

Tim LeMaster

State Senate Testimony

SB 348

<https://olis.oregonlegislature.gov/liz/2023R1/Measures/Overview/SB348>

I am a retired Marine Corps Major and member of the National African American Gun Association.

I oppose this bill.

First and foremost. The government has no ability to proactively manage or restrict the firearms of violent perpetrators. Gun laws are only effective on those who obey the law. These restrictions are a literal government sponsored firepower advantage for violent perpetrators.

1. Government gun policies in America are rooted in racism. Individuals most in need of firearms for personal self-defense live in high crime areas. These areas are disproportionately in underserved minority communities.

The below link is an NPR story that details how the first major gun legislation by Governor Reagan and the Republicans came about due to the Black Panthers. This attempt on gun restrictions on part of the California Republicans against the Black community actually gave rise to the NRA becoming the political powerhouse it is today. The transcript will be attached.

<https://www.wnycstudios.org/podcasts/radiolabmoreperfect/episodes/gun-show>

Gun laws were used to prevent Dr. Martin Luther King from protecting himself.

https://www.huffpost.com/entry/mlk-and-his-guns_b_810132

2. The state and local governments are failing to enforce existing laws for all manner of threats to public safety to include criminal gun possession under current laws. Hundreds of charged persons have been released back into the communities, their violations wholly dismissed, due to you, the state legislature failing to adequately provide resources to the legal system.

How about the state legislature prioritize enforcing existing laws and fix a broken system before beginning making a new population of prospective criminals and stripping away the right to choose one's means of self-defense at a time when the government can't effectively protect the citizenry.

<https://abcnews.go.com/US/wireStory/oregon-public-defender-shortage-300-cases-dismissed-93871068>

3. State and federal courts have found merit that Measure 114, which this bill works to replace, may violate our Constitutional rights. You have sworn an oath to uphold the Constitution. You are bound by that oath to allow the issue to be adjudicated before trying to unethically re-introduce it in an effort to undermine the current litigation.

These court cases should be adjudicated before elected officials waste time recycling questionable law without knowing and understanding the final disposition. Those legislators know full well this will be immediately challenged wasting resources re-litigating this policy at a time when, as referenced above, potential criminals are being released due to lack of legal system resources.

4. The Oregon state government is not effectively investing and charging the thousands of illegal gun purchase attempts at this time. The information for this is pending. On pages 37 and 38 on the pending statute requires the OSP to report on any investigations, charges, and disposition of the charges for illegal attempted gun purchases identified through the FICS.

The 2022 report does not detail this statutorily required information. I have reached out to the OSP regarding this and have yet to get an answer why it is not in the annual report. According to the OSP report more than 2,300 illegal firearm transfer attempts were made in 2022.

https://www.oregon.gov/osp/Docs/2022%20FICS%20Unit%20Overview_Final.pdf

BREAKDOWN OF OREGON FIREARMS TRANSACTIONS DENIED BY CATEGORY						
CATEGORY	DENIED DETAIL	2018	2019	2020	2021	2022
MENTAL HEALTH	MENTAL HEALTH ADJUDICATION ²	79	92	145	96	121
WANTED PERSON	OUTSTANDING FELONY WARRANT	25	23	47	18	33
	FUGITIVE FROM JUSTICE	78	76	49	16	8
PROHIBITED PERSON	CONVICTED OF A FELONY	518	787	1483	955	968
	PRE-TRIAL FOR A FELONY CRIME	54	54	94	93	43
	ASSAULT IV CONVICTION WITHIN LAST 4 YEARS	55	75	79	56	41
	RECKLESS ENDANGERING CONVICTION WITHIN LAST 4 YEARS	77	62	123	86	67
	MENACING CONVICTION WITHIN LAST 4 YEARS	23	12	32	32	21
	STRANGULATION CONVICTION WITHIN LAST 4 YEARS	1	2	9	4	5
	INTIMIDATION II CONVICTION WITHIN LAST 4 YEARS	0	0	1	0	0
	RESTRAINING ORDER	60	43	76	49	36
	PROBATION	416	421	618	349	267
	CONVICTED WITHIN LAST 4YRS FELONY WHILE A JUVENILE	26	36	25	27	35
	DISHONORABLE DISCHARGE FROM ARMED FORCES	3	1	4	7	7
	NON-U.S. CITIZEN	54	52	98	59	70
	CONVICTED DOMESTIC ABUSE**	320	320	472	357	517
	CONVICTED FELON/INSANITY	0	0	0	0	0
	CONVICTED MISD/INSANITY	0	0	0	0	0
	OTHER STATES MISD DISQUALIFIER	12	11	13	4	7
	UNLAWFUL USER CONTROLLED SUBSTANCE	97	148	89	35	40
	FEDERAL FLAG (IFFS)	2	1	0	0	0
	NICS INDEX	16	15	0	0	0
	OREGON COURT FIREARM PROHIBITION	6	22	28	33	21
	CONVICTED STALKING*	1	13	8	6	5
	TOTAL DENIED TRANSACTIONS	1748	2064	3216	2112	2316
STOLEN GUN	FIREARM HIT AGAINST POSSIBLE STOLEN GUN	165	168	130	122	165

What is the investigatory and prosecution status of last year's illegal attempts? The legislation should present and address this as an emergency priority before imposing new laws.

If history is any indicator the state is failing to pursue prosecuting unlawful purchase attempts. The Department of Justice's Office of Inspector General issued a 2016 report that only 254 cases were CONSIDERED for prosecution out of more than half a million false statements made for failed gun purchases.

<https://oig.justice.gov/reports/2016/a1632.pdf#page=1>

As mentioned before, this is a case where the state should prioritize ensuring the enforcement of current laws directly impacting this issue before justifying a need for more laws.

5. The CDC, under President Obama, commissioned a study on firearm related violence. In that study they estimated that 500,000 to 3,000,000 self-defense uses of firearms take place annually. A defensive use of a firearm can range from anything from simply presenting a weapon to repel a perpetrator to actually firing the weapon.

<https://nap.nationalacademies.org/read/18319/chapter/3>

A handwritten signature in black ink that reads "Tim LeMaster". The signature is written in a cursive, flowing style with a long horizontal stroke at the end.

Thank you,

Tim LeMaster



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MLK and His Guns

Most people think Martin Luther King would be the last person to own a gun. Yet in the mid-1950s, as the civil rights movement heated up, King kept firearms for self-protection.

By Adam Winkler, Contributor

Professor of Law, UCLA

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One issue on everyone's mind this Martin Luther King Jr. day was gun control. King's calls for resolving our differences through peaceful nonviolence are especially poignant after Jared Loughner gunned down six people and wounded several others in Tucson. Amid the clamor for new gun laws, its appropriate to remember King's complicated history with guns.

Most people think King would be the last person to own a gun. Yet in the mid-1950s, as the civil rights movement heated up, King kept firearms for self-protection. In fact, he even applied for a permit to carry a concealed weapon.

A recipient of constant death threats, King had armed supporters take turns guarding his home and family. He had good reason to fear that the Klan in Alabama was targeting him for assassination.

William Worthy, a journalist who covered the Southern Christian Leadership Conference, reported that once, during a visit to King's



and, to his surprise, almost sat on a loaded gun. Glenn Smiley, an adviser to King, described King's home as "an arsenal."

As I found researching my new book, *Gunfight*, in 1956, after King's house was bombed, King applied for a concealed carry permit in Alabama. The local police had discretion to determine who was a suitable person to carry firearms. King, a clergyman whose life was threatened daily, surely met the requirements of the law, but he was rejected nevertheless. At the time, the police used any wiggle room in the law to discriminate against African Americans.

Ironically, the concealed carry permit law in Alabama was promoted by the National Rifle Association thirty years earlier. Today, the [gun rights hardliners](#) fight to eliminate permits for concealed carry, as Arizona has done.

Eventually, King gave up any hope of armed self-defense and embraced nonviolence more completely. Others in the civil rights movement, however, embraced the gun.

One of the most indelible images of the 1960s is a photograph from *Life* magazine of Malcolm X looking out a window with a long M-1 carbine in his hands, the rifle pointed up to the sky. For blacks unhappy with the progress achieved by King's marches, the gun became a symbol of the "by any means necessary" philosophy.

The Black Panthers took Malcolm X's approach to the extreme, openly carrying guns as they patrolled for police abuses on the streets of Oakland. They even made guns part of their official uniform, along with the black beret and leather jacket. Every member learned about Marxism and firearms safety.

California passed a law to disarm the Panthers and then Congress, after King was assassinated by James Earl Ray, passed the Gun Control Act of 1968 -- the first major federal gun control since the



movement, which self-consciously borrowed tactics from the civil rights movement.

One lesson the gun advocates took was from the early King and his more aggressive followers: If the police can't (or won't) to protect you, a gun may be your last line of defense. Inspired by that idea, the gun lobby has grown so strong that even after the Tucson mass murder there is almost no likelihood of new gun laws being passed.

Whether a broader acceptance of the King's later pacifism would have made us safer than choosing guns, we will never know.

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Adam Winkler, Contributor

Professor of Law, UCLA

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MORE PERFECT: THE GUN SHOW FINAL WEB TRANSCRIPT

[RADIOLAB INTRO]

JAD ABUMRAD: This is Radiolab. I'm Jad Abumrad. A couple months ago, the More Perfect team and I released a doc called *The Gun Show*, which was sort of an off-angle look at the history that underlies how we talk about guns in this country. It landed right after the mass shooting in Vegas. Unfortunately, here we are again. We noticed that a lot of More Perfect listeners were sharing this doc in the wake of what happened in Florida. So we thought we would share it with Radiolab listeners who haven't heard it yet. It's reported by a guy named Sean Rameswaram. At the time, Sean was a producer at More Perfect. He's since gone on to start a daily podcast at Vox called *Today Explained*. I encourage you to check out that show. Sean is amazing. In the meantime, here's *The Gun Show*.

