

## Legally Speaking



### **The Quality of Liberty**

*By Karen L. MacNutt,  
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People who respect the law, but who do not have much practical experience with the courts, sometimes trust to the fairness of judges more than they should. That is not to say all judges are bad. Many are very good. Some, however, act on personal, or popular, prejudice rather than on the law. Given that most judges are skilled lawyers, if they want to bend the facts to get a particular result, they know how to do it. If they want to twist words, they know how to do that also.

The Second Amendment has been the victim of prejudice by some judges. “Prejudice” is defined as a judgement or opinion formed without knowledge or examination of the facts. “Preju-

dice” is the correct term because no impartial, scientific study has ever been able to link any of the gun laws in this country to a reduction in crime. There are only two studies that were conducted using a neutral, scientific method of research on guns, crime and gun laws: the 1981 Wright-Rossi study out of the University of Massachusetts commissioned for the Department of Justice; and, the 2003 study conducted for the Center of Disease Control by Stephen B. Thacker. Both concluded there was insufficient evidence to show gun laws had any effect on crime.

Because judges spend most of their time with people who disobey the law or use guns to break the law, they tend to forget that most people are not criminals. They fail to see that a vast majority of guns are never used in crime.

The purpose of our Constitution and Bill of Rights was to give Americans a government of law where all people would be treated fairly and in accordance with certain rights. In a pure democracy, 51% of the people could vote to kill the other 49%. That is not the way our government was intended to function.

Much of the Bill of Rights restricts the government’s use of its police powers, even when public safety might be impacted. The greater good has always come from recognizing those rights. The moments we are most ashamed of in our history are when we ignored them. Many of the rights guaran-

teed in the Bill of Rights are the ones that tend to be trampled on in the name of public safety.

For example, it is clear that words can provoke a riot. Just look at what happened in Baltimore. The 1st Amendment protects speech. That religious zealots can engage in acts that cause fear in the general community, is also obvious. Religion is also protected by the 1st Amendment.

Some might argue that individuals should give up their rights of privacy for the public good. If police could randomly search at will people on the street or homes in high crime areas for guns or drugs, would that not help law enforcement? Such programs have been suggested in our major cities. The 4th and 5th Amendments were intended to prevent such actions. Some would say a little torture is oka for a good cause. That is a violation of the 5th Amendment. Others would excuse holding people indefinitely without trial and without bail if those people were labeled “terrorists” or are suspected of disloyalty as happened to Japanese-Americans during the Second World War. The 5th and 8th Amendments call such programs into question. There is always a “valid” public safety excuse for ignoring peoples’ rights. When individual rights are ignored, however, the outcome is seldom for the public good. The Bill of Rights was necessary to “take off the table” those solutions to public safety problems that impacted fundamental freedoms. History

has taught that the evils caused by the impingement of those rights are greater than the evils they were supposed to cure. One of our fundamental freedoms is the right to have arms for self-defense (2nd Amendment). It is fundamental because it helps secure the other rights of the people.

Someone who is dependent on another for his or her safety, is not truly free. The dependent person is less likely to criticize those who are willing to use violence. Such people may be afraid to testify against gang members or public corruption in court. They can be made to fear leaving their homes or even voting. When the person who is supposed to be protecting you is abusing you, who do you turn to?

The Second Amendment, by securing your right to have a gun, gives you the means to protect your other rights from those who would use threats or violence to intimidate you into giving up those rights. Throughout Europe, where the right of honest people to own a handgun is limited, there have been increasing attacks on individuals who do things that some radical Muslims disapprove of. One of the more graphic examples was the 2004 murder and attempted beheading of Theodor van Gogh, a Dutch film director and free speech advocate. The attack took place during daylight on a public street in Amsterdam. The murderer, Mohammed Bouyeri, objected to one of van Gogh's films because it criticized Islam's treatment of women. Attacks by religious fanatics against those who they believe write, say, or paint things they disapprove of have increased worldwide. It

is a deliberate attempt to muzzle all dissenting thought. The U.S. is not immune to such attacks. Some of those same fanatical groups have used the internet to encourage attacks on service men and women in England, Canada and the United States.

The Second Amendment is an inconvenient right for many "liberal" judges. They squirm to explain it into oblivion. They like to say that the 2nd Amendment is not like the 1st Amendment and is not entitled to the same protections. The Supreme Court, in the case of *District of Columbia v. Heller*, thought the two amendments should be treated the same. Indeed, without the Second Amendment, your rights under the first may be dangerous to exercise.

