A Reply To Advocates of Gun-Control Law

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I. INTRODUCTION

The great stumbling block for those who want to lead us on a path toward governmental prohibition of gun ownership--prohibition that excepts a special government-approved few, for not many suggest that all guns everywhere be banned--is the Constitution. [1] The second amendment emphatically proclaims that the government may not inhibit the citizens' right to bear arms: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." [2] This is one of the few references to a "right" in the first eight amendments of the Bill of Rights, e.g., the first amendment prohibits certain congressional action and grants a right only for assembly. [3]

Many try to use the first part of the second amendment to dismiss the amendment as a whole. Four arguments are commonly made: (1) that individuals bearing arms are not militia and, therefore, are not included; (2) that any militia that might be said to exist among the people is not "well regulated" and therefore, only government-supervised persons, like police, National Guard and other branches of the armed forces, qualify as "the people" to whom the amendment applies; (3) that political differences between two centuries ago and now render the second amendment obsolete, because we are no longer faced with a standing army of British troops on American soil; and (4) technological differences between then and now destroy the amendment's meaning, since one handgun or thousands of handguns--or knives, or rifles, or bazookas--would not stop a Russian ICBM. [4]

These arguments all begin from an unexamined premise: that the Constitution and its Bill of Rights can be read in bits and pieces so that each provision becomes a discrete passage. Such a reading of the first amendment would have legislators proclaiming that individual states can pass laws abridging freedom of speech, since the amendment ties its prohibitions of government action to Congress. Such a reading would also require a finding that there is no constitutional requirement to allow bail, since the eighth amendment is connected only with "excessive bail." [5]

This "interpretation, " regarding each provision separately and as a simple sum of words and qualifiers, rises from a disregard of the Constitution as the founding document of America's system of government. The tendency to regard the Constitution as a collection of unrelated edicts often exists in tandem with another narrow view. This latter view regards the Constitution as, in

general, an expedient document in its time without the broad principles that define a concept of relationships among men.

Justice Black, in *Bridges v. California*, [6] states that amendments are to be read in the broadest possible scope:

> [The] only conclusion supported by history is that the unqualified prohibitions laid down by the framers were intended to give liberty . . . the broadest scope that could be countenanced by an orderly society. [7]

Using this statement as a hypothesis, we may work toward another, more reasonable, method of constitutional interpretation.

The amendments refer to and have changed the whole of the Constitution. The amendments supersede anything in the main document that they contradict and, of course, they override common law antecedents, just as the Constitution's main body does. [8] As additions, the amendments become integral parts of the entire document and interrelate with other amendments and provisions so as to produce a total and a unified effect. The amendments were not intended as separate and distinct entities, but rather to be taken in their entirety to achieve an integrated purpose. Considering this, it is possible to develop a more reasonable method of constitutional interpretation than was applied in *Shooting to Kill the Handgun: Time to Martyr Another American "Hero."* [9]

The amendments in the Bill of Rights define limits on the government's power to sanction or regulate the affairs of citizens. Further, they reflect a concept of natural rights, such as is stated in our first fundamental document, the Declaration of Independence. The amendments are meant to be read together [10] and many contain implicit references to other amendments. [11] They collectively determine the limits within which government power to sanction or regulate the affairs of citizens must operate.

It appears logical that the amendments had an essential purpose to convey more meaning and spirit than a narrow, or "statutory, " interpretation would reveal. Under a model of this nature, the intended meaning of the amendments could be extended beyond the verbal realm to include movies [12] and symbolic expression, [13] while the army could represent any branch of the armed forces. This approach is perfectly legitimate since, realistically, the Constitution sets up broad categories which can tolerate changes in application. Justice Black noted:

> [I]t is true that [the amendments] were designed to meet ancient evils. But they are the same kind of human evils that have emerged from century to century wherever excessive power is sought by a few at the expense of the many. . . . [T]he people of no nation can lose their liberty so long as a Bill of Rights like ours survives and its basic purposes are conscientiously interpreted, enforced and respected so as to afford continuous protection against old, as well as new, devices and practices which might thwart these purposes. [14]

In short, an interpretation such as the one in *Shooting to Kill* is inappropriate, because the particular applications which the Founders had in mind are subordinate, if not irrelevant, and should yield to the principles and the spirit involved.

