



1970

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## Recommended Citation

Elmer A. Bessick, *Gun Control Statutes and Domestic Violence*, 19 Clev. St. L. Rev. 556 (1970)  
available at <https://engagedscholarship.csuohio.edu/clevstrev/vol19/iss3/17>

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## Gun Control Statutes and Domestic Violence

Elmer A. Bessick\*

THE WIDESPREAD INCREASE IN CRIME in modern society has bred a reaction of strict law enforcement, or what may be termed "the law and order syndrome." As the crime rate steadily increases,<sup>1</sup> public sentiment for some sort of strong crime control becomes insistent. It is difficult to pinpoint any single factor which can be called the culprit for the nationwide increase in crime. Certainly, there are a number of factors which contribute in some fashion to this broad scale crime increase. The Federal Bureau of Investigation lists a total of eleven "crime factors" which include such diverse elements as poverty, education, size of police force, race, age and sex, etc.<sup>2</sup>

Numerous blue ribbon commissions<sup>3</sup> have issued reports as to the causes of national crime and violence, and each has pointed to the same conclusion—that there is no single factor which can be determined as the cause of the crime and violence now rampant in our society. At best, these reports show some relation between hunger, poverty, environment, organized crime and law enforcement, and national violence. These problems are certainly not incurable; their solutions are frequently expensive and time consuming. No immediate solutions are readily available. Urban Renewal, Fair Housing, Education and Job Training are part of the long-term care, but they do little in treating the symptoms manifested by crime and violence. The public seeks some sort of realistic approach to the problems of crime and violence. Among these proposed solutions, one eagerly urged is Gun Control Law.

President Lyndon B. Johnson, in his farewell State of the Union Message to Congress on January 14, 1969, stated that "one of my greatest disappointments is our failure to secure passage of a licensing and registration act for firearms."<sup>4</sup> This attitude is typical of the national reaction to the assassinations of John and Robert Kennedy and Dr. Martin Luther King. The need for some sort of effective regulation of firearms has been emphasized by these outbreaks of violence.

The prime question for determination in the area of firearms control is: Can gun control be effective to reduce crime and violence? If the

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<sup>1</sup> 1968 F.B.I. Uniform Crime Reports 1.

<sup>2</sup> *Id.*, vi.

<sup>3</sup> See generally The President's Commission on Law Enforcement and Administration of Justice (Feb. 1967); National Commission on the Causes and Prevention of Violence (Sept. 1969); American Bar Foundation Report: Firearms and Legislative Regulations (1967).

<sup>4</sup> 1 U.S. Cong. News (1969) 4, 9.

answer to this question is at least partially affirmative, then control of firearms would seem to be desirable. To test their effectiveness, we first must look to the character of criminal behavior.

A leading authority in the field of criminal behavior today is Dr. Marvin Wolfgang of Pennsylvania University. His book, *Patterns of Criminal Homicide*,<sup>5</sup> is considered the standard text in the field. His studies in criminal behavior have led to the formulation of what has been called Wolfgang's Law: Homicide will occur whether there is a gun or not! Wolfgang writes: "Few homicides due to shootings could be avoided merely if a firearm was not immediately present, for the offender would select some other weapon to achieve the same destructive goal."<sup>6</sup>

The nationwide riots which have hit some of our major cities these last few years have done a great deal to foster a national gun reaction. The violence and destruction of the riots prompted a great many to acquire firearms, ostensibly for protection. "After disturbances in Baltimore and Washington in April 1968, applications for handgun purchases nearly doubled in counties surrounding the two cities. In Alexandria, Virginia, suburbanites stood in lines to buy guns during the height of the rioting in the District of Columbia, and more applications were received in the first half of April than in the entire month of March,"<sup>7</sup> and in Detroit "in the eleven month period since the riots, almost as many licenses to purchase guns have been issued as in the thirty months preceding the riots."<sup>8</sup>

A Stanford Research Institute Study of "Firearms, Violence and Civil Disorders"<sup>9</sup> concludes that in the case of the Newark and Detroit riots, "the role of guns by civilians was minimal, and the role of guns by public safety personnel was not,"<sup>10</sup> but later predicts that "with the buildup of guns in private hands, many public officials are beginning to fear that the statistics of the past will not be applicable to the future. The role of guns by civilians may not be minimal."<sup>11</sup>

There is a long-standing American tradition which has evolved from the half-historic, half-romantic heritage of the American frontier. Americans trace their traditional affinity for firearms to the early days of the westward movement, frontier civilization, and back eventually to the

<sup>5</sup> Wolfgang, *Patterns of Criminal Homicide* (Science ed., 1966).

