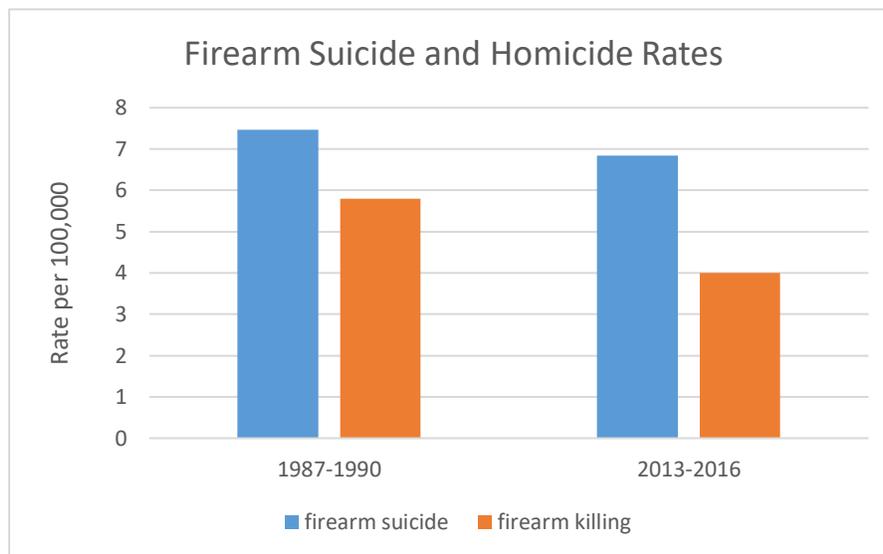
<sup>31</sup> *Fatal Injury Reports, National, Regional and State, 1981-2016*, WISQARS (Nov. 8, 2018), <https://webappa.cdc.gov/sasweb/ncipc/mortrate.html>.

<sup>32</sup> *See id.* (reporting 489 accidental deaths, 12,979 homicides, 22,018 suicides by gun as well as 484 “legal intervention” deaths).

<sup>33</sup> “Little research has been done on the relationship between firearms and suicide, although the question whether or to what extent firearms contribute to the number of suicides deserves high research priority.” ZIMRING & HAWKINS, *supra* note 1, at 61.

delving deeply into the role that guns play in suicide.

When Zimring and Hawkins wrote their book, the number of firearm deaths by suicide and by homicide were roughly similar. Between 1987 and 1990, the firearm homicide rate in the United States was 5.80 per 100,000 population while the firearm suicide rate was 7.46 per 100,000. Thirty years later, the gun homicide rate (like the overall homicide rate) has dropped significantly while the gun suicide rate climbed after an initial drop. Between 2013 and 2016, the firearm homicide rate in the United States was 3.88 per 100,000 population; over that same period the firearm suicide rate was 6.84 per 100,000 population.<sup>34</sup> In other words, more than three out of five firearm deaths in the United States during this period were the result of suicide rather than homicide. [See Figure 1]



**Figure 1** (Source: CDC, Firearm Death Rates per 100,000)

<sup>34</sup> *Id.*

To ignore the role that self-directed firearm violence plays in firearm deaths in this country, is thus to ignore the lion's share of the problem. It is also clear that not only does suicide play a crucial role when talking about firearm deaths, but that firearms perhaps play a crucial role in suicidal activity. Firearms account for a majority of all successful suicide attempts but only a tiny fraction of unsuccessful ones. According to the Brady Center to Prevent Handgun Violence, 50.7 percent of all suicides between 2009 and 2013 involved firearms but less than 1 percent of all unsuccessful suicide attempts involved a gun.<sup>35</sup> The reason for this is simple: Guns are simply far more likely to kill than are other methods readily available to a distressed person. In fact, suicide attempts with firearms were successful between 80 percent and 90 percent of the time, far more than other common methods.<sup>36</sup>

In other words, those who attempt suicide with the intention of succeeding are significantly more likely to use a gun than any other method. As with other examples of violence, both suicide and firearm suicide tend to be clustered in certain communities. Men are almost four times as likely to kill themselves as are women, despite the fact that women are twice as likely as men to attempt suicide. This is due in large part to the fact that men are far more likely than women to use a gun when they attempt to do so.<sup>37</sup> In 2016, the suicide rate for men was 21.83 per 100,000 while the rate for women was just 6.24 per 100,000, for a ratio

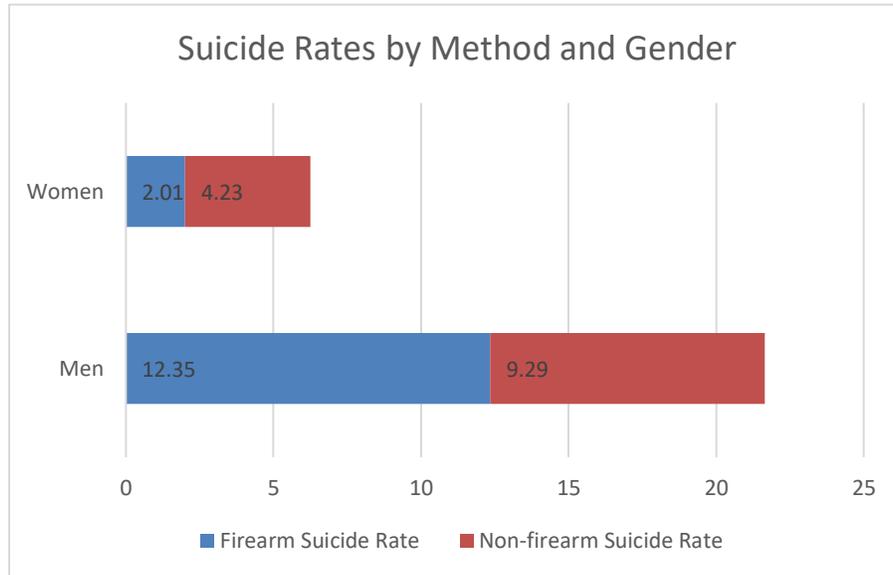
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<sup>35</sup> BRADY CENTER TO PREVENT GUN VIOLENCE, *THE TRUTH ABOUT SUICIDE AND GUNS* 8 (2016), <http://www.bradycampaign.org/sites/default/files/Brady-Guns-Suicide-Report-2016.pdf>. There is inherent uncertainty associated with discussing suicide attempts. While all deaths must be classified as to cause, the same is not true of nonfatal, self-inflicted injuries. With regard to many of these injuries, a post-mortem decision must be made as to whether to classify the death as an accident or a suicide.

<sup>36</sup> See, e.g., E.D. Shenassa, et al., *Lethality of Firearms Relative to Other Suicide Methods: A Population Based Study*, 57 *EPIDEMIOLOGY AND COMMUNITY HEALTH* 120 (2003) (reporting that firearms were 2.6 times more lethal than suffocation, 8 times more lethal than crashing/jumping, 18 times more lethal than exposure, 325.5 times more lethal than cutting and 270.4 times more lethal than poison). In this sense, Zimring and Hawkins were probably wrong when they wrote: "In the case of suicide, other methods – hanging, carbon monoxide, poisonous substances, jumping, and so forth – are almost equally effective possible alternatives." ZIMRING & HAWKINS, *supra* note 1, at 57. Just a few pages later, however, they note that "The trends in gun suicide that have accompanied increased gun ownership since the mid-1960s make us more inclined to suspect gun availability as a substantial influence on suicide rates in the United States." *Id.* at 63.

