

NRA = NO RATIONAL ARGUMENT? HOW THE NATIONAL RIFLE ASSOCIATION EXPLOITS PUBLIC IRRATIONALITY

By: Scott Medlock*

I. INTRODUCTION: ARMING THE IRRATIONAL

Many Americans responded to the terrorist attacks of September 11, 2001 by purchasing firearms. The Federal Bureau of Investigation reported that it conducted 455,000 more background checks on gun buyers during the six-month period following 9-11 than during the same period the year before.¹ Although a handgun is unlikely to effectively defend against a suicide attack with an airplane, an anthrax letter, or a car bomb, owning a deadly weapon made many people feel safer. One gun retailer reported, “My handgun [sales] have gone crazy. It seemed like immediately [after September 11] it was real, real crazy, people walking in right after each other wanting a gun.”² Numerous studies show that the presence of a firearm in the home increases the likelihood of violence against family members.³ Despite this, gun ownership is widespread

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1. ROBERT J. SPITZER, THE POLITICS OF GUN CONTROL viii (3d ed. 2004). The author notes “gun sales then dropped off sharply in 2002.” *Id.*

2. James F. Sweeney, *Aiming for Defense: More People, Including Ohioans, Are Buying Guns Since Sept. 11*, CLEVELAND PLAIN-DEALER, Dec. 7, 2001, at E1. A similar reaction followed the destruction caused by Hurricane Katrina. See John Burnett, *Hurricane Katrina Prompts Growth in Gun Ownership* (NPR radio broadcast Oct. 12, 2005).

3. Wendy Cukier & Antoine Chapdelaine, Global Trade in Small Arms: Public Health Effects and Interventions 10, at 14 (March 2001) (Int’l Physicians for the Prevention of Nuclear War, Working Paper), available at <http://www.research.ryerson.ca/SAFER-Net/issues/GlobMH01.pdf> (“[T]he homicide of a family member was 2.7 times more likely to occur in a home with a firearm than in homes without guns. After accounting for several independent risk factors, another study concluded that keeping one or more firearms was associated with a 4.8-fold increased risk of suicide in the home.”) (citing A.L. Kellermann, F.P. Rivara and N.B. Rushforth, *Gun Ownership as a risk factor for homicide in the Home*, NEW ENG. J. MED. 1993, 329(15): 1084-91, and A.L. Kellermann, F.P. Rivara, and G. Somes, et al., *Suicide in the Home in Relation to Gun Ownership*, NEW ENG. J. MED., 1992 Aug. 13, 327(7): 467-472.). See also Mark Duggan, *More Guns, More Crime*, 109 J. POL. ECON. 1086, 1088 (2001) (stating that changes in rates of gun ownership are positively correlated with increases in homicide rates); FRANKLIN E. ZIMRING & GORDON HAWKINS, CRIME IS NOT THE PROBLEM (1998) (arguing that gun violence is a public health problem and should not be addressed

in the United States – estimates indicate that there may be as many as 200 million privately owned guns in the country, and almost one third of households own at least one firearm.⁴

Although close to 30,000 Americans are killed by gunfire every year,⁵ the firearm industry is one of the least regulated in the nation.⁶

through a crime prevention paradigm, and that the presence of guns increases the lethality of violence); Philip J. Cook & James A. Leitzel, *"Perversity, Futility, Jeopardy": An Economic Analysis of the Attack on Gun Control*, 59 LAW & CONTEMP. PROBS. 91 (1996) (arguing that economic analysis suggests gun control should work); Wendy Cukier, *More Guns, More Death*, 18 MEDICINE, CONFLICT AND SURVIVAL 367 (2002) (arguing that the presence of guns in societies increases death rates).

4. Joanna Coles, *More Guns than Dogs in the American Family Home*, LONDON TIMES, June 5, 2000. See also James Lindgren, *Fall from Grace: Arming America and the Bellesiles Scandal*, 111 YALE L. J. 2195, 2203 (2002) (stating that 32.5% of households overall own at least one gun).

5. In 2002 there were 30,242 fatal gunshot injuries, and in 2004 approximately 64,389 nonfatal injuries. Centers for Disease Control, National Center for Injury Prevention and Control, available at <http://www.cdc.gov/ncipc/wisqars/default.htm> (last visited May 14, 2005) [hereinafter CDC].

6. There are only five federal gun laws, most of which restrict who can purchase a firearm and provide for background checks to enforce those prohibitions. See 18 U.S.C. § 922 (2004). Neither the Consumer Product Safety Commission nor the Bureau of Alcohol, Tobacco, and Firearms have “authority over firearm defects and design.” American Bar Association, *2005 Legislative Priorities: Tort Standards for the Gun Industry*, available at <http://www.abanet.org/poladv/priorities/tort.html> (March 1, 2005); Consumer Product Safety Commission, *Frequently Asked Questions: Jurisdiction*, available at <http://www.cpsc.gov/about/faq.html#jur> (November 12, 2005) (noting that the CPC does not have jurisdiction over “alcohol, tobacco or firearms”); 15 U.S.C. § 2052(1)(B) and (E); See Spitzer, *supra* note 1, at 86-87. These laws are also woefully under-enforced. A Department of Justice report indicates that few gun dealers are ever inspected by the Bureau of Alcohol, Tobacco, Firearms and Explosives. OFFICE OF THE INSPECTOR GENERAL, INSPECTIONS OF FIREARM DEALERS BY THE BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES (2004), available at <http://www.usdoj.gov/oig/reports/ATF/e0405/index.htm> (last visited May 14, 2005).

We found that most FFLs[Federal Firearms Licensees] are inspected infrequently or not at all. According to the former ATF Director, the agency's goal is to inspect each FFL at least once every three years to ensure that they are complying with federal firearms laws. However, due in part to resource shortfalls, the ATF is currently unable to achieve that goal. ATF workload data show that the ATF conducted 4,581 FFL compliance inspections in FY 2002, or about 4.5 percent of the approximately 104,000 FFLs nationwide. At that rate, it would take the ATF more than 22 years to inspect all FFLs.

Our review of the inspection history for 100 randomly selected FFLs also showed that the ATF did not conduct regular compliance inspections. Of the 100 FFLs, 23 had never been inspected; 22 had received only an application inspection; 29 had received at least one compliance inspection; and 26 FFLs had received only a license renewal inspection. Even for those FFLs that had been inspected, the records showed that many of the inspections occurred years ago. For example, one FFL cited in 1985 for selling a rifle to a minor and for numerous record keeping violations had never been re-inspected.

In comparison with other western democracies—many of which virtually ban private gun ownership—US firearms regulations are extremely lax. See United Nations Economic and Social Counsel, *Measures Relating to the Regulation of Firearms: Report to the Secretary General*, E/CN.15/1997/4 (1997); Spitzer, *supra* note 1, at 109-141 (discussing history of efforts to regulate gun ownership in the United States); Zimring, *supra* note 3, at 200-201 (discussing current United States gun controls).

This is in large part due to the efforts of the National Rifle Association (NRA), a leading opponent of gun control legislation. This paper argues that a large part of the NRA's success is due to its ability to manipulate existing irrationalities—things that make people go “real, real crazy”—among its supporters to intensify and mobilize opposition to gun control. The first section will briefly describe the legislative power of the NRA. The second section will review the existing literature on irrationality and risk. The final section will demonstrate how the NRA exploits these irrationalities more successfully than the interest groups that favor gun control.

II. THE POWER OF THE NRA

Polling data consistently shows that the positions taken by the NRA are not the positions favored by the American public.⁷ The NRA is opposed to any new gun control legislation, no matter how sensible. The NRA has opposed bans on guns with plastic components (which can pass through metal detectors) and armor piercing “cop killer” bullets.⁸ It favored allowing the federal ban on military-style assault weapons to expire in 2004.⁹ It opposed limited measures that reduce illegal gun trafficking, such as “one gun a month” laws.¹⁰ Moreover, the NRA has lobbied against every federal firearms regulation—from the 1934 National Firearms Act, which banned machine guns, to the 1993 Brady Handgun Violence Prevention Act, which required background checks on gun purchasers.¹¹

The NRA dominates the debate on gun control. Political scientist Robert Spitzer describes the NRA as “the fierce three-

7. See Douglas S. Weil and David Hemenway, *I am the NRA: An Analysis of a National Random Sample of Gun Owners*, 8 VIOLENCE AND VICTIMS 353, 360 (1993); National Annenberg Election Survey, *Two Thirds of Public, One Third of NRA Members Support Extending Assault Weapons Ban* Annenberg Data Shows, at http://www.annenbergpublicpolicycenter.org/naes/2004_03_guns_09-06_pr.pdf (September 6, 2004); PollingReport.com, *Guns*, at <http://www.pollingreport.com/guns.htm> (last visited November 12, 2005).