SEAN RAMESWARAM: I think we should start with one of the most confusing sentences in the Constitution and the Bill of Rights.

JAD: Not "We the people."

SEAN: Not that one. No, I got a different one. "A well-regulated militia, comma, being necessary to the security of a free state, comma, the right of the people to keep and bear arms, comma, shall not be infringed."

JAD: Say it one more time. Say -- I'm sorry.

SEAN: Okay. From the top.

JAD: And do it -- do it with the commas again.

SEAN: Sure. "A well-regulated militia, comma, being necessary to the security of a free state, comma, the right of the people to keep and bear arms, totally unnecessary comma, shall not be infringed."

ADAM WINKLER: *Is that the one that's about guns?*

SEAN: Adam Winkler, who wrote the book on the Second Amendment. And that book is called Gunfight.

JAD: He's a journalist?

SEAN: He's a professor of law ...

ADAM WINKLER: *At UCLA.*

SEAN: He said ...

ADAM WINKLER: *It's almost as if James Madison, the author of the amendment, had just discovered this wonderful new thing, the comma, and wanted to put it in there as many times as possible.*

SEAN: Which is like a nerdy, professorial joke. But like, seriously, what is it? And, like, it had to be this one? Couldn't it have been the amendment about, like, quartering soldiers in your house that was really confusing?

JAD: Yeah.

SEAN: No, it's the one about guns that they made, like, just indecipherable.

ADAM WINKLER: *And ever since, generations of Americans have been confused by the language of the Second Amendment.*

SEAN: So when this thing was written, we had just fought this war with the British, this Revolutionary War. And they tried to win it right from the get-go by coming for our guns. So these new states are looking at this new federal government, they're going like, "Meh, we don't know if we want to trust you quite yet." So there's this second amendment that says, "You guys can fight back."

JAD: Like, the feds aren't gonna disarm you. You can -- your militias can keep your guns.

SEAN: That's I think what we agree on. But then after that, you just look at the sentence, then it's not just the commas that are confusing. If you look at the sentence as a whole ...

ADAM WINKLER: *The pieces don't seem to fit together.*

SEAN: There's some noun confusion. I mean, it's obvious that the sentence is about someone's right to bear arms, but who? Who gets that right? At the beginning of the sentence you get ...

ADAM WINKLER: *A well-regulated militia.*

SEAN: The militia. States have a right to form militias, to assemble groups of people. And those people got to have their guns. That's easy enough. But then later in the sentence, there's ...

ADAM WINKLER: *Comma, the right of the people to keep and bear arms, comma, shall not be infringed.*

SEAN: The people. Which people? Those people over there in the militia? All people? If you mean all people, why did you say militia? It's like the first clause seems to point to some sort of collective right to bear arms, and the second clause seems to point to some individual right to bear arms.

JILL LEPORE: *Like, this is supposed to be a popularly ratified document. It's actually not that easy to read. It's really not that easy to read. And it's not -- it wasn't that easy to read then.*

SEAN: This is Jill Lepore.

JILL LEPORE: *A staff writer at the New Yorker Magazine.*

SEAN: She's also a professor of American History.

JILL LEPORE: *I study the 18th century. I'm really trained as a 17th- and 18th-century American political historian.*

SEAN: And Jill says from the beginning, when people thought about the Second Amendment, they tended to just focus on the first part.

JILL LEPORE: *That the primary motivation for the amendment is about militias.*

ADAM WINKLER: *A well-regulated militia.*

SEAN: That this confusing sentence was widely read as this collective militia right, not an individual one.

JILL LEPORE: *And this truth that the Second Amendment in fact guarantees the right of an individual to bear arms, and that the government, federal government ...*

SEAN: Can't limit that.

JILL LEPORE: *In any fashion.*

SEAN: Jill says that just didn't exist.

JILL LEPORE: *It wasn't a thing.*

STEPHEN HALBROOK: *I disagree with the way you've characterized that, although what you said is stated in the media frequently.*

SEAN: This is Stephen Halbrook. He's represented the NRA in several cases.

STEPHEN HALBROOK: *I've written several books on Second Amendment issues.*

SEAN: He actually thinks A) the sentence is just fine as is.

STEPHEN HALBROOK: *I don't think it's complicated at all.*

SEAN: B) the framers were thinking about an individual right to bear arms.

STEPHEN HALBROOK: *The Second Amendment refers to the right of the people to keep and bear arms. First Amendment refers to the right of the people peaceably to assemble. I mean, who is that? It's individuals. They're not some kind of collective that doesn't exist in reality.*

JAD: So which -- which was it?

SEAN: That's -- that's a really good question, Jad. I mean, it's a complicated one too. What I can tell you is that, you know, people I spoke to for the story said at least in the 20th century when the -- when the Second Amendment was taught in law schools, it was taught as this -- it was taught as this sort of antiquated, outdated thing that had to do with militias, not so much individual rights. But Jill Lepore, Stephen Halbrook, and their respective sides, something they can both agree on is that this super-sacred Second Amendment, this third rail of our American politics today, that just was not a thing. It was not like that.

JILL LEPORE: *It was utterly ignored.*

SEAN: People ignored this amendment.

STEPHEN HALBROOK: *When I was an undergraduate, undergrad at Florida State University, I went to*

the Florida Supreme Court and started looking up law review articles on constitutional law issues. And I found that there was hardly anything written about the Second Amendment.

JILL LEPORE: *No one ever wrote about it. Except for the third amendment, there was no amendment that was less written about, less legislated, less debated, less a subject of Supreme Court conversation than the Second Amendment.*

SEAN: Don't get me wrong. This is not to say people didn't think about guns. People had guns, states regulated guns. But for most of our history, the Second Amendment it was like -- it was like sort of the runt of the Bill of Rights litter. Like, no one argued about it.

JILL LEPORE: *It's a striking thing to think about.*

SEAN: There was no fight. No fight.

JILL LEPORE: *How surprising that is, given its centrality to our political conversation today. What a extraordinary transformation.*

SEAN: Because there was this window of time where all of this changes, the script just flips. There's 200 years of everything being chill, and then suddenly you get this.

[ARCHIVE CLIP, Charleston Heston: *I want to say those fighting words: from my cold dead hands!]*

SEAN: So basically in just a flash, the Second Amendment goes from being ignored to being ...

[ARCHIVE CLIP: *"You will not disarm me!"]*

SEAN: Explosive, to being radioactive. And in the process, we start to read the thing totally differently. All of a sudden, it's this hotly debated thing that's got nothing to do with that first part and everything to do with the second part.

[ARCHIVE CLIP, Donald Trump: *If she gets to pick her judges, nothing you can do folks.]*

SEAN: Everything to do with my personal right. And me.

[ARCHIVE CLIP, Donald Trump: *Although the Second Amendment people, maybe there is. I don't know. But ...]*

SEAN: And what I want to know is, how did that happen? How did we start reading the Second Amendment the way we do now? And what I found out is that, in the modern history of the gun rights movement and -- and how we read the Second Amendment can be boiled down to these three totally unrelated, disjointed-seeming, revolutionary events.

[ARCHIVE CLIP: *"Am I under arrest? Am I under arrest?"]*

SEAN: One, an invasion in Sacramento.

STEPHEN HALBROOK: *Then I'll be damned. Let me -- what in the hell ...*

SEAN: Two, a revolt in Cincinnati.

STEPHEN HALBROOK: *... credential do you have to tell me I'm wrong?*

SEAN: And finally ...

DICK HELLER: *Bam!*

SEAN: Number three, a reckoning at the Supreme Court of the United States.

DICK HELLER: *Unbelievable. What is that sound? Can you imagine that?*

JAD: So you're gonna tell me the story in three chapters?

SEAN: Yeah.

[MORE PERFECT INTRO]

NARRATOR: Chapter 1. The Invasion.

BOBBY SEALE: *I'm a carpenter. I'm a builder. I'm a stand-up comedian. Jazz drummer. Structure repairman of high-performance aircraft. I did electromagnetic field blacklight non-destruct testing for the Gemini missile program, and I'm an expert shot with guns. I was an expert shot with guns when I was 12 years old. I was raised a hunter and a fisherman besides being a carpenter and a builder. When I'm 12 years old, my father buys me a high-powered rifle. Hollow-tip ammo. I can knock an elephant down with that shit. You see what I'm getting at?*

SEAN: *Can I get you to tell me -- we got to start at some point. Can I have you tell me just your name and who -- where we are and who you are? Is that cool? Can we do that first?*

BOBBY SEALE: *[laughs] Is that cool?*

SEAN: *I know it seems pretty obvious.*

BOBBY SEALE: *My name is Bobby Seale. I created the Black Panther Party. I'm the founding chairman and National Organizer of the Black Panther Party.*

SEAN: *And where are we standing right now?*

BOBBY SEALE: *We're in Oakland, California.*

JAD: The Black Panthers?

SEAN: Yeah. So this transition from the militia to the individual, my right to bear arms, you could argue that that whole individual gun rights movement started in the 1960s with the Black Panthers in Oakland.

JILL LEPORE: *It's an unlikely and kind of surprising origin for what's known as the individual rights interpretation of the Second Amendment.*

BOBBY SEALE: *We were a different breed here. I mean, we some well-read guys, we knew our shit. We knew our history.*

SEAN: Just to give some context. This is 1966. It's been an exceptionally bad time for race relations all over the country.

[NEWS CLIP: *More than 1,500 people were in the streets.]*

SEAN: Protesters are being beaten at sit-ins. There's attack dogs and hoses. And in particular ...

[NEWS CLIP: *Relations between police and Negroes throughout the country are getting worse.]*

SEAN: There was major tension between the Black community and the police.

