

**Statement of**  
**DAVID W. CLARK**  
**on behalf of the**  
**AMERICAN BAR ASSOCIATION**  
**submitted to the**  
**SUBCOMMITTEE ON THE CONSTITUTION, FEDERALISM AND**  
**PROPERTY RIGHTS**  
**COMMITTEE ON THE JUDICIARY**  
**UNITED STATES SENATE**  
**on the subject of**  
**THE SECOND AMENDMENT**  
**September 23, 1998**

Mr. Chairman and Members of the Subcommittee:

The American Bar Association appreciates the opportunity to submit its views to you on issues arising under the Second Amendment to the Constitution of the United States. The ABA serves as the national voice of the legal profession and has over 400,000 members. I am David W. Clark, of Jackson, Mississippi. I currently serve as the Chair of the ABA's Coordinating Committee on Gun Violence. I submit this statement at the request of the President of the ABA, Philip S. Anderson.

There is considerable confusion and misunderstanding about the meaning of the Second Amendment and its relationship to the power of the federal government to enact laws regulating firearms in private hands. In fact, our concern about the widespread misunderstanding of the law in this area caused our House of Delegates, in August 1994, to adopt a resolution calling on the legal profession to "...join and work with our counterparts in the medical, teaching, religious, civic, law enforcement and other professions, to ...educate the public and lawmakers regarding the meaning of the Second Amendment to the United States Constitution, to make widely known the fact that the United States Supreme Court and lower federal courts have consistently, uniformly held that the Second Amendment to the United States Constitution right to bear arms is related to a well-regulated militia and that there are no federal constitutional decisions which preclude regulation of firearms in private hands."

Few issues have been more distorted and cluttered by misinformation than this one. We agree with the views of former Solicitor General (and Dean of Harvard Law School) Erwin N. Griswold, expressed in his November 4, 1990, Washington Post column, "Phantom Second Amendment Rights," that the debate then ongoing as to a proposed ban on assault weapons should spend little time on "the unsupportable claim that restrictions would violate the Second Amendment's right to keep and bear arms."

There is no confusion in the law itself. Federal and state court decisions in this century have been uniform in the view that the Second Amendment permits the exercise of broad power to limit private access to firearms by all levels of government. The strictest gun control laws in the nation have been upheld against Second Amendment challenge, including a ban on handguns imposed locally.

The Supreme Court enunciated in 1939 in *United States v. Miller*, 307 U.S. 174, what almost sixty years later remains clearly the law of the land -- namely, that the scope of the people's right to bear arms is qualified by the introductory phrase of the Second Amendment regarding the necessity of a "well regulated militia" for the "security of a free State." In *Miller*, the Court held that the "obvious purpose" of the Amendment was "to assure the continuation and render possible the effectiveness of..." the state militias and cautioned that the Amendment "must be interpreted and applied with that end in view."

The Militia in colonial times was not an ad hoc gathering of persons. The Militia was a creature of law, with appointed officers, and terms of service, that acted as a branch of government. Since today's "well regulated militia" does not use privately owned firearms, courts since *Miller* have unanimously held that regulation of such guns does not offend the Second Amendment. The Supreme Court has twice reaffirmed its view of the Second Amendment as expressed in *Miller*. In *Burton v. Sills*, 394 U.S. 812 (1968), the Court dismissed, for want of a substantial federal question, a gun owner's appeal of a New Jersey Supreme Court holding that the Second Amendment permits regulation of firearms "so long as the regulation does not impair the active, organized militias of the states." Most recently, in *Lewis v. United States*, 445 U.S. 55 (1980), the Court held that legislative restrictions on the use of firearms do not - for purposes of equal protection analysis - "trench upon any constitutionally protected liberties."

The lower federal courts have uniformly followed the interpretation of the Supreme Court. The absolutist view of the Second Amendment argued by some opponents of regulation of firearms has not been sustained by a single U.S. Supreme Court or lower federal court decision in our nation's history, while a series of U.S. Supreme Court and lower federal court decisions has uniformly upheld regulation of private arms. Throughout our nation's history, no legislation regulating the private ownership of firearms has been struck down on Second Amendment grounds. Congress should require those who make such broad claims about the inability of Congress to constitutionally regulate in this area to point to some court decision upholding such views.

The fact that the Second Amendment permits federal regulation of firearms has allowed Congress in recent years to prevent the sale and manufacture of terrorist weapons undetectable to airport and public building security, to restrict sale and possession of fully automatic machine guns, to outlaw "cop-killer" bullets, and to ban sale and possession of military assault weapons. None of these measures has been overturned in the courts. In recent years, the gun industry has consistently chosen not to raise Second Amendment claims in court. As lawyers we know why. They cannot point to a single legitimate precedent to support their claims.

Moreover, the fact that the Second Amendment permits regulation of firearms does not mean, as the gun lobby implies, that Congress will abuse that power to prevent sporting uses of firearms, the purchase of guns for self-defense, or other legitimate uses of guns. This is not an "all or nothing" proposition. Rather, the question before Congress is where to draw the line to balance interests of gun owners and manufacturers with public safety and public order. In the case of military assault weapons, Congress made a public policy choice regarding the benefits of having such weapons in general circulation versus the horrible costs they can inflict upon an innocent citizenry.

Gun violence in the United States is a grave national problem. Firearms claimed the lives of 35,957 people in the United States in 1995, according to the National Center for Health Statistics. Of these deaths, 18,503 were suicides, 15,835 were firearm homicides, and 1,225 were accidental shootings. Since 1985, there has been a 21.5% increase in firearms fatalities.

Firearms are overwhelmingly the instrument used in committing homicides in the United States and our homicide rate, especially for young persons, remains many times higher than the rest of the industrialized world. Worldwide statistics show that the epidemic of violence that has hit younger children in recent years is confined almost exclusively to the United States. According to a 1993 United Nations report, nine out of ten killings of young people in the industrialized world happen in the United States. More American teenagers now die from gunshot wounds than from all natural causes of disease combined. Pervasive, easy access to firearms is the primary reason. A 1997 United Nations report found that the overall firearm-related death rate among U.S. children aged less than 15 was nearly 12 times higher than among children in the other 25 industrialized countries combined.

The American Bar Association believes that the costs of gun violence to our society have become an enormous public burden. The Centers for Disease Control and leading health experts have conducted research, collected data, and published results regarding the nationwide cost of firearms injuries, and have shown that firearms injuries and death in the United States are at an epidemic level of occurrence. The dollar costs of medical care have become a significant contributor to health care costs nationwide. The cost to the public of paying for medical care and losses suffered as the result of firearms injuries and death is enormous. The lifetime cost of all firearm-related injuries was estimated for 1990 to be \$20.4 billion. (Source, W. Max and D.P. Rice, "Shooting in the Dark: Estimating the Cost of Firearm Injuries," *Health Affairs* (Winter 1993): 532-536).

We urge Congress to take appropriate steps to regulate firearms to reduce the tragic carnage of gun-related deaths and injuries plaguing this country. The Constitution clearly permits such regulation, and the Second Amendment cannot be used as a reason for failing to adopt appropriate regulatory legislation.