<sup>37</sup> *Fatal Injury Reports, National, Regional and State, 1981-2016*, WISQARS (Nov. 8, 2018), <https://webappa.cdc.gov/sasweb/ncipc/mortrate.html>.

of 3.5:1; if we look just at firearm suicides, the ratio grows to 6.14:1.<sup>38</sup>



**Figure 2** (Source, CDC, Suicide Death Rates, by Sex)

As Zimring and Hawkins acknowledged 30 years ago, facts such as these raise more questions than they answer:

Would those who seek to end their lives use other methods of suicide if all or some of them did not have firearms? If persons who now use firearms were forced to resort to other, slower means of self-destruction when there is a higher chance of intervention and rescue, would this result in a significant reduction in suicides? Does the presence of a gun and the knowledge of having a quick and effective way of ending life in some instances precipitate impulsive suicide attempts?<sup>39</sup>

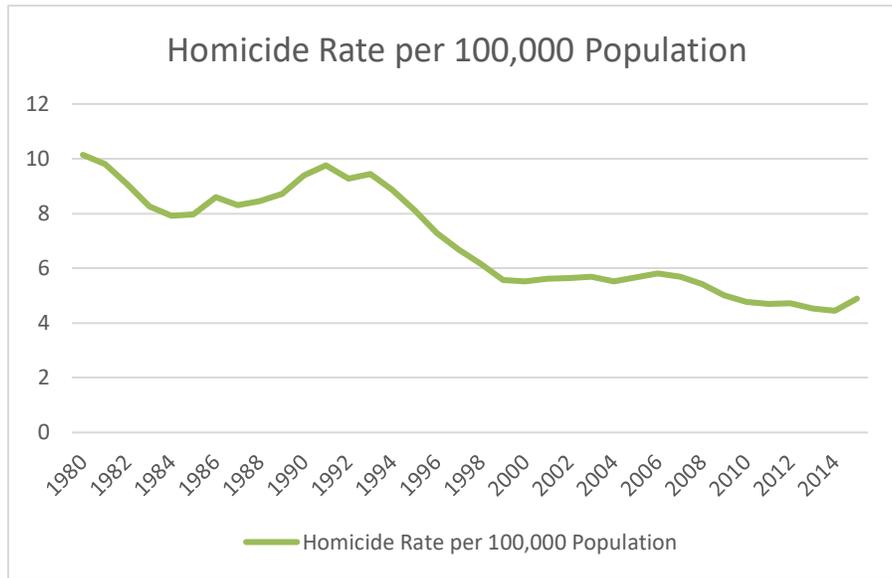
We now know the answers to some of these questions, and they reveal that firearms play a devastating role in suicide in the United States. In my discussion of solutions below, I argue that any approach aimed at reducing firearm deaths in the United States must begin with addressing the role that guns play in suicide.

<sup>38</sup> *Firearm Mortality by State*, CTRS. FOR DISEASE CONTROL AND PREVENTION: NAT. CTR. FOR HEALTH STATS. (last visited Nov. 20, 2018), [https://www.cdc.gov/nchs/pressroom/sosmap/firearm\\_mortality/firearm.htm](https://www.cdc.gov/nchs/pressroom/sosmap/firearm_mortality/firearm.htm).

<sup>39</sup> ZIMRING & HAWKINS, *supra* note 1, at 62.

### C. Homicide

Since the *Citizen's Guide* was written more than thirty years ago, the United States has gone through one of the greatest declines in violent crime rates on record.<sup>40</sup> Although the population has grown by more than 100 million people since 1980, the number of homicides per year has dropped significantly, resulting in a significant drop in homicide rates. [See Figure 3]



**Figure 3** (Source: Easy Access to the FBI's Supplementary Homicide Reports: 1980-2015 Online. Available: <http://www.ojjdp.gov/ojstatbb/ezashr/>)

<sup>40</sup> See, e.g., Matt Ford, *What Caused the Great Crime Decline in the U.S.?*, THE ATLANTIC, April 15, 2016:

By [the 1990s'] end, the homicide rate plunged 42 percent nationwide. Violent crime decreased by one-third. What turned into a precipitous decline started later in some areas and took longer in others. But it happened everywhere: in each region of the country, in cities large and small, in rural and urban areas alike. In the Northeast, which reaped the largest benefits, the homicide rate was halved. Murders plummeted by 75 percent in New York City alone as the city entered the new millennium.

There are lots of potential explanations for this drop in killings in the United States over the last thirty years.<sup>41</sup> For example, under one theory the drop in homicides is due not to a decrease in homicidal violence but rather to improved trauma care in the nation's hospitals.<sup>42</sup> If anything, however, the rate of non-fatal gun victimizations seems to have fallen to an even greater degree than have murder rates. Between 1993 and 2014, the rate of nonfatal violent firearm crime victimizations for those 12 and older dropped from 725 per 100,000 to just 175 per 100,000 – a drop of more than three-quarters.<sup>43</sup> In other words, the decline in the rate of people committing assaults with guns has fallen far more sharply than has the rate of people killing one another with guns; if anything, gun assaults have become more, rather than less, lethal over time.

Whether the cause is mass incarceration, demographic changes, or improving economic conditions, the fact remains that the homicide rate in the United States today is down nearly one-half from its peak. While we may not be able to explain this overall change, there are certain characteristics of homicides in the United States that merit special attention for what they can tell us about the role that firearms play in American homicide rates.

### 1. Mass Shootings

Mass shootings have replaced muggings and break-ins as the salient act of criminal violence in the American imagination; the number and details of such shootings dominate the nightly news the way drug violence did in the 1980s and 1990s. Although mass shootings dominate

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<sup>41</sup> See, e.g., FRANKLIN E. ZIMRING, *THE CITY THAT BECAME SAFE*, xi (2013) (describing a complicated story in New York City crime rates: “New York’s experience challenges the major assumptions that have dominated American crime and drug policy for more than a generation. It shows that huge increases in incarceration are unnecessary and inefficient. It proves that targeted violence-prevention policies can reduce drug violence and reclaim public areas from drug anarchy without all-out drug wars. But the most important lesson of the past two decades is that very high rates of violent crime are not hard-wired into the populations, cultures, and institutions of big cities in the United States.”).

<sup>42</sup> See Gary Fields & Cameron McWhirter, *In Medical Triumph, Homicides Fall Despite Soaring Gun Violence*, WALL STREET J. (Dec. 8, 2012), <https://www.wsj.com/articles/SB10001424127887324712504578131360684277812>.

<sup>43</sup> Jens Manuel Krogstad, *Gun Homicides Steady After Decline in the '90s; Suicide Rate Edges Up*, PEW RES. CTR. (Oct. 21, 2015), <http://www.pewresearch.org/fact-tank/2015/10/21/gun-homicides-steady-after-decline-in-90s-suicide-rate-edges-up/>.

the headlines regarding the American gun problem, their impact on the overall death rate in the United States is actually relatively minor. Assessing exactly how large a role is difficult, however, as accurately counting mass shootings proves surprisingly difficult in practice. What qualifies as a mass shooting? If a robber kills two victims, does that count? Does a disturbed individual who brings a gun to work and sprays bullets around without killing anyone count? What about a killer of a single person who then kills first responders?