[NEWS CLIP: *One of the cities most troubled by animosity between police and Negroes is Oakland, California.]*

ADAM WINKLER: *In the late '60s, there were several high-profile incidents of officers shooting unarmed black men.*

BOBBY SEALE: *This is what was happening, you know? And what we did is that, yeah, we took a position.*

SEAN: October, 1966, Bobby Seale and his friend Huey P, Newton, they start this organization called the Black Panthers.

BOBBY SEALE: *Black Panther Party for Self-Defense.*

SEAN: Now Huey, Bobby's co-founder ...

BOBBY SEALE: *Huey was two years in law school.*

SEAN: He was going to the University of San Francisco's School of Law, and one day he's sitting there as you do in law school, thinking about the law, thinking about Malcolm X, thinking about what he can do in Oakland. And it hits him.

[ARCHIVE CLIP, Huey P. Newton: *The Second Amendment of the Constitution guarantees the citizen a right to bear arms on public property.]*

SEAN: That they could argue that the Second Amendment gave them a right to have a gun.

BOBBY SEALE: *He said that's our constitutional, democratic, civil human right.*

JAD: And no one had ever said that before?

ADAM WINKLER: *Well, there's always been those who claim that the Second Amendment protected*

an individual right to bear arms.

SEAN: But Adam Winkler says people who argued that were in the minority. They weren't taken too seriously. This was one of the first times that the individual rights reading was forced into the mainstream, because coming out of law school class, Huey tells Bobby if we have a right to bear arms, we individuals?

BOBBY SEALE: *Then we can patrol the police, observe the police. Telling me -- I says, "You talking about patrolling the police? What legal -- you in law school, so what legal status do we have?"*

SEAN: Huey pointed to that second half of the Second Amendment.

BOBBY SEALE: *The right of the people to bear arms. To possess and bear arms, okay?*

SEAN: He also pointed to a California state law that said you could carry a gun as long as it wasn't concealed.

BOBBY SEALE: *If the gun is not concealed, it's not illegal. So ...*

ADAM WINKLER: *The Black Panthers started policing the police.*

BOBBY SEALE: *And we did.*

ADAM WINKLER: *They would go out in armed patrols and follow police cars.*

BOBBY SEALE: *On 7th Street.*

SEAN: Bobby told me about the first time they did it.

BOBBY SEALE: *In West Oakland, California, a nightlife district.*

SEAN: He says it was a weekend night, a police officer had pulled over some guy. And they started watching from down the street, and a crowd starts to gather.

SEAN: *And is Huey holding a gun?*

BOBBY SEALE: *Yes, he's holding a shotgun.*

SEAN: *What kind of gun is it?*

BOBBY SEALE: *It's a shotgun. A shotgun that I bought him. That gun you see in his hand, it's a high-standard gun. It cost \$89 or \$79. I bought the damn gun. I says, "Here, Huey. You got your shotgun now."*

SEAN: So you got this white cop on one side of the street.

BOBBY SEALE: *Arresting somebody.*

SEAN: And on the other side of the street, you got a dozen black guys holding shotguns.

BOBBY SEALE: *Strictly for observation. We was standing in a line. I had everybody standing in a line.*

SEAN: He told me the moment the cop noticed. He immediately stopped what he was doing with the guy he had pulled over and walked over to them and said ...

BOBBY SEALE: *"You have no right to observe me!" And Huey says, "No, California State Supreme Court ruling states that every citizen has the right to stand and observe a police officer carrying out their duty as long as they stand a reasonable distance away. A reasonable distance constitutes eight*

to ten feet. I'm standing approximately 20 feet from you and I'll observe you whether you like it or not." He said, "Man, what kind of Negroes are these? Let me see that gun." "No. You cannot touch my weapon." The cop says, "Are you a Marxist?" And Huey said, "Are you a fascist?" "Are you a Marxist?" "Are you a fascist?" Then the cop said, "Well, I asked you first." And Huey saying, "I asked you second. Are you a fascist?" So I mean, it's like a standoff.

SEAN: And this is where the dominoes start to fall. The standoff resolved themselves peacefully, but the cops in Oakland are not happy. And they -- they immediately start running this up the chain.

BOBBY SEALE: Next thing we know ...

[NEWS CLIP: We've got to protect society from nuts with guns.]

[NEWS CLIP: And I think we should act and we intend to act.]

BOBBY SEALE: Mulford, State Assemblyman Mulford who represented Oakland is trying to put a bill in to stop the Black Panthers.

[NEWS CLIP: It's my intention to make it a misdemeanor to have loaded rifles and shotguns and weapons in public places.]

SEAN: So this bill, the Mulford Act, is up for debate at the California state capitol in Sacramento. And Bobby Seale decides the Panthers should be there for the debate and that they should take their guns.

BOBBY SEALE: I took a delegation, an armed delegation to the California State Legislature, May 2nd, 1967. I had six women and 24 males.

SEAN: And how many guns?

BOBBY SEALE: *23 guns.*

SEAN: *And were they loaded?*

BOBBY SEALE: *Yes.*

SEAN: So they roll up to the assembly in Sacramento. And guess who happens to be waiting for them right there on the front lawn of the assembly?

JAD: What are we talking what year are we talking now?

SEAN: Guess who's governor?

JAD: I don't know. Who was the governor?

SEAN: Guy by the name of ...

[MOVIE CLIP: *Win one for the Gipper.*]

[NEWS CLIP: *Mr. Ronald Reagan.*]

BOBBY SEALE: *I went up there. When we got there, Ronald Reagan happened to be on the front lawn.*

JAD: Reagan?

SEAN: Reagan.

BOBBY SEALE: *I did not know he was going to be there on the front lawn.*

SEAN: *That's insane!*

BOBBY SEALE: *And he was on the front lawn talking to 200 Future Leaders of America.*

SEAN: *Kids?*

BOBBY SEALE: *Kids.*

SEAN: So you got Ronald Reagan.

BOBBY SEALE: *He's 50-60 feet from us.*

SEAN: And a bunch of white kids.

BOBBY SEALE: *10, 11, 12.*

SEAN: Hanging out on the front lawn of the -- of the State Building in Sacramento. And this is the 1960s. This would be insane now.

BOBBY SEALE: *But some of the kids saw us with our shotguns on our shoulders.*

SEAN: And he says some of the kids ...

BOBBY SEALE: *Come running over where we are. They thought we were a gun club of some kind. And then the press followed.*

SEAN: So Reagan's like, "What's going on?" The press is like, "What's going on?" And Bobby Seale

...

BOBBY SEALE: *I says, "I'm gonna read a statement.*

[ARCHIVE CLIP, Bobby Seale: *The Black Panther Party for Self-Defense calls upon the American people in general ...]*

BOBBY SEALE: *And that's when I read the statement.*

[ARCHIVE CLIP, Bobby Seale: *... and the Black people in particular, to take careful note of the racist California Legislature, which is now considering legislation aimed at keeping the Black people disarmed and powerless at the very same time racist police agencies throughout the country are intensifying the terror, brutality, murder and repression of Black people.]*

BOBBY SEALE: *Et cetera.*

SEAN: And he says while he was reading that ...

BOBBY SEALE: *Uniformed Capitol guards come running out ...*

SEAN: Grab Ronald Reagan ...

BOBBY SEALE: *Took him in the opposite direction from us, away from the kids, okay? And so we decided to go inside, because the assembly was in session at the time. Next thing I know, we're all loading on three elevators. Here is shotgun rifles pointing up, cameras in the -- and it's crowded. Body-touching-body crowded.*

SEAN: And when they got off the elevator, he asked someone which way to the spectator section

so the Panthers could watch the legislature debate the bill.

BOBBY SEALE: *Somebody says, "This way to the right." And so I walk into this door. And as I walk into the door, the president pro tempore in the State Assembly -- we're on the actual floor of the Senate. This is not the goddamn spectator section. I said, "Come on. Get the hell out of here, man. We in the wrong goddamn place."*

JAD: Wait. they walked into the state capitol with -- with shotguns?

SEAN: Yeah.

[ARCHIVE CLIP: "Am I under arrest? Am I under arrest?"]

SEAN: And then all hell breaks loose.

[ARCHIVE CLIP: "Am I under arrest? Take your hands off me if I'm not under arrest. I'm telling you to take your hands off me."]

BOBBY SEALE: *I turn around and I see State assemblymen, white State assemblymen ducking down behind their desks.*

[ARCHIVE CLIP: "If I'm under arrest I'll come. If I'm not, don't put your hands on me."]

[ARCHIVE CLIP: "Is this the way the racist government works? Don't let a man exercise his constitutional rights?"]

SEAN: You can point to this forgotten, unknown moment here in the State Building in Sacramento as, like, the game changer for the conversation about guns in America. Because suddenly overnight ...

BOBBY SEALE: *We were on the front pages of newspapers around the world. We were a ragtag organization with this profound international notoriety.*

SEAN: But in being introduced to the world, you had a lot of people going, "Wait, what? Like, there's a bunch of Black men rolling around with guns?"

JAD: Walking into the Capitol Building?

SEAN: When there's kids around?

SEAN: *What came of that -- that protest?*

BOBBY SEALE: *By the end of that month, the Mulford Act passed. The law said no one could carry a loaded weapon inside city limits within 150 feet of public property.*

SEAN: *This was directed at the Black Panthers?*

BOBBY SEALE: *We know it was.*

SEAN: Now, people have all kinds of opinions about the Black Panthers and what they did, particularly after Huey Newton ...

NEWS CLIP: *The shooting happened at 5 am.]*

SEAN: ... later that same year was arrested for shooting and killing a cop.

[NEWS CLIP: *A pool of blood marks the spot where 23-year-old officer John Frey was found fatally wounded.]*

SEAN: The case was eventually dismissed, but what seems clear is that the Black Panthers decision to use the Second Amendment to arm themselves to show up armed at the state capitol in California ...

ADAM WINKLER: *Inspired vigorous backlash.*

[NEWS CLIP: FBI Director J. Edgar Hoover today asserted that the Black Panthers represent the greatest internal threat to the nation.]

