

HOW SECOND AMENDMENT PROPAGANDA AND THE NATIONAL RIFLE ASSOCIATION HAS ALL BUT DESTROYED THIS COUNTRY AND THIS COUNTRY'S JUDICIAL SYSTEM

By Kathy B.

The National Rifle Association (NRA) has been the driving force behind Second Amendment rights to bear arms since the NRA was formed, or so NRA would like all Americans to believe. The truth is the NRA was formed in 1871 and up until the 1970's supported certain gun controls, including banning Saturday Night Specials, which would have banned one-third of the handguns in the US., as well as requiring permits among other limitations when it came to gun control. As for the Second amendment, not only did the courts disagree with the concept that the Second Amendment gave unbridled freedom to bear arms, but even William C Church the co-founder of NRA believed in a well-regulated Militia, being necessary to the security of a free State, but Church argued that ***"an armed population has no place here [USA] and that this happening was especially guarded against in our Federal Constitution."***¹

Before I explain how this 360 degree change in interpretation of the Second Amendment rights happened, it is important to see how the courts interpreted the Second Amendment rights in earlier case laws. In 1939 UNITED STATES v. MILLER ET AL ² goes into great detail as to the history of the second amendment intent, stating, "In the absence of any evidence tending to show that possession or use of a "shotgun having a barrel of less than eighteen inches in length" at this time has some reasonable relationship to the preservation or efficiency of a well-regulated militia, we cannot say that the Second Amendment guarantees the right to keep and bear such an instrument." The court further stated:

The Constitution as originally adopted granted to the Congress power — "To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions; To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress." With obvious purpose to assure the continuation and render possible the effectiveness of such forces the declaration and guarantee of the Second Amendment were made. It must be interpreted and applied with that end in view.

¹ See William C. Church's article in Scribner's Monthly, Volume 0019 Issue 3 (January 1880)
Title: American Arms and Ammunition [pp. 436-453] The article can be found at
<http://ebooks.library.cornell.edu/cgi/t/text/pageviewer-idx?c=scmo;cc=scmo;idno=scmo0019-3;node=scmo0019-3%3A14;view=image;seq=470;size=150;page=root>

² See Supreme Court of the United States 307 U.S. 174 (1939)

In 1886, *PRESSER v. ILLINOIS* ³ the court addresses sections of the Military Code of Illinois as it applies to the U.S. Second amendment, stating in part:

“We think it clear that the sections under consideration, which only forbid bodies of men to associate together as military organizations, or to drill or parade with arms in cities and towns unless authorized by law, do not infringe the right of the people to keep and bear arms. But 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 power of Congress and the National government, and not upon that of the States. It was so held by this court in the case of *United States v. Cruikshank*, 92 U.S. 542, 553, in which the Chief Justice, in delivering the judgment of the court, said, that the right of the people to keep and bear arms “is not a right granted by the Constitution. Neither is it in any manner dependent upon that instrument for its existence. The **Second Amendment** declares that it shall not be infringed, but this, as has been seen, means no more than that it shall not be infringed by Congress.”

In 1897 *ROBERTSON v. BALDWIN* ⁴ the court addressed the first 10 amendments, explaining:

Bill of Rights which simply “embody certain guaranties and immunities which we had inherited from our English ancestors, and which had from time immemorial been subject to certain well-recognized exceptions arising from the necessities of the case. In incorporating these principles into the fundamental law there was no intention of disregarding the exceptions, which continued to be recognized as if they had been formally expressed. Thus, the freedom of speech and of the press (art. 1) does not permit the publication of libels, blasphemous or indecent articles, or other publications injurious to public morals or private reputation; the **right** of the people to keep and **bear arms** (art. 2) is not infringed by laws prohibiting the carrying of concealed weapons;” . . .

