



The public radio show about law and American life

## Justice Talking Radio Transcript

**The Right to Bear Arms: A Surprising Split Among Liberals—Air Date: 6/18/07**

*A recent federal appeals court ruling that invalidated a Washington, D.C. ban on gun ownership raises important issues over the meaning of the Second Amendment. Throughout history, legal theorists have split on whether the Second Amendment protects the rights of individuals to own guns or only the right to establish armed militias. But now some liberals are unexpectedly supporting the view that individuals have a constitutional right to own and use guns, and that gun control laws may be unconstitutional. This week on Justice Talking: Is the left giving new ammunition to the NRA?*

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MARGOT ADLER: This is Justice Talking, the public radio show about law and American life. I'm Margot Adler. On today's show: the Second Amendment.

For as long as Americans have had the right to bear arms we've argued over how much to regulate them. In March opponents to gun control won the latest legal battle: a federal appeals court overturned a decades-old Washington, D.C. law banning handguns. But more significant is what the ruling said. It was the first time a federal appeals court struck down a gun law saying it violated the Second Amendment, essentially interpreting it as an individual right to own a gun rather than a collective one of the state. The district could appeal the decision to the U.S. Supreme Court. Later in the program we debate the meaning of the Second Amendment. But first we wanted to find out how the D.C. gun law has affected its residents.

Shelly Parker joins me now. She's one of the plaintiffs in the case who fought for her right to own a gun. Welcome.

SHELLY PARKER: Thank you.

MARGOT ADLER: Why did you want the law overturned?

SHELLY PARKER: Well it was mostly concern for my safety while I was living on Capitol Hill. I had gone through all the due diligence you're supposed to. I had bars on my house. I had an alarm system. I had a dog. And I had an individual who was a drug dealer on my block who came and tried to tear the bars off my house one evening. And he was about 7 foot 5 and stated to me that he was going to kill me so that was my motivation for wanting a gun.

MARGOT ADLER: So when that happened you went to the police? What did you do?

SHELLY PARKER: Oh yes. Oh I went to the police. There was a trial. It was, you know, the whole nine yards and stuff. But the problem was that he was not locked up until probably about a month before the trial for unrelated things. But he was still right there on the street. His friends were threatening me as I was walking my dog. I had my front window broke in, the back window on my car. It was not a good time.

MARGOT ADLER: And what did the police suggest that you do?

SHELLY PARKER: Ah. I had a policeman on the incident, on the night that my car window was broken in and I said, I asked him: What more can I do? I have all the things I'm supposed to. He stated to me, you know, maybe you should get a gun. And I kind of laughed. I was like, uh, no. And, you know, he suggested that, you know, the police would look the other way considering the circumstances and stuff. But I'm not willing to, you know, bet my life on that one.

MARGOT ADLER: So when you thought about the D.C. gun law, what were your problems with the law? What did it say that you really thought was problematic?

SHELLY PARKER: That I was not allowed to own one in the confines of my home. I wasn't looking to have one in my car. I didn't want one, you know, to tote on my hip as I was walking down the street. It's just I, inside my home, am not allowed to protect myself.

MARGOT ADLER: Do you think that, you say that you've never had a gun, you've never owned a gun--

SHELLY PARKER: Never. Nope.

MARGOT ADLER: If you had been able to, once the police had said yes, get a gun, would you have bought one?

SHELLY PARKER: I might have. Yes. The possibility is very high. At that time I would have probably definitely considered doing it.

MARGOT ADLER: Now under the gun ban if you owned a gun illegally you'd be arrested.

SHELLY PARKER: Yes.

MARGOT ADLER: And you might argue that that's a pretty straightforward way to eliminate gun violence and to get illegal guns out of cities. But--

SHELLY PARKER: Absolutely. Yes, in theory it works. Yes, in theory that should work brilliantly.

MARGOT ADLER: But you don't think it does?

SHELLY PARKER: Uh, it hasn't in D.C. at all, because criminals don't pay attention to laws because that's why they're criminals.

MARGOT ADLER: Washington, D.C. used to be called the nation's murder capitol.

SHELLY PARKER: Right.

MARGOT ADLER: Are you concerned that once the gun ban is lifted that you'll see an increase in violence?

SHELLY PARKER: I don't believe that it's going to get any worse than it already is. Um, I don't think there's going to be a rash of people that are going to run out and get guns. And I'm sure the D.C. laws are going to be such that they're going to at least tell us that we need to have them registered, possibly training, things like that are going to have to go with it. And, once again, it's the law abiding citizens in this city that don't have guns, not the criminals, and the law abiding citizens, even if they do go out and get guns, will probably still do all the things that the law says, like get it registered, and, you know, get training.

MARGOT ADLER: What brought you to this decision you said was what happened in your own neighborhood.

SHELLY PARKER: Right.

MARGOT ADLER: You ultimately moved out of that neighborhood.

SHELLY PARKER: Yes, I did.

MARGOT ADLER: Was that a difficult decision?