<sup>6</sup> Mosk, *Gun Control Legislation: Valid and Necessary*, 14 N.Y. Law Forum, 714 (Winter 1968).

<sup>7</sup> *Firearms in Civil Disorders, Current* (Jan. 1969), at 43.

<sup>8</sup> *Ibid.*

<sup>9</sup> *Firearms, Violence and Civil Disorders*, Stanford Research Institute Journal, October, 1968.

<sup>10</sup> *Supra* n. 7.

<sup>11</sup> *Ibid.*

colonial militia men. Since firearms have played an integral part in the history and development of this nation, it is difficult to alter the "habit" of firearms, they say. The National Commission on The Causes and Prevention of Violence, in a staff report,<sup>12</sup> seriously questions the utility of firearms for defense of home and person. In that report, the Commission's staff concluded that the gun is rarely effective as a means of protecting the home from either the burglar or robber. The Commission reasons that the burglar avoids confrontation and the robber confronts too swiftly. Although the possession of firearms seems to afford a great deal of comfort to many Americans, the report suggests that this comfort is largely an illusion bought with the blood of more frequent homicides, increased accidents, and more widespread illegal use of guns.<sup>13</sup>

Certainly this by no means negates the possible advantages of gun ownership; but it does call into serious doubt the advisability of unrestricted possession of such firearms. Today in America, approximately 60 million households contain an estimated 90 million firearms. If we disregard the "long guns" (i.e., the 35 million rifles and 31 million shot-guns) as exclusively sporting weapons, there would still be 24 million handguns in private hands.<sup>14</sup>

The easy access that Americans have to firearms, due to the relatively large number of guns available, accentuates the problem of human instability. The most dangerous aspect of firearms is that they may be fired in a split second by one who possesses no great strength or skill. Assuming that relatively few accidents are caused by a failure of the gun's mechanism itself, we are then faced with the unpredictable element of human impulse. As Robert Coles, Research Psychiatrist of the Harvard University Health Services, writes:

Every psychiatrist has treated patients who were thankful that guns were not around at one time or another in their lives. Temper tantrums, fits, seizures, hysterical episodes all make the presence of guns an additional and possibly mortal danger. . . We cannot prevent insanity in adults or violent and delinquent urges in many children by curbing guns, but we can certainly make the translation of crazy or vicious impulses into pulled triggers less likely and less possible.<sup>15</sup>

The Federal Bureau of Investigation publishes its Annual Report of Crime in the United States which includes a detailed analysis of crime trends and statistics. In its last published Report,<sup>16</sup> the F.B.I. included the following chart:

<sup>12</sup> National Commission on the Causes and Prevention of Violence, *Firearms and Violence in American Life*, a Staff Report (Sept. 1969).

<sup>13</sup> *Id.* at 68.

<sup>14</sup> *Id.* at 7.

<sup>15</sup> Coles, "America Amok," *The New Republic* (Aug. 13, 1966), at 14.

<sup>16</sup> 1968 F.B.I. Uniform Crime Reports, vi.

MURDER BY CIRCUMSTANCE—PERCENT<sup>17</sup>

Region	Spouse Killing Spouse	Parent Killing Child	Other Family Killings	Romantic Triangle & Lovers' Quarrels	Other Arguments	Known Felony Types	Suspected Felony Types
Northeastern States	11.8	3.7	6.6	6.4	39.3	20.2	12.0
*Northcentral States	13.3	3.6	10.7	6.4	39.4	20.1	6.5
Southern States	14.6	2.1	9.2	7.8	48.4	12.0	5.9
Western States	14.1	5.8	6.1	7.6	33.5	25.0	7.9
Total	13.7	3.3	8.7	7.2	42.2	17.4	7.5