Even as late as 1980 in *Lewis v. United States*,⁵ under footnote 8 states:

“These legislative restrictions on the use of firearms are neither based upon constitutionally suspect criteria, nor do they trench upon any constitutionally protected liberties. See *United States v. Miller*, 307 U. S. 174, 178 (1939) (the Second Amendment guarantees no right to keep and bear a firearm that does not have “some reasonable relationship to the preservation or efficiency of a well-regulated militia”); *United States v. Three Winchester 30-30 Caliber Lever Action Carbines*, 504 F. 2d 1288, 1290, n. 5 (CA7 1974); *United States v. Johnson*, 497 F. 2d 548 (CA4 1974); *Cody v. United States*, 460 F. 2d 34 (CA8), cert. denied, 409 U. S. 1010 (1972) (the latter three cases holding, respectively, that § 1202 (a) (1), § 922 (g), and § 922 (a) (6) do not violate the Second Amendment).”

As I mentioned in addition to case laws, the NRA had always been for gun control. “In the 1920s, NRA leaders helped draft the Uniform Firearms Act — model legislation for states to adopt that established new, restrictive rules on carrying firearms in public. Karl Frederick, the NRA’s president, said at the time, “I have never believed in the general practice of carrying weapons... I think it should be sharply restricted

³ See Supreme Court of the United States 116 U.S. 252 (1886)

⁴ See Supreme Court of the United States 165 U.S. 275 (1897)

⁵ At 445 U.S. 55, 100 S. Ct. 915, 63 L. Ed. 2d 198 (1980).

and only under licenses.” The Uniform Firearms Act only awarded licenses to “suitable” persons with a “proper reason” for carrying and created a waiting period before a newly purchased handgun could be delivered to the purchaser. The NRA also endorsed the first major federal gun control law of the modern era, the National Firearms Act of 1934. During hearings on the proposed legislation, which imposed heavy restrictions on machine guns and other gangster weapons, Karl Frederick was asked how the Second Amendment affected this groundbreaking law. His answer was astounding: “I have not given it any study from that point of view.” Protection for guns “lies in an enlightened public sentiment and in intelligent legislative action,” Frederick wrote elsewhere. “It is not to be found in the Constitution.” ⁶

So with the aforementioned in mind, then what happened to change the course of the courts’ interpretation of the Second Amendment right to bear arms without limitations? A kind of coup or takeover of the NRA leadership happened in 1977, which not only changed the course of the court cases, but changed the course of America in such a negative way that America is on a course of self-destruction.

The NRA had endorsed the Gun Control Act of 1968, but by 1977 the leadership of the NRA decided to withdraw from political lobbying and refocus on recreational shooting and outdoors activities. This caused a backlash from gun rights advocate hardliners who believe that guns are not primarily for hunting but for personal protection in an era of rising crime rates. This group of hardliners ousted the old leaders at the annual meeting of the membership and replaced the leadership with their own hardliner leadership. Prior to this the American Rifleman never mentioned the Second amendment, but from then on, the magazine mentioned the Second Amendment on almost every page, but without the full text: The 2nd Amendment “~~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.” ⁷

In addition to the coup of NRA leadership in 1977, the new hardliner leaders started using its membership numbers as a political strong arm for endorsing local politicians, by agreeing to have their members vote for said political contender and in return when that person is elected to office he or she would vote favorably to the NRA’s addenda.⁸ This political voting power often changed the outcome of elections, when the party that was most likely going to lose, embraced the deal offered to them by the NRA and ultimately won, but not for NRA members votes. The sheer number of NRA members involved

⁶ See <http://www.theatlantic.com/magazine/archive/2011/09/the-secret-history-of-guns/308608/>

⁷ See http://www.huffingtonpost.com/adam-winkler/when-the-nra-promoted-gun_b_992043.html and <http://www.sfgate.com/opinion/article/NRA-took-hard-right-after-leadership-coup-3741640.php>

⁸ See CBS/60 Minutes 1977 video at <http://www.cbsnews.com/news/1977-a-rare-inside-look-at-the-nra/> also see <http://www.thenation.com/article/how-nra-became-organization-aspiring-vigilantes-part-2/>

in local elections began to tip the tables in favor of political influences for NRA nationally. The stronger the NRA's hold became in the lobbying of state and national laws and lawmakers, which in turn started to affect our judicial system, with judges and justices being put into place by the very politicians that owed their political alliances to the NRA.