SHELLY PARKER: Um, I did like my house where I was. I enjoyed my neighbors. I loved Capitol Hill. Um, but after that whole incident I wasn't a 100 percent comfortable in my own home. I didn't know what was coming next.

MARGOT ADLER: With your involvement in this high-profile case, what's been the reaction from your friends and family?

SHELLY PARKER: Um, my family has been mostly supportive. My friends have all been supportive.

MARGOT ADLER: I read in one article that your sister who has two kids said she would be wary of having them visit you if there was a gun in the house.

SHELLY PARKER: She said that she would want to at least know that I was keeping it safely someplace, that if her children were wandering around my house they wouldn't have access to it.

MARGOT ADLER: What was your reaction when she said that?

SHELLY PARKER: At first I laughed and I was like, oh come now, you can't be serious. And then, you know, she better explained what she meant by that, and so, like, she would just want to assure that if I were to purchase a gun and bring it into my home that she would want to know it was locked up and not something that her children could just wander on to, you know, in a drawer or something down in the living room.

MARGOT ADLER: Well it's something that I actually hear from a lot of parents.

SHELLY PARKER: Oh sure, absolutely. And she's got every right to think about that. I mean if I'm going to buy a gun and keep it in my house and I keep it on the dining room table, yeah, she needs to be concerned about her children.

MARGOT ADLER: Shelly Parker is a Washington, D.C. resident and a software designer. She was one of the plaintiffs in a case which successfully overturned the city's gun ban. Thank you so much for being on Justice Talking.

SHELLY PARKER: You're welcome.

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MARGOT ADLER: At the end of the show we'll hear a different perspective from another D.C. resident, a mother who became a gun control advocate after losing two children in a double shooting. She says the only thing guns lead to is violence.

UNIDENTIFIED FEMALE: If these guns are allowed into the homes--I mean, I have mothers whose children have been killed in their homes and right now today they don't even know who killed their child. But a gun was brought into the home.

MARGOT ADLER: But it's gun violence outside the home that seems to grip the nation, most recently the shootings at Virginia Tech. What's the impact of a tragedy like this on gun regulation? We put that question to Robert Spitzer, author of "The Politics of Gun Control."

ROBERT SPITZER: Well, the Virginia Tech incident was of course horrifying to the American public. But its impact--it's interesting to note, I think--was really quite different than the impact of the last really large scale--

MARGOT ADLER: Of Columbine.

ROBERT SPITZER: Yeah, exactly. A similarly heinous shooting, the Columbine shooting from 1999. In that year and the following year, the Columbine shooting not only shocked the country in the way that the Virginia Tech shooting did but it also pushed the gun issue really into national politics. And the 2000 election between Al Gore and George W. Bush was an election where both candidates talked quite a bit about the gun issue. And even George W. Bush, who is an arch opponent of gun laws, or stronger gun laws, as he has been throughout his presidency, embraced some limited stronger gun measures, sensing that that was the tide in 2000 because of Columbine. Congress tried to enact tougher gun laws in 1999 and the effort fell short. But Gore lost the election and the Democrats said to themselves: This gun issue, it hurt us. And the Republicans in power--President Bush, his first attorney general John Ashcroft--were among the strongest opponents of gun law, and as a consequence the gun issue was kind of dropped from the American political consciousness. And so when the Virginia Tech shooting happened earlier this year you saw again much debate, but very, very little of it actually talking about toughening gun laws or raising some of the gun issues that actually were suggested by the Virginia Tech shooting.

MARGOT ADLER: One of the big issues that came up out of Virginia Tech was the mentally ill being able to purchase guns. It's clear that there is a problem here. What are states doing? And what is the federal government doing? And do you think anything will change as a result of what happened?

ROBERT SPITZER: This is one area where there is prospect for change. And the shooting at Virginia Tech revealed an ongoing problem with the Brady Law. This was a law that was passed back in 1993 that imposed a waiting period and background checks for people wanting to purchase a handgun. It was a nationwide rule. It was a rule that some states had but many states did not. And one of the provisions of the Brady Law said that when you do the background check you're looking of course to see if the person has a criminal background and you don't want those people to have--won't be able to buy guns, but also to see if they have a history of mental problems. But the problem there is that many states, in fact the majority of states, either a) did not systematically collect such data or b) didn't compile it in a coherent, useful way and then send it on to the national database so that that information could then be assessed if a person walked into a gun shop to buy a gun. And in the case of Virginia, Virginia did collect mental health data. But that data was defined in such a way that the student who shot up the Virginia campus--even though he was judged by a judge to have mental problems--his name did not make it to the list that Virginia compiled, which in turn was, you know, sent on--that day sent on to Washington. So that's why there was no red flag when he legally bought two handguns at two different times in the state of Virginia. So Virginia immediately has worked to try and improve their data processing and other states have too. And I think this is one area where we will see better data collection and more effective reporting of that data to try and prevent future people of this nature from being able to buy a handgun.

MARGOT ADLER: Could you tell us how gun laws vary from state to state?