Perhaps because of these definitional problems, no official records are kept of mass shootings. Instead we generally have to rely on third parties – mostly news organizations and statistics websites – to compile press reports based on their own criteria.<sup>44</sup> For example, the Washington Post examined a number of sources and compiled a comprehensive list of its own:

[T]here is no universally accepted definition of a mass shooting, and different organizations use different criteria. In this piece we use a narrow definition and look only at the deadliest mass shootings, beginning Aug. 1, 1966, when ex-Marine sniper Charles Whitman killed his wife and mother, then climbed a 27-story tower at the University of Texas and killed 14 more people before police shot him to death. The numbers here refer to 146 events in which four or more people were killed by a lone shooter (or two shooters in three cases). An average of eight people died during each event, often including the shooters.<sup>45</sup>

Based on their criteria, over the fifty years they examined there were 146 mass shootings, involving 149 shooters, killing 1,048 people across forty states and the District of Columbia.<sup>46</sup>

As daunting as these numbers are, they actually illustrate the relatively minor role that mass shootings play in the toll that firearm killings exact on the American people each year. For example, the 1,000

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<sup>44</sup> See, e.g., Bonnie Berkowitz, Lazaro Gamio, Denise Lu, Kevin Uhrmacher & Todd Lindeman, *The Math of Mass Shootings*, WASH. POST (Nov. 20, 2017), <https://www.washingtonpost.com/graphics/national/mass-shootings-in-america/> (listing a number of potential criteria, used by various authors Dr. Grant Duwe attempts to track fifty years of mass murders, defined as an incident in which four people, not including the assailant, are killed in a single public incident).

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

mass shooting victims listed over the last fifty years in the Post story would be just a small percentage of the total gun homicides *in a single year in the United States*.<sup>47</sup> The 117 mass shootings victims in 2017 – a number certainly inflated by the horrors of a single incident in Las Vegas in which sixty people were killed – were only a small fraction of the Americans shot and killed by police officers that same year.<sup>48</sup> Although mass killings dominate the headlines, the reality is that nearly all killings involve just a single victim.<sup>49</sup>

This is not meant to diminish the seriousness of mass killings. Rather the point is to emphasize the relatively small role of mass killings in the overall firearm homicide toll in the United States. Remember that suicides far outnumber homicides and that killings by strangers account for a minority of all killings committed each year.<sup>50</sup> Because of this, a solution aimed primarily at deterring or preventing mass killings will not necessarily do anything to curtail the kind of killings that pose the greatest danger to most Americans.

## 2. Intimate Violence

Intimate violence has two important things to tell us about the problem of firearm killings in the United States. First, for women the risk of being killed by a gun is inextricably tied to the problem of domestic violence. While it is true that most people are killed by someone they know, this is far truer of women than it is of men.<sup>51</sup> More than half of all

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<sup>47</sup> *Id.* For example, in 2015, 12,979 people were killed by firearm assaults in the United States. See Murphy, et al., *Deaths: Final Data for 2015*, NAT. VITAL STATS. REP. (Nov. 27, 2017), [https://www.cdc.gov/nchs/data/nvsr/nvsr66/nvsr66\\_06.pdf](https://www.cdc.gov/nchs/data/nvsr/nvsr66/nvsr66_06.pdf). This is more than ten times the number of mass shooting victims over the last fifty years (1,048/12,979 = 8.07%).

<sup>48</sup> See Part II, B.3, *infra* (estimating that as many as 1,000 Americans were killed by police officers in 2015).

<sup>49</sup> See, e.g., FEDERAL BUREAU OF INVESTIGATION, *Crime in the United States: Murder by Victim/Offender Situations* (2010), <https://ucr.fbi.gov/crime-in-the-u.s/2010/crime-in-the-u.s.-2010/tables/10shrtbl04.xls> (showing that eighty-seven percent of all killings involved a single victim and either a single offender, unknown offender or offenders, or multiple offenders).

<sup>50</sup> See, e.g., BRADY CENTER TO PREVENT GUN VIOLENCE, *supra* note 35. Mass shootings share characteristics of both stranger killings and more intimate ones. Often, the shooter goes after a co-worker or intimate partner, but then kills many others in the process. *Id.*

<sup>51</sup> In approximately half of cases contained in the FBI's supplementary homicide reports, the relationship is not known. This is due in part to the fact that nearly forty percent of killings go unsolved in the United States each year. See, e.g., Criminal Justice

female homicide victims are killed by an intimate acquaintance, and more than half of those women are killed with a firearm.<sup>52</sup> Despite having far lower homicide rates than men overall, women made up 70 percent of victims killed by an intimate partner in 2003, a proportion that a Justice Department study states “has changed very little since 1993.”<sup>53</sup>

And as with other kinds of homicide, the role that firearms play in domestic killings cannot be overstated. One study demonstrated that women killed by intimate partners were as likely to be killed by a firearm as by all other means combined.<sup>54</sup> A separate study of risk factors of homicide and suicide for women concluded that the presence of a gun in the home makes women far less safe.<sup>55</sup> And just as the presence of a handgun makes a disturbed person more likely to succeed at a suicide attempt, the presence of a gun may make a domestic violence situation fatal. Intimate assaults that might lead to a call to police or a trip to the emergency room often become fatal when a gun is present.

The other factor that connects domestic violence to the broader problem of gun violence is the fact that many of the offenders in high profile mass shootings had previous convictions or arrests for incidents of domestic violence. Omar Mateen, the shooter at the Pulse nightclub in Orlando, was alleged to have been physically abusive to each of his two

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Information Service, *Crime in the United States* (2015), <https://ucr.fbi.gov/crime-in-the-u.s/2015/crime-in-the-u.s.-2015/offenses-known-to-law-enforcement/clearances/clearances>. Of course, when the killer is unknown, there is good reason to believe that he or she is a stranger to the victim.

<sup>52</sup> See Emiko Petrosky, et al., *Racial and Ethnic Differences in Homicides of Adult Women and the Role of Intimate Partner Violence – United States, 2003-2014*, 66 CTRS. FOR DISEASE CONTROL AND PREVENTION: MORBIDITY AND MORTALITY WEEKLY REP. (July 21, 2017) (Reporting that 55.3% of all homicides of women were intimate partner violence-related and that firearms were used in 53.9% of killings of women.).

<sup>53</sup> Shannan Catalano, et al., *Female Victims of Violence*, BUREAU OF JUST. STATS. (2009).

<sup>54</sup> Leonard J. Paulozzi, et al., *Surveillance for Homicide Among Intimate Partners – United States, 1981-1998*, 50 MORBIDITY AND MORTALITY WEEKLY REPORT: SURVEILLANCE SUMMARIES at 9 (2001).

<sup>55</sup> Andrew Anglemyer, et al., *The Accessibility of Firearms and Risk for Suicide and Homicide Victimization Among Household Members: A Systemic Review and Meta-analysis*, 160 ANN. INTERN. MED. 101, 109 (2014) (“Although men account for more than three quarters of all suicides and homicides, women with firearm access have a higher risk for homicide victimization. Furthermore, empirical evidence suggests that most homicide victims know their assailant, which suggests an interpersonal dispute within the household or other domestic violence and not an unknown intruder.”) (citations omitted).

wives;<sup>56</sup> Cedric Ford, who shot 17 people, killing 3, had recently been served with a restraining order for allegedly choking his wife;<sup>57</sup> Devin Kelley who killed 26 and injured 20 more at a church in Texas had been court-martialed on charges of domestic assault after he threatened his wife with a gun and fractured his son's skull.<sup>58</sup> The New York Times – citing a study that showed that more than 57 percent of mass killers had a history of domestic violence – used the term “intimate terrorism” to describe the connection here, suggesting the similarity in the dynamics of private and public patterns of violence.<sup>59</sup>

Obviously, more research is needed to identify the parameters of this connection. Intimate violence, like mass shooting, is difficult to categorize. Should defendants who had been charged or accused of stalking women be counted as having a history of intimate violence? Only those who have been convicted of such conduct? Should we look only at violence directed at intimate partners or should abuse of other family members be included as well? But regardless of how we define it, the empirical data indicate that a history of domestic violence should be a warning sign sufficient to justify limiting access to firearms. I discuss this and other possible solutions below in Part II.

