

Foreword

Aiming for Answers: Balancing Rights, Safety, and Justice in a Post-*Bruen* America

Chad Nowlan*

On October 25, 2023, eighteen people lost their lives to a uniquely American act of violence when a gunman opened fire at various locations around Lewiston, Maine.¹ The all-too-familiar plight and grief that accompanies a mass shooting consumed us all as the former Dean of the University of Minnesota Law School, Garry Jenkins, was scheduled to be inaugurated as the new President of Bates College in Lewiston less than forty-eight hours later.² Instead of an inauguration, our former Dean was stuck in a city-wide lockdown as the manhunt for the shooter dragged on.³

Traditionally, the Dean of our esteemed Law School welcomes guests to the *Minnesota Law Review* symposium with

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1. See Marlene Lenthag & Dennis Romero, *Maine Shootings: Timeline of the Fatal Lewiston Attacks*, NBC NEWS (Oct. 26, 2023), <https://www.nbcnews.com/news/us-news/lewiston-shooting-timeline-maine-attack-rcna122290> [https://perma.cc/VE7F-FE7E].

2. See Steve Collins, *Bates Expects to Inaugurate Its President by May 4*, LEWISTON SUN J. (Feb. 14, 2024), <https://www.sunjournal.com/2024/02/14/bates-college-expects-to-inaugurate-its-president-may-4> [https://perma.cc/6W84-N9L5].

3. Lenthag & Romero, *supra* note 1.

opening remarks. This year, however, we had accepted the unfortunate reality that our Interim Dean was going to be in Maine to celebrate Former Dean Jenkins' inauguration during the event. Much to our dismay, our Interim Dean was able to address our symposium attendees *only* because a mass shooting was keeping him from his previously scheduled engagements.

In the aftermath of the Lewiston shooting, guests and students were quick to label our Symposium as “timely.” It provides little comfort to think that our Symposium would have been timely that week, the month before that, and the year before that. Gun violence does not cease to exist when the news decides it has covered a singular event enough for its viewers; communities continue to grieve, survivors continue to piece their lives back together, and more acts of gun violence are committed every day. Data from the past several years confirm that every day in the United States an average of one hundred and six people die from firearms and an additional two hundred and ten people are shot and survive.⁴ In the year 2000, there were three mass-shooting incidents in the United States; in 2021, there were sixty-one.⁵ Because the cycle of gun violence incident to thoughts and prayers to hollow promises of change back to gun violence continues to spin even when we do not want to think or talk about it, discussions like our Symposium will continue to be timely every day of every week of every month of every year in the United States.

In January of 2023, the University of Minnesota Law School launched the Gun Violence Prevention Law Clinic—the first of its kind in the country⁶—as an opportunity for students to make an impact in the movement to reduce the harm caused by firearms.⁷ It was only fitting, then, that our Symposium that

4. *Statistics*, BRADY UNITED, <https://www.bradyunited.org/resources/statistics> [<https://perma.cc/E852-WBQX>].

5. John Gramlich, *What the Data Says About Gun Deaths in the U.S.*, PEW RSCH. CTR. (Apr. 26, 2023), <https://www.pewresearch.org/short-reads/2023/04/26/what-the-data-says-about-gun-deaths-in-the-u-s> [<https://perma.cc/36XT-9GXA>].

6. Gillian Haveman, *New UMN Law School Clinic to Focus on Gun Violence Prevention*, MINN. DAILY (Feb. 14, 2023), <https://mndaily.com/275430/news/new-umn-law-school-clinic-to-focus-on-gun-violence-prevention> [<https://perma.cc/7BMK-K7BC>] (noting that the clinic at UMN Law is the first of its kind in the country).

7. See Ken Erdahl, *U of M Law Clinic Aims to Prevent Gun Violence While Working Within Current Laws*, KARE11 (Feb. 14, 2023), <https://www.kare11>

October was focused on gun violence prevention as well. The Gun Violence Prevention Law Clinic challenges students by posing them with questions about how gun laws should operate and how our justice system can be used to enforce those laws.⁸ The answer may not be easy, but as we take aim at solutions in the aftermath of the Supreme Court's decision in *New York State Rifle & Pistol Ass'n v. Bruen*,⁹ we can only hope a day comes when conversations about gun violence will no longer feel so timely.