ROBERT SPITZER: Well gun laws do vary from state to state. They vary widely, and it's a consequence of federalism, interestingly enough, that old dusty concept that doesn't seem to

have much to do with modern politics when it has a lot to do with modern politics. I'd compare the laws of Virginia, for example, with the laws of my home state of New York. In Virginia it's pretty easy to buy a gun, just about any kind of gun. The only real restriction in Virginia is that if you want to buy a handgun you're limited to buying one handgun per month. And indeed that's why the Virginia Tech shooter went into a store, bought one handgun, waited 30 days, and then bought a second handgun. And had the Virginia Tech shooter lived in New York he almost certainly could not have obtained the guns that he obtained in Virginia. And the reason why is because in New York State if you want to buy a handgun you need to of course get a permit first. But in order to get that permit you're not only fingerprinted and they do, and you have to pay several hundred dollars in fees, but they do an extensive background check. That is they talk to your neighbors. In the case of a student they would certainly talk to your professors and fellow classmates. And such an investigation would have immediately revealed that this young man had a great deal of problems and it is virtually inconceivable that he could have made the handgun purchases that he did make in Virginia had he lived in New York State. So I think that that underscores pretty dramatically how widely state laws vary and therefore how widely the application of gun control occurs in America.

MARGOT ADLER: Thank you so much, Bob.

ROBERT SPITZER: My pleasure.

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MARGOT ADLER: Robert Spitzer is a political science professor at the State University of New York at Cortland. Coming up on Justice Talking: more of my conversation with Robert Spitzer. We talk about guns, the gun industry, and what kinds of guns are most often used in crimes. And later we'll hear a debate on the Second Amendment: why that right is in the Constitution and what it really means.

UNIDENTIFIED MALE: What the militia was in 1776 is not relevant. What is relevant is that the militia is a defined term in the Constitution and it is what Congress decides it will be. It can change over time and today it is surely the National Guard System because that is what Congress has determined.

MARGOT ADLER: Guns and the right to bear arms. Stay with us.

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MARGOT ADLER: This is Justice Talking. I'm Margot Adler. Today we're talking about guns: the laws concerning guns, the politics of gun control, and gun ownership in America. About a third of American households have guns and there are double the number of hunting rifles and shotguns than there are handguns. We'll hear a debate later on about the constitutional right to bear arms. But now let's continue my conversation with Robert Spitzer, a political science professor at the State University of New York at Cortland. I asked him what kinds of guns are used most often in crimes.

ROBERT SPITZER: The weapon of choice for criminals is handguns. About 80 percent of all gun crimes are committed with handguns. For obvious reasons a criminal would prefer, and does prefer, a handgun because it's portable, it's easy to conceal. It's pretty easy to use. And it's not a coincidence, I would say, that the student who shot and killed over 30 people on the Virginia Tech campus earlier this year purchased two handguns. He was able to carry those guns concealed on his person, walk a considerable distance across a big flat campus to go to the two buildings that he entered and commit the mayhem that he did commit.

MARGOT ADLER: I've read a lot about semi-automatic weapons, automatic weapons, assault rifles. Tell me the differences between them.

ROBERT SPITZER: Well a semi-automatic weapon is a weapon that fires with each pull of the trigger.

MARGOT ADLER: So one bullet per pull?

ROBERT SPITZER: That's exactly right. So as fast as you can move your finger on the trigger, that's how fast you can fire a bullet. The typical hunting rifle tends to have a semi-automatic action to it although not all of them do. So do so-called assault weapons. A fully automatic weapon is one where you depress the trigger, hold the trigger out, and a stream of bullet issues forth at a very high rate. Now the ownership of fully automatic weapons is strictly regulated in the United States and has been since 1934 as a matter of fact.

MARGOT ADLER: But even when the assault weapons ban was in place I gather that manufacturers figured out ways around those laws. How did they do that?

ROBERT SPITZER: Well, the assault weapons ban banned the possession of certain named types of assault weapons, like an Uzi for example, or an AK47, and the number of banned weapons was about 18 or 19, plus there were several dozen copy-cat models that were banned. But some of these companies were able to get around the ban by producing their currently then illegal gun under the assault weapons ban by modifying some of the characteristics of the gun. And the federal assault weapons ban law identified an assault weapon as one that possessed two or more particular characteristics. For example, they had very short barrels, less than 20 inches. The banned assault weapons also were made from various plastic materials that made the guns lighter weight. They included pistol grips or thumb-hole stocks that allowed the shooter to lay down a field of fire, what's called "spray fire." They also had fittings for flash suppressors, grenade launchers, bayonet fittings, things like that. So by eliminating some of those traits or making the barrel longer, you could get around the law, and a then-illegal gun could in other words be manufactured legally and sold legally.

MARGOT ADLER: And now that that ban basically is no longer in place, I could go into any gun store and buy one of these assault weapons?

ROBERT SPITZER: Yes, you can. That is correct. As long as it fires in semi-automatic mode, you absolutely can.

MARGOT ADLER: And I could take it home?