8. See OSHA GRAY DAVIDSON, *UNDER FIRE: THE NRA AND THE BATTLE FOR GUN CONTROL* 85-98 (2d ed. 1998). See also National Rifle Association, *Fact Sheets: ‘Armor-Piercing Ammunition’ and ‘Plastic Gun’ Non-Issues*, at <http://www.nraila.org/Issues/FactSheets/Read.aspx?ID=25> (last visited May 14, 2005).

9. See National Rifle Association, www.clintongunban.com (last visited May 14, 2005).

10. National Rifle Association, *Fact Sheets: Rationing a Constitutionally-Protected Right*, at <http://www.nraila.org/Issues/FactSheets/Read.aspx?ID=140> (last visited May 14, 2005) [hereinafter NRA, *Rationing*]. See Rebecca Knox & Douglas Weil, *Effects of Limiting Handgun Purchases on Interstate Transfer of Firearms*, 275 JAMA 1759 (1996) (discussing the efficacy of Virginia's one-gun-a-month law in reducing interstate trafficking of handguns originally purchased in Virginia).

11. See DAVIDSON, *supra* note 8 at 29, 268 (discussing NRA opposition to the National Firearms Act and the Brady Bill).

headed watchdog from Greek mythology, Cerberus, ... [dominating] and [defining] gun politics for most of the twentieth century.”¹² *Fortune Magazine* declared that the NRA was the most powerful lobby group in Washington in 2001,¹³ and observers of American politics have speculated that the NRA has surpassed the religious right as the most important constituency of the Republican Party.¹⁴ Many frequently cite the NRA as the paradigmatic example of an effective interest group, especially in the context of its demonstrated ability to trump public opinion that might favor stricter gun control.¹⁵

There is also a strong perception that the NRA has the ability to swing elections. Many Democrats believe the NRA and the gun control issue cost Al Gore the White House in 2000.¹⁶ Others argue that the assault weapons ban and the Brady Bill were responsible for the Republican take-over of Congress in 1994.¹⁷ Supporters of the NRA are likely to be single-issue voters—they will cast their ballot based solely on a candidate’s position on gun control.¹⁸

Representative Peter Smith (R-NH) sponsored a bill to ban assault weapons in 1989 after promising the NRA he would oppose all gun control. The next election cycle, the NRA targeted him for defeat. “I’ve never been through anything like this. It was astounding,” he said. “[M]y mother was almost driven off the road. People were shooting my lawn signs at night. That is the level of emotion the NRA was able to stir up.”¹⁹ Ultimately, Smith was defeated by Socialist Bernard Sanders—who also supported an

12. SPITZER, *supra* note 1 at 75.

13. *Fortune Magazine*, *The Power 25: Top Lobbying Groups*, available at <http://www.fortune.com/fortune/power25> (May 28, 2001). See also PETER HARRY BROWN & DANIEL G. ABEL, *OUTGUNNED: UP AGAINST THE NRA* 297 (2003) (discussing the *Fortune* rankings).

14. *Weekend All Things Considered: Grassroots Lobbying Operation of the NRA* (NPR broadcast, Oct. 16, 2004); John Lott, Address to Texas Federalist Society (Oct. 13, 2004) (“The NRA is for Republicans what unions are for Democrats”) [hereinafter Lott, Federalist Speech].

15. Martin Shubik, *Risk, Society, Politicians, Scientists and People*, in RISK, ORGANIZATIONS, AND SOCIETY 7, 14 (Martin Shubik ed., 1991); Howard Schuman & Stanley Presser, *The Attitude-Action Connection and the Issue of Gun Control*, 455 ANNALS OF THE AMER. ACAD. OF POL. AND SOC. SCI. 40, 41 (1981). See also PollingReport.com, *Guns*, at <http://www.pollingreport.com/guns.htm> (last visited May 14, 2005).

16. Joe Lockhart, *My Party and Guns*, WASH. POST, July 31, 2001, at A23 (arguing “gun safety was not a winning issue for Democrats in 2000”). But see Jim Brady, *Guns and Voters*, WASH. POST, Aug. 13, 2001, at A14 (arguing an alternative reading of the election exists—many pro-gun members of Congress lost their seats and gun control ballot initiatives were passed in Colorado and Oregon).

17. See *The NewsHour with Jim Lehrer* (PBS television broadcast, May 14, 1999), available at http://www.pbs.org/newshour/shields&gigot/may99/sg_5-14.html (Paul Gigot: “the most recent time when gun control really, really mattered in an election was 1994 where the Democrats lost an awful lot of seats by the president’s own admission because of the assault weapons ban and the Brady Bill, the reaction to that.”).

18. DAVIDSON, *supra* note 8, at 65-66, 80.

19. SPITZER, *supra* note 1, at 88.

assault-weapons ban—but Spitzer speculates that “the NRA was less concerned with Sanders’ position than with punishing Smith.”²⁰ The NRA, moreover, mobilizes its members to do much more than just vote. In 1978, almost two-thirds of the letters written to Congress and money given to politicians regarding the gun issue, came from opponents of gun control.²¹

For these reasons, when the NRA speaks, legislators listen. Since the passage of the Brady bill in 1993 and the (now expired) assault weapons ban in 1994, there has been no federal legislative action on gun issues. On April 20, 1999, two teenaged gunmen killed twelve students and a teacher before taking their own lives at their suburban high school near Denver.²² Some of the weapons used in the shooting were bought through the “gun show loophole,” which allows private dealers to sell firearms at gun shows without conducting a background check.²³ Despite the high-profile and horrific nature of this attack, Congress failed to pass a measure that would require all gun dealers to perform a simple background check before selling a firearm.²⁴ In 2004, the federal assault weapons ban expired despite heightened concerns about terrorism after the 9-11 attacks and the overwhelming support of the American public.²⁵ The NRA has been just as successful at the state level. Since the NRA began an intensive campaign to pass laws allowing citizens to carry concealed handguns two decades ago, many states have passed such legislation.²⁶ When cities began to sue the gun industry to recover the costs of gun violence, many states passed legislation that prohibited cities or individuals from bringing such suits.²⁷ President Bush recently signed similar legislation into law.²⁸

Much of the NRA’s success comes from its effective grass roots organization. The NRA’s deep pockets allow it to provide a wealth of membership incentives: it publishes four different monthly

20. *Id.*

21. Schuman & Presser, *supra* note 16, at 44.

22. Spitzer, *supra* note 1 at 13.

23. The NRA refers to this deficiency in the background check regime as “the freedom loophole.” Wayne LaPierre, *Standing Guard*, AMER. RIFLEMAN, July 2002, at 12; Brown & Able, *supra* note 13, at 100.

24. Vice-President Al Gore had to cast a tie-breaking vote in the Senate, and the measure could not be passed out of the House. BROWN & ABEL, *supra* note 13, at 118-22.

25. See Silla Brush, *Assault-gun Ban Will End, but Debate Won’t*, DALLAS MORNING-NEWS, Sept. 11, 2004, at 1A (citing poll data that eighty percent of Texans supported renewal of the ban, despite the fact that fifty-three percent of Texans own guns).

26. See William F. Lane, *Public Endangerment, or Personal Liberty? North Carolina Enacts a Liberalized Concealed Handgun Statute*, 74 N.C. L. REV. 2214, 2233-34 (1996).

27. See Timothy D. Lytton, *Lawsuits Against the Gun Industry: A Comparative Institutional Analysis*, 32 CONN. L. REV. 1247, 1265 (2000).

28. Now with David Brancaccio “Gun Legislation and Lawsuits” (PBS television broadcast, December 2, 2005). See also S. 397, Protection of Lawful Commerce in Arms Act, 109th Cong., <http://www.govtrack.us/congress/bill.xpd?bill=s109-397>.

publications,²⁹ provides discount firearm insurance, has its own expansive shooting range and ranch in New Mexico,³⁰ and has relationships with a variety of corporations to provide perks such as hotel and rental car discounts.³¹ Loyal NRA members follow its instructions to the letter. Dennis Meyer, an NRA supporter in Wisconsin, told a reporter “[i]f the NRA tells me to do something, I do it. That’s why I’m voting.”³² The NRA has volunteer organizers in every congressional district in every election.³³ It conducts constant and effective letter writing campaigns to support its agenda (the organization generated 300,000 post cards on media consolidation in 2003).³⁴ The NRA’s close connections with gun manufacturers also assist its organizing efforts. Manufacturers may include NRA membership material in the packaging of new guns. The NRA reciprocates by publishing flattering reviews of new weapons in its magazines.³⁵

III. A REVIEW OF “IRRATIONAL LITERATURE”—FERTILE GROUND FOR THE NRA

Understanding and estimating the level of risks posed by different human activities is complicated; it involves comprehension of probabilities, comparisons with the hazards posed by other activities, and estimating the harm an activity poses. Risk evaluations are often highly complex and may be incomprehensible to some people. Cognitive limitations and bad information further distort people’s understanding and processing of risks. For these

29. American Rifleman, America’s First Freedom, NRA Women’s Outlook, Man at Arms

30. The Whittington Center, see <http://www.nrawc.org/>.

31. *See Advertisement: Defend Your Second Amendment Rights. Choose the NRA Platinum Visa Card*, AM. RIFLEMAN, July 2002; *Advertisement: Stay at Any One of These Hotels, and Receive a 15-30% Discount Off of the Standard Rate!*, AM. RIFLEMAN, July 2002, at 90 (AmeriHost Inn, Days Inn, Howard Johnson, Knights Inn, Ramadam Travelodge, Villager and Wingate Inn); SPITZER, *supra* note 1, at 85.