ADAM WINKLER: *Americans thought a revolution was about to break out right here at home. This led to a whole new wave of gun control laws.*

SEAN: In California, but also federal gun control.

ADAM WINKLER: *Many of which seemed to be targeted towards African Americans rather than just reducing gun violence.*

SEAN: Suddenly, America was like, "We've got to get guns off the streets."

ADAM WINKLER: *But the irony was that even though those laws were designed to disarm left-leaning Black radicals, many white rural conservatives thought that they were next. That government was going to take their guns next.*

SEAN: Every action creates a reaction. And at the same time that this Panthers thing is hitting front pages of newspapers around the world, you've got assassinations, you've got race riots, you've got Vietnam protests. All of a sudden, everyone's clamoring for gun control. Democrats and Republicans. In fact ...

[ARCHIVE CLIP, Ronald Reagan: There is absolutely no reason why out on the street today a civilian should be carrying a loaded weapon.]

JAD: Reagan?

SEAN: Reagan. That was the exact same day as the Black Panthers showed up at the state capitol in Sacramento with their shotguns.

JAD: So Reagan. Reagan was into gun control.

SEAN: Reagan's got his fingerprints all over this thing. What's happening here is the Black Panthers show up in the capital, Sacramento, and Ronald Reagan react. They create some gun control. Then there's even more gun control, even federal gun control. And a lot of people are sitting at home watching this and they start to get very upset. Which brings us to ...

NARRATOR: Chapter 2. The Revolt.

JOHN AQUILINO: *And I'm sitting there going, "You know, we can't allow this to happen."*

JOSEPH TYRO: *No. No.*

JOHN AQUILINO: *I can buy the damn pistol that I want to buy.*

SEAN: These two guys, John Aquilino.

JOHN AQUILINO: *I live in Rockport, Texas.*

SEAN: Joseph Tyro.

JOSEPH TYRO: *Buffalo, New York.*

SEAN: They get us there. And they've both been into guns pretty much their entire lives.

JOSEPH TYRO: *My father was a veteran of World War One. Did some recreational shooting with my mother.*

JOHN AQUILINO: *I used to love to go to the amusement park and spend all day shooting the .22s at little things that moved in the shooting gallery.*

SEAN: But neither one of them was particularly hard core about their gun beliefs until around the time the Black Panthers came along.

JOHN AQUILINO: *You mean the fact that here are bunch of people who were slightly darker complected than New England Ivy League grads running around with firearms? Did that scare people? Hell, yes!*

SEAN: *Did it scare you?*

JOHN AQUILINO: *No, it didn't scare me.*

SEAN: John told me, Joe as well that it wasn't the Panthers themselves that were the problem.

JOHN AQUILINO: *I don't like anybody that tells me I can't do something.*

SEAN: It was all the gun control laws that came in the wake of the Panthers.

JOSEPH TYRO: *When the Gun Control Act was passed in 1968 ...*

[ARCHIVE CLIP: *Today we began to disarm the criminals and the careless and the insane.]*

JOSEPH TYRO: *A lot of things disappeared that I had been used to.*

SEAN: Joe says he starts to see gun shops in his neighborhood close. Like, the furniture store in Buffalo that used to have ...

JOSEPH TYRO: *A shotgun for \$5.*

SEAN: They stop selling them. And he says that just really bothered him because the reason you have a gun is for protection.

JAD: Yeah.

JOSEPH TYRO: *It's like another form of insurance.*

SEAN: Which wasn't an abstract idea for him. Buffalo in the '60s and '70s, not the safest place in the world. His house was even broken into.

JOSEPH TYRO: *I could only describe it as a home invasion. I mean, these guys actually battered their way through two doors.*

SEAN: Joe says he and his wife and his dog huddled in one room with a gun while these two guys stormed through his house and robbed him.

JOSEPH TYRO: *I think they grabbed my wife's purse, maybe some other money, and they left. I mean, by the time the police got there they were gone.*

SEAN: Joe's whole relationship with firearms is sort of predicated upon that -- this idea that it's for self-defense. And here he's got people breaking into his house. He's got the cops not being there for him. He's got the government trying to take his gun away. So what do you do? You join the NRA.

JOSEPH TYRO: *Then I joined to fight this gun control stuff.*

SEAN: But this came at a moment where the NRA was at this crossroads unlike any it had seen before or since. Back when Joe joined in the early '70s ...

ADAM WINKLER: *The NRA was not the die-hard supporter of gun rights that we know today.*

SEAN: Because according to Adam Winkler it was never meant to be.

ADAM WINKLER: *The idea behind the NRA ...*

[ARCHIVE CLIP: *Marksmanship continues to be fundamental right down to this day.]*

ADAM WINKLER: *Was to increase civilian marksmanship training so that the next time there's a war Americans would be capable of fighting it.*

SEAN: And, you know, you don't hear much about the NRA's founders ...

ADAM WINKLER: *But the NRA was formed in the 1870s right after the Civil War by a reporter for the New York Times who thought that the Union soldiers had been so ineffective in the Civil War because they were not familiar with firearms.*

JAD: Really?

SEAN: Yeah, for, like, a hundred years their main focus was, like, teaching Boy Scouts how to shoot straight.

ADAM WINKLER: *Not the Second Amendment.*

SEAN: And apparently ...

ADAM WINKLER: *If you go back through issues of American Rifleman in the '40s and '50s ...*

SEAN: It's like the NRA's version of Playboy. Guns instead of girls.

ADAM WINKLER: *You'll be amazed that you can't find a single mention of the Second Amendment anywhere in those magazines.*

SEAN: The NRA at that point was sort of like a gun trade group. They were not super political, and -- and the people who ran it ...

JOSEPH TYRO: *They were hunters. Gentlemen hunters.*

SEAN: They were just like these wealthy businessmen who like to hunt, according to Joe.

JOSEPH TYRO: *Rich guys who, you know, they were hobbyists.*

SEAN: But you had all these people coming in, like Joe and like John ...

ADAM WINKLER: *Who were convinced that guns weren't about shooting ducks. They were about ...*

JOSEPH TYRO: *Self-defense.*

ADAM WINKLER: *Protecting yourself against criminals in a time of starkly rising crime rates.*

SEAN: And this would lead to this straight-up head-on collision at the NRA. Now, right when Joe and John joined the NRA, the organization had just for the first time sort of set up this lobbying arm.

JOHN AQUILINO: *Yeah. It was the brand new Institute for Legislative Action.*

SEAN: John actually got hired to work there in 1976.

JOSEPH TYRO: *And the Institute for Legislative Action was supposed to fight for gun rights on Capitol Hill.*

SEAN: That's what they both wanted it to do.

JOHN AQUILINO: *But let's put it this way. We were the, if you would, the bastard stepchildren of the National Rifle Association.*

SEAN: *Really?*

JOHN AQUILINO: *Yeah. When the Institute for Legislative Action was formed ...*

SEAN: In 1975.

JOHN AQUILINO: *The NRA refused the Institute any office space in the building.*

SEAN: In the mid-'70s, the part of the NRA that lobbied politicians had to rent office space from the hotel next door to the NRA.

JOHN AQUILINO: *I mean, it was crazy. And then ...*

SEAN: Right after he was hired ...

JOHN AQUILINO: *78 people fired. Very interestingly.*

JOSEPH TYRO: *There was a big firing and then there was word that the NRA wanted to move, leave Washington, DC.*

SEAN: Sell the headquarters there.

JOHN AQUILINO: *And move to Colorado Springs.*

SEAN: *What's in Colorado Springs?*

JOHN AQUILINO: *Well, the Olympic Camp. They were gonna move the headquarters and put it near this -- the Olympic sports training group, so that they could then start writing all the magazines about all the Olympic sports.*

JOSEPH TYRO: *They really didn't know what the hell they were doing.*

JOHN AQUILINO: *They wanted to turn the NRA from an organization of firearms owners to a publishing company.*

JOSEPH TYRO: *They wanted to get out of the politics business.*

SEAN: The older guard didn't seem to have the stomach for whatever gunfight some members wanted to have.

ADAM WINKLER: *They were very moderate.*

SEAN: They thought, like, "Maybe we should try and kind of get out of this whole gun business thing."

JOHN AQUILINO: *Well hey, not just kind of getting out.*

SEAN: John says there was even a moment when a report surface that suggested ...

JOHN AQUILINO: *That we should change the name of the association.*

SEAN: *Really?*

JOHN AQUILINO: *Yeah. They were gonna take 'Rifle' out.*

SEAN: *Tell me more. Tell me everything.*

JOHN AQUILINO: *There would be no NRA.*

SEAN: *Do you remember what any of those proposed names were?*

JOHN AQUILINO: *No.*

SEAN: *But they were considering at least taking rifle out.*

JOHN AQUILINO: *Oh, yeah.*

SEAN: *Huh.*

JOHN AQUILINO: Yeah. And it -- it bridled. I mean ...

JOSEPH TYRO: I was just so pissed off. And that's when the seeds of revolt were planted.

SEAN: A few months later ...

[ARCHIVE CLIP: I'd like to call to order the 129th-annual members meeting.]

SEAN: This is from one of those meetings.

JOHN AQUILINO: Cincinnati, Ohio. 1977.

JOSEPH TYRO: The annual NRA meeting of members.

JOHN AQUILINO: I think it was May, but I'm not sure.

JOSEPH TYRO: May 22nd.

JOHN AQUILINO: They had a big auditorium.

JOSEPH TYRO: The Cincinnati Convention Center.

JOHN AQUILINO: A thousand people showed up.

JOSEPH TYRO: Somewhere between a thousand and 1,500.

[ARCHIVE CLIP: Ladies and gentlemen ...]

SEAN: Now prior to this big meeting, there had been little meetings.

JOSEPH TYRO: *Secret meetings.*

SEAN: Joe and a few other guys ...