ROBERT SPITZER: Yes, you can.

MARGOT ADLER: And how long--I guess it would depend on the state how long that process would be, right? In some states I'd actually go through a big check and in some cases I wouldn't.

ROBERT SPITZER: There would be a background check, but normally a background check occurs pretty quickly. I believe there are seven states today that do ban the sale of assault weapons. New York State is one; California is another; Maryland; and I think three other states. But in most of the states in the union, over 40, you could indeed, can indeed buy an assault weapon and take it home.

MARGOT ADLER: So let's say I want to buy a gun. Where do I go? What's the process?

ROBERT SPITZER: Well, there are, I suppose, two types of stores. There are stores that specialize in guns, small mom-and-pop operations, smaller stores--although there are pretty big stores in states like Virginia and elsewhere. There are also large chain-type stores and pawnshops. Places like that will sell guns as well. Indeed one of the two stores where the Virginia Tech shooter bought one of his handguns was a pawnshop. And he actually made the gun purchase over the internet and had the gun delivered by mail to the pawnshop and that's where he actually affected the purchase. So those are the kinds of stores that people typically go to to buy a gun.

MARGOT ADLER: So if I went on the internet, how could anybody know who I was?

ROBERT SPITZER: Well the link in the chain for an internet purchase is that the purchase is not supposed to be mailed directly to you. It has to be mailed to a licensed gun dealer somewhere. And then you have to go to that gun dealer and present your identification, have the background check done, look at the drivers license, etc. and then complete the sale in that way.

MARGOT ADLER: One of the big issues with buying guns is gun shows. Why are there fewer restrictions if I buy a gun there?

ROBERT SPITZER: Here's the thing: If you are a federally licensed dealer, gun dealer, you have what they call an "FFL," you have a license to sell guns and you then must conduct a background check for somebody coming in to buy a gun. And that would apply normally to a gun show. However, at a gun show, non-licensed dealers can sell guns as well as licensed dealers. So if I have, let's say, 20 guns in my house and I decide I want to go to the local gun show to sell those guns and I'm just an ordinary citizen, I'm not a commercial dealer, I can sell those guns without a federal license and I'm not obliged to conduct a background check of prospective purchasers because that's how the laws are written.

MARGOT ADLER: Robert Spitzer is a political science professor at the State University of New York at Cortland. Thank you for talking with us.

ROBERT SPITZER: My pleasure.

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MARGOT ADLER: The Second Amendment, which gets touted by proponents of gun rights as well as those in favor of gun control, states the following: "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." It's not very long, but those words get interpreted in many different ways.

Joining me to get at the heart of the Second Amendment and why it gets interpreted differently are Carl Bogus and Sandy Levinson. Carl Bogus is a law professor at Roger Williams University and has written several articles on the Second Amendment. Sandy Levinson is a professor at Texas Law School. His most recent book is "Our Undemocratic Constitution: Where the Constitution Goes Wrong (and How We the People Can Correct It)." Welcome both of you.

SANDY LEVINSON: Thank you.

CARL BOGUS: Thank you.

MARGOT ADLER: Carl, in the late 18th century when the Constitution was written, every single male American was a member of the militia. The militia was the citizens who brought their own guns. A lot has changed since then, but doesn't that argue that the meaning of the Second Amendment is that individuals have the right to own guns?

CARL BOGUS: Well, this is perhaps the most important aspect of the whole debate. The fact of the matter is that after the war was over the founders had a passionate disagreement about what the militia should henceforth consist of. Some, Hamilton--Alexander Hamilton being an example, argued that the militia should be a select militia, really a professional force of highly trained soldiers. Others, and James Madison is an example, believed in a universal militia, which is what you just described, where every adult white male would be enrolled. And there was a debate about that but they settled that debate at the Constitutional Convention in Philadelphia. They agreed that this would be left up to Congress as a policy matter. And they defined the militia in Article I, Section 8 of the Constitution as that that would be organized by Congress. They gave Congress for the first time the lion's share of power over the militia and the power to organize it as Congress saw fit. So what the militia was in 1776 is not relevant. What is relevant is that the militia is a defined term in the Constitution and it is what Congress decides it will be. It can change over time and today it is surely the National Guard system because that is what Congress has determined.

MARGOT ADLER: I'll let Sandy respond very briefly and then we'll go to the 21st century.

SANDY LEVINSON: I think his analysis of what the Second Amendment meant suggests that in a certain sense the Second Amendment was a shell game, that it really didn't change anything even though ordinary Americans might have read the Second Amendment as guaranteeing a

fairly robust right of American citizens to have arms. That's really not the case, because if you do very careful parsing it leaves everything up in the hands of Congress. I don't think this is an impossible reading of the Second Amendment. I simply don't think that that was a widely shared understanding at the time, even if that was Alexander Hamilton's view of it, for example. And as time goes by, after 1791, which is when the amendment actually was added, I think it has a dynamic history in the same way that the First Amendment has a dynamic history. Our conception in the 21st century of the First Amendment would shock a lot of people in 1791. And for most of us, including, I'm sure, Carl and myself, most of the listeners of this program, we much prefer a 21st-century First Amendment to the First Amendment that the framers thought that they were putting in the Constitution.

