

**56. Excerpt from Social Issue Portfolio: “Guns and Domestic Violence—
Focusing Statement, Personal Essay, Policy Memo, Adaptive Challenges”**

“Guns and Domestic Violence: A Preventable Homicide”

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Table of Contents

Focusing Statement	3
Personal Essay	4
Book Review	7
Annotated Bibliography	11
Interview with a Practitioner	24
Policy Memo	32
Adaptive Challenges	38

(Please Note: The contents and page numbers above correspond to the original project. What follows are excerpts from that project, so the actual contents and page numbers do not correspond with what is listed above.)

Focusing Statement

In the United States, when domestic violence escalates into intimate partner homicide, firearms, used in almost two-thirds of all domestic homicides, are the weapon of choice. The victims of firearm induced intimate partner homicide are overwhelmingly female - for every woman using a firearm to kill an intimate partner in self-defense, 83 women are killed. As a proportion of all female homicides, the FBI estimates that at least a third is perpetrated by an intimate partner. However, despite these daunting figures, intimate partner homicide with a firearm is perhaps the most preventable form of homicide. Since the perpetrator is known, the homicide is often preceded by incidences of increased violence; not surprisingly, the two greatest risk factors for firearm-related intimate partner homicide are a history of domestic violence and the presence of a firearm within the home. Recognizing this fact, the 1990's marked significant gains in national legislation regulating and restricting firearm purchases for perpetrators of domestic violence.

Despite this trend of increasing legislation, however, firearms remain the weapon of choice for intimate partner homicides, and continue to be used by individuals with a history of domestic abuse. This unsettling fact urges the question: *How are individuals with a history of domestic violence able to obtain firearms?*

The answer to this question is complex. Within this portfolio, however, I focus on current government practice - specifically the attempt to deny firearm purchases to domestic violence perpetrators through the National Instant Criminal Background Check System, and the attempt to remove firearms from violent homes through laws prohibiting persons under restraining orders from gun possession - in an effort to understand why existing policies fail to protect the victims

of firearm induced domestic homicide, and how these policies can be improved.

Personal Essay

I can remember sitting at the dinner table and perusing the daily *Cape Argus* when I read the headline, “Passersby beg for her life - but woman shot dead.” There was a large picture of Shamiema Ismail in her wedding dress staring at me from the front-page, and as I read the article I learned that the shooter was a previous intimate partner that had been stalking Shamiema to such an extent that she **had** taken out a protection order against him - a protection order that was never served. I was so infuriated by this incident that it was all I could talk about for the rest of the evening, and the next day I was calling everyone from the Detective-Inspector in charge of the case to the courthouse where she had taken out the protection order in an attempt to find the answers to why this occurred.

This began my interest in exploring the link between firearms and domestic violence, and for the rest of my internship in South Africa I focused largely on this topic.

The learning curve was steep, and the more I discovered the more I came to realize the severity and complexity of the problem. Not only were there no easy solutions, but it was also extremely difficult to even pin down the precise problem. There was an enormous quantity of illegal guns circulating, there was a pervasive culture of domestic violence, there was a dominant gang presence, and so forth; therefore, the larger question of domestic homicide with a firearm could not be addressed without first addressing these contributing components. It was one of those cases where the more questions you asked, the more questions you discovered; however, there was one persistent question that continually came to my mind: “how does the problem of

firearms in domestic relationships differ in the United States?” With this question burning in the back of my mind, I decided to deal directly with US policy.

Prior to my research, thinking about gun legislation in the United States would lead me to almost exclusively contemplate the National Rifle Association (NRA). As one of the most powerful lobbying groups in Washington, the organization seems to dominate the national and even the international perspective on firearms (for example, the South African Gun Association receives funding from the NRA). In many respects because of this conception of the power of the NRA, I regarded significant changes to firearm legislation as close to impossible. In my mind, the aftermath of Columbine High School provided overwhelming support for this claim. I can remember the zealous national outcry that followed the shooting. There were the demands of citizens for immediate changes to gun laws and the promises of legislators to respond with legislation. A few months after Columbine however, following several NRA ad campaigns, there was only a dead bill sitting in Congress. The apparent collapse of such a strong national desire for change diminished my belief that reforms in US gun policy were possible. This impression did not change until I began to conduct my research.