### 3. *Police Killings*

As Frank Zimring notes in his recent book on the subject,<sup>60</sup>

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<sup>56</sup> Nancy Leong, *What Do Mass Shooters Have In Common? A History of Domestic Violence*, WASH. POST, June 15, 2017 (“Omar Mateen, who murdered 49 people at Pulse nightclub in Orlando, physically abused his wife for years, beating her because she had not finished the laundry or a similar offense.”).

<sup>57</sup> *Id.* (“Cedric Ford, who shot 17 people last year at the Newton, Kan., plant where he worked, killing three, had been accused of abusing his ex-girlfriend and had been served with a restraining order not long before the shooting.”).

<sup>58</sup> Alex Horton, *The Air Force Says It Failed to Follow Procedures, Allowing Texas Church Shooter to Obtain Firearms*, WASH. POST, November 7, 2017 (“Kelley should have been barred from purchasing firearms and body armor because of his domestic violence conviction in 2014 while serving at Holloman Air Force Base in New Mexico. He was sentenced to a year in prison and kicked out of the military with a bad conduct discharge following two counts of domestic abuse against his wife and a child, according to Air Force spokeswoman Ann Stefanek.”).

<sup>59</sup> Amanda Taub, *Control and Fear: What Mass Killings and Domestic Violence Have in Common*, N.Y. TIMES (June 15, 2016), <https://www.nytimes.com/2016/06/16/world/americas/control-and-fear-what-mass-killings-and-domestic-violence-have-in-common.html>.

<sup>60</sup> Franklin E. Zimring, *When Police Kill* (2017) (“[T]he estimates of killings by the police have always been clearly inadequate for the national level, with no sustained effort

shootings by police, while of very high salience, particularly in recent years, are not measured either consistently or accurately in the United States.<sup>61</sup> In particular, there is good reason to believe that the three most respected, government-collected counts of police killings of civilians (the overwhelming majority of which involve police use of a firearm) undercount such killings by as much as 50 percent.<sup>62</sup> Using crowd-sourced data from newspapers and a data analysis website, Zimring concluded that as many as 1,000 police killings occur in the United States each year.<sup>63</sup>

This scale of police killing is extraordinary. The FBI's supplementary homicide data for 2015 showed that there were 1,108 people killed by strangers in the United States that year. If Zimring is correct that there were also approximately 1,000 police killings that year, it would indicate that an American is almost as likely to be killed by a police officer in the line of duty as to be murdered by a stranger. As Zimring indicates, the scale of police killing in the United States is unique; the rate of police shootings is 125 times the rate per capita in England and Wales.<sup>64</sup> While there were approximately 1,000 police shootings in 2015, between 2008 and 2012 there were never more than 10 citizens killed by German police officers in a single year.<sup>65</sup>

It is almost impossible to disentangle police killings from police shootings. While some high-profile cases like that of Eric Garner – who was choked to death while selling loose cigarettes in New York – do not involve firearms, nearly all police killings involve a shooting. 86 percent of the police killings that Zimring identified were shootings, and nearly all of these were triggered by fear of a suspect with a gun. As Zimring

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to generate a reliable estimate.”).

<sup>61</sup> See *id.* at 37–38 (finding that both the Arrest Related Death and Supplementary Homicide Reports data are unreliable measures of police killings).

<sup>62</sup> *Id.* at 40 (“[E]ach of the three national statistical systems reports no more than half of the true volume of cases. The samples that get reported to the FBI or BJS may be biased as well as incomplete.”).

<sup>63</sup> *Id.* at 39 (“I suggest that it is prudent to estimate 929 deaths per year as a lower bound and 1,217 as an upper bound of the mean annual average of deaths for [the period 2003–09 and 2011].”).

<sup>64</sup> *Id.* at 76–77 (“[T]he US rate of police killing is 4.6 times that of Canada, twenty-two times that of Australia, forty times higher than Germany’s, and more than 140 times the rate of police shooting deaths of England and Wales. Since only 86% of the killings profiled [in England and Wales] were police shooting, the proper ratio for England and Wales versus the United States is 1 to 125”).

<sup>65</sup> *Id.*

states:

[H]igh vulnerability to death by civilian attack is overwhelmingly the product of gun availability and use in the United States. Guns are the weapon used in more than 90 percent of all fatal attacks of police (and if automobiles are excluded as attack weapons because of ambiguity of the driver's intent, the gun share rises to 97 percent.<sup>66</sup>

Thus, firearms play a significant role in both sides of the police shooting equation – despite years of promise of less lethal technologies in policing, officers still reach for their guns when they experience a threat. And the threat that is most likely to cause them to do so is that the suspect possesses a firearm.

#### D. Accidents

Gun deaths resulting from accidental firings are almost a rounding error in the scheme of gun fatalities. In 2015 there were 489 deaths resulting from the accidental discharge of a firearm in the United States.<sup>67</sup> Not 489 per 100,000 or per million, but 489 total.<sup>68</sup> Firearm accidents constitute the smallest category of death listed in the Vital Statistics list of causes of death.<sup>69</sup> By way of comparison, that same year 1,140 women died in childbirth, 2,686 people died due to complications from surgery, and 3,602 people drowned in the United States.<sup>70</sup> Given the widespread distribution of firearms in the country, these numbers indicate that there is very little progress to be made in preventing deaths attributable to the accidental discharge of firearms within the home.

For women, who bear the brunt of guns in the home used in domestic violence incidents, the chances of being accidentally killed by a weapon are far, far smaller than the already low overall rate. Only 71 women were killed by accidental discharge of a firearm in 2015 compared with 418 men.<sup>71</sup> Largely because men are more likely to possess and use guns, they are more likely to bear the brunt of their accidental discharge.

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<sup>66</sup> *See id.* at 88.

<sup>67</sup> SHERRY L. MURPHY ET AL., DEATHS: FINAL DATA FOR 2015, 66 NAT. VITAL STATS. REP. 32-34 (2017).

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Fatal Injury Reports, National, Regional and State, 1981-2016*, WISQARS (Nov. 8, 2018), <https://webappa.cdc.gov/sasweb/ncipc/mortrate.html>.

Thus, while every firearm death is tragic, if we are looking for a solution to the “American gun problem,” these numbers illustrate that we should probably focus our primary attention elsewhere. What is more, the current rate of gun accident deaths represents a significant drop over time – the rate of accidental shooting deaths has declined nearly 50 percent over the last 15 years even as the number of guns in the United States has skyrocketed.<sup>72</sup> In the final section, I discuss whether this drop in the rate of accidental shootings can tell us anything about means for reducing other firearm fatalities.

## II. NOW WHAT?

The *Citizen's Guide* was designed not only to describe the dynamics of gun violence in America but to propose some common-sense solutions as well. In that spirit, this section is meant to provide some tentative solutions to the problems identified above.

In criminology, one of the great straw men is the idea that “nothing works” with regard to the rehabilitation of criminals.<sup>73</sup> Since rehabilitative models always fail, the argument goes, maybe there is nothing left to do but lock the bad guys up for good. A similar fatalism is often invoked in gun control debates – because America has so many guns already in circulation and because the idea of reducing the current cache of firearms in private hands is at best politically untenable, there is nothing that can be done about the gun problem. And there is certainly something to this concern. Guns are durable goods which, if properly cared for, can last for decades. And bullets, even though they are an expendable resource, are both cheap and plentiful. So, as the argument goes, the cat is already out of the bag. The most we can do is tinker at the edges of firearm control because guns are an inevitable part of the American landscape for the foreseeable future.