It is not hard to conclude that the language of the second amendment means what it says, changing only with respect to its particular application. For this reason, it is clear that gun-control advocates attempting to reinterpret the second amendment into a noneffective status are essentially attempting to defeat the meaning and purpose of the amendment. Gun-control advocates who argue that they can determine which provision of the Constitution will or will not be enforced, essentially frustrate "the great design of a written Constitution." [15]

II. THE SECOND AMENDMENT IN CONTEXT

If the first ten amendments do, indeed, represent a doctrine of natural law or a protection of fundamental rights, it would seem logical that each amendment should recognize, implicitly or explicitly, some inviolable right in addition to stating some specific prohibitions against government infringement on that right. The second amendment demonstrates this proposition. It grants the individual right to bear arms and restricts government infringement on that right.

The main body of the Constitution grants to Congress the power to organize, arm and discipline militia. [16] This creates rights for government. The second amendment secures individual liberty and gives another dimension to war power. Perhaps anticipating the argument that armies would make individual means of self-protection useless and/or dangerous, the Framers amended that grant of power to make explicit that the Constitution was not intended to infringe on "the right of the people to keep and bear Arms . . ."; rather, this right would help secure such a militia. This stands to reason, since it had been chiefly the gun-bearing individual who assisted in the fight for independence, was responsible for its success and, hence, made possible the Constitution.

It remains to be proven that such a rationale of individual protection against state militia is not even more valid today than when the Bill of Rights was written. Also, it may help to secure a militia.

What the psychological, military and societal effects are on a citizenry bearing arms is certainly a factual and policy issue, on both a society-building level and in present appraisal. [17] We cannot say as pure fact that providing people freedom to keep and bear arms does not help build an army when needed. Among the elements to be considered in this respect is that there is no clear and convincing proof that the right to bear arms does not act as a deterrent to either domestic or foreign aggression. Therefore, since the amendment provides this freedom and there is no clear and convincing evidence of its need for repeal, it should not be interpreted into nonexistence.

Considering the amendments as commands and absolutes [18] further reinforces this viewpoint of the second amendment. A command's focus is on its effects of sanctifying and protecting, not upon the reasons for its consequent protections. Commands are absolutes. They are not reducible to their justifications. If the amendment in question is one of the Bill of Rights, it must be read as

commanding certain societal absolutes and preventing the state from intruding on the enjoyment of those absolute rights. As Congress may not quell printing presses or deny juries, it may not deny guns if the language in one amendment is as commanding as the other. [19] To accept the amendments in that fundamental document as societal bases and commands is to admit that bearing arms is a fundamental and constitutionally protected right.

III. STATE POWER

The safeguards and assumptions expressed in the Constitution establish a doctrine of criminal law. Through government, this doctrine is employed to sanction, restrain and, occasionally, attempt to rehabilitate those who, if we did not, would act in ways that would tangibly affect the freedom of others. We immobilize a man who steals a car so the car owner may be mobile, but we leave alone a child who upsets another by not saluting a flag. [20] We look to inhibit those who commit inhibiting acts on another's freedom.

To guard against the potential abuses of this criminal law doctrine, the Constitution also created a presumption of the innocence of the individual. This presumption stems philosophically from the concept of free will. It appears to flow logically, then, that we punish only for acts, not for ideas, things or acts that create tendencies to act. Here the connection among amendments is even more clear. Ideas can incite as well as excite. Men loose on bail may be more dangerous than those caged on suspicion. Yet, because of the constitutional protections, factors associated with prohibited acts, even causally associated, cannot be prohibited. [21]

Guns in fact elude the classification of precursors more so than most other examples. That is, a person must be legally intoxicated before he can be convicted of drunken driving and a person must be elected to office before he can be impeached. However, guns are only one means employed in crimes and most of the crimes committed through the use of guns could be committed with some other weapon. Yet despite the obvious fact that guns are not absolute precursors, they seem, more frequently than other factors associated with crime, to be the target of reformers.

Gun-control advocates often argue that guns are the link between the psychological tendency and the actual criminal conduct. [22] However, they fail to realize or address themselves to the fact that the mere possession of guns does not affect the user's free will or his decision making process, as alcohol, heroin or even free speech may. They do not detract from the exercise of mind protected by the first amendment, nor do they interfere with the model of man posited by this analysis. Rather, the choice to possess guns simply makes it possible to choose to use guns in a legal or an illegal context--or not to use them at all.