MARGOT ADLER: Carl?

CARL BOGUS: The shell game argument, I don't think that James Madison intended the Second Amendment to be a shell game. I do think he intended it to mean something and it was this: He realized, and his constituents in Virginia impressed upon him, the fact that they thought that in giving the national government the lion's share of power over the militia that they gave the North the power to subvert the slave system by disarming the militia, because the Constitution's main body said that Congress could arm the militia. The argument had been made by Patrick Henry and George Mason and other anti-federalists, that Congress could disarm the militia and leave the South vulnerable to slave revolts. And so the Second Amendment, I believe, was written by Madison to assure his constituents that if Congress didn't arm the militia the states and the people themselves could arm the militia. Nevertheless, it was the government-regulated militia.

MARGOT ADLER: Now some say that the interpretation of the amendment is dependent on how the punctuation influences one's reading of it. So there are three commas and how does a comma or three of them influence what the Second Amendment means? Let's start with you Carl.

CARL BOGUS: Well, what is relevant and what is critical is the preface: "A well-regulated Militia, being necessary to the security of a free State," which takes us to the second comma. And the individual rights advocates tend to diminish or even ignore that portion and the collective rights advocates believe that it is important to describing what the purpose of this right is all about.

MARGOT ADLER: So Sandy, if everybody has the right to bear arms, what's all this militia stuff in the beginning of the Second Amendment?

SANDY LEVINSON: Well, the way I would translate the militia is that it's really referring to all law-abiding citizens. I think "free State" is not referring to a government but rather a state of freedom as opposed to a state of tyranny or a tyrannical state. Then you have "well-regulated," and that could mean well-regulated by the state. Or in the 18th century I think there were a lot of people who thought in terms of political theory they wouldn't necessarily be controlled by the state in a way that we think of today.

MARGOT ADLER: Sandy Levinson is a professor at Texas Law School. I'm also talking with Carl Bogus, a law professor at Roger Williams University. We're talking about guns and the Second Amendment on Justice Talking. Carl, the D.C. Court of Appeals overturned Washington, D.C.'s gun ban. What effect do you believe this will have on other gun laws in America?

CARL BOGUS: Well, um, since it's only the D.C. Circuit it won't have effect on laws outside of the District of Columbia. Happily, nine other United States Courts of Appeals have held that the Second Amendment grants a collective right only.

MARGOT ADLER: So you don't think there'll be a ripple effect from this?

CARL BOGUS: No, the question is whether the U.S. Supreme Court will take an appeal from this case, whether the district will seek to appeal, and if it does, whether the Supreme Court will take an appeal.

MARGOT ADLER: Some have argued that even if the Second Amendment establishes an individual right to own guns, the D.C. law should still be upheld as constitutional because the district has a legitimate government purpose, that of reducing gun violence. Sandy, what's your take on that?

SANDY LEVINSON: I think it is a legitimate purpose. I think there are all sorts of reasons to put limitations on exactly who can get a gun. I think it boils down to whether the legitimate fear of gun violence can justify prohibiting everybody from owning a gun. And I think that's a matter for genuine debate on which people of good faith can differ. But it does seem to me that it would--that the circuit court's reading of the Second Amendment at that point was plausible, that law-abiding people who have given no reason for you to fear their particular use of a firearm, that they could have good reason. And ironically enough, precisely because there is so much violence in the district, they could have good reason for wanting a gun simply as an ultimate means of self-defense. And I think it's a serious argument.

MARGOT ADLER: In 1992 Chief Justice Warren Burger, a Republican appointed by Richard Nixon, said the Second Amendment does not guarantee the right to have firearms at all, that the individual rights view was "one of the greatest pieces of fraud--I repeat the word fraud," he said, "on the American public by special interest groups that I've ever seen in my lifetime." We clearly have a very different Supreme Court, a very different time. What's changed? Start with you Carl.

CARL BOGUS: Well, there's been a conservative revolution and we have a far more conservative judiciary that we even had under conservative Warren Burger. But nothing about the history of the Second Amendment has changed. Nobody has discovered any, anything new in historical research. The debate remains essentially the same as it did then.

MARGOT ADLER: Sandy?

SANDY LEVINSON: I think Carl is right in talking about how much more conservative the court has gotten, but I also think that it's kind of amusing that liberals would look to Warren Burger, who was not a very distinguished member of the Supreme Court, and who certainly didn't know much about American history as the last word in the Second Amendment. I think what's changed is that a lot of people have actually studied the Second Amendment much more than was the case up to 1992.

MARGOT ADLER: Sandy Levinson is a professor at Texas Law School. Carl Bogus is a law professor at Roger Williams University. Thank you both for coming on Justice Talking.

SANDY LEVINSON: Thank you.

CARL BOGUS: Thank you for having me.