JOHN AQUILINO: *From Illinois ...*

JOSEPH TYRO: *Texas, Arizona.*

SEAN: They'd been going back and forth.

JOSEPH TYRO: *By phone, by mail.*

SEAN: One point they even met up.

JOSEPH TYRO: *In a motel in Florence, Kentucky.*

SEAN: And they decided to form a small but fierce faction within the NRA.

SEAN: *And your secret group, did you -- did you have a name? Did you call it something?*

JOHN AQUILINO: *We were called the Federation For the NRA.*

JOSEPH TYRO: *Called ourselves that. The Federation For the NRA.*

SEAN: And this tiny group planned a coup.

[ARCHIVE CLIP: Honorary life members ...]

JOHN AQUILINO: *It was a hot, steamy night in Cincinnati.*

SEAN: The Federation members were all wearing buttons that said National Rifle Association with the word 'Rifle' underlined.

JOHN AQUILINO: *We wore orange hats.*

JOSEPH TYRO: *We had walkie-talkies to connect with each other.*

SEAN: *How many people were there?*

JOSEPH TYRO: *Somewhere between 10 and 15 of us.*

SEAN: They spread out through the crowd.

SEAN: *So how does the meeting start? Do you remember?*

JOHN AQUILINO: *Well, basically, you know, they did all the niceties.*

[ARCHIVE CLIP: I pledge allegiance to the flag ...]

SEAN: Pledge of Allegiance.

[ARCHIVE CLIP: *Would you bow your heads with me please?]*

SEAN: Opening prayer.

[ARCHIVE CLIP: *Lord, you are awesome in my ...*

JOSEPH TYRO: *Blah, blah, blah, blah, blah. And then ...*

[ARCHIVE CLIP: *Let's do a little business. There are four microphones on the floor. If there are any items you'd like placed on the -- on this agenda, now is the time to add them]*

SEAN: When it came time for the members' part of the meeting where members submit proposals which happens in, like, this super parliamentary sort of way. This guy ...

JOHN AQUILINO: *Neil Knox.*

SEAN: He was part of their group.

JOHN AQUILINO: *He kind of bull rushed the microphone, and he said, "The gathered members have a list of bylaws that they would like to have voted on.*

SEAN: Translation. We've got these 15 demands.

JOSEPH TYRO: *These 15 demands. I'm not sure if that's more or less than Martin Luther.*

SEAN: The demands are basically, number one: we demand that the NRA not move its headquarters.

JOSEPH TYRO: *Cancel that.*

SEAN: We demand the Institute for Legislative Action, which you want to kill, should have more power.

JOHN AQUILINO: *Hell, yes. Hell, yes.*

SEAN: And we demand that the current NRA leadership be replaced.

JOHN AQUILINO: *We wanted to take over.*

SEAN: So the Federation guys making all these demands ...

JOSEPH TYRO: *What was crazy was that the -- the leadership of the NRA ...*

SEAN: That was running the meeting ...

JOSEPH TYRO: *They just sat there. They were, like, dumbfounded. But ...*

SEAN: Every time the Federation guy would make a motion ...

JOSEPH TYRO: *Judge Porter would say ...*

[ARCHIVE CLIP: *The agenda. Are there seconds?]*

JOSEPH TYRO: *You know, do I have a second?*

[ARCHIVE CLIP: *There are many -- okay, the motion has been made.]*

SEAN: And then the floor debate would begin. People would start to speak for and against each amendment. The Federation members would use their walkie-talkies to coordinate who spoke at what microphone.

SEAN: *How many votes did you need that day?*

JOSEPH TYRO: *I think at least 600 votes.*

SEAN: *And how many votes did you think you had? If you needed 600 or so, how many did you think ...*

JOHN AQUILINO: *We hadn't the slightest idea.*

JOSEPH TYRO: *Going in, we anticipated 50-50 support.*

SEAN: So as each of the 15 amendments are being debated, the insurrectionists are running around in their orange caps with their walkie-talkies trying to rally support from everyone.

JOSEPH TYRO: *That discussion, debate lasted eight hours.*

SEAN: It went from 7:00 pm.

JOSEPH TYRO: *Until close to four o'clock in the morning.*

JAD: 4:00 am?

SEAN: Yeah.

JOHN AQUILINO: *And nobody left. They were all there.*

JOSEPH TYRO: *There were tense moments. I mean, we really didn't know whether we could pull this off.*

SEAN: But Joe says one of the big turning points is when a guy named Bob Kukla gets up to the mic. He was at the time the head of the Institute for Legislative Action. He gets up to the mic.

JOSEPH TYRO: *And he played a tape.*

SEAN: You remember cassette tapes, right? This was one that Bob Kukla secretly recorded.

JOSEPH TYRO: *I don't know how he did it.*

SEAN: But what you hear on this tape is Bob Kukla talking to his bosses at the NRA, and they're yelling at him.

JOSEPH TYRO: *Berating him for going to war every time somebody talks about gun control.*

SEAN: They're basically like, "Bob, shut up!"

SEAN: *He had the tape there and he played it over the ...*

JOSEPH TYRO: *He played it -- yeah, right. And of course, that electrified the audience.*

JOHN AQUILINO: *You could actually hear people gasping.*

SEAN: So the rank and file was audibly ...

JOSEPH TYRO: This was -- this was evidence that the other side was going to deep-six the gun control fight.

SEAN: These people on the tape, they're all in the room.

JOHN AQUILINO: Oh, yeah, they're -- they're sitting next to him at the table.

SEAN: Over the course of this one nine-hour meeting on a hot steamy night in Cincinnati, every single one of those 15 proposals was passed.

JOHN AQUILINO: We stopped the building in Colorado.

SEAN: Ensured the NRA wouldn't change its name. They fired the leadership.

JOHN AQUILINO: You know, just like the political savants that figured that Hillary's gonna get the presidency, they just absolutely took it in their shorts.

SEAN: And maybe the biggest change, the most important change was that the Institute for Legislative Action, this political lobbying arm of the NRA, it was given the keys to the car. They were not the bastard stepchild anymore. They were the NRA.

JOSEPH TYRO: You know what? We won.

ADAM WINKLER: They had essentially staged a coup.

JOHN AQUILINO: What do they call 1776? It's the same thing.

ADAM WINKLER: *And when the sun rose the very next day, the NRA had a whole new board committed to a new no-compromises view of the Second Amendment, in which individuals have a right not only to have a gun but to have almost any gun that they want, and have as many of them as they want, and can take those guns almost any place they want. American gun politics literally changed overnight.*

SEAN: And just shortly after this coup, the NRA bolts this abridged version of the Second Amendment right on the wall, front and center in its headquarters.

ADAM WINKLER: *The right of the people to keep and bear arms shall not be infringed.*

SEAN: Nice, clean, totally uncomplicated sentence.

ADAM WINKLER: *Conveniently left out was the part that talked about a well-regulated militia being necessary for the security of a free state.*

SEAN: I asked John, like, what about the militia part of the sentence? Why doesn't the NRA ever talk about that?

JOHN AQUILINO: *The militia? Okay, now you're getting me back to asking you if -- and Sean, I love you dearly, trust me. But it's only been in the last, what, 30 years that if you'll pardon the expression the bullshit media has turned the militia into a four-letter word. The militia is you and me, Sean.*

SEAN: Post-coup, the NRA took a very hard line on gun control, and became an irrepressible political force in America.

[ARCHIVE CLIP: *Friend and foe agree the NRA's power to scare congressmen lies in its ability to mobilize its members in any congressional district at the touch of a computer button.]*

SEAN: They start pouring millions of dollars into lobbying, and just a few years after that

Cincinnati revolt, the NRA endorses its first presidential candidate.

[ARCHIVE CLIP, Ronald Reagan: The Constitution does not say that government shall decree the right to keep and bear arms.]

JAD: Reagan?

SEAN: Reagan.

[ARCHIVE CLIP, Ronald Reagan: The Constitution says the right of the people to keep and bear arms shall not be infringed.]

SEAN: At this point, everyone and their uncle leaves out the militia part of the Second Amendment, which is why Americans eventually start to forget that the militia clause or whatever you want to call it even exists.

[ARCHIVE CLIP, Ronald Reagan: I wish I'd saved that and said it last.]

JILL LEPORE: One of the things that most surprised me when I was doing this research ...

SEAN: This is Jill Lepore again.

JILL LEPORE: I think by the 1990s, the new interpretation of the Second Amendment had so penetrated popular opinion that people were more familiar with the Second Amendment than with the First by 1991. The First Amendment! That eclipse really kind of shocks me.

SEAN: But even if -- even if the Panthers and the President and the American people are all down to sort of forget about this militia clause of the Second Amendment, it didn't mean a lot without the courts. And the courts, particularly the Supreme Court, weren't buying it.

[ARCHIVE CLIP: Chief Justice of the US Supreme Court from 1969 to 1986.]

JILL LEPORE: Warren Burger. I think he's on giving a television interview, and he says that this new interpretation of the Second Amendment was ...

[ARCHIVE CLIP, Warren Burger: One of the greatest pieces of fraud.]

JILL LEPORE: One of the greatest pieces of fraud. I repeat: the word fraud ...

[ARCHIVE CLIP, Warren Burger: ... on the American public by special interest groups that I have ever seen in my lifetime.]

SEAN: And this was a Republican appointed by Richard Nixon, no?

JILL LEPORE: Yeah. Yeah.

SEAN: Yeah, so the Supreme Court obviously not dying to have this conversation at the moment. But it's not just the Supreme Court, if you look at the federal courts, the entire federal court system in America, there has not once in our history at this point over 200 years been a single instance of some gun law, some state local gun law getting up to a court and the court going, "You know what? You can't do this. It violates the Second Amendment." That's just not even happening.

JAD: Really?

SEAN: Not even ...

JAD: There wasn't a Second Amendment smackdown anywhere in federal court?

SEAN: This isn't -- this isn't a thing.

JAD: Wow!