32. Anna Badkhen, *Hunters’ Issues Could Decide Vote in Battleground States*, SAN FRANCISCO CHRONICLE, Oct. 22, 2004, at A4.

33. *See* Chris W. Cox, *It’s Your Vote – It’s Our Freedom!*, AM. RIFLEMAN, Oct. 2004. *See also* Weekend All Things Considered: Grassroots Lobbying Operation of the NRA (NPR broadcast, Oct. 16, 2004).

34. Frank Ahrens, *FCC Plan to Alter Media Rules Spurs Growing Debate*, WASH. POST, May 28, 2003, at A1.

35. SPITZER, *supra* note 1, at 79-80; *Ed Brown Kobra Carry Tactical Pistol*, AM. RIFLEMAN, Dec. 2002, at 68 (“As John Browning’s masterpiece M1911 pistol approaches its centennial, this classic handgun shows no sign of aging”). It also publishes helpful articles on how to select the proper concealed weapon to carry. Daniel T. McElrath, *Setting Your Sights on a Carry Gun*, AMER. RIFLEMAN, Aug. 2002, at 41-42 (“Well, you’ll need to ask yourself [some] questions when it comes time to select a carry gun: ... Are you willing to rework your entire wardrobe for the sake of carrying a particular gun? Does the climate in your area permit you to dress to conceal most carry guns? Do you want to lug 1 1/2 to 2 1/2 lbs. of steel around all day, every day? Answer honestly.”).

reasons, people develop “shortcuts”—or heuristics—to help them understand and interact with the world around them. Paul Slovic, a leading researcher in this field, argues that people use heuristics to “make sense out of an uncertain world.”

[L]aboratory research on basic perceptions and cognitions has shown that difficulties in understanding probabilistic processes, biased media coverage, misleading personal experiences, and the anxieties generated by life’s gambles cause uncertainty to be denied, risks to be misjudged (sometimes overestimated and sometimes underestimated), and judgments of fact to be held with unwarranted confidence.³⁶

The limited capability of the human mind to process information leads us to develop “bounded rationalities” that we utilize to interpret risks in a context we are familiar with and understand.³⁷ Our inability to fully comprehend risks results in the development of a heuristic to interpret the risk for us.

“Framing” is a concept similar to heuristics. A “frame” is a lens that a person looks through to understand an issue. Political scientists Donald Haider-Markel and Mark Joslyn describe a frame as “how conditions or events in society come to be understood by the public and political elites.”³⁸ Their example of how a frame works is the AIDS epidemic: some people understand AIDS as a public health crisis, others view it as a “condition associated with the decline of moral values.”³⁹ The frame through which an issue is understood “can influence the focus of the policy proposals, who participate[s] in policy processes, and who may win or lose.”⁴⁰ Slovic, in an article co-written by Howard Kunreuther, notes that “different (but logically equivalent) ways of presenting the same risk information can lead to different evaluations and decisions.”⁴¹ Moreover, the initial frame through which an issue is understood shapes interpretation of additional facts and observations. Slovic explains “[n]ew evidence appears reliable and informative if it is consistent with one’s initial beliefs; contrary evidence tends to be dismissed as

36. Paul Slovic, *Perception of Risk*, 236 SCI. 280, 281 (1987) [hereinafter Slovic, *Science*].

37. Paul Slovic, Howard Kunreuther & Gilbert F. White, *Decision Processes, Rationality and Adjustment to Natural Hazards*, in *THE PERCEPTION OF RISK* (Paul Slovic ed., 2000) at 5 [hereinafter Slovic, *Rationality*].

38. Donald P. Haider-Markel & Mark R. Joslyn, *Gun Policy, Opinion, Tragedy, and Blame Attribution: The Conditional Influence of Issue Frames*, 63 J. OF POL. 520, 521 (2001).

39. *Id.* at 522.

40. *Id.*

41. Howard Kunreuther & Paul Slovic, *Science, Values, and Risk*, 545 ANNALS AM. ACAD. POL. & SOC. SCI. 116, 120 (1996).

unreliable, erroneous, or unrepresentative.”⁴² Gun control and gun ownership may often be considered through a crime prevention frame.

Framing and heuristics combine to overcome logical evaluations of hazards. Slovic uses the example of wearing a seat belt in an automobile:

[The] resistance to the wearing of seat belts was understandable in the light of the extremely small probability of an accident on a single automobile trip. Because a fatal accident occurs only about once in every 3.5 million person trips and a disabling injury only once in every 100,000 person trips, refusing to buckle one’s seat belt prior to a single trip is not unreasonable.⁴³

Strong feelings about an issue can also overwhelm careful analysis of potential risks and costs.⁴⁴ The *perception* that a risk is low may trump the *calculation* that a risk is high.⁴⁵ Thus, someone who is familiar with guns and has never been harmed by one may disregard the risks firearm ownership creates.

IV. THE NRA’S EXPLOITATION OF IRRATIONALITIES

Slovic and his colleagues list several irrationalities that feed the use of heuristics: control, dread, trust, and rights rhetoric. The NRA is able to utilize each of these heuristics in the gun control context. Moreover, the contours of these heuristics and frames make it inherently more difficult for groups that support gun control to challenge the NRA.

A. CONTROL

People are more willing to accept risks when they believe that they are in control of the risk. The classic example is the fear of flying versus the fear of driving. Even though statistically one is far more likely to die in a car accident than an airplane crash, people fear flying more than driving. The amount of control the individual

42. Slovic, *Science*, *supra* note 37, at 281.

43. Paul Slovic, Baruch Fischhoff & Sarah Lichtenstein, *Response Mode, Framing and Information-Processing Effects in Risk Assessment*, in *THE PERCEPTION OF RISK* 158 (Paul Slovik ed., 2000).

44. See Douglas MacLean, *Social Values and the Distribution of Risk*, in *VALUES AT RISK* 90 (Douglas MacLean ed., 1986).

45. Raphael G. Kasper, *Perceptions of Risk and Their Effects on Decision Making*, in *SOCIETAL RISK ASSESSMENT* 75 (Richard C. Schwing & Walter A. Albers eds., 1980).

has over each vehicle can partially explain this phenomenon. For example, a driver is in almost total control of the automobile, but in an airplane, a passenger must surrender all control to the pilot.⁴⁶ This feeling that some risks are “out of control” causes irrational fear to eclipse the known actual level of risk.

Gun ownership is often all about control. When the primary reason for gun ownership is self-protection, the presence of the gun gives owners the feeling that they control their own destiny.⁴⁷ Author and NRA supporter Tom Clancy argues:

Owning a gun [throughout American history] meant that a person could protect his or her family when the state was unable to do so, a lamentable condition that persists to this day even in areas that have large, organized police agencies. Having a gun today still gives the individual a degree of personal autonomy—the capacity for self-defense—that is not the anachronism many pretend it to be. Unfortunately, many people with a morbid fear of firearms seek to expand the scope of their prejudices, attempting to enforce them upon others who do not share them.⁴⁸

The NRA actively encourages the perception that personal safety necessitates gun ownership. Each issue of all NRA magazines contains a page of “Armed Citizen” stories — tales of gun owners protecting themselves from crime with their weapons. These stories emphasize that “armed citizens” are taking control of their own destiny. A typical story begins, “[a] Kent, Wash., jewelry store owner decided he’d had enough and wasn’t going to take it anymore.”⁴⁹ The NRA also emphasizes that the police are unable to protect citizens, so citizens must arm to protect themselves. Relying on a study by “nationally recognized” Florida State criminologist Gary Kleck, NRA executive vice-president Wayne LaPierre argues “[t]here could potentially be as many as 2.5 million *more* crimes each year listed in the national crime data banks with an additional incalculable cost in loss of property, health and life,” if law-abiding citizens were not allowed to exercise their right to self-defense with firearms.⁵⁰ Muddling the concepts of tort duty with a professional or

46. See Frank B. Cross, *The Public Role in Risk Control*, 24 ENVTL. L. 887, 919 (1994).

47. 19.7 % of households own a handgun, the weapon most likely to be purchased for self-defense purposes. See Lindgren, *supra* note 4, at 2203 n. 44.