As with the “nothing works” theory of penology, this gun-control fatalism is likely false as a descriptive matter. That is, it is not entirely

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<sup>72</sup> *Id.* Accidental gun deaths per 100,000 fell from 0.28 in 2001 to 0.15 in 2016.

<sup>73</sup> See Robert Martinson, *What Works – Questions and Answers about Prison Reform*, NAT. AFFAIRS: THE PUB. INTEREST 48, 49 (1974). (“I am bound to say that these data, involving over two hundred studies and hundreds of thousands of individuals as they do, are the best available and give us very little reason to hope that we have in fact found a sure way of reducing recidivism through rehabilitation. This is not to say that we found no instances of success or partial success; it is only to say that these instances have been isolated, producing no clear pattern to indicate the efficacy of any particular method of treatment.”).

clear that the full range of options has been tried with regard to gun violence – much as a robust approach to the rehabilitation of offenders was never sincerely implemented. But just as obviously, it should be clear that there is no single solution for the gun problem. Because America has several gun problems rather than a single one, we should be wary of any omnibus solution to its gun troubles.

Furthermore, we should be wary of accepted truths in this regard and should test them rather than accepting them as fact. For example, Australia is often held out as an example of successful gun control policy.<sup>74</sup> The National Firearms Agreement (NFA), passed in 1996 following a grizzly and prominent mass killing, banned semi-automatic rifles and shotguns and required purchasers to show good cause before buying certain weapons.<sup>75</sup> The homicide and suicide rates fell by half<sup>76</sup> over the next twenty years and the country has not had another mass shooting since.<sup>77</sup>

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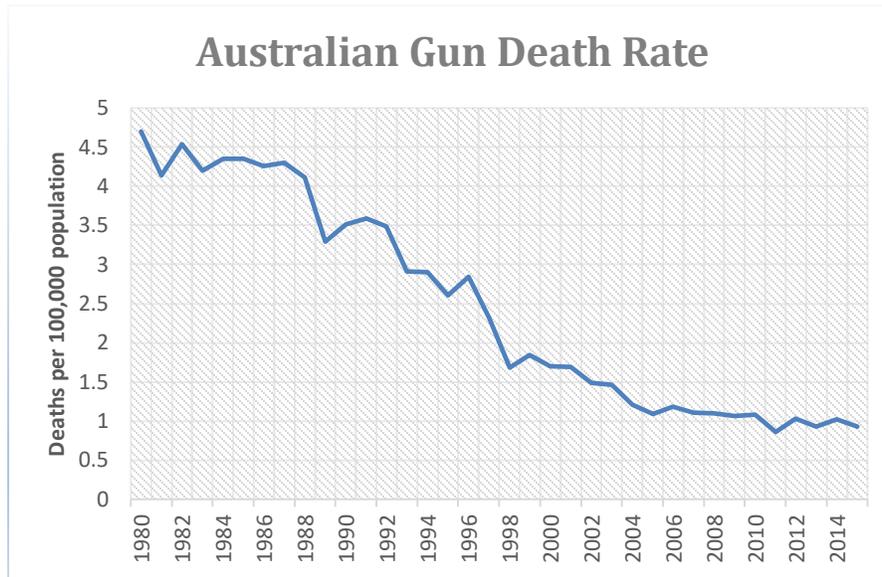
<sup>74</sup> See, e.g., Clifton Leaf, *How Australia All But Ended Gun Violence*, FORTUNE, February 20, 2018 (Writing that after an assault weapons ban: “Australian independence didn’t end. Tyranny didn’t come. Australians still hunted and explored and big-wave surfed to their hearts’ content. Their economy didn’t crash; Invaders never arrived. Violence, in many forms, went down across the country, not up. Somehow, lawmakers on either side of the gun debate managed to get along and legislate. As for mass killings, there were no more. Not one in the past 22 years.”).

<sup>75</sup> Australian Institute of Criminology, *Legislative Reforms* available at <https://aic.gov.au/publications/rpp/rpp116/legislative-reforms>. (“[T]he National Firearms Agreement (1996) [] emerged in response to the mass shootings that occurred at Port Arthur in 1996. The Agreement resulted in restricted legal possession of automatic and semi-automatic firearms and further restricted the legal importation of non-military centrefire self-loading firearms to those with a maximum magazine capacity of five rounds. The Agreement further committed all states and territories to a firearms registration scheme and licensing of persons in order to legally possess and use firearms.”).

<sup>76</sup> David Hemenway and Mary Vriniotis, *The Australian Gun Buyback*, available at [https://cdn1.sph.harvard.edu/wp-content/uploads/sites/1264/2012/10/bulletins\\_australia\\_spring\\_2011.pdf](https://cdn1.sph.harvard.edu/wp-content/uploads/sites/1264/2012/10/bulletins_australia_spring_2011.pdf). (“The NFA also seems to have reduced firearm homicide outside of mass shootings, as well as firearm suicide. In the seven years before the NFA (1989-1995), the average annual firearm suicide death rate per 100,000 was 2.6 (with a yearly range of 2.2 to 2.9); in the seven years after the buyback was fully implemented (1998-2004), the average annual firearm suicide rate was 1.1 (yearly range 0.8 to 1.4). In the seven years before the NFA, the average annual firearm homicide rate per 100,000 was .43 (range .27 to .60) while for the seven years post NFA, the average annual firearm homicide rate was .25 (range .16 to .33).”).

<sup>77</sup> *Id.* (“While 13 gun massacres (the killing of 4 or more people at one time) occurred

Or so the story goes. The reality is substantially more complicated. Firearm death rates had been falling for several years *before* the implementation of the NFA and continued falling for many years after. Figure 4 shows total gun deaths per year (including homicides, suicides, and accidents) in Australia between 1980 and 2015. If one did not know that the law was implemented in 1996, it would be hard to identify exactly when and whether significant gun control legislation was passed in Australia.



**Figure 4** (Source: GunPolicy.org)<sup>78</sup>

in Australia in the 18 years before the NFA, resulting in more than one hundred deaths, in the 14 following years (and up to the present), there were no gun massacres”). For a more skeptical view see RAND Corporation, *The Effects of the 1996 National Firearms Agreement in Australia on Suicide, Violent Crime, and Mass Shootings* (“Attributing reductions in suicide and homicide rates to the NFA is complicated by the fact that these rates were decreasing even before the NFA was enacted. There is more evidence consistent with the claim that the NFA caused reductions in firearm suicides and mass shootings than reductions in violent crime, but there is also evidence that raises questions about whether those changes can be attributed to the NFA or to other factors that influenced suicide and mass shooting rates around the time the NFA was implemented.”), available at <https://www.rand.org/research/gun-policy/analysis/supplementary/1996-national-firearms-agreement.html>.

<sup>78</sup> *Australia – Gun Facts, Figures and the Law*, GunPolicy.org, available at [https://www.gunpolicy.org/firearms/compareyears/10/rate\\_of\\_all\\_gun\\_deaths\\_per\\_100\\_000\\_people](https://www.gunpolicy.org/firearms/compareyears/10/rate_of_all_gun_deaths_per_100_000_people).