In 1995, the U.S. Supreme Court overturned the original "Gun-Free" School Zone Law enacted by Congress making it a federal offense "for any individual knowingly to possess a firearm at a place that the individual knows, or has reasonable cause to believe, is a school zone." 18 U. S. C. § 922(q)(1)(A) (1988 ed., Supp. V). In *U.S. v. Lopez*,⁹ the court held "the Act exceeds the authority of Congress "[t]o regulate Commerce . . . among the several States . . ." **U. S. Const.**, Art. I, § 8, cl. 3."

One of NRA's favorite sons, so to speak, was Ronald Reagan. Ironically, 1981 assassination attempt on his life and Jim Brady was shot and subsequently disabled was the inspiration for the introducing the Brady Bill, which basically imposed 7 days waiting periods and background checks before being able to purchase a gun and in 1993, Congress amended the GCA by enacting the Brady Act. For the next seven years the NRA vigorously fought it. In *Printz v. United States*,¹⁰ by a 5-4 ruling the court held the Brady Law was unconstitutional for violating the Tenth Amendment to the U.S. Constitution. The Court found that Congress exceeded its powers by forcing local officials to implement a federal law without compensation. Also *Printz* court cited *U.S. v. Miller* (1939), *supra* stating "*The Court did not, however, attempt to define, or otherwise construe, the substantive right protected by the Second Amendment.*" This comment in the *Printz* case opened the door for a later case in 2008, *District of Columbia v. Heller*,¹¹ wherein the U.S. Supreme Court issued its first decision since 1939 interpreting the Second Amendment to the United States Constitution. The Court ruled that the Second Amendment to the U.S. Constitution confers an individual right to possess a firearm for traditionally lawful purposes such as self-defense.

With the political strings being pulled by NRA on politicians that would never have been elected in the first place without the voting power of the NRA members, the course of America started to unwittingly take change in perception of gun control. For example, the slogan "guns do not kill people, people kill people" began to take hold in the minds of the citizens (much like the slogan "have a nice day" just kind of sunk in). Then it was the push to get tough on crime, not gun control on law abiding citizens. It is not commonly known, but it was the NRA that got the "Three Strikes and you're out law" pushed through the states. NRA stepped in with financial, organizational and grass-roots support, hundreds of thousands of

⁹ At 514 U.S. 549, 115 S. Ct. 1624, 131 L. Ed. 2d 626 (1995).

¹⁰ At 521 U.S. 898, 117 S. Ct. 2365, 138 L. Ed. 2d 914 (1997).

¹¹ At 128 S. Ct. 2783, 554 U.S. 570, 171 L. Ed. 2d 637 (2008).

dollars' worth of NRA magazine publicity promoting it. In California as well as other states NRA was a crucial element in the "three strikes" victory.

"On November 4, 1995, Leandro Andrade stole five videotapes worth \$84.70 from a Kmart store in Ontario, California. Security personnel detained Andrade as he was leaving the store. On November 18, 1995, Andrade entered a different Kmart store in Montclair, California, and placed four videotapes worth \$68.84 in the rear waistband of his pants. Again, security guards apprehended Andrade as he was exiting the premises. Police subsequently arrested Andrade for these crimes." As a direct end result of three strikes and you're out law, Leandro Andrade was given not one but two sentences of 25 years-to-life for stealing nine children's videotapes, including "Snow White," "Cinderella" and "Free Willie 2." Without the three strikes and you're out law, the normal sentence would have been three years. His case was appealed as cruel and unusual punishment, among other things and eventually made it to the U.S. Supreme court, in *Lockyer v. Andrade*.¹² In a 5-4 decision against Andrade and upholding the three strikes law.