(\*Includes Ohio)

From these reported statistics, some important observations may be made. If we combine the percentages of "Known Felony-type Murders" and "Suspected Felony-type Murders" into one grouping, we find a 24.9% national average for felony murders. The familial murders<sup>18</sup> total 25.7% and those romance-linked killings total 7.2%. The "other argument" group, by far the largest, accounts for 42.2% of the total reported murders. The F.B.I. concludes that "most murders are committed by relatives of the victim or persons acquainted with the victim. It follows, therefore, that criminal homicide is, to a major extent a national social problem beyond police prevention."<sup>19</sup>

As the F.B.I. has examined the various circumstances of murders, it has also made a detailed study of the weapons used in criminal homicides based upon studies of murder victims. Their statistics show both totals and percentages for calendar year 1968.

MURDER VICTIMS—WEAPONS USED, 1968<sup>20</sup>

Number	Guns	Cutting or Stabbing	Blunt Objects (Club, Hammer, etc.)	Personal Weapons (Strangulations and Beatings)	Poison	Explosives	Other (Drownings, Arson, etc.)	Unknown and not Stated
12,508	8,105	2,317	713	936	13	6	294	119
100%	64.8%	18.5%	5.7%	7.5%	.1%	Less than .1%	2.4%	1.0%

<sup>17</sup> *Id.* at 8.

<sup>18</sup> Familial Murders include Spouse killing Spouse, Parent killing Child, and Other Family Killings. Note categories which are treated as one because of the kinship relationship of the victim to the killer.

<sup>19</sup> *Supra* n. 17.

<sup>20</sup> 1968 F.B.I. Uniform Crime Reports, 108.

And these same figures are further broken down into the geographic regions of the country:

MURDER, TYPE OF WEAPONS USED—PERCENT<sup>21</sup>

Region	Firearms	Knife or Other Cutting Instrument	Other Weapons (Club, Poison, etc.)	Personal Weapons
Northeastern States	45.7%	30.9%	12.3%	11.1%
*Northcentral States	69.8%	15.7%	7.4%	7.1%
Southern States	73.2%	15.8%	6.3%	4.7%
Western States	60.5%	16.9%	10.5%	12.1%
Total	65.4%	18.7%	8.3%	7.6%

(\*Includes Ohio)

From the above quoted F.B.I. statistics, it is virtually impossible not to conclude that guns are the major vehicle of criminal homicide in the United States.

Once there has been established a definite correlation between crime and violence, especially "domestic homicide" as opposed to "Felony-related homicide," and the accessibility of firearms, it is only a logical step to turn to the regulations of firearms as a partial cure for the rising homicide rates. Many cities, notably Philadelphia,<sup>22</sup> Chicago,<sup>23</sup> Washington, D.C.,<sup>24</sup> Miami,<sup>25</sup> San Francisco,<sup>26</sup> and New York City,<sup>27</sup> as well as the states of New Jersey,<sup>28</sup> Massachusetts<sup>29</sup> and Illinois,<sup>30</sup> have enacted gun control legislation. City of Toledo<sup>31</sup> (Lucas County) Ohio and the Cities of University Heights<sup>32</sup> and East Cleveland<sup>33</sup> (Cuyahoga County) in Ohio, have enacted gun control ordinances based upon the Toledo Ordinance.<sup>34</sup>

<sup>21</sup> *Id.* at 8.

<sup>22</sup> Phila., Pa., Ordinance 560 (April 15, 1965).

<sup>23</sup> Chicago, Ill., Municipal Code, Chs. 11.1-11.2 (1968).

<sup>24</sup> Dist. of Columbia, Police Regulation, Arts. 51, 54 (1968).

<sup>25</sup> Miami, Fla., Code § 25.104-25.119, Ch. 61, § 61-1 (1968).

<sup>26</sup> San Francisco, Cal., Municipal Code, Ch. VII, pt. II, § 1 (610-610.8), (1968).

<sup>27</sup> N. Y. City, N. Y., Administrative Code, § 436-6.0 through 6.16 (Cum. Supp. 1968).

<sup>28</sup> N. J. Stat. Ann., § 2 A:151 (1953).