### A. Suicide

Because the greatest threat that firearms pose in the United States today is with regard to suicide, it is here that perhaps the greatest progress can be made in reducing firearm deaths. There is good reason to believe that without ready access to firearms, those considering suicide would be far less likely to complete the act. This is true for two reasons. First, those who fail in a suicide attempt are very likely to survive their suicidal inclinations.<sup>79</sup> Second, as discussed above, those who choose firearms for their attempt are far more likely than all others to succeed.<sup>80</sup>

The policy suggestion that comes out of these dynamics is clear: means should be developed to limit the access that emotionally disturbed people have to firearms. This is obviously easier said than done, but there are some policies that are already in existence that have promise. A study in the *New England Journal of Medicine* demonstrated that the risk of suicide rose starkly immediately following a handgun purchase: “In the first week after the purchase of a handgun, the rate of suicide by means of firearms among purchasers (644 per 100,000 person-years) was *57 times as high* as the adjusted rate in the general population.”<sup>81</sup> The point is not necessarily that those contemplating suicide buy weapons to accomplish the act; rather the point seems to be that the presence of a weapon in the home makes suicidal thoughts easier to act on.<sup>82</sup> A study of those who survived near-fatal suicide attempts indicated that one in four had contemplated suicide for less than five minutes before attempting it.<sup>83</sup> If the environment of those at risk can be altered to make such impulsive decisions less deadly, an enormous number of lives can be saved.

The Means Matter campaign at the Harvard School of Medicine has instituted a Gun Shop Program to make suicide by firearm less likely.<sup>84</sup> By educating gun shop owners and employees about the signs of

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<sup>79</sup> A meta-analysis of follow up studies following a suicide attempt indicated that just between five and eleven percent (median 6.7%) of those who had attempted suicide later went on to commit suicide. See David Owens et al., *Fatal and Non-Fatal Repletion of Self-Harm: Systematic Review*, 181 *BRIT. J. PSYCHIATRY* 193, 195 (2002).

<sup>80</sup> BRADY CENTER TO PREVENT GUN VIOLENCE, *supra* note 35.

<sup>81</sup> Garen J. Wintermute et al., *Mortality among Recent Purchasers of Handguns*, 341 *N. ENGL. J. MED.* 1583 (1999) (emphasis added).

<sup>82</sup> *Id.*

<sup>83</sup> Thomas R. Simon et al., *Characteristics of Impulsive Suicide Attempts and Attempters*, 32 *SUICIDE & LIFE-THREATENING BEHAVIOR* 49 (2002).

<sup>84</sup> Means Matter, *Our Mission* (“The mission of the Means Matter Campaign is to increase the proportion of suicide prevention groups who promote activities that reduce

depression, they hope to discourage sales to those who may pose an immediate threat to themselves (and possibly others).<sup>85</sup> In addition, a number of states have made it possible for concerned citizens to petition to have the police temporarily remove firearms from a loved one if they are worried for their safety.<sup>86</sup> Finally, an increasing number of states require that handguns in the home be stored in a secure way.<sup>87</sup> Again, if the concern is with the impulsive suicidal act, the more barriers to a deadly rash act that can be put in place, the more likely the individual is to survive her suicidal thoughts.<sup>88</sup>

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a suicidal person's access to lethal means of suicide and who develop active partnerships with gun owner groups to prevent suicide.”). available at <https://www.hsph.harvard.edu/means-matter/>.

<sup>85</sup> Means Matter, *Gun Shop Project*, available at <https://www.hsph.harvard.edu/means-matter/gun-shop-project/>.

<sup>86</sup> See, e.g., 2018 Ill. Legis. Serv. P.A. 100-607 (permitting a family member or law enforcement official to apply for an ex parte order to remove guns from someone who poses an “immediate and present danger” to themselves or to others. Md. Pub. Safety Sec. 5-603 (permitting the issuance of an “interim extreme risk protective order to prohibit the respondent from possessing a firearm if the commissioner finds that there are reasonable grounds to believe that the respondent poses an immediate and present danger of causing personal injury to the respondent, the petitioner, or another by possessing a firearm.”).

<sup>87</sup> California, for example, requires guns to be locked when not in use, that locks accompany all sales, and that they be compliant with state-wide standards. See Cal. Penal Code §§ 16540, 16610, 16870, 23635-23690, 31910(a)(1), (b)(1), 25135, 32000. Connecticut applies similar standards to handguns but not long guns. Conn. Gen. Stat. §§ 29-33(d), 29-37b, 29-37i. For a comprehensive list of safe storage requirements in the states, see Giffords Law Center, *Safe Storage*, available at <https://lawcenter.giffords.org/gun-laws/policy-areas/child-consumer-safety/safe-storage/#state>.

<sup>88</sup> See, e.g., E. Michael Lewiecki & Sara A. Miller, *Suicide, Guns, and Public Policy*, 103 AM. J. PUB. HEALTH 27, 27 (2013) (“The impulsivity of suicide provides opportunities to reduce suicide risk by restriction of access to lethal means of suicide (“means restriction”). Numerous medical organizations and governmental agencies, including the WHO, the European Union, the Department of Health in England, the American College of Physicians, the CDC, and the Institute of Medicine, have recommended that means restriction be included in suicide prevention strategies.”) (citations omitted). It should be noted that recent scholarly literature complicates the link between impulsivity and suicide. See, e.g., April R. Smith, et al., *Revisiting Impulsivity in Suicide: Implications for Civil Liability of Third Parties*, 26 BEHAV. SCI. L. 779 (2008) (“Impulsivity has also been associated with death by suicide and is one of the most frequently implicated risk factors for engaging in maladaptive behaviors, such as serious self-injury. However, recent research has shown that although people who attempt suicide tend to be more impulsive than those who do not, the actual act of suicide is generally not done impulsively.”).

These tactics alone will not stop someone determined to kill themselves from attempting to do so. What they can do is push suicidal individuals to consider less lethal means if they attempt to take their own lives. In this way, the techniques that led to a reduction in firearm accidents may be helpful in this context as well. Erecting barriers between individuals and their weapons – gun safes, trigger locks, etc. – may not only prevent accidents but may also give a suicidal person sufficient time and space to rethink their decision to end their life.

## B. Homicide

### 1. Mass Killings

In the aftermath of a high-profile killing, attention is often focused on a particular class of weapons. In Zimring and Hawkins's time, this attention was often focused on the Saturday Night special – cheap revolvers that were widely distributed and associated with street crime.<sup>89</sup>

A string of recent mass shootings in the United States – Newtown, Connecticut; Aurora, Colorado; Las Vegas, Nevada – brought to prominence a new weapon: the AR-15.<sup>90</sup> Along with other semi-automatic rifles such as the AK-47<sup>91</sup> so-called assault rifles have been singled out as obvious targets for gun restriction. And such weapons have been targeted by lawmakers before. Assault weapons<sup>92</sup> – a term rejected by gun advocates – were prohibited by federal statute in 1994, but that prohibition lapsed just ten years later.

But as much attention as these weapons garner, they were used

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<sup>89</sup> See generally ZIMRING AND HAWKINS, *supra* note 1, at 175-76.

<sup>90</sup> See, e.g., Alan Feuer, *AR-15 Rifles Are Beloved, Reviled and a Common Element in Mass Shootings*, N.Y. TIMES (June 13, 2016), <https://www.nytimes.com/2016/06/14/nyregion/ar-15-rifles-are-beloved-reviled-and-a-common-element-in-mass-shootings.html>.

<sup>91</sup> See, e.g., C.J. Chivers, *Tools of Modern Terror: How the Ak-47 and AR-15 Evolved into Rifles of Choice for Mass Shootings*, N.Y. TIMES (Aug. 4, 2016), <https://www.nytimes.com/interactive/2016/world/ak-47-mass-shootings.html>.