48. Tom Clancy, *Introduction* to WAYNE LAPIERRE, GUNS, CRIME, AND FREEDOM xiii, xiv-xv (Regnery Publishing 1994).

49. *Armed Citizen* AM. RIFLEMAN, Dec. 2002, at 8.

50. WAYNE LAPIERRE, GUNS, CRIME AND FREEDOM 23 (1994) (emphasis in original). See also Gary Kleck and Mark Gertz, *Armed Resistance to Crime: The Prevalence*

moral duty, LaPierre states, according to the Supreme Court, police have “no duty to protect individuals – [the police’s] duty is only to the community at large.”⁵¹ The NRA projects the image that the world is a hazardous place filled with constant danger.

The NRA promotes the idea that a firearm is an equalizer. A frequently encountered NRA slogan is “rapists love gun control,” implying that women are more vulnerable to sexual assault when they are not armed.⁵² NRA supporter John Lott explained in a speech at the University of Texas School of Law that his size and strength advantage would make it easy for him to rape a member of the audience unless she had a gun.⁵³ Indeed, oppressed minority groups from the African-American Black Panthers to the gay and lesbian Pink Pistols have adopted this “armed equalizer” rationale.⁵⁴

This feeling of control is closely tied to the perception that voluntary risks are “less risky” than involuntary risks. Slovic notes that “the public will accept risks from voluntary activities (such as skiing) that are roughly 1000 times as great as it would tolerate from involuntary risks (such as food preservatives) that provide the same level of benefit.”⁵⁵ For gun owners, the presence of a gun is a voluntary risk—they choose to bring the gun into their home. Therefore, even if the benefit of having the gun is very low compared to the risk, the risk becomes more tolerable. Polling data indicates that gun owners believe the presence of guns makes their communities safer, while non-gun owners believe gun ownership makes society more dangerous.⁵⁶ Indeed, Slovic has difficulty classifying whether gun ownership is a voluntary or involuntary risk, precisely because gun owners feel the risk is voluntary while non-gun owners feel that it is not.⁵⁷

and Nature of Self-Defense with a Gun, 86 J. CRIM. L. & CRIMINOLOGY 150 (1995) (arguing that two and a half million crimes are prevented each year by gun owners). *But see* David Hemenway, *Survey Research and Self-Defense Gun Use: An Explanation of Extreme Overestimates*, 87 J. CRIM. L. & CRIMINOLOGY 1430, 1438 (criticizing Kleck and Gertz’s telephone survey methodology by suggesting through an analogy, if their methodology were accurate, “twenty million Americans have seen spacecraft from another planet, and over a million have been in personal contact with aliens from other planets”).

51. LAPIERRE, *supra* note 51, at 31.

52. See, e.g., Dave Kopel, “Rapists Like Gun Control,” *National Review*, April 14, 2000, available at <http://www.nationalreview.com/comment/comment041400a.html>.

53. Lott, *Federalist Speech*, *supra* note 14.

54. October 1966 Black Panther Party Platform and Program, available at http://lists.village.virginia.edu/sixties/HTML_docs/Resources/Primary/Manifestos/Panther_platform.html (“The Second Amendment to the Constitution of the United States gives a right to bear arms. We therefore believe that all black people should arm themselves for self defense.”); PinkPistols.org (“Armed gays don’t get bashed”).

55. Slovic, *Science*, *supra* note 37, at 282.

56. SPITZER, *supra* note 1, at 66.

57. See Baruch Fischhoff, Paul Slovic & Sarah Lichtenstein, *Weighing the Risks: Which Risks are Acceptable?*, in *THE PERCEPTION OF RISK* 127 (Paul Slovik ed., 2000).

The voluntariness of the risk is related to an individual's overconfidence in his or her own abilities to manage the risks. Slovic notes "hazards judged to be 'voluntary' tend also to be judged 'controllable.'"⁵⁸ Slovic explains how overconfidence magnifies the effect of other heuristics:

The psychological basis for this unwarranted certainty seems to be people's insensitivity to the tenuousness of the assumptions upon which their judgements are based ... Such overconfidence can keep us from realizing how little we know and how much additional information is needed about the various problems and risks we face.⁵⁹

The NRA perpetuates this overconfidence by suggesting that the solution to gun violence is the presence of more guns. Former NRA president Charlton Heston stated that the Columbine High School shootings could have been prevented by the presence of armed guards in the school.⁶⁰ Texas state representative Susanna Hupp argued that Texas needed a concealed-carry regime after members of her family were killed in a shooting attack at a Luby's Cafeteria. Hupp claimed that if the law had allowed her to carry her gun into the restaurant, she could have killed the shooter and prevented much of the carnage.⁶¹ Of course, Hupp fails to recognize that her hypothetical is flawed because the shooter could have shot and killed her when he identified that she had a gun. Indeed, a concealed-carry permit holder attempted to stop a man attacking a courthouse with an AK-47 in Tyler, Texas and was shot and killed by the assailant.⁶² These examples demonstrate that gun owners are often overconfident in the advantage created by carrying a gun, even while ignoring the risks doing so creates.

B. DREAD

Risks that seem especially fearful produce an effect that Slovic calls "dread." Dreaded risks are exaggerated far beyond the actual

58. Slovic, *Science*, *supra* note 37, at 283.

59. Paul Slovic, Baruch Fischhoff & Sarah Lichtenstein, *Facts and Fears: Understanding Perceived Risks*, in *SOCIETAL RISK ASSESSMENT* 185 (Richard C. Schwing & Walter A. Albers eds., 1980) [hereinafter Slovic, *Facts and Fears*].

60. See Jack Mathews, *Hired Gun: NRA Spokesman Charlton Heston Who Played Heroes From Michelangelo to Moses is Having Trouble with Reality*, N.Y. DAILY NEWS, May 2, 1999, at 7. In fact, there was an armed police officer in the school on the day of the shooting who returned fire before retreating.

61. Carol Morello, *A Daughter's Regret*, WASH. POST, May 13, 2000 at A1; See generally LAPIERRE, *supra* note 51, at 33 (discussing the value of concealed carry laws).

62. Patrick Beach, *Tyler Shooting Victim Called a Hero*, AUSTIN AMER.-STATESMAN, Feb. 26, 2005, at A1.

risk they pose. The prototypical example of this effect is the shark attack: very few people are attacked, much less killed, by sharks every year.⁶³ Despite the extremely low risk, the fear of sharks is widespread. “Dreaded” risks are often exotic and uncommon, but present in the popular culture (think of the *Jaws* films) and therefore easy to understand.⁶⁴

Violent crime represents just such a dreaded fear. Images of violent crime are omnipresent in popular culture and Slovic’s research demonstrates that people consistently overestimate the number of homicides that occur each year.⁶⁵ The NRA exploits this dread by, for example, publicizing stories of valorous “armed citizens,” and deceptively framing gun control as a crime issue.

Clancy argues that the debate over gun control is a distraction from “the real issue of crime.”⁶⁶ A fifth of LaPierre’s book focuses on crime, and is replete with horror stories of crimes that could have been averted by someone with a gun.⁶⁷ Lott made his career with his best-selling book *More Guns, Less Crime*, which argues that states with concealed-carry regimes saw greater decreases in crime than those states that did not permit carrying concealed weapons.⁶⁸

The NRA has refined its presentation of crime to minimize the costs of gun violence and amplify the dread effect. Gun control advocates often assert that children and young people are disproportionately harmed by gun violence. LaPierre counters this by dehumanizing juvenile criminals—“Juveniles who commit violent acts with firearms need to be locked up behind bars. They aren’t

63. Susan Casey, *The Devil’s Teeth*, SPORTS ILLUSTRATED, May 2, 2005, at 56 (“In any given year more than a thousand people will be injured by toilet bowl cleaning products or killed by cattle. Fewer than a dozen will be attacked by a great white shark.”).