SEAN: And getting the Supreme Court to weigh in on it? That doesn't even look like it could be a thing. It doesn't even look like much more than a fantasy until ...

[ARCHIVE CLIP: For gun owners there are few names that have become synonymous with protecting our rights. Ladies and gentlemen, please welcome a true patriot, Dick Heller.]

SEAN: Dick Heller showed up.

[ARCHIVE CLIP, Dick Heller: Freedom! Freedom! Let's hear it! Freedom!]

SEAN: And changed everything.

[ARCHIVE CLIP, Dick Heller: Well, hello freedom lovers everywhere out there. Freedom! Freedom! Freedom! Let's hear it! Wow!]

JAD: This is The Gun Show for More Perfect, featured here on Radiolab. We'll continue in a moment.

[AARON: Hi, this is Aaron Majors from Austin, Texas. Radiolab is supported in part by the Alfred P. Sloan Foundation, enhancing public understanding of science and technology in the modern world. More information about Sloan at www.sloan.org.]

SANDY LEVINSON: Heller, in 2008 revives the Second Amendment. Or you could even say breathes life into the Second Amendment, because the Second Amendment had never been taken truly seriously by federal courts until 2008.

JAD: That's Sandy Levinson, professor at the University of Texas law school. I'm Jad Abumrad here with Sean Rameswaram. All right, so Sean ...

SEAN: Jad.

JAD: It's -- I guess now it's time for Chapter 3, Dick Heller, right?

SEAN: Yeah, we're gonna get to Dick, but first here's what's going on in America. The Second Amendment has become one of those issues that can get you elected. Academics have begun to have a vigorous debate about its meaning. But the Supreme Court is still staying out of it. They're leaving this up to the states which already have all sorts of gun laws of their own to deal with. But then ...

[ARCHIVE CLIP: December 12, 2000, Republican George W. Bush becomes president-elect after a divided US Supreme Court effectively halts recounts in Florida's contested presidential vote tally.]

SEAN: But then George W. Bush is elected. The NRA likes George W. Bush.

[ARCHIVE CLIP, George W. Bush: The National Rifle Association ...]

SEAN: And he likes them.

[ARCHIVE CLIP, George W. Bush: ... has a proud history of protecting the Second Amendment to the United States Constitution.]

ADAM WINKLER: And in 2001, the Bush Administration declared that the Second Amendment protected an individual right to own guns.

SEAN: UCLA law professor Adam Winkler again.

ADAM WINKLER: *A right that was not limited as most courts had held, to service in the militia.*

SEAN: And almost right after he gets into office, Bush's Attorney General ...

ADAM WINKLER: *John Ashcroft put out a letter.*

SEAN: This public letter to the NRA ...

ADAM WINKLER: *Announcing that the Department of Justice had adopted a new interpretation of the Second Amendment.*

SEAN: And then ...

ADAM WINKLER: *Right around the same time as the Bush Administration memo came out, a court in Texas ruled that the Second Amendment did protect an individual right to bear arms.*

SEAN: And that was a first. It's a big deal. Before this, all the decisions had kind of veered in the other direction.

ADAM WINKLER: *And because of that court ruling and John Ashcroft's letter, these three libertarian lawyers, Alan Gura ...*

ALAN GURA: *Constitutional attorney.*

ADAM WINKLER: *Bob Levy ...*

BOB LEVY: *I chair the board at the Cato Institute.*

ADAM WINKLER: *And Clark Neily.*

SEAN: He's at Cato too.

ADAM WINKLER: *Thought the timing was right.*

BOB LEVY: *We thought that it was a good time for some litigation.*

SEAN: Now one thing you need to know about these guys is that they weren't necessarily doing it for the guns.

ADAM WINKLER: *They had no association with the NRA or the gun rights movement.*

SEAN: For them, it was more about getting the government to back off.

ALAN GURA: *In our country, when the government wants to restrict our liberty, it is incumbent on the government to make the case for it. It's incumbent on the government to say, "Here's why you shouldn't be permitted to exercise that right."*

SEAN: So that was their angle.

JAD: That's -- that is interesting. I've always wondered why the gun rights movement has become such a proxy war for, like, anti-government-ism.

SEAN: Yeah. Well I mean, if you think about it, and this is something Professor Sandy Levinson told me, is that sort of embedded in this amendment is the very idea that you can take up arms

...

SANDY LEVINSON: *Against the government ...*

SEAN: ... to protect yourself and your fellow man from tyranny.

SANDY LEVINSON: *On the far right, or occasionally on the far left you find people who are willing to say this, that this is really what's terrific about the Second Amendment. But mainstream conservatives and mainstream liberals are not very happy with those arguments. They are embarrassed by them. And so mainstream conservatives want to talk about self-defense against burglars, and mainstream liberals want to talk about how the Second Amendment protects state-organized militias and almost nothing else.*

SEAN: Anyway, getting back to the story, these three libertarian lawyers, they decide to put together a case. And their idea was to target this really restrictive gun law in DC.

ALAN GURA: *All handguns were banned. You could own a shotgun or a rifle, but the law specifically made it illegal to ever put a round in the chamber, even in self-defense. So there was -- there's really -- we described it as a ban on all functional firearms.*

SEAN: But in order to challenge that law, they needed to find a plaintiff.

JAD: Interesting. How do you find a plaintiff? You look for somebody who got robbed? What do you do?

BOB LEVY: *Well, we can actually instigate litigation. We can take out a full-page ad in the New York Times saying, "You want to vindicate your Second Amendment rights? Give us a ring."*

ALAN GURA: *We just essentially got the word out. Talked to, I would say, between two and three dozen people.*

BOB LEVY: *They all had really interesting stories.*

SEAN: They found a guy who was gay.

ALAN GURA: *Gentleman named Tom Palmer.*

SEAN: Who had previously been assaulted when he lived in California because he was gay.

ALAN GURA: *Was almost murdered by a skinhead mob.*

BOB LEVY: *Homophobic thugs.*

SEAN: And he wanted a gun to protect himself.

ALAN GURA: *Our lead plaintiff was an African American woman named Shelley Parker.*

SEAN: She was trying to protect herself against local drug dealers, and the cops actually told her she should get a gun which was illegal.

JAD: Weird.

SEAN: So they had this whole group.

BOB LEVY: *So we ended up with three men, three women, mid-twenties to their early-60s. Four of them were white, two of them were African American.*

SEAN: And the problem they ran into was that all of these super sympathetic plaintiffs didn't have this very special thing they needed to bring a case.

ALAN GURA: *Standing.*

SEAN: Standing.

ALAN GURA: *Which is just a legal term meaning they didn't have a sufficient grievance to be in court.*

SEAN: Like, if you're gonna bring a case ...

BOB LEVY: *You have to show that you've been actually harmed by not being able to get a gun.*

SEAN: You have to show some physical concrete proof that harm has been done, that you've been denied a gun. And none of the plaintiffs had that. Except for one guy.

SEAN: *Dick?*

DICK HELLER: *Are you Sean?*

SEAN: *I am. That's me. Great to meet you.*

DICK HELLER: *And you.*

SEAN: Dick Heller.

SEAN: *And what does your hat say?*

DICK HELLER: *Sean, this is my favorite hat. Make America Free Again.*

SEAN: So he actually gets paid by the Freedom.

JAD: [laughs]

DICK HELLER: *With a big Western handgun in the center.*

SEAN: *And it looks like you drew a trigger on there. Is that what you did?*

DICK HELLER: *Well, it was missing the trigger, so we had to update it.*

SEAN: *Who's we?*

DICK HELLER: *Me.*

SEAN: *Okay.*

SEAN: I met Dick right outside the Supreme Court, the building where he became famous. He's a slim 75-year-old white guy, sports glasses that look straight out of the '70s.

DICK HELLER: *Got a situation here. You want to cross?*

SEAN: *Sure. What's the situation?*

DICK HELLER: *The anti-Trump protesters are here.*

SEAN: I actually happened to meet him in DC the day after Trump won the election.

DICK HELLER: *They hate freedom, apparently.*

[CROWD CHANTING]

SEAN: The President-elect was visiting the White House. They were protesters everywhere.

DICK HELLER: *Pull out your knife. Not my president. They're anti-Trump protesters. Don't you like freedom?*

[CROWD CHANTS]

DICK HELLER: *What about freedom? What about freedom?*

SEAN: Most of the protesters that were passing us were white, but just as a few young Black men pass us by, he says ...

DICK HELLER: *See you on the plantation!*

PROTESTER: *Love trumps hate.*

DICK HELLER: *Freedom! Freedom!*

SEAN: *See you on the plantation.*

DICK HELLER: *Yeah.*

SEAN: *Why'd you say that?*

DICK HELLER: *We -- in Washington, we call it the government plantation.*

SEAN: *You didn't mean you kids are about to be slaves or something? Because that's how I interpreted it.*

DICK HELLER: *Well, yeah. The more power government has, the less freedom you have. The closer you get to ball and chain of a plantation. There's a pretty good place to eat right there if you here for a couple of days. Have you been in there?*

SEAN: *I have not.*

DICK HELLER: *Yeah, pretty good.*

SEAN: *Okay. Hyatt Regency, this is good for you? We can do this?*

DICK HELLER: *Sure. Yeah.*

SEAN: *Great.*

SEAN: We ended up talking at the Hyatt which is just down the street from the Supreme Court. And -- and Dick explained to me that his journey with guns, like John and Joe, began pretty casually. Like, 1976, he's living in DC. And one day he's sitting at home.

DICK HELLER: *I was watching my hero Matt Dillon, Gunsmoke.*

SEAN: Different Matt Dillon.

DICK HELLER: *And he had this long-barreled handgun. I was about 30 years old and I figured, "Golly, I should own my first gun." So I went and bought my -- what I call my Matt Dillon special. High-standard .22 revolver, Matt Dillon buntline. And it was just I live in America. We're a cowboy society, I should have a cowboy gun. And it was just nothing, no really deep thought to it.*

SEAN: But then just a few months after he got that gun ...