<sup>92</sup> Public Safety and Recreational Firearms Use Protection Act, 18 U.S.C. §§ 921(a)(30)-(31), 922(v)-(w), 923(i), 924(c)(1) (2000) (repealed 2004); John J. Phelan IV, *The Assault Weapons Ban – Politics, the Second Amendment, and the Country's Willingness to Sacrifice Innocent Lives for Freedom*, 77 ALB. L. REV. 579 (2013-14) (“[T]he Assault Weapons Ban became the law of the land in 1994 and just ten years later, in 2004, the ban ended through a sunset provision when Congress decided not to reenact the bill. From 1994 to 2004, the ban prohibited the possession, transfer, and manufacture of certain semiautomatic assault firearms.”).

only in a minority of the mass killings that have occurred in the United States since 1982.<sup>93</sup> A database compiled by Mother Jones Magazine showed that rifles of any kind were used in just 35 of the 98 mass killings occurring in the United States between 1982 and the end of 2017.<sup>94</sup> By contrast, much more widely distributed semi-automatic pistols were used in more than two-thirds of such attacks.<sup>95</sup> While there are definitely some mass killings that would be impossible without rifles – the Las Vegas shooting comes readily to mind – many more would be unaffected by such a ban. From a public policy standpoint, this conclusion is troubling. Semi-automatic handguns are ubiquitous in America, worn on the hips of almost every police officer and owned in a large number of homes.<sup>96</sup> If the mass shooting crisis were as simple to fix as banning assault rifles – or banning attachments such as bump stocks that allow them to shoot like prohibited fully automatic rifles – things would be far simpler.

More promising is the idea of a universal background check for anyone seeking to purchase a gun, whether from a licensed firearms dealer or a private party. Currently, only federally-licensed firearms dealers are obligated to conduct a background check while private dealers are not.<sup>97</sup> This creates an enormous loophole – often referred to as the gun show loophole – by which those who could not buy a weapon from a licensed

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<sup>93</sup> And, as we saw above, mass killings account for only a tiny fraction of all firearm killings each year.

<sup>94</sup> Mark Follman et al., *US Mass Shootings, 1982-2018: Data from Mother Jones' Investigation*, MOTHER JONES (Nov. 19, 2018).

<sup>95</sup> *Id.*

<sup>96</sup> See, e.g., Ashley Southal, *New York Police Department Is Retiring the Revolver*, N.Y. TIMES, May 31, 2018 (reporting that the New York City police department was phasing out the last of its revolvers in favor of semiautomatic pistols).

<sup>97</sup> See, e.g., Andrew Goddard, *A View Through the Gun Show Loophole*, 12 RICH. J. L. & PUB. INT. 357, 357 (2009) (“The term “Gun Show Loophole” came about as a result of the passage of the Firearm Owners Protection Act of 1986 and the Brady Handgun Violence Prevention Act of 1993. These laws effectively created a dual standard for gun sales based on the federal license status of the seller. The Brady Act mandated that licensed gun dealers must conduct criminal background checks on potential buyers regardless of whether the sale takes place at the dealer’s store or at a gun show,<sup>3</sup> whereas the Firearm Owners Protection Act expressly exempted “persons making occasional sales or selling all or part of a personal collection” from the need to obtain a federal license to sell firearms.”). See also, Firearm Owners Protection Act of 1986, Pub. L. No. 99-308, 100 Stat. 449 (codified at 18 U.S.C. §§ 921-929 (2006)); Brady Handgun Violence Prevention Act of 1993, Pub. L. 103-159, 107 Stat. 1536 (codified at 18 U.S.C. §§ 921-924 (2006)).

dealer are able to do so privately.<sup>98</sup> While some states have closed this loophole by requiring a background check for all purchases, it remains in place elsewhere.<sup>99</sup> Closing the gun show loophole could allow regulators to track the movement of guns and would prevent those who ought not to have them from obtaining them.

But background checks are only as good as the information contained in their databases and recent incidents have indicated that the sharing of information within the federal government as well as between federal and state agencies is uneven. For example, Devin Kelley, who shot people in a Texas church in late 2017, had been convicted of assaulting his wife and son while in the Air Force and should not have been authorized to purchase a gun under existing laws.<sup>100</sup> Nonetheless, because of an error in reporting, his court martial was not in the federal database, and he was allowed to purchase the gun that led to the killing.<sup>101</sup>

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<sup>98</sup> *Id.*

<sup>99</sup> See, e.g., Giffords Law Center, *Universal Background Checks*:

California, Colorado, Delaware, Nevada, New Jersey, New York, Oregon, Vermont, and Washington generally require all firearm transfers to be conducted by or processed through licensed dealers, who conduct background checks on prospective firearm purchasers or recipients. In the District of Columbia, firearms may be sold and transferred only by or to a licensed dealer.

“Rhode Island requires all sellers to obtain a completed application form from the prospective purchaser and to submit the form to law enforcement for purposes of conducting a background check. Connecticut requires any person transferring a firearm to either submit a form to law enforcement or conduct the transfer through a licensed dealer, so that a background check is conducted for every sale or transfer. Maryland and Pennsylvania require a background check for every prospective handgun sale or transfer, and provide that the background check may be conducted either by a licensed dealer or a designated law enforcement agency.”

Available at: <https://lawcenter.giffords.org/gun-laws/policy-areas/background-checks/universal-background-checks/>.

<sup>100</sup> Alex Horton, *supra* note 58 (“Kelley should have been barred from purchasing firearms and body armor because of his domestic violence conviction in 2014 while serving at Holloman Air Force Base in New Mexico. He was sentenced to a year in prison and kicked out of the military with a bad conduct discharge following two counts of domestic abuse against his wife and a child, according to Air Force spokeswoman Ann Stefanek.”).

<sup>101</sup> *Id.* (“Initial information indicates that Kelley’s domestic violence offense was not entered into the National Criminal Information Center database,” Stefanek said in a statement released Monday. Air Force Secretary Heather Wilson and Chief of Staff David Goldfein have directed an investigation of Kelley’s case and ‘relevant policies and

Again, such failures are not an invitation to throw up our hands and accept the status quo. Nor are they a reason to oppose or fail to advocate for improvements in the system. Given the likely resistance to implementing another assault weapon ban (or the far greater pushback that could be expected in opposition to a plan to limit access to semi-automatic handguns) the prospect of strengthening criminal databases and background checks seems a far more achievable goal.

## 2. *Intimate Violence*

As discussed above, intimate violence affects gun homicides in two ways. First, a domestic assault is five times more likely to be fatal if it involves the use of a firearm.<sup>102</sup> Second, domestic abuse is often an early warning sign for even more serious assaultive behaviors.<sup>103</sup> The frustrations that lead individuals to kill often manifest first as domestic violence and second as mass violence.<sup>104</sup>

With regard to both of these concerns, the obvious solution is to keep domestic abusers from obtaining or retaining firearms. Federal law currently prohibits all convicted felons from possessing a firearm, but such a limitation is clearly insufficient.<sup>105</sup> Means must be established to keep those under domestic violence restraining orders from obtaining, or perhaps even retaining, their guns. American federalism definitely complicates this process: although the federal government can pass laws prohibiting felons from possessing firearms, it does not have the manpower to effectively enforce such laws.<sup>106</sup> It relies on the voluntary cooperation of states' law enforcement apparatus to give it teeth. In a time

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procedures,' she said.'').