Seen in this perspective, the second amendment can either manifest or lend assistance to an exercise of the first amendment rights. [23] The possession of arms manifests a choice or a freedom of life style which is consistent with the democratic philosophy. The possession of arms may allow a person, who is otherwise intimidated into submission, alternative choices with respect to where he may go or what he may say. For instance, those who worked on voter registration in the South almost uniformly report that the possession of guns by Southern blacks gave them the necessary confidence to overcome the threats, harassment, burning crosses and

sniper shots to which they were frequently subjected. [24] In order to survive and to realize a measurable degree of personal dignity the Southern blacks needed the guns. As a protection, it made it easier to organize and insist on the exercise of their constitutional rights to vote and speak. [25] Perhaps this was only made possible because the Constitution guaranteed the right to keep and bear arms.

IV. THE INSTITUTION OF CONTROL

The author of *Shooting to Kill* offers many extralegal arguments against citizens' keeping and bearing arms, specifically against the ownership of handguns. These are really irrelevant to the constitutional argument and the associated rationale. Perhaps we should stop there, but other considerations arise. Controls mean regulation. They also mean people to regulate. The police are often proposed for that function. If we return to our Southern example, it is clear that "rednecks" would get guns from sheriffs while black leaders would not. The police have awesome power and discretion in our society and often it is exercised in a way which oppresses the poor and disadvantaged. [26] We live in a society with, perhaps, too many controls and sanctions. [27] In the North, especially in the troubled urban centers, do we need more controls--particularly by the police? [28] To whom would the power to decide who packs a pistol go? Is it not naive to assume that regulation would mean that guns would go to the trustworthy and refusals to the dangerous? [29] When liberals on a campus want licenses for guns to protect themselves against attacks by thugs, it is the liberals who will be refused as "commies" and perhaps frightened into a silence which their first amendment protection does not prevent. An appeal to the Supreme Court to find that such gun refusal penalizes their political beliefs may be cold comfort too late.

Controls on alcohol, drugs, sex, and now guns are very often desired as a method for eliminating a critical social problem (generally a manifestation of more basic problems). But instituting controls now seems to be a futile repetition of a thoroughly disproved assumption, an insistence on naivete and blindness in the light of experience. The institution of control is attractive because it seems to be such a simple solution, but realistically it is a solution that fails to solve. Freud knew that prohibition would end when it started [30] and even William F. Buckley now worries about whether it makes sense to proscribe pot. [31] If we have trouble preventing poaching, can we not see the infinite difficulty of outlawing pistols? The drug prohibition and control law has only raised the price and the medical risk. The gambling prohibition and control law has sustained organized crime. Similarly, the prohibitions on adults' consensual sexual acts have not prevented them, but perverted society. Considering the fact that guns are easy to manufacture and, thus, would be even more difficult to control, it seems reasonable to conclude that this would be one more item in this list of failures. It would create disasters where we now have only critical problems. Moreover, so many guns are now in circulation it would take eons for them to disappear in significant numbers.

Many other policy arguments about the wisdom of gun controls can be made. Among them is the idea that focusing on guns instead of political and social conditions represents the classic failure of vision. It penalizes items associated with bad results instead of seeking underlying solutions to radical problems. If there is a new propensity to violence, we are cheated out of the energy we need to cure its roots if we concentrate on regulating the items merely associated with that

violence. The remarkable fact about riots is that they have included little sniping by citizens and much property destruction. [32]

Lee Harvey Oswald could have found a gun, no matter what the laws. Sirhan Sirhan could have wrapped-up Robert Kennedy's campaign with a homemade zip-gun. Madmen throw acid and bombs as well as spray with bullets. Murderers, in other words, can find many tools. We would do better to turn to the slums and their great hostility, to the causes of mad bombers and assassins, in order to find a means for detecting and curing these ills within constitutional procedures and to find an answer to the ultimate metaphysical question of the eternal destruction in the hearts and souls of men.

In promoting his campaign of gun control, the author of *Shooting to Kill* fails to consider the potential gun control has to destroy other constitutionally protected rights. Gun control laws, like drug control laws, would likely be designed in such a way that they serve both as an excuse to infringe on constitutional guarantees of freedom and to further the power of those who would ignore these freedoms and oppress minority interests. For instance, recent inroads into search and seizure laws have been "justified" on the basis of drug detection, for example, when the quantity is easily disposable. In practice, police often break and enter or stop and frisk without notice if their purpose is drug confiscation. Similar incidents are easy to imagine under the proposed gun control legislation. The glorification of police misconduct in movies like *The French Connection*, speaks for itself. The ineffectiveness of the results, if, indeed, the targets are drug abuse and crimes against persons and property, is an argument against the mistake of abandoning the Constitution for these claims of terror concerning social phenomenon.