64. See Slovic, *Rationality*, *supra* note 38, at 15.

65. Slovic, *Facts and Fears*, *supra* note 60, at 183.

66. Clancy, *supra* note 49, at xv.

67. See generally LAPIERRE, *supra* note 51.

68. See JOHN LOTT, *MORE GUNS, LESS CRIME* 1-20 (2d ed. 2000) (arguing that there is a correlation between the passage of laws allowing citizens to carry concealed weapons and reductions in crime). Lott’s work has prompted a great deal of skepticism and scrutiny. See Ian Ayers & John Donohue, *Shooting Down the ‘More Guns, Less Crime’ Hypothesis*, 55 STAN. L. REV. 1193, 1202 (2003) (“[t]here is stronger evidence for the conclusion that these laws increase crime than there is for the conclusion that they decrease it”); John J. Donohue, *The Impact of Concealed Carry Laws, in EVALUATING GUN POLICY* 287 (Jens Ludwig & Philip I. Cook, eds. 2003) available at http://www.brookings.edu/dybdocroot/press/books/chapter_1/evaluatinggunpolicy.pdf (concluding that liberalized concealed carry regimes result in more crime, not less as Lott contends); Timothy Noah, *The Bellesiles of the Right? Another Firearms Scholar Whose Dog Ate His Data*, SLATE, Feb. 3, 2003, available at <http://slate.msn.com/?id=2078084> (discussing the possibility that Lott falsified data in his book); Richard Morin, *Scholar Invents Fan to Answer His Critics*, WASH. POST, Feb. 1, 2003, at C1 (revealing that Lott used a pseudonym to respond to his online critics); Violence Policy Center, *Funder of Lott CCW Study has Links to the Gun Industry*, available at http://www.vpc.org/fact_sht/lottlink.htm (last visited Apr. 9, 2004) (stating that the Olin Foundation, the principal funders of Lott’s work, are also the owners of Winchester Ammunition).

children; they are terrorists running rampant in our communities.”⁶⁹ This demonization makes the juvenile criminal more dreaded, and allows the NRA to make the claim that children are not really being killed by guns. Rather, the children who die committing crimes with guns deserve death.⁷⁰

The NRA also constructs a dreaded fear of the government. Spitzer notes that “[a]t its heart, the gun debate is a question about the relationship between the citizen, the state’s power to regulate, and the maintenance of public order.”⁷¹ The NRA suggests that expanding the government’s regulatory power results in tyranny. A 1993 letter to NRA members argued that the passage of the Brady bill meant that “Congress [has] sent one message to America’s gun owners in 1993... ‘YOU ARE THE ENEMY.’ Indeed, hearing Congress rant and rave about gun control in recent weeks was enough to make any freedom-loving American sick.”⁷² This communication is an example of what journalist Osha Gray Davidson labels the NRA’s “Armageddon Appeal.” The NRA suggests that all liberty hangs in the balance with each vote on gun control. One NRA employee stated that “You keep any special interest group alive by nurturing the crisis atmosphere: ‘Keep sending those cards and letters in. Keep sending money.’”⁷³ In 2002, the NRA warned, “[i]f the Democratic party ends up with the biggest numbers, absolute control of legislative power will fall to a majority of lawmakers zealously long-dedicated to erasing America’s firearm freedom.”⁷⁴ LaPierre compares gun control proposals to policies enacted in communist Cuba⁷⁵—he ignores the Western democracies that have the same policies because one cannot plausibly claim that gun control inevitably leads to tyranny when confronted with the, *inter alia*, British, French, Canadian, Australian, and Irish examples.⁷⁶

69. LAPIERRE, *supra* note 51, at 77.

70. Cf. NRAleaders.com, *NRA Leaders: Jeff Cooper*, available at <http://www.nraleaders.com/jeff-cooper.html> (last visited May 15, 2005) (Jeff Cooper, a member of the NRA’s board of directors in his “Cooper’s Corner” column in *Guns and Ammo*: “[T]he consensus is that no more than five to ten people in a hundred who die by gunfire in Los Angeles are any loss to society. These people fight small wars amongst themselves. It would seem a valid social service to keep them well-supplied with ammunition.”).

71. SPITZER, *supra* note 1, at ix.

72. SPITZER, *supra* note 1, at 73 (quoting letter produced by Institute for Legislative Action, NRA).

73. DAVIDSON, *supra* note 8, at 149.

74. James O.E. Norell, “F” Troop: Why Are These People Smiling?, AM. RIFLEMAN, Sept. 2002, at 74. Congressman Henry Waxman’s (D-CA) “agenda will be virtually impossible to stop.” *Id.* Representative Dick Gephardt (D-MO) would become “the all-powerful Speaker of the House.” *Id.*

75. LAPIERRE, *supra* note 51, at 88.

76. After a horrific shooting where sixteen school children were killed in Dunblane, Scotland, Britain banned civilian handgun ownership. See Dunblane Massacre, <http://dunblane-massacre.ask.dyndns.dk/>. Australia virtually banned gun ownership after a series of rampage shootings in the 1990s. See A Beginner’s Guide to Australian Gun Laws,

Famously, the NRA has demonized the Bureau of Alcohol, Tobacco and Firearms (ATF), the agency responsible for enforcing federal firearm laws. Former President George H.W. Bush resigned his NRA lifetime membership in “outrag[e]” after an NRA fundraising letter compared ATF agents to Nazi stormtroopers.⁷⁷ The longest chapter in LaPierre’s book is entitled “[ATF] Abuses.”⁷⁸ Representative John D. Dingell (D-MI), a member of the NRA’s Board of Directors, stated, “if I were to select a jack-booted group of fascists who were perhaps as large a danger to American society as I could pick today, I would pick [the ATF]. They are a shame and disgrace to our country.”⁷⁹ Promoting the ATF as the vanguard of domestic tyranny solidifies fear of the agency tasked with enforcing gun laws.

The tyranny argument is closely linked to an even more dreaded phenomenon—genocide. A frequent argument in support of gun control is that nations with strict controls on gun ownership have lower violent crime rates.⁸⁰ LaPierre, however, insists that “[h]einous crime statistics relevant to [gun control] … concern the slaughter of 6 million Jews in the holocaust [sic].”⁸¹ Opponents of gun control argue that it could be easier to round up and slaughter a disarmed populace. Signs reading “Six Million Dead Jews Had Gun Control” were a popular reaction to the Million Mom March for

http://www.guncontrol.org.au/index.php?article=6. Canada has not banned ownership of most guns, but has passed legislation that requires every gun owner hold a government issued license, and that their weapons be registered with the government. See Canada Firearms Centre, http://www.cfc-cfc.gc.ca/default_e.asp.

77. Michael Kranish, *GOP Sees Reasons to Blur Party Lines on Gun Debate*, BOSTON GLOBE, May 18, 1999, at A4.

78. LAPIERRE, *supra* note 51, at 177-200. As part of the reorganization of the Homeland Security Department, the BATF was re-christened the Bureau of Alcohol, Tobacco and Explosives, but is still widely referred to as the “ATF” or “BATF.”

79. *Id.* at 177. Jeff Cooper calls ATF agents “ninjas” because they wear black masks; he states: “It has long been my conviction that a masked man with a gun is a target.” NRAleaders.com, *supra* note 71.

80. See NationMaster.com, *Map & Graph: Crime: Murders (per capita) Top 100 Countries*, http://www.nationmaster.com/graph-T/cri_mur_cap (last visited Nov. 19, 2004) (The U.S. has .04 murders per 1,000 people, ranking 24th highest in the world. Georgia, Uruguay and Bulgaria have the same murder rate per capita; the U.S. is closely followed by Armenia, Yemen and India at .03 murders per 1,000 people.). Among only industrialized nations, the U.S. ranks third in per capita murders, behind only Mexico and Poland. In murders committed with firearms, the U.S. performs even more poorly. See Nationmaster.com, *Map & Graph: Crime: Murders with firearms (per capita) Top 100 Countries*, http://www.nationmaster.com/graph-T/cri_mur_wit_fir_cap (last visited Nov. 20, 2004) (The U.S. ranks 8th, with .02 murders with firearms per 1,000 people, on par with Uruguay, Lithuania and the Czech Republic. Only South Africa, Colombia, Thailand, Zimbabwe, Mexico, Belarus, and Costa Rica have more per capita gun violence.).

81. LAPIERRE, *supra* note 51, at 166. See also JOHN LOTT, THE BIAS AGAINST GUNS 75 (2003) [hereinafter LOTT, BIAS] (arguing that resistance movements in Europe during World War II could have benefited from guns).

Sensible Gun Laws in 2000.⁸² An anti-gun control bumper sticker reads “All those who support gun control, raise your hand” with a picture of Adolph Hitler giving the “Sieg Heil” salute. The possibility that an advanced Western democracy like the United States could turn genocidal seems highly unlikely; yet, it is an argument that the NRA and its supporters persistently advance.⁸³

C. TRUST

When people do not trust an institution, they disregard its estimation of risks. “[N]umerous recent studies clearly point to *lack of trust* as a critical factor underlying the divisive controversies that surround the management of ... hazards.”⁸⁴ Trust is difficult to earn and easy to squander. Abraham Lincoln observed that “if you *once* forfeit the confidence of your fellow citizens, you can *never* regain their respect and esteem.”⁸⁵ Slovic notes that interest groups can act to undermine trust.