<sup>102</sup> Susan B. Sorenson, et al., *Weapons in the Lives of Battered Women*, 94 AM. J. PUB. HEALTH 1412, 1413 (2004).

<sup>103</sup> See Leong, *supra* note 56 (showing that domestic abuse is often an early warning sign of even more serious assaultive behaviors).

<sup>104</sup> *Id.*

<sup>105</sup> See 18 U.S.C. § 922(g).

<sup>106</sup> See, e.g., Jeanne Marie Laskas, *Inside the Federal Bureau of Way Too Many Guns*, GQ, August 30, 2016 (describing an ATF operation lacking in funding, technology, and manpower: "There is no national database of guns. We have no centralized record of who owns all the firearms we so vigorously debate, no hard data regarding how many people own them, how many of them are bought or sold, or how many even exist.'). And this resource limitation is hardly a new phenomenon. See generally, Franklin E. Zimring, *Firearms and Federal Law: The Gun Control Act of 1968*, 4 J. LEGAL STUD. 133 (1975) (describing the various ways in which limited federal resources hamper the enforcement of federal gun-control legislation).

of federalism disputes between the federal and state governments – over everything from immigration<sup>107</sup> to marijuana law reform<sup>108</sup> – cooperating to keep guns out of the hands of domestic abusers seems like an easy topic on which federal and state officials could find common ground.

### 3. *Police Killings*

One might imagine that the problem of gun violence would transform police departments into powerful advocates on behalf of gun control legislation – policing is surely easier when the government has a monopoly on the use of force not just in law but in practice as well. As we saw above, it is almost always concern about a firearm in the hands of a suspect that leads to a police shooting. Yet police officers and their advocates are often among the leading opponents of significant gun control legislation.<sup>109</sup>

In his recent book, Professor Zimring offers practical solutions to the problem of police killings. His proposals range from wider use of body

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<sup>107</sup> See, e.g., *Arizona v. U.S.*, 567 U.S. 387 (2012) (preempting many of Arizona’s state immigration laws).

<sup>108</sup> See, e.g., *Nebraska v. Colorado*, 136 S.Ct. 1034 (March 21, 2016) (refusing to hear a complaint brought by Nebraska and Oklahoma to invalidate Colorado’s marijuana regulatory regime as preempted by federal law).

<sup>109</sup> See, e.g., John Ingold, *Appeals Court Says Colorado Sheriffs Can’t Sue Governor Over Gun Laws*, DENVER POST, March 22, 2016 (reporting on a suit brought by Colorado sheriffs to enjoin the enforcement of state laws to expand criminal background checks for purchasers and to limit the capacity of ammunition magazines.); Rich Morin, Kim Parker, Renee Tepler, and Andrew Mercer, *Police Views, Public Views*, Pew Research Center (2017) (“Police officers are considerably more likely than the general public to say it is more important to protect the rights of Americans to own guns than it is to control gun ownership (74% of officers vs. 53% of the public). At the same time, there is widespread agreement between police and the public on several key gun law reforms. For example, more than nine-in-ten officers and almost the same share of the public favor laws that would prevent the mentally ill from purchasing guns (95% and 87%, respectively). And about the same proportions of the police and the public favor background checks for people who buy weapons at a gun show or from a private individual (88% and 86%, respectively).”). *But see*, Campbell Robertson and Timothy Williams, *As States Expand Gun Rights, the Police Object*, NEW YORK TIMES, May 3, 2016 (“In more than a dozen states with traditions of robust support for gun ownership rights, and where legislatures have moved to relax gun laws during the past year, the local police have become increasingly vocal in denouncing the measures. They say the new laws expose officers to greater danger and prevent them from doing their jobs effectively.”).

cameras,<sup>110</sup> to changes in departmental deadly force policy<sup>111</sup>, to the use of federal jurisdiction to deal with excessive force cases.<sup>112</sup> I cannot improve on these suggestions here. What is clearly needed though, is a mindset change. As Professor Zimring writes, it is important that police chiefs come to see the killing of civilians as a tragedy on par with the killing of their own officers.<sup>113</sup>

### C. Accidents

As discussed above, the rate of fatal firearm accidents in the United States is low and dropping. Given that there are more than 300,000,000 guns circulating in 42 percent of the nation's homes,<sup>114</sup> we should take solace in the fact that accidental fatalities associated with these weapons are as rare as they are. A combination of education programs, laws requiring safe handling and storage, and the concentration of weapons in fewer, more experienced households may all be behind the decline.<sup>115</sup> Unfortunately, it is difficult for researchers to determine exactly what explains the drop in accidental firearm deaths; the so-called Dickey Amendment, first passed by Congress as a spending rider in 1996, prevents the Centers for Disease Control and Prevention from spending money to "advocate or promote gun control."<sup>116</sup> As a result, gun violence is the subject of far less research than we would expect given its impact

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<sup>110</sup> ZIMRING, *WHEN POLICE KILL*, at 203 ("One important hint to why cameras might merit sustained attention is the prominent role of photographs and videos in virtually every notorious recent incident of police violence. From Rodney King to Laquan McDonald, camera images of violent encounters have been critical determinants of political and justice system outcomes.").

<sup>111</sup> *Id.* at 219 ("[T]he sine qua non that must happen in a police department's thinking and planning prior to achieving significant reform on the use of deadly force is adoption of the belief that the preservation of the lives of civilians is an important principle of police policy.").

<sup>112</sup> *Id.* at 195 ("[T]he case for primary federal jurisdiction in police lethal violence is a strong one because of the systemic bias that reduces the chances of local prosecutors charging unlawful police conduct.").

<sup>113</sup> *Id.* at 219-20 ("Once the value of civilian lives becomes a priority of policy planning, a significant number of changes in police protocols, training, and evaluation of critical incidents can make changes happen quickly and safely.").

<sup>114</sup> *See supra* notes 24-28, and surrounding text.

<sup>115</sup> *See, e.g.,* Kurtis Lee, *Amid rising gun violence, accidental shooting deaths have plummeted. Why?*, L.A. TIMES (Jan. 1, 2018), <https://www.latimes.com/nation/la-na-accidental-gun-deaths-20180101-story.html>.

<sup>116</sup> Omnibus Consolidated Appropriations Act, Pub. L. No. 104-208 (1996).

on public health.<sup>117</sup>

That said, we should create synergy between preventing suicidal individuals from obtaining weapons and preventing gun accidents. Gun safety measures – which make it difficult for disturbed or violent individuals to access guns in the first place or which make them more difficult to access impulsively – will necessarily have a beneficial effect on the rate of gun accidents. If an angry abuser does not have access to a weapon then neither will a curious elementary school student or a careless teenager.

### CONCLUSION

The concerns that Professor Zimring identified thirty years ago remain with us today and are complicated by new, seemingly intractable problems. Clearly, the solutions to America's gun problems are no easier than they were 30 years and almost 200 million guns ago. But the techniques that Zimring and Hawkins developed for describing a public policy dilemma, both in the *Citizen's Guide* and elsewhere, can help guide us today. I sincerely hope that Professor Zimring takes up the invitation to return to this topic in light of all that has transpired in the years since.

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<sup>117</sup> See, e.g., David E. Stark et al., *Funding and Publication of Research on Gun Violence and Other Leading Causes of Death*, 317 J. AM. MED. ASSN. 84 (2017) (“Compared with other leading causes of death, gun violence was associated with less funding and fewer publications than predicted based on mortality rate. Gun violence had 1.6% of the funding predicted (\$1.4 billion predicted, \$22 million observed) and had 4.5% of the volume of publications predicted (38,897 predicted, 1,738 observed) from the regression analyses.”).