While the 1990's held many disappointments for gun control proponents, including the failure of post-Columbine bills directed at raising the minimum handgun purchasing age and making background checks mandatory at gun shows, there was one front that achieved significant progress - guns within domestic relationships. In 1994 the Brady Law was implemented which required background checks and waiting periods for all guns purchased from federally licensed firearm dealers (approximately 50% of all gun sales); however, the waiting period requirement

was later repealed after strong NRA lobbying. In 1994, with the Violent Crime Act, persons subject to a court restraining order were prohibited from possessing firearms. Finally, in 1996, the Lautenberg Amendment prohibited persons convicted of domestic violence misdemeanors from possessing firearms. However, while important checks on individual's rights to purchase firearms have been made law at the federal level, the implementation of these laws, which often times occurs at the state level, has at times proven less successful. These implementation problems often arise from a lack of consistent policies between states and the federal government, as well as from a lack of shared information.

A perfect example of an implementation problem can be seen in the case of Simon Gonzales. Gonzales, as a result of an extended history of violent behavior, had a protection order taken out against him in Colorado by his ex-wife - given the standing protection order, Gonzales was ineligible for any type of firearm purchase. However, at the time, Colorado only tracked protection orders within the Colorado Bureau of Investigation (CBI), yet only required that gun purchasers be subject to background checks against the National Instant Criminal Background Check System (NICS). Therefore, on June 22, 1999, Gonzales was easily able to purchase a 9mm handgun and 30 rounds of ammunition from a licensed dealer. Later that evening all three of Gonzales' children, Leslie, Kathryn and Rebecca, were shot dead with this same gun. The NICS system failed to discover Gonzales' protection order because Colorado, in an attempt to save money, did not record protection orders in the NICS system. Therefore, the Gonzales case highlights the importance of cooperation between the state and federal level, specifically the importance of full NICS cooperation.

Throughout my research of firearm induced domestic homicides in the United States I

recognized many similarities to the problems in South Africa. In both countries, domestic homicide with a firearm is painfully complex and extends beyond the explanation of incomplete legislation and faulty implementation; however, in both countries this lack of legislation and implementation is also very real, and it is therefore the starting point for change.

Policy Recommendations Memo

To: Senator Barbara Mikulski

From: Patrick Ashby

Date: December 4, 2003

Re: How to reduce firearm induced domestic homicide

Executive Summary

The incidence of domestic homicide, which is most often committed with a firearm, can be reduced by taking two easy measures to prevent abusers from possessing firearms:

1) Increasing state participation in the National Instant Criminal Background Check System (NICS) by creating additional funding and incentive grants; 2) Increasing the number of states that prevent persons subject to restraining orders from possessing firearms by creating incentive grants. Both the NICS and restraining order laws enjoy widespread political and public support; furthermore, the use of incentive grants to encourage state participation ensures compliance.

Easy Gun Access for Domestic Violence Perpetrators Results in Preventable Homicides

As a percentage of all domestic violence, intimate partner homicide with a firearm is relatively small; however, because it is possible to identify individuals with a history of domestic violence,

and it is possible to deny these persons access to legal firearm possession, it is also perhaps the most preventable of all homicides. But, despite warning signs that can help prevent intimate partner homicide, information is currently underutilized and results in unnecessarily easy gun access for perpetrators of domestic violence.

Firearms in Domestic Violence are Deadly - Approximately four people are killed by intimate partners in the United States every day; of these homicides, roughly 60 percent are committed with a firearm. Additionally, it is 12 times more likely that a firearm associated domestic assault will end in death than a non firearm- associated domestic assault.