In 1998, the U.S. Attorney's Office received a letter of endorsement from Mr. Wayne LaPierre and Ms. Tanya Metaksa on behalf of the National Rifle Association, in support of vigorous prosecution and sentencing of the armed criminal as not only appropriate, but also the first step in eliminating this modern terrorist from our streets. The NRA has also made substantial donations to the Project Exile Citizen Support Foundation.¹³ In addition, NRA has chaired in a very influential group called The American Legislative Executive Council, also known as ALEC. ALEC is a conservative group of corporations and politicians (that few Americans know about), that was behind the spread of "stand your ground" laws. The National Rifle Association worked with ALEC to spread similar laws that are on the books in at least 25 states. Those laws grow directly out of the Second Amendment ethos the NRA has championed: "the ethos of individualism, of having a gun, of individuals taking the initiative," said Robert Spitzer, a political scientist at the State University of New York at Cortland and at Cornell University who has studied and written about the NRA for decades.¹⁴

In 2000 California voters passed Proposition 21, titled the Gang Violence and Juvenile Crime Prevention Act of 1998, which amended the existing juvenile laws to be the toughest in this country. Proponents

¹² At 538 U.S. 63, 123 S. Ct. 1166, 155 L. Ed. 2d 144 (2003)

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See *PROJECT EXILE: THE SAFE STREETS AND NEIGHBORHOODS ACT OF 2000* at http://commdocs.house.gov/committees/judiciary/hju65824.000/hju65824_0f.htm.

Also see <https://www.justice.gov/archive/dag/testimony/dagcrime052799.htm>

¹⁴ See NRA expands its role from fight for gun rights to conservative causes

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such as Chevron Corp. and Pacific Gas & Electric (PG&E) gave the largest amounts of funds in support of Proposition 21 and these corporations were all directly or indirectly affiliated with ALEC. This new law basically gave prosecutors an option to either charge a juvenile that had already been made a ward of the court for an earlier offense with probation violation (WIC 777) allowing the child to be found in violation without any of the normal constitutional rights the juvenile would have had and instead of new criminal charges the juvenile would be subject to serving the remainder of time left on the original charge that they were in violation of probation on in juvenile hall or some other juvenile camp or group home. Or the prosecutor could choose to charge the juvenile with the crime that the juvenile was accused of committing in violation of his or her probation, giving the juvenile limited rights afforded them under the constitution, but if found to have committed the crime, the juvenile would be subject to newer and usually longer sentencing, in addition to potentially getting a strike against them, that would continue through adulthood and also having their DNA registered with the CA Correctional Dept. data base. This new law was just another political ploy to appear to be getting tough on crime, now placing the blame on juvenile gang violence and not guns. We don't need gun control laws, we need to get tougher on juveniles now. Children were being incarcerated left and right for probation violations of "any law" or other condition of probation, i.e. 15 minutes late on an earlier curfew imposed in terms of probation or an unexcused absence from school or being caught smoking or having a pack of cigarettes.. See *In re Eddie M.*,¹⁵ Primarily children from poorer families were at the center of it, white as well as racial. Probation officers could raid the homes of the juveniles at any time day or night and hold the family hostage as they searched through their homes. Counties around the country were getting free federal grant money, paid for by taxpayers, to expand and build new juvenile halls, based on the new influx of children being roped into the system, in the name of tough on crime. Counties across this country were getting millions and millions of free federal money to get tough on juvenile gangs, even in areas where gang violence was practically unheard of back then. Corruption and kickbacks were the norm, some Judges were getting kickbacks from private juvenile facilities for every child they sentenced and sent to them.¹⁶ Everyone from county board of supervisors to probation officers to law enforcement were getting huge increases in federal money, paid for by taxpayers. Charges were being enhanced, not merely for committing a crime with a gun, but anything that the prosecutor wanted to consider as a deadly weapon and if there were two or more friends at the scene this could be considered gang related, even if none of them were known

¹⁵ At 73 P.3d 1115, 3 Cal. Rptr. 3d 119, 31 Cal. 4th 480 (2003).

¹⁶ See NYT 2/12/09 article "Judges Plead Guilty in Scheme to Jail Youths for Profit"

http://www.nytimes.com/2009/02/13/us/13judge.html?_r=0. Also see https://en.wikipedia.org/wiki/Kids_for_cash_scandal

to be affiliated with any gang. See *Manduley v. Superior Court*.¹⁷ for a specific breakdown of the changes to our juvenile laws by passing Prop. 21.