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MARGOT ADLER: Coming up on Justice Talking, we'll hear from a mother from Washington, D.C. Her son and her daughter were killed in a shooting. She supports the D.C. gun ban.

UNIDENTIFIED FEMALE: It just seemed like every other day somebody was being killed that I knew, a family member, friends of friends.

MARGOT ADLER: Guns and America--stay with us.

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MARGOT ADLER: This is Justice Talking, where we make the connection between law and American life. I'm Margot Adler. Today we're talking about guns and why the issue of guns and gun control is so political. Gun control has been long considered one of the nastiest political wedge issues between Republicans and Democrats. However it's no longer as partisan as it once was. Adam Allington has this report.

ADAM ALLINGTON: Leading up to elections, Americans are used to seeing ads like this NRA-sponsored spot for Arkansas Governor Mike Beebe.

MIKE BEEBE: I'm a sportsman. I love to hunt and fish. And I'm a strong supporter of the Second Amendment. Arkansas is not New York or Washington. We don't need any more gun laws. We simply need to enforce the ones we've got.

ADAM ALLINGTON: Sound familiar? Well, it would were it not for the fact that Beebe is a Democrat hitting a traditionally Republican talking point on gun control. If that sounds strange, here's Democratic National Committee Chairman Howard Dean.

HOWARD DEAN: Gun control is not a national issue. It's a state issue. Some states have big problems with guns. Other states don't. So let's not have a one-size-fits-all piece of legislation.

ADAM ALLINGTON: Steve Jardine, a Democratic political advisor says that's exactly the kind of position Democrats need to take if they want to keep their majority in Congress and win elections in the pro-gun heartland.

STEVE JARDINE: We are a gun culture. We just are. And I think that's part of a dilemma that Democrats faced when they were finding themselves saying they essentially were anti-gun. What's happened in the last few years is that there are a lot of Democrats out there at the national level that said we don't want to hamstring all of our candidates and say you have to take a, you know, a pro-gun control position.

ADAM ALLINGTON: Jardine points to Democratic campaigns like Senator Jon Tester's in Montana or Ben Nelson in Nebraska as the reason they won back congressional majorities in 2006. In those cases the candidates ran campaign ads playing up their pro-hunting, pro-gun credentials. Whether guns was the issue that actually carried those elections, however, isn't exactly clear. Paul Helmke is president of the Brady Campaign to Prevent Gun Violence. He says supporting sensible gun control legislation will never hurt a candidate.

PAUL HELMKE: Somehow the consultants and some of the pundits have bought into the NRA-sponsored myth that it's something to run away from. Even when you look at 2006, I looked at races around the country including state assembly races, and I don't know anybody who lost because they supported gun-control measures.

ADAM ALLINGTON: Still, with a near 50/50 partisan split in Congress, voting majorities are hard to come by. And most Democrats aren't exactly eager to claim an issue as divisive as guns. Glen Campbell is a staffer for Missouri Congressman Russ Carnahan. He says regardless of what the current climate on gun control may be, the issue is not likely to move forward under a Republican majority.

GLEN CAMPBELL: Whether there's legislation going forward or not, there's still probably better control in regard to these kind of gun issues by having Democratic majorities versus non-Democratic majorities.

ADAM ALLINGTON: Campbell says the feeling on Capitol Hill is that politicians are having enough trouble building coalitions on issues like the Iraq war or immigration for gun control to gain much traction. At least that's one theory. The other is that most politicians are just straight scared of the National Rifle Association.

UNIDENTIFIED FEMALE: They are a staunchly political and committed voting block and they will vote on a single issue.

ADAM ALLINGTON: Ashley Varner is a spokeswoman for the NRA.

ASHLEY VARNER: When we sit down to talk to a state legislator, a governor, or a congressman in D.C., that legislator knows that when they are meeting with one representative of the NRA they are meeting with quite possibly tens or hundreds of thousands of members in their particular district or state.

ADAM ALLINGTON: The NRA has always claimed that its real power comes from its ability to make a difference in close elections. In the 2006 elections, the NRA's political victory fund leveraged tens of millions of dollars into 276 congressional campaigns including a record 58 Democrats. Some political experts claim that the NRA's star is actually fading. With the assault weapons ban expiring in 2004 and a new breed of pro-hunting, pro-conservation Democrat on the rise, the NRA just doesn't have the bully pulpit it once did. Still, the group's four million plus voting members are a powerful political force. Guys like Robert Johnston from St. Louis: Johnston has a "conceal and carry" permit and says when he's comparing candidates he always begins with their positions on gun control.

ROBERT JOHNSTON: I'm not the average voter. I'm not tied to a political party. I'm a conservative person. I was raised that way. If both of them were supportive of the Second Amendment we have a level playing field. Now let's get to the other issues. And I'll work my way up that way.

ADAM ALLINGTON: Lobbyist both for and against gun control claim the issue is neither a Republican nor Democratic cause. In fact, two of the leading Republican presidential candidates, Rudy Giuliani and Mitt Romney, both endorsed the 1994 assault weapons ban. For NPR's Justice Talking, I'm Adam Allington in St. Louis.