Risk Factors for Domestic Homicide – There are two major risk factors for domestic homicide:

1. The risk of domestic homicide increases 14.6 times if there is prior domestic violence in the home
2. The risk of domestic homicide increases 7.2 times if a firearm is present in the home

When both risk factors are combined, there is an additional increase in the likelihood of firearm-associated domestic homicide.

Lack of State Response to Warnings – The federal government has responded to the warning signs of domestic homicide by prohibiting persons subject to a court restraining order from possessing a firearm. However, enforcement usually occurs at the state level and often follows state policies; therefore, state laws are the most important, but only 23 states have restraining order laws. Furthermore, since a purchaser will likely drive several hours to obtain a gun,

restraining order laws are often undermined by uneven firearm policies in bordering states.

Lack of NICS Participation – The federal government enforces restraining order laws primarily through the National Instant Criminal Background Check System (NICS). All federally licensed gun dealers - who account for over 50% of all gun sales - must conduct background checks on every firearm sale. If a state enters a restraining order into the system, a firearm sale is denied to that person anywhere; however, the effectiveness of the NICS depends solely upon state participation. Although 43 states are now entering protective orders, many are not fully participating; some states have only five entries.

Measures for Success

The most effective policy solution would satisfy the following criteria:

- 1) Increase NICS Participation - Greater state participation within the NICS system would lead to a decrease in firearm sales to perpetrators of domestic violence. Participation should be measured by both the number of states and the extent of the entries.
- 2) Increase the Number of States with Restraining Order Laws - Since states are the primary enforcers of restraining orders, increasing the amount of states that deny persons under restraining orders from possessing firearms would reduce sales to perpetrators of domestic violence. Additionally, since only state laws prohibit firearm purchases from persons under temporary restraining orders - given the heated nature of domestic disputes, this immediate period following a report is arguable the most volatile - increased state laws would further reduce these potentially dangerous sales.
- 3) Decrease Domestic Homicide Rate - Steps to decrease firearm purchases by domestic violence perpetrators are only a means to the end - decreasing the domestic homicide rate.

Policy Alternatives

People die every day from intimate partner homicide; therefore, because there appears to be several areas where governmental intervention could be beneficial, the following policy alternatives should be considered:

- 1) Increase Funding for NICS - Currently, there is limited federal money available to assist states in updating their databases; with more federal funding, more states would become full participants in the NICS program. Funding could be secured by charging gun purchasers a small background check fee. Alternatively, the appropriations committee could allocate block grants¹.
- 2) Utilize Incentive Grants² to Increase NICS Participation – The appropriations committee can entice states to increase their NICS participation by making involvement a condition for receiving current criminal justice grants; specifically large grants, such as those involved in combating drugs.
- 3) Utilize Incentive Grants to Encourage Restraining Order Laws – The appropriations committee can entice states without restraining order laws to pass legislation by making it a condition for receiving significant criminal justice grants.
- 4) Mandate NICS Participation – Congress could pass legislation that mandates a certain level of NICS compliance from every state.
- 5) Mandate Restraining Order Laws – Congress could pass legislation that mandates all states pass restraining order laws.

Recommendation

¹ A block grant is an appropriated amount of money given to the states that must be used for a specific purpose.

The best way to satisfy the criteria for a successful policy, while minimizing potentially negative outcomes, requires a multi-pronged approach: 1) increase NICS funding through block grants; 2) encourage NICS participation through incentive grants; 3) encourage the passage of state restraining order laws through incentive grants. This is the best approach for the following reasons:

1) Most Politically Feasible – Despite the contentious nature of gun laws, legislation over the past decade directed specifically at preventing domestic violence perpetrators from obtaining guns has had wide support. The NRA has supported the creation of the NICS and has acknowledged the importance of restraining order laws. It is extremely difficult to argue against the prevention of domestic violence, and domestic violence is a cause that easily mobilizes people - 89% of US adults support these laws. By increasing the funding available for states to become full NICS participants, there is less room for states to complain that compliance is financially burdensome; there is almost no cost for states to pass protection order laws. Furthermore, funding through block grants avoids the potential dispute with the NRA over background check fees, which they could argue place an inappropriate financial barrier between a person's ability to obtain a firearm. Utilizing incentive grants, as opposed to mandates, to encourage state participation also avoids political problems. States have previously invoked "States' Rights" to oppose portions of the Brady Act that were mandated; additionally, there are questions of the constitutionality for a mandate of this kind, which could result in numerous court battles. Conditions for receiving federal funds, however, have been ruled constitutional by the Supreme Court.