<sup>29</sup> Mass. Gen. Laws Ann., Ch. 737 (Cum. Summary, 1968).

<sup>30</sup> Ill. Rev. Stat., Ch. 38, § 83-1 et seq. (Cum. Supp., 1969).

<sup>31</sup> Toledo, Ohio, Municipal Ordinance No. 719-68 (Toledo Municipal Code, Ch. 17, Art. 19, § 1-15 (1969)).

<sup>32</sup> University Heights, Ohio, Municipal Ordinance No. 69-87 (Codified Ordinances, Part V, Ch. 593 (1969)).

<sup>33</sup> East Cleveland, Ohio, Emergency Ordinance No. 6105 (July 29, 1969) (Codified Ordinances, § 545.11 through 545.25).

<sup>34</sup> *Supra* n. 31.

Critics of gun control legislation seek refuge in the United States Constitution for protection of what they term "the right to bear arms." Both the language and the logic of their position springs from the Second Amendment to the U. S. Constitution:

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.<sup>35</sup>

If the language of "the right of the people to keep and bear Arms shall not be infringed" is to be viewed alone, without reference to the other clauses of the Second Amendment, then the language would appear to be absolute. This would support the position of gun control opponents. But, if the Second Amendment language were to be viewed as a single prohibition, with reference to "a well regulated Militia," then it would appear that it only would be a bar in those cases where there would be an attempt to control weapons of the military.

There have been several *landmark* decisions handed down by the United States Supreme Court in the area of Second Amendment Rights. Probably the cornerstone for all judicial interpretations of the Second Amendment has been the case of *United States v. Cruikshank*.<sup>36</sup> The Court there ordered charges of conspiracy to prevent Negroes from bearing arms for lawful purposes, dismissed on the ground that "bearing arms for lawful purpose(s) . . . is not a right granted by the Constitution."<sup>37</sup>

The Court, speaking through Mr. Chief Justice Waite, explained that:

The Second Amendment declares that it shall not be infringed; but this, as has been seen, means no more than it shall not be infringed by Congress. This is one of the amendments that has no other effect than to restrict the powers of the national government, leaving the people to look for their protection against any violation by their fellow-citizens of the rights it recognizes to the States . . .<sup>38</sup>

Eleven years later, in 1886, when presented with the Illinois statute which prohibited the assembly of military groups under arms in either cities or towns unless authorized by law, the Court, in *Presser v. Illinois*,<sup>39</sup> held that there were no Second Amendment infringements. The Court cited and followed *Cruikshank*,<sup>40</sup> stating that "a conclusive answer to the contention that this amendment prohibits the legislation in question lies in the fact that the amendment is a limitation only upon the

<sup>35</sup> U.S. Const. amend II.

<sup>36</sup> 92 U.S. 542, 23 L. Ed. 588 (1875).

<sup>37</sup> *Id.* at 553.

<sup>38</sup> *Ibid.*

<sup>39</sup> 116 U.S. 252, 6 S. Ct. 1018 (1885).

<sup>40</sup> *Supra* n. 36.

power of Congress and the National Government, and not upon that of the States.”<sup>41</sup>

The Supreme Court, in 1894, in the case of *Miller v. Texas*<sup>42</sup> and again in 1939 in *U. S. v. Miller*,<sup>43</sup> upheld gun control restrictions. In *Miller v. Texas*,<sup>44</sup> the Court held that a Texas statute which prohibited the carrying of dangerous weapons was valid because Second Amendment limitations have “no reference whatsoever to proceedings in state courts.”<sup>45</sup> The Court, forty-five years later, in *U. S. v. Miller*,<sup>46</sup> held that Second Amendment prohibitions did not apply to the possession of a “sawed-off shotgun,” as the weapon bore no “reasonable relationship to the preservation or efficiency of a well regulated militia.”<sup>47</sup>

From *Cruikshank*<sup>48</sup> and *Presser*,<sup>49</sup> it would appear that the Supreme Court interprets the Second Amendment as being only a restriction on the federal government and not on the states. *Miller v. Texas*<sup>50</sup> permits state regulation of firearms and *U. S. v. Miller*<sup>51</sup> permits Congressional regulation of firearms.