Gun-control possesses two alternatives: we either ban guns from all citizens or from some. The National Rifle Association claims only .0035 of the guns in the United States are used in crimes. [33] If guns were banned for all, the power of the police and, perhaps, in some parts of the country, the fear of animals might commence to become alarming. Some "radicals" maintain that we can no longer ignore the possibility that the military could be mobilized to suppress liberties with little effective resistance. If guns were banned for some, the danger, known so well to the poor, will be upon us. [34] The professor who speaks for a liberal cause in a reactionary city will see the others armed and outraged. The slum dweller, preyed upon by crime, police, landlord, welfare department and a host of others, will have only his fear to arm him. Gun control laws, like drug laws, would likely be designed in such a way that they serve to further the power of those who oppress the poor and weak--another excuse to take away further constitutional freedoms.

It has been suggested that guns occasionally facilitate crimes. It is in this context that *Shooting to Kill* is so completely misleading. The Constitution is based on considerations and spelled-out in clauses, whereas *Shooting to Kill* is based on statistics and quotes.

Realizing the difficulty of locating the exact problem together with the complexities involved and the subsequent chance for miscalculated legislation it is no wonder, as the author of *Shooting to Kill* notes, that "20,000 gun regulations have been abysmal failures." [35] In answering the question which follows, "why should one assume that any more would help?," [36] the most sensible response is that one should not.

At least a part of the failure is that the Constitution is based on reasoned principles whereas gun control laws are based on statistical measurement. The inconsistency lies in using an inflexible indicator to gauge the fluctuating variables involved in the "complex ecology of crime." [37] Under these conditions, the reliability of statistics must certainly be suspect. The author of *Shooting to Kill* acknowledges this when he quotes Senator McClure: "Whoever said that statistics can be used to prove anything, understood the real world." [38] Statistics are finite devices used in order to break down complex problems into easily identifiable parts. Reality, however, has no such limits or definitions that are susceptible, with any reliability, to this analysis.

In addition, statistics can easily be abused or distorted to fit the user's purpose. [39] *Shooting to Kill* makes frequent use of statistics from the Federal Bureau of Investigation (FBI), [40] while ignoring the simple possibility that they may not be reliable.

> For example . . . Albert Biderman, a key commission consultant on statistics, attacked the FBI reports for fostering a false image of rapidly increasing lawlessness and for grossly distorting both the rate and distribution of crime. And another commission consultant, Professor Marvin Wolfgang, detailed in an article the many elements in the FBI reports of "error, omission, inconsistency, contradiction, deficiency, and bias." [41]

An explanation for the fact that statistics are not always reliable is that the FBI, like other sources, has a "vested interest in maintaining the crime wave, not only to get ever-increasing appropriations but also to sustain a constant state of emergency in which they can serve as national savior." [42]

Certainly, in the area of police statistics, there is no question of their great manipulation. [43] In an area like gun possession, the reliability of statistics must certainly be suspect. *Shooting to Kill* acknowledges this fact by noting that discovering how many guns there are in the United States is an impossible task.

Furthermore, to combine statistics is to multiply errors times errors. An attempt to rescue this mathematical mumbo-jumbo by reference to the necessity to include the "influence on crime of factors such as population density, geography, race, per capita income, and education," [44] lets the tiger out of the bag. Police statistics show that the most likely to commit violent crimes and use guns are the slum-crowded, the black, the poor, and people with little education.

A critical question to address is whether gun control laws actually prevent the criminal use of guns. In this respect, the author of *Shooting to Kill* discusses the New York Sullivan Law in contrast to the Texas law. [45] Houston has led the country in homicides, but is that the result of handgun availability or the Texas temperament? In the East, specifically New York City, with the Sullivan Law, the figures on homicide and violence are not much better. If we were to accept the statistics, and say a little better is at least desirable, we would still be left with no reason to believe that the Sullivan Law, instead of the somewhat more bearable life that the poor and the black are allowed in New York City, than in Houston, is the cause of this better effect.

Trying to discern the rationale behind banning only handguns raises further questions. People with some money might buy shotguns if handguns were banned and, in fact, the author of *Shooting to Kill* invites them to do so. [46] Shotguns can be modified or sawed-off. But even unmodified, full-length shotguns could be used to commit murder. The use of the familiar statistic showing murder victims as the relatives or friends of their murderers is impossible to comprehend as an argument for outlawing handguns--no matter how the argument is twisted and mauled.