Recently the Massachusetts Supreme Court, ruled on the state's "may issue" gun licensing system. Massachusetts gives the police almost unlimited authority to issue or not issue permits based upon the chief of police's determination that a person is "suitable." The Court was asked to rule that the burden of proving someone unsuitable (to deny the license) should be on the police. In Massachusetts, you must have a license to any kind of gun in your home. The state court held that because licensing is not an absolute prohibition on gun ownership, that state's licensing system did not burden the Constitutional right. The undefined suitability standard was upheld and the applicant was given the burden of proving he or she is suitable if the license is denied. The court ignored the fact that a refusal to grant the license leads to an absolute prohibition

for the citizen to have a handgun in his or her home.

The dictionary defines "right" as something due to someone as a matter of law. If something is due to you as a matter of law, then the person who wishes to deprive you of that thing should be the one who has to prove that you should be denied the right. The state court treated the "right" to have a handgun as if it were a "privilege," that is a special advantage given to a particular class or chosen group of people.

The court saw no problem in placing the burden of proving suitability on the license applicant. One has to wonder how much thought they really gave to the question.

Take my friend Joe, a disabled veteran. His license was revoked because the police said he had been committed to a mental institution based on a report by the FBI which relied on Joe's name being on a list (without any details) from the VA, Pay and Benefit branch (not the medical branch). Joe is certain that he has never been committed to an institution for mental illness. How does he prove that fact if the government does not have to tell him which institution they claim he was admitted to or what court held the competency hearing? How does he prove he was never committed if the government takes the position that a statement that a record does not exist, is not proof that particular set of facts did not occur?

While Massachusetts has defined the "right" to have a handgun for self-defense into oblivion, some other courts say one has the right to defend one's life with a

handgun in the home, but not outside.

At home you can shut the door, engage the locks, put bars on the windows, electrify your eight foot fence with razor wire, and have a pack of hungry Rottweilers roam your property. If the need for a handgun for self-defense is “most acute” in the home, it is only because your home is your last refuge, there is no safer place for you to retreat to.

It is when you are outside your home, that you are most vulnerable to attack. From the citizens’ point of view, there is no difference between being killed in your home, in front of your home, at work, or in the supermarket parking lot. You are still dead.

Murder is the leading cause of workplace deaths for women. It is the second leading cause for men. Most of us have to work for a living. It is not a luxury. Businesses such as gas stations, family-owned drug stores, taxi cabs, parking lots, all-night convenience stores and the like, frequently have only one or two people working at a time. They are vulnerable to violent assault by those who want money and are willing to maim or kill to get it. Judges who work in buildings protected by armed guards who require that all who enter go through metal detectors should feel a tinge of hypocrisy when they tell the rest of us that the right to have arms to defend ourselves ends at our front door.

There is a clear link between the First Amendment and the Second. After slavery was abolished, violence against the recently freed slaves was intended to prevent them from enjoying the rights of citizens, including the right of

free speech and the right to vote. The violence was sometimes condoned, excused or otherwise tolerated by those holding the public trust. In 1868 Sen. Thaddeus Stevens argued for passage of the 14th Amendment to the United States Constitution to guarantee freed slaves all the rights of citizenship, including the right to be armed. He said that if you disarm a community, you rob it of the right to defend life and you “take away the inalienable right of defending liberty.” “Liberty,” is defined as not being in captivity. A person barricaded in their home out of fear of violence is just as much a captive as the person in jail or in slavery.

A hundred years later, civil rights workers were murdered in Alabama for voicing their opinion that all Americans should be treated equally. Of the 40 people named on the Montgomery, Alabama, memorial to those who were murdered between 1954 and 1968 for supporting civil rights, only two were killed in their homes.

Since the adoption by many states of “shall issue” firearms licensing systems, the rate of homicide in the United States has declined. Some would argue that there is a cause and effect relationship. The more guns held by good people, the less crime. Indeed it would seem to be so as in places such as Chicago and Washington, D.C. that instituted almost total bans on private gun ownership, violence against individuals increased after the bans. One thing cannot be disputed. People feel safer when they have access to handguns for self-defense and know how to use them.