RACIAL JUSTICE AND FIREARM LAWS

Our Symposium began with a discussion of the tension between the movement for racial justice and the fact that Black and Brown individuals are charged under existing gun laws at significantly higher rates than white individuals.¹⁰ Moderated

.com/article/news/local/breaking-the-news/university-of-minnesota-law-clinic-aims-to-prevent-gun-violence-while-working-within-current-laws/89-4ef72467-fb32-4375-9b03-3155dbaf2092 [https://perma.cc/SKP5-33WG]; Julia Brunette Johnson, *Minnesota Law Launches Gun Violence Prevention Clinic*, NAT'L JURIST (Dec. 14, 2022), https://nationaljurist.com/prelaw/around-the-nation/minnesota-law-launches-gun-violence-prevention-clinic [https://perma.cc/M4XJ-P3AZ]; *Law School Launches Gun Violence Prevention Clinic*, MINN. L. MAG. (2023), https://minnesotalawmag.law.umn.edu/stories/law-school-launches-gun-violence-prevention-clinic [https://perma.cc/H5DH-EGXX].

8. For a small sampling of the issues focused on by students in the Gun Violence Prevention Law Clinic, see *Students from the Gun Violence Prevention Clinic Win First Case That Upholds Gun Safety Regulations in Minnesota*, MINN. L. (Dec. 11 2023), https://law.umn.edu/news/2023-12-11-students-gun-violence-prevention-clinic-win-first-case-upholds-gun-safety [https://perma.cc/RMJ9-5QKU]; *Gun Violence Prevention Clinic Student Director Chad Nowlan '24 Defends Constitutionality of Minnesota Firearms Laws in Oral Arguments in Minnesota v. Greenlee*, MINN. L. (Oct. 20, 2023), https://law.umn.edu/news/2023-10-20-gun-violence-prevention-clinic-student-director-chad-nowlan-24-defends [https://perma.cc/QDM8-NCA9]; *Prof. Megan Walsh and Student David Lamb Write Op-Ed in Star Tribune About Gun Violence by Domestic Abusers*, MINN. L. (Feb. 29, 2024), https://law.umn.edu/news/2024-02-29-prof-megan-walsh-and-student-david-lamb-write-op-ed-star-tribune-about-gun-violence [https://perma.cc/53XB-7T9Y]; *Gun Violence Prevention Clinic and State of MN Prevail in Motion to Compel Hearing Against Fleet Farm*, MINN. L. (Mar. 25, 2024), https://law.umn.edu/news/2024-03-25-gun-violence-prevention-clinic-and-state-mn-prevail-motion-compel-hearing-against [https://perma.cc/GV29-JW97].

9. 597 U.S. 1 (2022).

10. *Symposium*, MINN. L. REV., https://minnesotalawreview.org/symposium [https://perma.cc/FZJ9-RCGR] (explaining the purpose of the Symposium's panels). See also Daniel S. Harawa, *The Second Amendment's Racial*

by Esther Sanchez-Gomez of Giffords Law Center,¹¹ the panel featured Minnesota Attorney General Keith Ellison,¹² Duke University School of Law's Jennifer Behrens,¹³ New York University School of Law's Daniel Harawa,¹⁴ and Dr. Brennan Gardner-Rivas.¹⁵ The answer being sought by the day's first panel was what concrete actions individuals working in this field can take to end the skewed enforcement of laws meant to keep our communities safe from gun violence.