Handguns are, we are told, "relatively difficult to shoot accurately." [47] Are we sure that we want a country armed with shotguns instead of the less accurate handgun? Do we want the more accurate weapon allowed to people selected by those in various realms of power? Nowhere is there any "textual" support for distinguishing between handguns and rifles in the Constitution.

A hodgepodge of statistics and quotes does not a constitutional argument make. The second amendment speaks clearly. It speaks as other amendments do and it speaks with them. Within its safety, a militia, as well as other good causes, may be served. Let us not chip at the constitutional absolutes in hysteria over dramatic tragedies. Now is the time to keep constitutional commands clear. It is also the time to move in the world of politics in order to provide fruitful outlets for the driving energy of mankind and to remove the frustrations that have chained us to insanity and destruction.

[from the front page:

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[1] This Article, along with voicing the views of the author, will respond generally to a comment entitled *Shooting to Kill the Handgun: Time to Martyr Another American "Hero,"* published in Volume 51 of the *Journal of Urban Law* [51 J. Urban L. 491 (1974)].

[2] U.S. Const. amend. II.

[3] U.S. Const. amend. I: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

[4] *See generally* Comment, *Shooting to Kill the Handgun: Time to Martyr Another American "Hero,"* 51 J. Urban L. 491 (1974) [hereinafter referred to as *Shooting to Kill*].

[5] *See*, Act of Sept. 24, 1789, ch. 20, 1 stat. 73, 91; *cf.* Trimble v. Stone, 187 F. Supp. 483 (1966). Clayton v. Stone, 358 F.2d 548 (D.C. Cir. 1966).

[6] 314 U.S. 252 (1941). See discussion in Weiss, Book Review, 72 Yale L.J. 1665 (1963).

[7] 314 U.S. at 265.

[8] Precedents are often relevant for subsequent interpretation, *see* Ely, Legislative and Administrative Motivation in Constitutional Law, 79 Yale L.J. 1205 (1970), and, of course, common law concepts are often, perhaps mistakenly, adopted as a whole, *e.g.*, the doctrine of sovereign immunity. The author of *Shooting to Kill*, however, missed the mark completely in his use of common law antecedents. The author asserts that there was no common law right to keep or bear arms. *See Shooting to Kill*, at 515. This assertion implies that the second amendment was passed to create that right in the law, just as the first amendment created rights not found in the common law. The Bill of Rights is for individuals and was passed because the Constitution had not explicitly safeguarded the rights of individuals against powers delegated to the federal government, *e.g.*, the war power. The author of *Shooting to Kill* fails to discuss the reasons for enacting the Bill of Rights, Constitutional distinctions should be made in constitutional contexts, not imported whole from extraneous sources.

[9] 51 J. Urban L. 491 (1974).

[10] *E.g.*, Griswold v. Connecticut, 381 U.S. 479 (1965); United States v. Guest, 383 U.S. 745 (1945).

[11] The fourteenth amendment used fifth amendment language and the provisions for bail in the eighth amendment refer to the criminal process dealt with in the sixth and seventh amendments. *See* Boyd v. United States, 116 U.S. 616 (1886); Mapp v. Ohio, 367 U.S. 643 (1961).

[12] Burystn v. Wilson, 343 U.S. 495 (1952).

[13] *See* Weiss & Wizner, *Pot, Prayer, Politics, and Privacy: The Right to Cut Your Own Throat in Your Own Way*, 54 Iowa L. Rev. 709, 724-35 (1969).

[14] Adamson v. California, 332 U.S. 46, 89 (1947).

[15] *Id*.

[16] U.S. Const. art I, Sec. 8.

[17] The author of *Shooting to Kill* mentions the psychological effect of possessing guns. The personal importance of guns and the psychological effect of this freedom may well have been reasons why the Founders safeguarded this right.

[18] *See* Justice Black's statement of this view in Adamson v. California, 332 U.S. 46 (1947). Overly rigid use of such rhetoric must, of course, be ingested with a grain of salt. Absolutes are categorical absolutes, not abstractions of permanent petty detail.

[19] In this context, it is possible to give contemporary, concrete meaning to "arms" as weapons of self defense. However, the issue of defining arms need not be discussed here because the fundamental right to bear them is not distinguished or defined in the Constitution.

[20] West Virginia v. Barnett, 319 U.S. 624 (1943); *see generally* Weiss, *Privilege, Posture, and Protection: "Religion " in the Law*, 73 Yale L. J. 593 (1964); Weiss & Wizner, *supra* note 13, at 723-25.