[An important change], a social phenomenon, is the rise of powerful special interest groups—well funded (by a fearful public) and sophisticated in using their own experts and the media to communicate their concerns and their distrust to the public in order to influence risk policy debates and decisions (Fenton 1989). The social problem is compounded by the fact that we tend to manage our risks within an adversarial legal system that pits expert versus expert, contradicting each other’s risk assessments and further destroying the public trust.⁸⁶

The NRA works to create a distrust of “liberal elites” who are hostile to “traditional” ways of life in America. Another famous NRA bumper sticker reads “Ted Kennedy’s Car Has Killed More People Than My Gun.” Political scientist Sylvia Tesh notes that the NRA “requires all prospective members to sign an oath of loyalty to the United States. It sprinkles its by-laws with politically loaded terms

82. See Jews for the Abolition of Firearms Ownership, <http://www.stentorian.com/2ndamend/jafo.html> (a satirical website mocking firearms safety advocates).

83. See Kenneth Lasson, *Blunderbuss Scholarship: Perverting the Original Intent and Plain Meaning of the Second Amendment*, 32 U. BALT. L. REV. 127, 156 (2003) (“As a democracy matures, the risk that a tyrant will seize the reins of government diminishes”).

84. Paul Slovic, *Perceived Risk, Trust and Democracy*, in THE PERCEPTION OF RISK 317 (Paul Slovic ed., 2000).

85. *Id.* at 319.

86. *Id.* at 324 (citing D. Fenton, *How a PR Firm Executed the Alar Scare*, WALL STREET JOURNAL, Oct. 3, 1989, at A22).

like ‘law and order,’ ‘right of self-preservation and defense of family, person and property,’ ‘the national defense,’ and the like.”⁸⁷

This tactic may be effective because of the deep divide between how rural and urban Americans understand the gun issue. William Lawrence notes that people tend to minimize the hazards posed by items they encounter frequently. “Discrete highway, workplace, and sports accidents take an enormous toll. They have the property of being, in general, fairly well understood: things break, children act like children, drunks drive like drunks.”⁸⁸ Slovic also observes that “familiar hazards” tend to be minimized.⁸⁹ In many rural areas, the “gun culture” is a way of life.⁹⁰ Activities such as hunting and target shooting are rites of passage and hold special importance.⁹¹ Clancy states that shooting is “like golf,”⁹² an explanation that people living in urban areas may have difficulty comprehending, but a comparison that resonates with rural Americans. Rural Americans typically have been exposed to guns throughout their lives. Their “weapon of choice” is likely a hunting rifle, a gun rarely used in crime. Conversely, urban Americans typically do not own firearms, and their exposure to firearms may be limited to media accounts of shootings.⁹³ Urban Americans are most often exposed to handguns, the weapons most likely to be used in violent crime.

Researchers have also consistently observed that the context of a person’s introduction to a hazard determines how risky that person perceives the hazard to be. In the risk-perception context, first impressions matter. Raphael Kasper observes:

[c]onsider what possible current conceptions of the automobile might be if the introduction of petroleum products to the public had been in the form of napalm rather than in the form of oil for light and heat. Nuclear power, it should be recalled, was introduced to the public through the awesome destructive power of the atomic bomb and it is almost certainly true that current public perceptions of nuclear power are shaped largely by that first impression.⁹⁴

87. Sylvia Tesh, *In Support of “Single-Issue” Politics*, 99 POL. SCI. Q. 27, 35 (1984).

88. William W. Lawrence, *The Nature of Risk*, in *SOCIETAL RISK ASSESSMENT* 9 (Richard C. Schwing & Walter A. Albers eds., 1980).

89. Slovic, *Facts and Fears*, *supra* note 60, at 189.

90. See Robin M. Wolpert & James G. Gimpel, *Self-Interest, Symbolic Politics and Public Attitudes Toward Gun Control*, 20 POL. BEHAVIOR 241, 244 (1998).

91. SPITZER, *supra* note 1, at 8-9.

92. Clancy, *supra* note 49, at xiii.

93. See LOTT, *BIAS*, *supra* note 69.

94. Kasper, *supra* note 46, at 75. See also Paul Slovic, James H. Flynn & Mark Layman, *Perceived Risk, Trust, and the Politics of Nuclear Waste*, 254 SCI. 1603, 1606 (1991).

Hunting, and guns in general, are not viewed as hazardous by people in rural communities because their introduction is part of a specific ritual.

Rituals have been characterized as irrational or non-rational behavior, actions in which the relationship between means and ends is non-intrinsic or inefficient. This aspect of rituals indicates their symbolic meaning and draws the attention of the community to objects, relationships or roles that have a special place in the life of the group.⁹⁵

Annually, only a small percentage of gun deaths are classified as accidents. An even smaller percentage of gun deaths take place in the context of hunting or other recreational uses of firearms.⁹⁶ When these accidents take place, they seem less “senseless” than the gun violence that plagues urban communities because the ritual of hunting provides a context in which accidents make sense, much like car crashes in driving.

Pro-gun appeals to people in rural areas are also effective because these people may see anti-gun sentiments as a threat to their very way of life. Wolpert notes that the NRA “deliberately cast[s] the gun control issue in moral terms to evoke the fundamental and personal values underlying the gun culture.”⁹⁷ Fewer young people today remain in the small towns they grew up in. Improved telecommunications and transportation blur the cultural distinctions that used to exist between small-town and big-city America. Spitzer notes that “some predict that the ‘hunting heritage’ may disappear entirely by the middle of the twenty-first century.”⁹⁸ Despite this perception, the role of guns in rural America has remained unchanged and violent gun crime remains as rare in rural areas as a pick-up truck in New York City. LaPierre argues that assault weapons (which he misleadingly refers to as “semi-automatics”) “constitute a strong part of this country’s vast shooting and outdoor tradition.”⁹⁹ Exploiting this general misperception makes some of

95. MacLean, *supra* note 45, at 86.

96. Of the 30,242 gun deaths in 2002, only 762 were accidents; many of these involved children playing with guns. CDC, *supra* note 5. According to the International Hunting Education Association, in 1998 there were 93 fatal hunting accidents in the United States and Canada and 894 non-fatal accidents. International Hunting Education Association, *USA & Canada: Hunting Accident Stats for 1998*, available at <http://www.dfg.ca.gov/ihea/he1998.html>.

97. Wolpert & Gimpel, *supra* note 91, at 244.

98. SPITZER, *supra* note 1, at 9.

99. LAPIERRE, *supra* note 51, at 60. A “semi-automatic” is any weapon that will fire a new bullet each time the trigger is pulled. An “automatic” is any weapon that will fire a

the NRA's more ridiculous claims—such as the genocide and tyranny arguments — seem plausible. When rural individuals already see their way of life crumbling via attacks on their “gun culture,” it seems less outrageous that other things normally taken for granted — such as democratic, non-genocidal government — could also fall apart. (It certainly does not help the cause when gun control supporters opine that, “[c]oming most recently from Manhattan, I shared Woody Allen’s fear of the country, believing that the woods were full of lunatics with chainsaws and drifters with big hunting knives.”)¹⁰⁰

The NRA intensifies the negative effects of such anti-rural sentiments by contending that “liberal elites” are lying to the public and the media about the consequences of gun violence. Former NRA president Charlton Heston states that, “[t]he gun-ban lobby and its media allies know they can’t change history and they can’t change the law. So they’re trying to rewrite history through little lies and misrepresentations.”¹⁰¹ Clancy writes that LaPierre’s book “explodes the myths which gun control advocates have used to undermine our Second Amendment rights.”¹⁰² LaPierre states, “[g]roups like [the Brady Campaign] continue to agitate over firearm accidents, even though such accidents are already on the wane.”¹⁰³ He contends that the elitist American Bar Association “isn’t listening”¹⁰⁴ to the public on criminal justice issues, and suggests that “anti-gun philosophy emanates from air-conditioned offices or homes with electronic security systems”¹⁰⁵—amenities that many average Americans may not enjoy. Lott criticizes the National Academy of Sciences as “examin[ing] only the negative side of guns.”¹⁰⁶ The NRA attempted to eliminate the funding for the

continuous stream of bullets as long as the trigger is held down. The NRA asserts that only automatic weapons are true “assault weapons.” “Assault weapon” is a term applied to any civilian, semi-automatic version of a military weapon. An “assault weapon” is a type of “semi-automatic.” Saying that every “semi-automatic” is an assault weapon is like saying every pastry is a pie—“pastries” is a category that includes pies, but also includes cakes, etc. For example, the Bushmaster rifle used in the sniper attacks in the Washington, DC area was a civilian version of the American military’s M-16. Assault weapons are distinguished from the hunting rifles LaPierre refers to by their capability to accept high-capacity ammunition clips and their capacity to fire at a more rapid rate.