Behrens and co-author Joseph Blocher penned a piece on this topic for the *Minnesota Law Review's* online publication, *Headnotes*. In it, Behrens and Blocher explore the history of the phrase "Saturday Night Special" being used to describe "cheap, easily-concealable firearms" and whether, as opponents to gun regulations claim, its roots are deeply embedded in racial bias that confirm any gun law is per se racist.¹⁶ Despite popular belief, Behrens and Blocher debunk the myth that this phrase originated in 1976 with Barry Bruce-Briggs's article, "The Great American Gun War."¹⁷ Behrens and Blocher trace the origins of the phrase as it was used in relation to firearms back to 1917 and its general usage back to the 1800s, indicating that "[t]he terminology emerged during a time when one could ride the Saturday-night special (train) to shop at a Saturday-night special (sale) in order to purchase a Saturday Night Special

Justice Complexities, 108 MINN. L. REV. 3225 (2024) (exploring the disparities between Black and white individuals charged under existing gun laws).

11. See Esther Sanchez-Gomez, GIFFORDS L. CTR., <https://giffords.org/people/esther-sanchez-gomez> [<https://perma.cc/W788-3642>].

12. See *Biography of Minnesota Attorney General Keith Ellison*, OFF. OF MINN. ATT'Y GEN., <https://www.ag.state.mn.us/Office/AGBio.asp> [<https://perma.cc/ZLT7-R676>].

13. See Jennifer L. Behrens, DUKE L., <https://law.duke.edu/fac/behrens> [<https://perma.cc/3KLC-TP4Q>].

14. See Daniel Harawa, N.Y.U. L., <https://its.law.nyu.edu/facultyprofiles/index.cfm?fuseaction=profile.overview&personid=56644> [<https://perma.cc/B8SR-P8Z4>].

15. See *About*, BRENNAN GARDNER RIVAS, PHD, <https://aggressivehistorian.com> [<https://perma.cc/N2AA-WFPL>].

16. See Jennifer L. Behrens & Joseph Blocher, *A Great American Gun Myth: Race and the Naming of the "Saturday Night Special"*, 108 MINN. L. REV. HEADNOTES 293, 312 (2024), https://minnesotalawreview.org/wp-content/uploads/2024/05/SympSupp1_Behrens-Blocher.pdf [<https://perma.cc/R4M7-73WG>].

17. *Id.* at 297; see also B. Bruce-Briggs, *The Great American Gun War*, 45 PUB. INT. 37 (1976).

(handgun).¹⁸ The Authors are careful to clarify, however, that their research does not demonstrate certain gun laws and the public perception thereof were *not* motivated by racial discrimination.¹⁹ But, reiterating the focus and purpose of their article in the post-*Bruen* context, “[p]recisely because the history is nuanced, it is important to be accurate about historical claims.”²⁰ The nuance that Behrens and Blocher emphasize was at the heart of the first panel’s discussion: because *Bruen* now mandates the citation of historical analogies to uphold contemporary firearms laws, litigators and scholars must proceed with caution and ensure that the laws and history being cited in support of gun regulations do not fall into a trap of continuing histories of racial discrimination within the law.²¹

Daniel Harawa authored an essay in conjunction with the day’s first panel topic titled “The Second Amendment’s Racial Justice Complexities.”²² In it, Harawa continues the discussion of the inherent tension between the goals of the racial justice movement and the racially biased history of America’s gun laws and their skewed enforcement.²³ To exemplify and expand upon the Symposium’s discussion, Harawa loops in Professor Trevor Gardner’s “interests that Black Americans may have when it comes to the administration of criminal laws,” including a “liberty interest,” a “security interest,” and the “democratic interest.”²⁴ Harawa contends, as he did on the day’s panel, that the complex problems presented by the overlapping racial justice and safety interests of firearms laws require “layered solutions.”²⁵ Ultimately, and appropriately fitting the day’s discussions, Harawa astutely concludes that lawmakers must be proactive rather than reactive in their administration of gun violence laws to address the “root causes” of gun violence

18. Behrens & Blocher, *supra* note 16, at 312.

19. *Id.*

20. *Id.* at 313.

21. See generally Daniel S. Harawa, *NYSRPA v. Bruen: Weaponizing Race*, 20 OHIO ST. J. CRIM. L. 163 (2022).

22. Harawa, *supra* note 10, at 3225.

23. *Id.*

24. *Id.* at 3229–30; see also Trevor George Gardner, *The Conflict Among African American Penal Interests: Rethinking Racial Equity in Criminal Procedure*, 171 U. PA. L. REV. 1699, 1703 (2023).