The amount of taxpayers dollars that has been spent and continues to this day, as a direct result of NRA's political influence and pushing tougher on crime, not gun control, is unconscionable.¹⁸ This country could have better spent our tax dollars on projects geared towards crime prevention. Instead of building more and bigger juvenile halls, jails and prisons, we could have been building new housing for the poor and homeless and improving lives in our communities for everyone, which would have naturally cut down on crime and America would have been better off for it today. The tough on crime propaganda was the beginning of the end of America and America's justice system as we once knew it. We are no longer the country to look to as good example to follow, but rather we have become an example for other democratic countries of what not to do.

Between 1980 and 2006, the California prison population went from about 23,000 inmates to more than 170,000. During the same time period, the US prison population jumped from about 300,000 to 1.6 million, according to the US Bureau of Justice Statistics. The jump in incarceration rates, which disproportionately affect black men, have been linked to the "tough on crime" era of the 1980s. Through the juvenile courts and the adult criminal justice system, the United States incarcerates more of its youth than any other country in the world, a reflection of the larger trends in incarceration practices in the United States. In 2014, the United Nations Human Rights Committee criticized the United States for about ten judicial abuses, including the mistreatment of juvenile inmates.¹⁹ A UN report published in 2015 criticized the US for being the only nation in the world to sentence juveniles to life imprisonment without parole.

Through The National Rifle Association's Institute of Legislative Action the NRA's influence on our country's judicial system and politicians has become so great that even in 2016 at this very moment in our country's history, the speaker of the house will not allow hearings to go forth for Merrick Garland as replacement of our U.S. Supreme Court Justice, after the death of Justice Solia without the say so of the NRA.²⁰ What's more, after decades of being mislead by NRA propaganda about the underlying intent of Second Amendment and promoting getting tougher on crime American's are starting to realize the failures and problems associated with getting tougher on crime and rethinking about the laws and gun

¹⁷ At 41 P.3d 3, 117 Cal. Rptr. 2d 168, 27 Cal. 4th 537 (2002)

¹⁸ Here is just one small example of the millions of taxpayers dollars currently being spent just in CA. on correctional facilities at <http://www.correctionalnews.com/articles/2014/01/29/lake-county-awarded-20-million-in-state-funding>

¹⁹ Just one example of the abuse in the juvenile system at <https://www.newsreview.com/chico/sex-drugs-guns/content?oid=1295730>

²⁰ See <https://www.nraila.org/articles/20160316/nra-opposes-nomination-of-merrick-garland-to-the-us-supreme-court>

control.²¹ So now NRA has switched their focus from tough on crime to get tough on radical Islam and "homegrown" terrorists,²² lumping all American Muslims potentially into that category just like they did decades ago, with juveniles from poorer and troubled neighborhoods as gang members and three strike laws.. NRA hardliners will stop at nothing to take the focus off the reality that Americans have to "stand our ground" and support passing laws for more restrictive gun control in order to start reining in access to specific types of guns. If Americans allow their fears of homegrown terrorists to sway their basic beliefs in humanity and good sense and allow NRA hardliners to continue to have so much political power over our country and feed into NRA's Second Amendment propaganda, the problems our future generations will be dealing with from the lessons that we are just starting to learn from the mistakes of tough on crime campaign, will be insurmountable. . America's Millennials are going to be left holding the bag, having to deal with this generations disenfranchised juveniles and adults that's lives and families have been all but destroyed directly due to tough on crime era, coupled with the potential future harm and threats imposed on American Muslim communities and families and the hate and anger and the tension this scenario will fester.

The Second Amendment was never intended to arm the population, so it could one day raise against our own government or our own citizens, but that is what is happening slowly, but surely this is what will happen. The political unrest and American distrust of our government is evident in this 2016 election, with most voters not truly understanding the root of the problems and being so easily lead, like the story of the Pied Piper leading the rats of Germany into the river, there will be a price to pay. If we are truly going to make America Great Again, we must stop the Pied Piper of NRA and its propaganda about the Second Amendment, or America will pay the Pied Piper of NRA with everything we once stood for.

²¹ See <http://www.nationalreview.com/article/415557/republican-2016ers-are-rethinking-tough-crime-michael-tanner>

²² See <https://www.yahoo.com/news/republican-ted-cruz-says-california-attack-underscores-time-144004312.html?ref=gs>