The other main Constitutional challenge to effective firearms control stems from the Fifth Amendment of the United States Constitution:

No person . . . shall be compelled in any criminal case to be a witness against himself . . .<sup>52</sup>

This Constitutional safeguard against self-incrimination has been expanded by the Supreme Court recently, in three landmark decisions. All three decisions, *Grosso v. United States*,<sup>53</sup> *Haynes v. United States*<sup>54</sup> and *Marchetti v. United States*,<sup>55</sup> prohibit self-incrimination by disclosure required by federal registration requirements.

In the *Marchetti* case,<sup>56</sup> the Supreme Court reversed the petitioner’s conviction for willful failure to register and pay the \$50.00 wagering tax on the grounds that “provisions (of the wagering tax statutes) may

<sup>41</sup> *Supra* n. 39 at 265.

<sup>42</sup> 153 U.S. 535, 14 S. Ct. 874 (1894).

<sup>43</sup> 307 U.S. 174, 59 S. Ct. 816 (1939).

<sup>44</sup> *Supra* n. 42.

<sup>45</sup> *Supra* n. 42 at 538.

<sup>46</sup> *Supra* n. 43.

<sup>47</sup> *Supra* n. 43 at 178.

<sup>48</sup> *Supra* n. 36.

<sup>49</sup> *Supra* n. 39.

<sup>50</sup> *Supra* n. 42.

<sup>51</sup> *Supra* n. 43.

<sup>52</sup> U.S. Const. amend. V.

<sup>53</sup> 390 U.S. 62, 88 S. Ct. 709 (1968).

<sup>54</sup> 390 U.S. 85, 88 S. Ct. 722 (1968).

<sup>55</sup> 390 U.S. 39, 88 S. Ct. 697 (1968).

<sup>56</sup> *Ibid.*



not be employed to punish criminally those persons who have defended a failure to comply with their requirements with a proper assertion of the privilege against self-incrimination.”<sup>57</sup> In *Gross v. United States*,<sup>58</sup> gamblers were required to file special monthly reports as a prerequisite to the payment of the excise tax. The Court there held that this required reporting would be self-incriminatory.

The basis for Fifth Amendment challenges to gun regulation is found in *Haynes v. United States*.<sup>59</sup> The Court permitted the Fifth Amendment as a complete defense for willful possession of an unregistered firearm in violation of the National Firearms Act. Provisions of the Act which required registration as a condition of possession would be an admission of unlawful possession.<sup>60</sup> This decision would seem to pose some real problems for those gun registration laws which require the registration of the firearm as opposed to the registration of the one possessing the firearm.

Ex-felons, drug addicts, habitual drunks and the like who are usually prohibited by these gun control ordinances from possessing firearms would be required to admit their violation by attempting to register the weapon. If they chose not to comply with the ordinance, they would be guilty of a willful failure to register and thereby liable to the extent of punishment provided for by the ordinance.

In addition to this problem, there is the problem of conflict between the federal firearms laws and the various state and local laws. There may conceivably be a class of people who own a federally unregistered firearm, who as a class may be prohibited from possessing firearms under state and local laws. This class may successfully argue that the federal registration law itself provides protection from state prosecution by claiming Fifth Amendment protection. This argument is based primarily on *Murphy v. Waterfront Commission*,<sup>60a</sup> which held that “the Constitutional privilege against self-incrimination protects a State witness against incrimination under federal as well as state law and a federal witness against incrimination under State as well as federal law.”<sup>60b</sup>

Mr. Justice Goldberg believed that “a fair state-individual balance” is upset “when a witness can be whipsawed into incriminating himself under both State and federal law even though the constitutional privilege against self-incrimination is applicable to each.”<sup>60c</sup> The only logical solution to this problem would be to either except these forbidden classes

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<sup>57</sup> *Supra* n. 55 at 42.

<sup>58</sup> *Supra* n. 53.

<sup>59</sup> *Supra* n. 54.

<sup>60</sup> *Supra* n. 54 at 100.

<sup>60a</sup> 378 U.S. 52, 84 S. Ct. 1594 (1964).