DICK HELLER: *In October of 1976 ...*

SEAN: A trend that started with the Mulford Act and the Black Panthers back in Sacramento hits Washington, DC.

DICK HELLER: *DC gun control regulations outlawed firearms ownership.*

SEAN: You get that gun law which outlawed all handguns.

DICK HELLER: *So I had some choices. I could turn it into the government. Not gonna happen. I can throw it in the dipsy dumpster. Not gonna happen. Or there was another option. I could go to jail. Not gonna happen.*

SEAN: Eventually, he decides on option D: give the gun to his brother.

DICK HELLER: *Well, my brother lived in Maryland, so that made it very convenient.*

SEAN: *Did you just go visit your gun in Maryland? What did you do?*

DICK HELLER: *Yes. I would go visit and caress and use my gun.*

SEAN: *What did you use it for?*

DICK HELLER: *Target practice, of course.*

SEAN: Dick made his gun visitation situation sound functional, but I think like any long-distance relationship it mostly sucked, because more and more he didn't feel safe where he lived.

DICK HELLER: *I lived about 10 blocks from the Capitol building, right across the street from the number one most infamous drug dealer den in the city called Kentucky Courts. Every night at 2:00 am, the chief drug dealer would fire a nine-millimeter into the air, empty the clip, and that was the signal every night at two o'clock that drug dealing was over for the day.*

SEAN: It's clear that living through the crack epidemic in DC really shaped a lot of Dick's views on guns. So in the years after the handgun ban, Dick starts the very long process of finding a way to get his gun back to DC. And he eventually even quits his desk job to pursue getting his gun back full time.

DICK HELLER: *I'm all over Capitol Hill, and I see security guards have guns. Well golly! Why can't I be a security guard? Golly! Maybe that would help me have a gun that I can't have on my own. Golly! Let's see how easy or not easy this is. Golly! One step leads to another.*

SEAN: Golly! Just like that, Dick was able to have a gun in DC, but only during the day and only while he was working.

DICK HELLER: *Like Barney Fife, at the end of my shift I have to turn in my gun and my bullet.*

SEAN: *And they kept it there?*

DICK HELLER: *And they kept it on site in the safe, yes.*

SEAN: He finally starts looking for some help, some legal help.

DICK HELLER: *But I knew Washington because I lived here, and I'd gone to some think tanks, Cato and Heritage and some others. I knew they existed.*

SEAN: And right around the time Dick's out there looking for some help, turns out these lawyers are out there looking for some Dick.

DICK HELLER: *[laughs] No. No.*

SEAN: He wasn't their ideal, sympathetic guy.

DICK HELLER: *I was told repeatedly, and it was in print that I was the worst choice.*

BOB LEVY: *It was less than optimal.*

SEAN: You know, because of that plantation thing he said, or he would always talk smack about the federal government in interviews.

DICK HELLER: *One day Clark Neily put a note in my hand and said, "Dick Heller, this is what you say: 'I just wanted a gun to protect my house.' Shut up."*

SEAN: So he wasn't their favorite plaintiff, but ...

ALAN GURA: *Dick did one thing that no one else had done, which is besides just wanting an illegal handgun in DC, he actually fill out an application to register a gun that he already possessed again in Virginia, and had that application denied.*

SEAN: And he had this denial slip or whatever it's called. He like, literally had this physical proof of his grievance. And this simple, technical, arbitrary, little stupid piece of paper gave him what's known as standing to bring the case.

ALAN GURA: *Dick Heller ended up being kind of last man standing. That was nothing to do -- that was not our choice.*

SEAN: Regardless, he became their guy, and these three lawyers they take the case to the DC court.

ALAN GURA: *And the judge after inspecting it said the case can go forward. Magic moment.*

[ARCHIVE CLIP: *The Supreme Court is entering the debate over the Second Amendment right to bear arms. Today's case has aroused huge interest among citizens and politicians alike, and it has divided even the President and Vice President.]*

NARRATOR: Chapter 3. The Reckoning

SEAN: March 18th, 2008.

ADAM WINKLER: *The day the Heller case was argued at the Supreme Court, everyone understood how high the stakes were. Outside in front of the Supreme Court protesters by the hundreds were marching and chanting in favor of gun rights and in favor of gun control. Journalists from all over the world descended upon the Supreme Court that day. And inside the Supreme Court House ...*

DICK HELLER: *Not a creature was stirring ...*

SEAN: *Not even a mouse.*

DICK HELLER: *You coulda heard a mouse, I say. And everybody is just quiet and you can hear your heart beating. And suddenly, bam! And then "Oyez, oyez, oyez," the clerk yelled at the top of his lungs. And then there's this strange sound. What can that be? It was the swishing of the robes of the justices as they ascended the steps to the bench. Unbelievable!*

[ARCHIVE CLIP, Supreme Court: *We will hear argument today in case 07290, District of Columbia versus Heller.]*

SEAN: This was the first time in our history the Supreme Court would directly try to figure out what the Second Amendment means.

[ARCHIVE CLIP, Supreme Court: Mr. Dellinger.]

SEAN: And immediately ...

[ARCHIVE CLIP, Walter Dellinger: Good morning, Mr. Chief Justice, and may it please the court.]

SEAN: DC's lawyer Walter Dellinger gets up and jumps right into it.

[ARCHIVE CLIP, Walter Dellinger: The Second Amendment was a direct response ...]

SEAN: And he sort of begins with this central question. Like, what was James Madison thinking when he wrote this super confusing sentence, like, 200 years ago? Was he thinking about the individual people and their right to own a gun? Or was he thinking about the collective right of the militia to own a gun?

[ARCHIVE CLIP, Walter Dellinger: And the first text to consider is the phrase, "Protecting a right to keep and bear arms."]

SEAN: And he says if you look at the phrase ...

[ARCHIVE CLIP, Walter Dellinger: The phrase, "Keep and bear arms."]

SEAN: How it was used at the time ...

[ARCHIVE CLIP, Walter Dellinger: Every person who used the phrase "bear arms," used it to refer to the use of arms in connection with militia service.]

SEAN: Dellinger says that if you look at some of Madison's rough drafts of the Second Amendment, it's pretty clear that when he says people have a right to bear arms, all he really means is, like, report for duty.

[ARCHIVE CLIP, Walter Dellinger: Even if the language of keeping and bearing arms were ambiguous, the Amendment's first clause confirms that the right is militia-related.]

[ARCHIVE CLIP, Chief Justice John Roberts: If you're right, Mr. Dellinger ...]

SEAN: Chief Justice Roberts jumps in and is like, "Whoa, whoa, whoa, whoa, whoa, whoa, whoa."

[ARCHIVE CLIP, Chief Justice John Roberts: Why would they say the right of the people to keep arms ...]

SEAN: If they meant just the people in the state militias ...

[ARCHIVE CLIP, Chief Justice John Roberts: Why wouldn't they say state militias have the right to keep arms?]

[ARCHIVE CLIP, Walter Dellinger: Mr. Chief Justice, I believe that the phrase "the people" and the phrase "the militia" were really in sync with each other. The Federalist Farmer uses the phrase, "The people are the militia. The militias are the people."]

[ARCHIVE CLIP, Chief Justice John Roberts: If that's right, doesn't that cut against you? If the militia included all the people, it includes all the people.]

[ARCHIVE CLIP, Walter Dellinger: Yes, I do believe it includes all the people.]

SEAN: At this point everyone sort of jumps in. A bunch of justices start interrupting each other.

It's kind of like a scrum. And they're all trying to figure out okay, so when Madison wrote the phrase ...

[ARCHIVE CLIP, Walter Dellinger: The right of the people to keep and bear arms shall not be infringed.]

SEAN: Like, who were the people he was talking about?

[ARCHIVE CLIP, Justice Ruth Bader Ginsburg: Thinking of "the people." What those words meant.]

SEAN: Was the people just the militia, or everyone, all the people? What is the relationship between the second part of the sentence, the people part, and the first part of the sentence, the militia part?

[ARCHIVE CLIP, Walter Dellinger: Verdugo-Urquidez]

SEAN: They go into, like ...

[ARCHIVE CLIP, Walter Dellinger: Blackstonian common law right ...]

SEAN: Common law.

[ARCHIVE CLIP, Justice Antonin Scalia: Scottish Highlanders.]

SEAN: Scottish Highlanders for some reason. At one point ...

[ARCHIVE CLIP, Justice Anthony Kennedy: Well, the subject is "arms" in both clauses ...]

SEAN: They even sort of start to diagram Madison's sentence.

[ARCHIVE CLIP, Walter Dellinger: I think, as this Court ...]

SEAN: And the net result according to Adam Winkler was the four liberals ...

ADAM WINKLER: *Stevens, Souter, Breyer, Ginsburg.*

SEAN: Seem to want to emphasize the militia part of the sentence. And then you had the four conservative justices.

ADAM WINKLER: *Scalia, Thomas, Alito, Roberts.*

SEAN: Who seem to want to emphasize the people part of the sentence. The second part.

[ARCHIVE CLIP, Justice Antonin Scalia: Of course, I don't see how there's any -- any contradiction.]

SEAN: And Team People's team captain, the quarterback, the first chair that day was without a doubt Justice Antonin Scalia.

[ARCHIVE CLIP, Justice Antonin Scalia: Why isn't it perfectly plausible, indeed reasonable, to assume that since the framers knew that the way militias were destroyed by tyrants in the past was not by passing a law against militias, but by taking away the people's weapons?]

ADAM WINKLER: *Justice Scalia, of course was a very conservative Justice.*

JOAN BISKUPIC: *Grew up in Queens.*

SEAN: This is Joan Biskupic.

JOAN BISKUPIC: *Long-time reporter covering the Supreme Court.*

SEAN: She's also written a biography of Justice Scalia.