A 1994 poll in Minnesota found that two-thirds of that state’s hunters supported banning assault weapons. Sharon Schmickle, *Close Vote on Gun Ban Shows the Firepower of Single-Issue Politics*, MINNEAPOLIS STAR-TRIBUNE, May 5, 1994, at 1A. In contrast, the Irish Republican Army has written a song about their adoration for one of LaPierre’s “semi-automatics,” the Armalite AR-16. *See My Little Armalite*, available at <http://ingebo.org/songs/iwasstop.html>.

100. DONNA DEES-THOMASES, LOOKING FOR A FEW GOOD MOMS 26 (2004).

101. Charlton Heston, *President’s Column*, AM. RIFLEMAN, Dec. 2002, at 14.

102. Clancy, *supra* note 49, at xvi.

103. LAPIERRE, *supra* note 51, at 80.

104. *Id.* at 100.

105. *Id.* at 46.

106. LOTT, BIAS, *supra* note 82, at 53.

National Center for Injury Prevention and Control (NCIPC) at the Centers for Disease Control because the NCIPC used five percent of its budget to study gun related violence.¹⁰⁷ The NRA dismisses studies of gun violence conducted by medical experts as “bad medicine.”¹⁰⁸ The NRA minimizes these evaluations because these “elites” do not understand “the people” and their closely held “traditions.”

The NRA has co-opted one of the heuristics that Slovic identifies—media bias—and used it to undermine the public’s trust in the information they receive about guns. Slovic notes that in major newspapers “the number of [stories] was not closely related to statistical frequencies of occurrence. All forms of disease appear to be relatively neglected whereas violent, often catastrophic events such as tornadoes, fires, drownings, homicides, and accidents were reported disproportionately often.”¹⁰⁹ Brian Jenkins notes that “[t]he number of individuals killed in political clashes in Israel is far fewer than those killed by automobile accidents, yet the significance of the deaths are totally different,” resulting in disproportionate media coverage.¹¹⁰ The media reports on risks which tend to emphasize the “dread” effect without putting the actual probability of the event into context. Indeed, the media may intentionally increase this effect to spike ratings—“Tune in at 11 because 60 things in your home can kill you!”

This rhetorical strategy is linked to the general conservative critique of the “liberal media”¹¹¹ and the distrust of “liberal elites.” LaPierre flatly states that “[t]he major news media are biased. We all know it. There isn’t a public opinion poll that disputes it.”¹¹² Lott has written an entire book arguing that the media is pervasively “anti-gun.” He argues that while the media fails to adequately cover “armed citizen” stories (citizens using guns in self-defense), it over-covers stories where criminals use guns to kill innocent people.¹¹³ The NRA generated 400,000 postcards to the Federal Communications Commission (FCC) opposing media

107. DAVIDSON, *supra* note 8, at 293.

108. See, e.g. DAVID KOPEL, *Bad Medicine: Doctors and Guns*, in GUNS: WHO SHOULD HAVE THEM? (David Kopel ed., 1995).

109. Slovic, *Facts and Fears*, *supra* note 60, at 185.

110. See Brian M. Jenkins, *Evaluating Security Against Terrorism*, in RISK, ORGANIZATIONS, AND SOCIETY 79 (Martin Shubik ed., 1991).

111. For an excellent rebuttal to this argument, see ERIC ALTERMAN, *WHAT LIBERAL MEDIA?: THE TRUTH ABOUT BIAS IN THE NEWS* (2004).

112. LAPIERRE, *supra* note 51, at 201.

113. LOTT, *BIAS*, *supra* note 82. For an explanation of why media coverage of the NRA and the “pro-gun” argument may be unflattering, see BRIAN ANSE PATRICK, *THE NATIONAL RIFLE ASSOCIATION AND THE MEDIA: THE MOTIVATING FORCE OF NEGATIVE COVERAGE* (2002). For an argument that the media may actually be “pro-gun” see TOM DIAZ, *MAKING A KILLING: THE BUSINESS OF GUNS IN AMERICA* 120-40 (1999) (discussing how media violence promotes gun sales).

consolidation—not the organization’s usual bailiwick—because further consolidation would intensify the “anti-gun” voices in the media.¹¹⁴ Whether the NRA was actually concerned about FCC rule changes was irrelevant because the debate gave the NRA the opportunity to reinforce its message that the media lies about gun control issues. This criticism of the media allows NRA supporters to pretend that gun violence is not a problem in this country—if they can ignore everything the “biased” media says about firearms, they can conveniently ignore the problem. NRA supporters living in areas that never experience gun violence first-hand may be more likely to believe that the “liberal media” exaggerates the problem of gun violence. Critiquing the media allows the viewers to ignore any factual reporting that contravenes their preexisting beliefs about gun control.

Perhaps more insidiously, the NRA misrepresents the policy positions of the major organizations supporting gun control. The NRA refers to groups like the Brady Campaign as the “gun ban lobby,” making their “slippery slope” argument seem more plausible: if the Brady Campaign wants to ban all private gun ownership, then they will not stop at sensible proposals like “one gun a month.” In fact, the Brady Campaign only supports banning very limited classes of weapons, such as assault rifles. LaPierre entitles two chapters in his book “Waiting Periods: The First Step,” and “The Brady Bill II Agenda: Registration, Licensing, Gun Bans and Taxes.” He contends that the so-called “Brady Bill II” “contains four more steps in the march to disarm the American people.”¹¹⁵ Portraying measures like licensing and registration as inevitably resulting in firearm confiscation both confuses the issue and ignores the fact that there are nations that have implemented similar regimes without resorting to total disarmament. Canada, for example, has yet to take all of its citizens’ guns away despite enacting strict gun control legislation.¹¹⁶ For this reason, the NRA’s policy positions may be out of sync with the preferences of their own members, who support many of the same policies as the Brady Campaign.¹¹⁷ The NRA is often described as having a *Field and Stream* membership, and a *Soldier of Fortune* leadership.¹¹⁸

114. See Cox, *supra* note 34.

115. LAPIERRE, *supra* note 51, at 83.

116. See Canada Firearms Centre (citing *supra* note 77).

117. See Weil & Hemenway, *supra* note 7, at 360 (“77% of respondents who belong to the NRA said that they favored a federal law mandating a 7-day waiting period and background check prior to the purchase of a handgun, and 59% said that they were in favor of ‘mandatory registration of handguns or pistols’”).

118. The NRA surely knows this, too. It makes different magazines available to its members to cultivate the different, sometimes opposing, members it attracts. *American Rifleman* features articles about hunting and sporting issues. *America’s First Freedom*, on the

The NRA encourages its followers to distrust the government (which plans to tyrannize and murder them), educated elites (who seek to destroy their way of life), and the media (which lies to them). The theme of trust runs through all the NRA's messages—the only person you can trust is yourself, and you better have a gun for protection.

D. ASSIGNMENT OF RIGHTS

Risks will also be discarded when the impression is created that one has a right to engage in risky behavior. Lawrence lists many examples of this phenomenon.¹¹⁹ For example, smokers may oppose governmental policies to decrease smoking rates because it is their "right" to smoke. Likewise, the NRA has built up elaborate rights rhetoric around the gun control issue. The NRA has christened itself "America's oldest civil rights organization."¹²⁰ It has virtually created an academic debate over the meaning of the Second Amendment to the United States Constitution.¹²¹ Though the legal effect of the Amendment on individual rights is debatable, public opinion indicates that Americans believe they have a right to bear arms.¹²² Former United States Supreme Court Chief Justice Warren Burger (hardly a bleeding-heart liberal), however, flatly insisted that the idea the Second Amendment creates an individual right to own a gun is "one of the greatest pieces of fraud, I repeat the word 'fraud,' on the American public by special interest groups that I've ever seen in my lifetime."¹²³

The rights rhetoric dovetails with the NRA's other rhetorical strategies. Arguing that proposals to limit gun ownership violate a right confirms that the government is becoming more tyrannical.¹²⁴ It also justifies the NRA's hard-line against even the most sensible gun control proposals—a right is absolute and cannot be abridged.¹²⁵ Wolpert and Gimpel observe that "[t]he idea that the Constitution protects the right to bear arms may help legitimize the self-interested

other hand, features conspiratorial "exposes" on "anti-gunners" like George Soros and Michael Moore.

119. Lawrence, *supra* note 89, at 13.

120. National Rifle Association, *Did You Know? NRA and Civil Rights*, available at <http://www.nra.org/Issues/DidYouKnow/Default.aspx?ID=7> (last visited May 15, 2005).

121. See generally Lasson, *supra* note 84.

122. Daniel Merkle, *America: It's Our Right to Bear Arms*, ABCNEWS.com, May 14, 2002, available at http://abcnews.go.com/sections/us/DailyNews/guns_poll020514.html (finding seventy-three percent of Americans believe the Second Amendment protects such a right).