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MARGOT ADLER: We just heard how gun control gets caught up in politics, but we'll now hear the story of a city councilman in Idaho who found himself making national headlines for a gun law he proposed in his community. Last year the city of Greenleaf, Idaho adopted an ordinance which encouraged its citizens to keep a gun at home in case of emergency. It received national attention, including comic barbs from the likes of Jay Leno and "The Daily Show." Steven Jett is the city councilman from Greenleaf who wrote the ordinance. Welcome to the show.

STEVEN JETT: Thank you.

MARGOT ADLER: What was your intent behind the law?

STEVEN JETT: Well, when we originally proposed the ordinance we were looking at the Kennesaw, Georgia experience and also their law.

MARGOT ADLER: Now this was a law which made it mandatory to have a gun.

STEVEN JETT: Exactly. Yes.

MARGOT ADLER: Right.

STEVEN JETT: It was a mandatory law and right in the law it acknowledges that it's not an enforceable law. And so after talking with the city attorney, we felt that a mandatory law was

not what we wanted to do. So we took out that, the wording, and just put in a recommendation that if you are not prohibited from and choose to exercise that Second Amendment right, do so, and obtain appropriate training. Also in the ordinance we earmarked franchise fees for furnishing training, such as hunter's ed courses. Coming up in a couple of weeks, we have a concealed weapons permit class. The city is making city hall available for that training to happen.

MARGOT ADLER: I read one article that your thinking was that guns would protect the city being overrun by refugees from natural disasters like Hurricane Katrina. Was that, uh--

STEVEN JETT: [LAUGHS] No! That was dreamt up by a totally unethical AP reporter or editor and I have the email to prove that. The majority of this ordinance deals with civil emergencies. It mandates the city develop an emergency operations plan and have a lot of things in place. And one of those things is a receipt of refugees plan. So if anybody is forced out of their home down in the valley--we're a little bit higher than they are--we're working on a plan to receive them into the city, not shoot at them at city limits.

MARGOT ADLER: So is it that if everybody owned a gun somehow everybody would be safer?

STEVEN JETT: I myself tend to believe that the statistics show that gun ownership helps to reduce crime. And I believe that the Kennesaw experience backs that up. You have to understand that Greenleaf is a very small town and we do not have a police force. We have to contract with a city about five miles away for police protection.

MARGOT ADLER: Now Greenleaf doesn't have a lot of crime, is that right?

STEVEN JETT: No, it doesn't. No. With the--unfortunately in the last couple of weeks there have been news reports of about 40 burglaries out here in the Greenleaf area. However, there is approximately--now this is a real rough guess--200 to 250 acres that have big "for sale" signs on them right now for growth, for developments, development property. So if Greenleaf and this area is going to grow, we're not trying to stop that, but we're trying to be a little bit more prepared for it. There will be a lag time before we're able to get our own police force.

MARGOT ADLER: I've read that 80 percent of the adults in Greenleaf have guns.

STEVEN JETT: That's a pretty good estimate I think.

MARGOT ADLER: Is owning a gun just a normal part of life in Greenleaf?

STEVEN JETT: I think so.

MARGOT ADLER: Uh hmm.

STEVEN JETT: I think so.

MARGOT ADLER: And do you think the ordinance will really change anything?

STEVEN JETT: No. Not for the citizens. But you know, when we, I laugh at the amount of press that this got. And the more I think about it, the more people that know that we are pro-Second Amendment, I'm happy. I just hope that the criminals read the paper.

MARGOT ADLER: And how would you describe the reaction of the town to all the attention? This is a very small city. It's got about 900 residents. What have they said to you?

STEVEN JETT: Overwhelming support. Now the pastor of the Greenleaf Church and I had really good conversations and he had a lot of good input, and we tweaked some of the wording. He was a very valuable contributor to writing this bill up.

MARGOT ADLER: Greenleaf is named after a Quaker poet, an abolitionist.

STEVEN JETT: Yes.

MARGOT ADLER: John Greenleaf Whittier.

STEVEN JETT: Correct.

MARGOT ADLER: Quakers are known for advocating pacifism and nonviolence. Did this history come up when you were thinking about the ordinance and encouraging gun ownership?

STEVEN JETT: That specific factor was one of the reasons why we did not elect to go with the mandatory gun ownership law. That would fly in the face of the whole heritage of the town and I didn't want to do that. As I talked to the pastor, we did talk about the fact that the town is predominately Quaker, and we added some words in there that the pastor came up with, which I really like now: "Prepare to care."

MARGOT ADLER: Hmm.

STEVEN JETT: So, yeah, the Greenleaf background of the town did factor into the conversations.

MARGOT ADLER: Steven Jett is a city councilman from Greenleaf, Idaho. Thank you for coming on Justice Talking.

STEVEN JETT: Thanks, Margot, I appreciate it.