<sup>60b</sup> *Id.* at 77-8.

<sup>60c</sup> *Id.* at 55.

from the registration requirements or to provide a grant of immunity from prosecution for compliance with the registration requirements. Although this seems to weaken the law, it is a possible solution.

The Chicago gun control Ordinance<sup>61</sup> has presented a workable solution. The Chicago Gun Registration Law excepted felons from the requirement of registration.<sup>62</sup> By the use of this exception, the Chicago City Council attempted to avoid Fifth Amendment problems over self-incrimination. This, to date, has proved workable, and in the absence of Supreme Court clarification, is perhaps the best in existence.

The States have less of a problem with the Constitutional challenges to gun control legislation. Since the Second Amendment poses no problem and the Fifth Amendment limitations are not insurmountable, the States are only limited by the provisions in their own constitutions. The Ohio Constitution provides that:

The people have the right to bear arms for their defense and security; but standing armies, in time of peace, are dangerous to liberty, and shall not be kept up; and the military shall be in strict subordination to the civil power.<sup>63</sup>

The Ohio Supreme Court, in *State v. Nieto*<sup>64</sup> and *Porello v. State*,<sup>65</sup> permits the State Legislature to use the police power of the State to protect the public welfare. As Judge Brenton, of the Montgomery County Common Pleas Court, writes: "Article I, section iv of the Ohio Constitution accords the right to bear arms. But this right does not prevent the legislature from making such police regulations as may be necessary for the welfare of the public at large concerning the manner in which arms shall be borne and the use thereof."<sup>66</sup>

Municipalities, in Ohio, base their police powers on the Home Rule grant found in § 3, Art. XVIII of the Ohio Constitution.

Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations as are not in conflict with general laws.<sup>67</sup>

In a challenge to the Toledo Gun Control Ordinance, it was held in *Photos v. Toledo*<sup>68</sup> that:

This court can conceive of no matter more concerned with public safety, health and welfare of the citizens of the City of Toledo than

<sup>61</sup> *Supra* n. 23.

<sup>62</sup> Chicago, Ill., Municipal Code, Chs. 11.1-15 (1968).

<sup>63</sup> Ohio Const., art. I, § 4 (1851).

<sup>64</sup> 101 Ohio St. 409, 130 N.E. 663 (1920).

<sup>65</sup> 121 Ohio St. 280, 168 N.E. 135 (1903).

<sup>66</sup> *State v. Schutzler*, 20 Ohio Misc. 79, 249 N.E. 2d 549 (1969).

<sup>67</sup> Ohio Const., art. XVIII, § 3 (1851).

<sup>68</sup> 19 Ohio Misc. 147, 250 N.E. 2d 916 (1969), affirmed, Ct. of App., Lucas Co., cert. denied 2-25-70.

that of the indiscriminate purchase and use of firearms, and the regulation thereof in any manner, not preempted by the state of Ohio as is done here by a City ordinance, in the form of registration of the individual rather than the weapon, which should be subject to the police power of the city of Toledo.<sup>69</sup>

The public welfare argument was used to uphold New Jersey gun control legislation in *Burton v. Sills*.<sup>70</sup> Judge Connors, in upholding the Toledo Ordinance, followed and restated the logic of owner registration as pronounced by Judge Leahy in *Burton v. Sills*:<sup>71</sup>

From the day we are born, when a birth certificate must be recorded, we spend the intervening years obtaining licenses to marry, to drive a motor vehicle, to sell alcoholic beverages, to operate a barber shop, to practice the learned professions and to do countless other things, including the obtaining of a license to hunt and fish. These burdens we assume for the good that flows therefrom. We find no basic difference in a requirement to obtain a gun purchaser's identification card.<sup>72</sup>

Since the Supreme Court of Ohio has not yet ruled on the question of gun control, the only guiding Ohio case in point is *Photos v. Toledo*.<sup>73</sup> There the Ohio Supreme Court dismissed the appeal from the Court of Appeals "for reasons (that) no substantial constitutional questions exist herein."<sup>74</sup> By overruling the Appellant's Motion to Certify the Record, the Ohio Supreme Court refused to overturn the Court of Appeals' finding of a valid exercise of the police power of the State.<sup>75</sup> Based upon this case alone, we must conclude that the Ohio Supreme Court sees no Constitutional problems to gun control in Ohio.