Although violence due to crime has declined, there has been a

worldwide increase in violence based upon religious beliefs emanating from the Middle East. The leaders of those religious extremists have used the internet to call for the killing of all Jews, Christians, and Muslims who don’t agree with the first group, all people who criticize the first group, and gays among others. Not only have they expressed those views, they have acted on them. Women are high on the list of groups to suffer from such violence. A 2015 UN report on human rights stated that between 2009 and 2014 there were attacks on girls’ schools by people who did not believe women should be educated in at least 70 different countries.

The attack on the New York World Trade Center, the Boston Marathon Bombing, and the recent attack on a provocative Texas Art show are all graphic examples of why we should not think violent terrorist attacks only happen in other countries. American malls, museums, theaters and other places where people congregate are just as open to attack by home grown extremists.

The NRA was criticized when, in response to attacks on schools by people with mental health problems, it stated that the only thing that will stop a bad guy with a gun is a good guy with a gun. When religious fanatics attacked the Canadian Parliament last year, tragedy was avoided when one good man, the ceremonial sergeant at arms, killed the bad guys with his handgun. In Texas, a convention of cartoonists were saved from death by fanatics by one good man with a handgun.

What good is the 1st Amendment, if you can be killed for hav-

ing a view that differs from the most violent movement in the world? What good is the right to vote or the right to travel if the only place you can be safe is behind the barricaded doors of your own home? If you cannot defend your life in public, if you are confined to your home out of fear for your life, you have lost your liberty.

In 2013 an off-duty British soldier was attacked and beheaded on a London street by someone who thought the brutal murder would somehow please God. In 2014 one Canadian soldier standing as an honor guard at a war memorial was gunned down for a similar reason while another was intentionally run over by a car. The zealots then attacked the Canadian Parliament building. The attack was terminated by Kevin Vickers, the Sargent at Arms of Parliament. Vickers, who opens each session bearing a ceremonial mace and sword, also carries a handgun. He killed the intruder just outside the Parliament's caucus rooms.

In 2014, Musab Mohammed Masmari was arrested for trying to burn down a gay nightclub. He reportedly told the FBI that homosexuals "should be exterminated" based upon his religious beliefs. In November of 2014 there was an unprovoked ax attack on two New York police officers by an individual who embraced the same radical philosophy. In February of 2015 an American blogger known for speaking out against religious extremism, was hacked to death while traveling abroad. A group calling itself Islamic State Hacking Division, posted the names, addresses and photographs of 100 American servicemen calling for "our brothers in

America" to attack them.

The leaders of those religious extremists have called for all Jews, Christians, and Muslims who don't agree with the first group, all people who criticize the first group, gays, soldiers, and police officers to be killed. Not only have they expressed those views, they have acted on them.

So what good is the 1st Amendment, if you can be killed for having a view that differs from the most violent movement in the world? If the only place you can be safe is behind the barricade doors of your own home, you have lost your liberty, your right to not be confined.

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## **Texas Student**

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suspension of a student's or a registered student organization's use of campus facilities," the complaint explains.

Apparently, school policy requires that if a student or registered student organization wants to have an activity on campus, they request permission from the Student Leadership and Activities Office one month in advance "to ensure that administrators can circulate the request to four different departments for approval."

But the complaint alleges that when Sanders had contacted Erikah Brown, coordinator of Student Clubs and Activities in late January, "Brown informed (Sanders) that she could engage in recruitment in the area around the Blinn College Student Center and did not need any permission

as long as she did not use a table."

Jeff Tilley, Blinn College director of marketing and communications, provided the following statement via e-mail:

"We have reviewed media reports indicating that a student has filed suit against Blinn College. At this time, we have not been served. Although we have not been served and thus cannot comment on the specific lawsuit, we have begun the process of investigating and reviewing the claims and allegations.

"Blinn College recognizes and supports the right of our students to engage in freedom of speech and to peaceably assemble. These rights are recognized in our college catalog and in our board policies... These policies recognize that the College will not discriminate against students based on their viewpoint or the opinions that they wish to express.

"As permitted by law, Blinn College is allowed to implement what the courts call "time, place and manner" regulations to ensure that the operations of the college, including classes in session, are not disrupted. We must ensure that access in and out of our facilities is not disturbed and that our facilities remain safe and orderly for all.

"In light of the lawsuit that has been filed, we certainly will take this opportunity to evaluate our policies as they are written and as they are applied by faculty and staff who work on campus and interact with students. We will evaluate whether any misunderstandings may have occurred. Because of our commitment to our students and to the law, we are confident that we will be able to resolve any concerns that have been raised."

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