123. See *The MacNeill/Lehrer NewsHour* (PBS television broadcast, Dec. 16, 1991).

124. See NRA, *Rationing*, *supra* note 10.

125. Tesh, *supra* note 88, at 41.

claims of gun owners against restrictions on gun rights.”¹²⁶ It is no longer a selfish desire to avoid a background check, or the inconvenience of temporary limitations on gun purchases that are at issue, but a fundamental aspect of liberty. The NRA’s political magazine is entitled *America’s First Freedom* because the organization promotes the idea that gun ownership is necessary to secure all other rights against the government.¹²⁷ This contention reinforces the historical argument that gun ownership is a long standing tradition in America and the tyranny/genocide arguments. Government limitation on gun possession is part of a slippery slope to totalitarianism. Former NRA President Charlton Heston has argued that assault weapons are to the Second Amendment as the paparazzi are to the First Amendment; liberty requires that we tolerate things that we personally find distasteful.¹²⁸ LaPierre insists that “[e]very American must leap to the defense of his or her liberties. ... Then, and only then, will freedom be safe for future generations.”¹²⁹

Rights rhetoric is also an attempt to undermine the political supporters of gun control, as civil rights tend to be considered liberal ground and gun control supporters are typically liberal.¹³⁰ Framing gun control as a rights issue threatens to both fracture the libertarian element of the liberal coalition¹³¹ and force organizations like the American Civil Liberties Union to take a position on the issue when that may not be otherwise appropriate.¹³² Rights rhetoric also sows further distrust of “liberal elites” who are typically at the forefront of

126. Wolpert & Gimpel, *supra* note 91, at 256.

127. See LAPIERRE, *supra* note 51, at 20 (one purpose of the “right to bear arms” is to “overthrow tyrants”); Charlton Heston, Address to the National Press Club, Sept. 11, 1997, available at <http://www.gunsoftexas.com/national.htm> (“I want to rescue the Second Amendment from an opportunistic president, and from a press that apparently can’t comprehend that attacks on the Second Amendment set the stage for assaults on the First [Amendment]. ... There can be no free speech, no freedom of the press, no freedom to protest, no freedom to worship your god [sic], no freedom to speak your mind, no freedom from fear, no freedom for your children and for theirs, for anybody, without the Second Amendment freedom to fight for it.”).

128. *See id.*

129. LAPIERRE, *supra* note 51, at 10.

130. This characterization is obviously not always true. Many of the most prominent members of the gun control movement are in fact Republicans. Jim and Sarah Brady, the president of the Million Mom March Mary Leigh Blek, and former Brady Campaign president Pete Shields are all Republicans. Similarly, some of the most prominent members of the Republican Party also support gun control. Many of the major speakers at the 2004 Republican National Convention—California Governor Arnold Schwarzenegger, former New York Mayor Rudolph Giuliani and Arizona Senator John McCain—all support some forms of gun control.

131. Noted liberal law professors Sanford Levinson and Lucas Powe believe that the Second Amendment protects an individual’s “right to bear arms.” *See* Sanford Levinson, *The Embarrassing Second Amendment*, 99 YALE L.J. 637 (1989); L.A. Powe, Jr., *Guns, Words, and Constitutional Interpretation*, 38 WM. & MARY L. REV. 1311 (1997).

132. The ACLU supports gun control and subscribes to the “collective rights” interpretation of the Second Amendment. *See* Levinson, *supra* note 132, at 644.

civil rights issues, but “hypocritically” refuse to support the “right to bear arms.”

V. CONCLUSION: ARE GUN VIOLENCE PREVENTION ADVOCATES OUTGUNNED?

Groups that support gun control face several difficult hurdles in challenging the NRA. It is important to note, initially, that the NRA has several enormous institutional advantages. While the Brady Campaign has a staff of about 50 people—respectable for a progressive lobby group—the NRA has a considerably larger staff housed in their Fairfax, Virginia office building.¹³³ The NRA has also been in existence for over a century, while most gun control groups only began to organize in the 1970s.¹³⁴ Moreover, the NRA has several advantages attached to shooting sports and activities that the gun control organizations have not discovered how to counter; shooting alleys, gun shows, gun stores, etc. are natural organizing opportunities that do not exist on the other side of the issue.

These factors are compounded because, according to Wolpert, “self-interest strongly influences public preferences on gun control.”

[G]un owners are consistently and significantly less supportive than non-gun owners of banning handguns, banning assault weapons, and imposing a seven-day waiting period for the purchase of firearms. Symbolic factors are only sporadically significant, and when significant, their influence is far outweighed by self-interested considerations.¹³⁵

While few people who favor gun control have a self-interest in working for the cause, every gun owner who opposes gun control has an interest in protecting his or her own weapon. People respond to the threats that they perceive.¹³⁶ It is harder for many supporters of gun control to believe that they could be shot than it is for opponents to believe that their guns will be taken away. Million Mom March founder Donna Dees-Thomases proposes that “[u]nless a person is actually caught in the crossfire, I think most of us in America are oblivious to the gun-violence epidemic. For some reason we tend to live our lives believing that gun violence will never affect us. . .”¹³⁷ Ultimately, an interest in preventing gun violence means working to

133. See DAVIDSON, *supra* note 8, at 29.

134. See DAVIDSON, *supra* note 8, at 169-76.

135. Wolpert & Gimpel, *supra* note 91, at 242-43.

136. Slovic, *Facts and Fears*, *supra* note 60, at 181.

137. DEES-THOMASES, *supra* note 101, at xvii-iii.

help other people, while opposing gun control is about protecting yourself.

This creates great intensity on the anti-control side. Davidson compares the NRA's brand of gun ownership to a "great religion."¹³⁸ Dees-Thomases describes being harassed by "gun nuts...those borderline psychopathic people with some kind of sick Freudian relationship with their guns."¹³⁹ The NRA's rhetorical strategies have built up this cult of gun ownership by making guns the lynchpin of their supporters' political and cultural identity—guns are fundamental to these peoples' political, cultural and social lives. Proponents of gun control have had difficulty generating the same intensity among their supporters, perhaps from fear of looking "nutty." Dees-Thomases writes her memoir as an extended pregnancy metaphor—coming up with the idea for the Million Mom March was "gestation," the initial steps were the "first trimester," etc. The group has slogans such as "Because I Said So," recruited Rosie O'Donnell as their celebrity-spokesperson, assigned "misbehaving" politicians to a "time out chair," and has written letters to congressmen's mothers.¹⁴⁰ These communication strategies are hardly the NRA's "Armageddon appeals." Hyperbolic appeals that read "Charlton Heston is coming to kill your children" would seem hysterical and grossly implausible.

Proponents of gun control have also found it difficult to introduce an alternative frame into the debate. Gun control's effect on violent crime is the primary policy question, despite some scholars' insistence that "crime is not the problem."¹⁴¹ Viewing the issue through a public health, national security, human rights, or domestic violence frame has helped to gather coalition partners (one of the federal gun laws is the provision of the Violence Against Women Act that prohibits misdemeanor domestic abusers from owning a gun),¹⁴² but has not fundamentally changed the debate. Haider-Markel and Joslyn state that the "temporal stability of opinion on gun issues and the noted intensity of policy positions suggest considerable resistance to political frames."¹⁴³ The NRA has succeeded in framing the gun issue, and its massive financial and organizational advantages mean that pro-control groups can expect

138. DAVIDSON, *supra* note 8, at 44 ("The first gun at puberty is the bar mitzvah of the rural WASP.").

139. DEES-THOMASES, *supra* note 101, at 20-21.

140. To the mother of Congressman Ken Lucas (R-KY): "Dear Ms. Lucas, Do you know what Kenny has been up to? Those Columbine kids got their guns because of a loophole in the Brady Law. Kenny had the chance to vote to close that loophole on June 18. But did he? No. He voted against closing it! How many more kids are going to die before Kenny does something about this? I hope you have a good talking to your boy." *Id.* at 41.

141. See, e.g., ZIMRING, *supra* note 3; SPITZER, *supra* note 1, at 43.

142. See 18 U.S.C. § 922(d)(9).

143. Haider-Markel & Joslyn, *supra* note 39, at 523.

difficulty in changing the paradigm in which gun violence is considered.

The irrationalities that alter how people think about risk are perfectly suited to the NRA's arguments against gun control. The combination of control, dread, trust, and rights rhetoric works in combination with the NRA's simple message that "guns don't kill people, people kill people." Gun ownership is built up as a vehicle to counter the perceptions created by these heuristics. The birthright of a gun grants you control over those who scare, mislead, and seek to abuse you. When brought together with the NRA's other advantages in size, wealth, and industrial support, this effective message seduces people into opposition against sensible gun control.