JOAN BISKUPIC: *He was an avid hunter, and he grew up at a time when young men were trained in firearms in high school.*

[ARCHIVE CLIP: *Marksmanship has played a vital role in our country.]*

ADAM WINKLER: *Even from the time he was a kid at school in Queens, he said he used to carry his gun for rifle practice at school on the subways of New York.*

JOAN BISKUPIC: *Can you imagine doing that today in New York City?*

[ARCHIVE CLIP, Justice Antonin Scalia: *You're being unrealistic in thinking that the second clause is not broader than the first. The principal purpose here is the militia. The second clause goes beyond the militia and says the right of the people to keep and bear arms.]*

[ARCHIVE CLIP, Justice David Souter: *Then why have the first clause? I mean, what's it doing -- I mean what help is it going to be?]*

SEAN: What you hear throughout the arguments is that Scalia is very, very forwardly pressing the sort of individual rights argument.

[ARCHIVE CLIP, Justice Antonin Scalia: *It speaks of the right of the people.]*

SEAN: And justices like David Souter ...

[ARCHIVE CLIP, Justice David Souter: the kind of the militaries ...]

SEAN: Are arguing back saying, "What about the collective? The militia?" This goes on for well over an hour, the justices sort of grilling the lawyers, arguing amongst themselves, everybody trying to figure out what was in James Madison's head. Until finally Justice Breyer, one of the liberal justices is like ...

[ARCHIVE CLIP, Justice Stephen Breyer: You're saying that this is unreasonable ...]

SEAN: Hold the phone!

[ARCHIVE CLIP, Justice Stephen Breyer: That really is my question.]

SEAN: Forget what Madison intended. There is no way for us to know. Let's talk about now. Let's talk about gun violence. This sentence was most definitely written about muskets. What about handguns and assault rifles? What is reasonable now?

[ARCHIVE CLIP, Justice Stephen Breyer: 80,000 to 100,000 people every year in the United States are either killed or wounded in gun-related homicides or crimes or accidents or suicides, but suicides are more questionable. That's why I say 80,000 to 100,000. Now in light of that, why isn't a ban on handguns a reasonable or a proportionate response on behalf of the District of Columbia?]

[ARCHIVE CLIP, Alan Gura: Because your honor, for the same reason it was offered by numerous military officers at the highest levels of the US military at all branches of service writing in two briefs, they agree with us that the handgun ban serves to weaken America's military preparedness because ...]

SEAN: Alan Gura basically argues when you take away people's guns, they're gonna be less prepared if and when they enlist in the Army. To which Justice Breyer's like, "They can still practice shooting ...

[ARCHIVE CLIP, Justice Stephen Breyer: ... with their rifles.]

SEAN: Which weren't banned in DC.

[ARCHIVE CLIP, Justice Stephen Breyer: They can go to gun ranges I guess, in neighboring states. But does that make it unreasonable for a city with a very high crime rate? Assuming that the objective is what the military people say, to keep us ready for the draft if necessary. Is it unreasonable for a city with that high crime rate to say, "No handguns here."]

[ARCHIVE CLIP, Justice Antonin Scalia: You want to say yes.]

[ARCHIVE CLIP, Justice Stephen Breyer: Now, why?]

[ARCHIVE CLIP, Justice Antonin Scalia: That's your answer.]

[ARCHIVE CLIP, Justice Stephen Breyer: Well, you want to say yes, that's correct. But I want to hear what the reasoning is, because there is a big crime problem. I'm simply getting you to focus on that.]

SEAN: That, by the way, was Justice Scalia telling Alan Gura how to answer Justice Breyer's question.

[ARCHIVE CLIP, Alan Gura: The answer is yes, as Justice Scalia noted. And it's unreasonable and it actually fails any standard of review that might be offered under such a construction of the individual right because proficiency with handguns ...]

SEAN: Anyway, the oral arguments last 97 minutes, far longer than most other cases. And going into the arguments ...

ADAM WINKLER: Many Supreme Court watchers figured the case would be a close 5-4 decision. And it could go either way.

SEAN: And as with all of these close cases ...

ADAM WINKLER: *The question was what would Anthony Kennedy, the swing Justice, do? As in so many issues in America, it comes down to what does Anthony Kennedy believe? So at the oral argument, and I had the good fortune to be at the oral argument in the Heller case, everyone was looking to hear what would he say about the Second Amendment? His was really the vote that counted. And the very first comment he made ...*

[ARCHIVE CLIP, Justice Anthony Kennedy: *It had nothing to do with the concern of the remote settler to defend himself and his family against hostile Indian tribes and outlaws, wolves and bears and grizzlies and things like that?]*

SEAN: One of the first things he said was about bears. Like, not bear arms, but grizzly bears. And the point Kennedy was trying to make was clear: don't you think the framers had other reasons that they wanted people to have guns other than just being in a militia? Like, what about people being in their homes and just needing to defend themselves?

DICK HELLER: *And that's when I silently screamed at the top of my lungs so nobody could hear me. Yes! We win! dot-dot-dot something.*

[NEWS CLIP: *We return now to the historic Supreme Court decision handed down this morning.]*

[ARCHIVE CLIP, Justice Anthony Kennedy: *Justice Scalia has our opinion this morning in case 07290, District of Columbia versus Heller.]*

[ARCHIVE CLIP, Justice Antonin Scalia: *We hold that the Second Amendment guarantees an individual right to have and use arms for self-defense in the home, and that the district's handgun ban as well as its requirement that firearms in the home be rendered inoperative violates that right.]*

JOAN BISKUPIC: *It was a groundbreaking reading of the Second Amendment. Scalia minimized that clause referring to a well-regulated militia, and put the stress on the second clause that referred to the*

right of the people.

[ARCHIVE CLIP, Justice Antonin Scalia: *The people will not be deprived of the right to keep and bear arms.]*

SEAN: *This was as good as it got for him on the bench.*

JOAN BISKUPIC: *I think so.*

SEAN: RIP the militia clause. December 15, 1791, to June 26, 2008. A pretty good run, if I'm being honest. For the first time in the history of these United States, the courts definitively declared that the Second Amendment gives every American the right to a gun for self-defense.

DICK HELLER: *It was a -- it was a great day for freedom in America. It was a great day for the Constitution. A great day for citizens. It was great day for gun owners. It was a great day for fearful people.*

SEAN: Of course, not everyone agreed.

JACK RAKOVE: *I mean, to me that's a travesty.*

SEAN: This is Jack Rakove.

JACK RAKOVE: *Professor of history and political science at Stanford University.*

SEAN: He filed a brief for the court, and he says Scalia's reading of the history is just wrong.

JACK RAKOVE: *The Second Amendment was not about individual right.*

SEAN: You could argue that we shouldn't even be talking about history.

JACK RAKOVE: *Because the nature of firearms has changed so radically from the 18th century to our own time.*

SEAN: And that ultimately -- and here he echoed Justice Stevens in his dissent.

[ARCHIVE CLIP, Justice John Paul Stevens: *The court has decided to enter today into a political thicket.]*

JACK RAKOVE: *I think it's all politics, to be honest. I mean, I don't really believe in constitutional law anymore. I think constitutional law is a fiction. You know, it's become so highly politicized in so many areas. I think constitutional law is bunk.*

SEAN: *Wow!*

JACK RAKOVE: *I just -- you know, I'm a historian, I'm not a lawyer, so I don't have any professional stake in defending the judiciary.*

SEAN: But -- there's a very big but.

JOAN BISKUPIC: *We did have a major caveat.*

[ARCHIVE CLIP, Justice Antonin Scalia: *The next section of our opinion points out that like most rights, the Second Amendment right is not unlimited.]*

JOAN BISKUPIC: *He said like all rights, it's not absolute.*

[ARCHIVE CLIP, Justice Antonin Scalia: *It is not a right to keep and carry any weapon whatsoever in*

any manner whatsoever and for whatever purpose.]

JOAN BISKUPIC: Which is very important to keep in mind.

[ARCHIVE CLIP, Justice Antonin Scalia: *Our opinion should not be taken to cast doubt on long-standing prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings.]*

SEAN: And this is another thing that we tend to forget. The decision says every individual has a right to bear arms, but most interestingly, like, the decision also says of course, we need gun control. The word Heller has come to represent, like, Second Amendment rights. Like, are you for Heller or are you against Heller? Even though being for Heller is being for gun control.

JAD: That's confusing.

SEAN: Yeah, it is. I mean, after all this time, it's still just totally confusing. You have a right to a gun, but the government has a right to regulate it. Dick Keller gets his gun back in DC, but DC still also has all sorts of gun regulations. And you see the same pattern all over the country. Some states are lenient, some are super strict, and both approaches seem to comply with Heller. In a way, the Heller Decision is just like all those commas and clauses that we started with in James Madison's sentence. It's this confusing declaration that leaves the door wide open for interpretation. Which obviously sucks. We could have used a little more clarity on how to live with this Second Amendment right to bear arms. But that door being open, it gives us an opportunity, I think. An opportunity to get it right, to fix it. And it seems like now would be a pretty good time.

JAD: That was The Gun Show from More Perfect, and producer Sean Rameswaram. Huge thanks to him. Check out his show, Today Explained on Vox. Thanks to Adam Winkler. We drew a lot of the information from this episode from his book, Gunfight. Thanks also to Suzie Lechtenberg, Kelly Primo, Julia Longoria, Sarah Qari, Jonny Lawton, Alex Overington and the full More Perfect team which includes, you know, Cristian Farias, Linda Hirshman, Elie Mystal, David Gable and Michelle Harris. Thank you to Oyez for all the Supreme Court audio. They're a free law project in collaboration with the Legal Information Institute at Cornell. Leadership support for More Perfect is provided by the Joyce Foundation. Additional funding is provided by the Charles Evans Hughes Memorial Foundation. I'm Jad Abumrad. Thanks for listening.

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