2) Most Potential Impact – By avoiding many areas of potential confrontation, this multi-

² An incentive grant encourages a state to pursue a specific policy by tying their participation to their ability to receive funding for other projects.

pronged approach will achieve the criteria for an effective policy solution. As indicated by several other federal initiatives that utilize incentive grants - such as the requirement for state drinking ages of 21 to receive national highway funds - NICS participation and states with restraining order laws will likely increase almost as significantly as with the passage of a federal mandate; while a successful federal mandate would assure complete participation, the risk of political opposition makes incentive grants have a far more certain impact. The precise effect increased NICS participation will have upon the domestic homicide rate is unknown, but since its inception it has prevented 563,000 firearm sales. States that have passed protection order laws have been shown to prevent two to three domestic homicides with a firearm per year; there is also strong evidence that states passing protection order laws decrease all forms of firearm related homicide as well as non-firearm related domestic homicide.

Adaptive Challenges

When asked, most people support laws that prevent domestic violence perpetrators from having access to guns; additionally, it is impossible to find a person that supports firearm induced domestic homicide. With this in mind, it is important to ask: why is domestic homicide with a firearm so prevalent? To answer this question, it is crucial to step back from the specific issue of firearm induced domestic homicide in order to examine domestic violence and gun violence separately. As separate issues, there is no longer a single, shared belief as to what is right and wrong. It is in this controversy of opinion, and from the attempt to shift the values and attitudes of society towards these two issues, that the most significant impact upon firearm related domestic homicides will come.

It would seem that domestic violence is as clear-cut an issue as firearm induced domestic homicide, however, this is not true. While the past two decades have shown an increase in the economic independence of women and an increase in the availability of shelters - both factors that increase a woman's chances for leaving an abusive relationship - domestic violence still remains at epidemic levels in the United States. One of the largest hurdles is that domestic violence continues to be the most underreported of all crimes, and it will continue to be underreported until domestic violence shifts from an individual's problem to a community's problem. This requires a change in attitude and habits. For example, domestic violence calls can not be considered a "waste of time" for police officers, and can not be treated by public defenders as simply the case "that will be dropped next week." Additionally, society beyond the criminal justice system must play a role. For example, songs such as Prodigy's "Smack My Bitch Up" that convey indifference or glorification of domestic violence cannot be accepted. More than any other contemporary American issue, guns and gun control spur heated debate and polarize opinions. On one side, there is the argument that guns are designed to kill and therefore infringe upon a person's ability to live safely. On the other side, there is the argument that guns do not kill, people kill; therefore, restricting guns not only infringes upon a person's constitutional rights, but also infringes upon a person's ability to protect themselves. It is ironic that both sides of the gun argument cite the issue of safety; however, if this is a true concern for both parties, it is crucial that they extend beyond their absolutist attitudes and values in order to compromise together towards this goal - as it now stands much legislation that divides pro-gun and anti-gun groups ends in deadlock. Again, attitudes and expectations of popular culture must also shift. Guns and gun violence are glorified in Hollywood, on TV and in music videos, which leads to a community that is desensitized and unresponsive to such violence.

Shifting society's values, expectations, attitudes and habits is not easy, especially when dealing with major issues such as guns and domestic violence. It is a slow process, but a continual one. Every time there is a Columbine or D.C. sniper incident, an educational initiative or a large ad campaign, attitudes change - gun violence and domestic violence becomes less and less acceptable, and society is willing to give up more to ensure that the violence stops. It is at this point that relocated society values begin to result in a decrease in firearm related domestic violence homicides.