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MARGOT ADLER: We started our program today by talking with a Washington, D.C., woman who was a plaintiff in the case that overturned D.C.'s gun ban and believes she has the right to own a gun. We thought we would end the show by hearing from another D.C. resident who has a different perspective. Shanda Smith supports the D.C. gun ban. In 1993 she lost her son and

daughter when they were shot and killed while riding in a car. Smith is also with Mothers on the Move Spiritually, a group aimed at strengthening families. Welcome.

SHANDA SMITH: Hello.

MARGOT ADLER: Can you tell us a little bit about the incident that led to the deaths of your son and daughter? They were both shot on the way to a church Christmas party.

SHANDA SMITH: Yes ma'am. My son, Rodney, was 19, just came home for college break. My daughter, Valante, she was in 9th grade, she was 14 years old, a 9th grade student at Hart Junior High here in the District of Columbia. My kids were in their brother's car and it was two other children in the back seat of the car. But how the police do their business, nobody never knew it was two kids in the backseat except for me and maybe the police department. So nobody never knew there was a witness. They shot into the driver's side of the car and killed my son. And those bullets--they were in a 280Z--same bullets that struck him, struck her, too.

MARGOT ADLER: Hmm.

SHANDA SMITH: And they just died instantly on the spot, which I was right there and I couldn't tell it was my kids.

MARGOT ADLER: How did this horrible tragedy affect you?

SHANDA SMITH: Well, at first I didn't want to be bothered with nobody, no other teenager or anything, because like I said, at the time they were 19 and 14 when this happened. But then I took two looks at my babies and I knew one day they would be teenagers, so I kind of turned it around and started talking to other families. And which I've had other crimes committed against our family, other deaths in our family. Then it just seemed like every other day somebody was being killed that I knew, a family member, friends of friends. I meet a lot of people on the Metro, you know, if you're talking about it and you try to pass out literature, that they'll confide in you and let you know, yes, I've lost a loved one, too.

MARGOT ADLER: So their deaths led you to your strong opposition against people owning guns?

SHANDA SMITH: Yes ma'am. In strengthening the families really we don't want no more violence. But if these guns are allowed into the homes, I mean, I have mothers whose children have been killed in the homes and right now today they don't even know who killed their child. But a gun was brought into the home. In the case of my children, and part of the testimony, the young men, they'd been running around since 1985. The kids got killed in '93. In '98 they made an arrest. Listening to the testimony from the prosecution and the police department, these guys had been running guns from Virginia, North Carolina, and Pennsylvania. With all of the murders in the families that I know here in the District of Columbia, all those guns come from across the line. I'm going to start with Virginia because Virginia is the closest. Some law-abiding citizen, and it has to be someone who has an I.D. that lives in Virginia, can purchase a gun. Well, you can just come across the bridge and sell the gun.

MARGOT ADLER: How do you respond to D.C. residents who say if I was at home and there was a burglar or I was attacked, I could protect myself if I had a gun?

SHANDA SMITH: Nine times out of 10 here in the district, if somebody breaks into your home, it's because they've already been in your home or you done left the door, the window, or something open.

MARGOT ADLER: Another argument against the gun ban that I've heard is that criminals don't follow the law. They're going to use guns; why shouldn't I be able to have a gun to protect myself? What's your reaction to that argument?

SHANDA SMITH: Well, I look at it like this. First of all, if they were to put a gun shop in the District of Columbia, where would you put it at? And would it be accessible? Would you have one in the Southeast for the residents that live over there that nightly they hear gun shots all the time? They want to protect themselves, too. Or would you put it in Northwest, and I'm targeted as soon as I come up Northwest to buy a gun? It just doesn't make sense.

MARGOT ADLER: The D.C. gun ban hasn't been lifted yet because the court decision might be appealed. But if and when the gun ban is overturned and D.C. residents are able to own guns, what do you think is going to happen?

SHANDA SMITH: Well, what I'm going to think is going to happen--and I'm going to look at it both ways--is the community activists, I've tried to motivate the community, motivate the mothers to do something positive. I mean, we're trying to protect our other children. I have a 17- and 15-year-old at home. I don't want nothing to happen to them being the first two were killed mistakenly anyway. So I've done what I've had to do in raising these kids even though I've lost two kids. These other families feel the same way. We still have children. So we don't want the guns there for someone to make the mistake like they made against my son and daughter. Because they thought this person was what? Someone else. Or they thought this person was going to rob you? You thought you look like you was trying to climb through my window. I mean these are the excuses that you're going to use if these people are allowed, the residents here in the District of Columbia.

MARGOT ADLER: Shanda Smith is a Washington, D.C. resident. In 1993 she lost her son and daughter to gun violence. Smith is also with the group Mothers on the Move Spiritually. Thank you for joining us here on Justice Talking.

SHANDA SMITH: Thank you, too.

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MARGOT ADLER: That's it for our show today. More about gun laws and the Second Amendment can be found on our website, [justicetalking.org](http://justicetalking.org). While you're there let us know what you think. You can also check out our blog and you can also podcast our show. Thank you all for joining me. I hope you'll tune in next week. I'm Margot Adler.