The Toledo Ordinance was passed on August 12, 1968. Since that date, two Northern Ohio cities have adopted gun control legislation. The City of University Heights, the first city in Cuyahoga County to do so, adopted their ordinance on January 5, 1970 (effective April 1, 1970), by unanimous vote.<sup>76</sup> The University Heights Gun Ordinance was patterned after the Toledo Ordinance<sup>77</sup> and required owner registration.

The City of East Cleveland, also in Cuyahoga County, passed their Gun Control Ordinance on July 29, 1969 (effective May 15, 1970).<sup>78</sup> The East Cleveland Ordinance is also based upon the Toledo Ordinance with

<sup>69</sup> *Id.*, 19 Ohio Misc. at 162.

<sup>70</sup> 99 N.J. Super. 516, 240 A. 2d 462 (1967).

<sup>71</sup> *Ibid.*

<sup>72</sup> *Supra* n. 69.

<sup>73</sup> *Supra* n. 68.

<sup>74</sup> *Photos v. Toledo*, *supra* n. 68, cert. denied 2-25-70.

<sup>75</sup> The Cleveland Press, February 25, 1970, 1.

<sup>76</sup> *Supra* n. 32.

<sup>77</sup> *Supra* n. 31.

<sup>78</sup> *Supra* n. 33.

one major modification—it requires the registration of the gun as well as registration of the owner. This modification was added by the City Commission because “many residents complained that the proposal was not strong enough.”<sup>79</sup>

It is clear that these gun control ordinances were adopted in hopes of precipitating other suburban action. Councilman Emanuel Rose stated that “within a short time, all the suburbs and Cleveland are expected to follow us, and when they do, we will sit down together and write another law that will be uniform throughout the county and less difficult to enforce than the one we just passed.”<sup>80</sup> Apparently, the action by University Heights and East Cleveland triggered little response, except debate.

There is very little information available to evaluate the effectiveness of gun control legislation. The Federal Bureau of Investigation on March 17, 1970 issued its 1969 Preliminary Annual Release of *The Uniform Crime Reports* which revealed some statistics for selected cities. Among the cities reported were Chicago, Miami, San Francisco and Toledo—all of which had enacted gun control legislation in 1968. Examining the data available on the number of “Murder, Non-negligent Manslaughter,” we are able to compare the year 1969 with 1968:

City Reporting	Murder, Non-negligent Manslaughter	
	1968	1969
Chicago, Ill	647	716
Miami, Fla.	69	72
San Francisco, Calif.	92	127
Toledo, Ohio	22	19

(Statistics based on F.B.I.'s 1969 Preliminary Annual Release, *Uniform Crime Reports*)

From what little data there is available, it would appear that gun control legislation has had little effect on the homicide rates in the above-mentioned cities. One must remember that the ordinances enacted by these cities went into effect at different times throughout 1968 and that it takes a period of time to take effect. The mere enactment of an ordinance will not make all gun owners who are affected go out and immediately register.

It is difficult to foresee the effects of gun control legislation based on the available data, especially in the face of the ever increasing crime rates. The city councils of the heavily populated metropolitan areas are turning toward gun control as, at best, a partial answer to the increase of crime and violence. As a control of crime, gun control is a questionable solution. The fact that there are still unsolved Constitutional prob-

<sup>79</sup> The Cleveland Plain Dealer, March 11, 1970, 10-C.

<sup>80</sup> The Cleveland Press, January 6, 1970, 1.

lems in the area of Fifth Amendment self-incrimination poses a real threat to the attempted regulation of the criminal possession of firearms.

To state that the concept of gun control is ineffective in the regulation of crime would be to overemphasize the Fifth Amendment problems. If gun control were an effective method to reduce the number of guns available in the urban households, then it is quite possible that many family quarrels and other arguments would not end with someone's death. The availability of firearms makes the gun a readily accessible vehicle of violence. If the regulation of this vehicle were more strict, then perhaps this type of domestic violence would be less frequent.