[21] A rational, and perhaps constitutionally permissible, response to this problem is to increase sanctions when crimes are committed in conjunction with tendency-producing substances or dangerous instrumentalities. When crimes are committed with guns, greater penalties could be meted out as is the practice in England.

[22] The critical element to be considered is neither the use of the gun or the criminal conduct, but rather that psychological tendency or motivation to commit the crime and the social pathologies involved. It appears that this is at the center of the issue, but the author of *Shooting to Kill* deceptively evades it in pursuit of more tangible arguments.

[23] *Cf.* Weiss & Wizner, *supra* note 13.

[24] This point is missed in the discussion of self-defense in *Shooting to Kill* at 497. The author neglects to mention the fact that some people are alive today because their right to and actual possession of guns acted as a deterrent to aggressors.

[25] *Cf.* Weiss & Wizner, *supra* note 13.

[26] *See* Report of National Advisory Commission on Civil Disorders 268-336 (Bantam Books ed. 1948).

[27] For a discussion of various related problems, *see* Allen, *Civil Disobedience and the Legal Order*, 36 U. Cin. L. Rev. (1967); S. Allen, Borderland of Criminal Justice (1963).

[28] When dealing with controls, it must be realized above all that they imply regulation. With this can be recalled "the nightmare vision of hordes of bureaucrats, certificates, photocopies, data bands and the regulated paraphernalia necessary to enforce strong gun regulations." *Shooting to Kill* suggests that the government buy banned handguns at market value. Assuming arguendo that the government is able to succeed in this highly speculative venture, it will encounter a critical consideration not dealt with in *Shooting to Kill*. Initiating a program of control does not guarantee its continued effectiveness. It would be necessary to develop some bureaucratic mechanism to monitor the program continuously.

The expansion would probably lead to the undesirable "nightmare vision" of increasing bureaucracy. The potential for abuse is significant because it extends not only to the administrative elements in the bureaucratic framework, but also to the executive functions involved in the implementation of policy. For example, the discretionary element presently allowed police in the execution of other controls, would also be present in the execution of gun control with the obvious tendency to employ this discretion for abusive purposes. What basis is there to assure that guns would be permitted only to those citizens who are responsible and trustworthy? The problem, then more logically lies not in the possession of guns, but in the increased controls given over to bureaucrats and particularly to police. For an account of difficulties in entrusting regulatory decisions to police, see Goldstein, *Police Discretion*, 69 Yale L.J. 596 (1960).

[29] *Cf*. Feiner v. New York, 340 U.S. 315 (1951).

[30] *See generally* S. Freud, Civilization and its Discontents (1930).

[31] *See* The New York Post, July 12, 1968, at 27.

[32] The enactment of new legislation attempting to control or regulate behavior basically establishes new boundaries within which legal behavior is exercised. It follows, a fortiori, that it must also establish more boundaries beyond which people may behave in a civilly disobedient manner. Adding to this the simple fact that any nation is a complex composition of variations in attitude, opinion and moral convictions, produces a sum total which can be interpreted to mean that any laws necessarily become the adversary of at least some conscientious scruples. There may be at least some people who will act in dereliction to these laws simply because they owe allegiance to some higher authority than secular law or to some other intense conscientious scruples or want to protest some injustice. This problem should also give pause. *See* Report of National Advisory Commission on Civil Disorders, *supra* note 26.

[33] *The National Rifle Association Magazine*, May, 1974, at 39.

[34] Neglect proceedings, purportedly to protect the "best interests of the child," operate only to deprive the poor. *See* Jennings & Weiss, Book Review, 72 Colum. L. Rev. 950 (1972).

[35] *Shooting to Kill* at 513.

[36] *Id.*

[37] *Id.* at 514, citing Benson, *A Controlled Look at Gun Control*, 14 N.Y.L.F. 718, 731-37 (1968).

[38] *Id.* at 503, *citing* McClure, *Firearms & Federalism*, 7 Idaho L. Rev. 197, 202 (1970).

[39] R. Cipes, The Crime War (1968).

[40] *Shooting to Kill* at 495.

[41] R. Cipes, *supra* note 39, at 8, *citing* Biderman, *Social Indicators and Goals*, in R. Bauer, Social Indicators (1966) and Wolfgang, *Uniform Crime Reports: A Critical Appraisal*, U. Penn. L. Rev. 708 (1963).

[42] R. Cipes, *supra* note 39 at 8.

[43] *See generally* R. Cipes, *supra* note 39.

[44] *Shooting to Kill* at 502.

[45] *Id.* at 512.

[46] *Id.* at 498 & 500.

[47] *Id.* at 499.

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