25. Harawa, *supra* note 10, at 3242.

through community violence intervention programs and non-carceral solutions to firearm law violations.²⁶

These published pieces articulate just a few of the many observations and thoughts offered about the nuanced overlap of the racial justice movement and the gun violence prevention movement. Starting the Symposium with this discussion allowed its themes to undergird the rest of the day's panels, forcing listeners and attendees to grapple with the same questions that Behrens, Blocher, and Harawa parse through in their respective pieces. No discussion of gun violence prevention can proceed without considerations of race and the disparity in historical gun law enforcement, and it is against this backdrop that the Symposium's ensuing topics were tackled.

THE SORDID AFTERMATH OF *BRUEN* (SO FAR)

The Symposium's second panel focused on what the brief period since *Bruen* was handed down has looked like in the lower courts around the country.²⁷ Moderated by Janet Carter from Everytown for Gun Safety,²⁸ the panel featured the Brady Center for Gun Violence Prevention's Director of Constitutional Litigation, Shira Lauren Feldman,²⁹ Eric Ruben from Southern Methodist University's Dedman School of Law,³⁰ Fordham University's (and the oft-cited) Saul Cornell,³¹ and Samford Law's member of the "loyal opposition" Brannon Denning.³² Numerous

26. *Id.* at 3259.

27. *Symposium*, *supra* note 10.

28. See Janet Carter, EVERYTOWN L., <https://everytownlaw.org/person/janet-carter> [<https://perma.cc/G9GU-UBYV>].

29. See Shira Lauren Feldman, BRADY UNITED, <https://www.bradyunited.org/about-us/our-team/brady-legal-team/shira-lauren-feldman> [<https://perma.cc/N2GW-WGLK>].

30. See Eric Ruben, SMU L., <https://www.smu.edu/law/faculty/profiles/ruben-eric> [<https://perma.cc/ER93-NQU3>].

31. See Saul Cornell, FORDHAM U., <https://www.fordham.edu/academics/departments/history/faculty/saul-cornell> [<https://perma.cc/CJS2-SWNM>]; see also *History Professor's Research Cited by Federal Court in Gun Regulations Case*, FORDHAMNOW (Apr. 13, 2021), <https://news.fordham.edu/politics-and-society/history-professors-research-cited-by-federal-court-in-gun-regulation-case> [<https://perma.cc/5X5S-5WKV>].

32. See Brannon P. Denning, SAMFORD U. L., <https://www.samford.edu/law/directory/Denning-Brannon-P> [<https://perma.cc/3LVS-R5PF>]; see also MN Gun Owners Caucus (@mnguncaucus), X (formerly TWITTER) (Oct. 27, 2023, 10:58 AM), <https://twitter.com/mnguncaucus/status/1717933779145158790> [<https://perma.cc/3LVS-R5PF>].

courts at both the state and federal level have attempted applying the *Bruen* test to wildly different results since the decision was handed down.³³ In fact, several courts have purported to apply the same test and yet reached diametrically opposed conclusions.³⁴ This panel reconciled these disparities in judicial decision-making and attempted to offer a glimpse of what the next few years may hold.

Denning and co-author Glenn H. Reynolds penned an Essay in this issue that spoke to many of the issues discussed in the Symposium's second panel.³⁵ Given the Symposium's proximity in time to the United States Supreme Court hearing oral arguments in *United States v. Rahimi*, the 2023–24 Term's blockbuster Second Amendment case,³⁶ it is unsurprising that a significant portion of the day's discussion and Denning and Reynolds's Essay is spent attempting to read the tea leaves of how that case may come out. As the authors and panelists pointed out, the *Rahimi* case "highlights a number of questions about the . . . *Bruen* decision . . . that have cropped up with frequency in the courts [post-*Bruen*]."³⁷ The panelists at the Symposium discussed how, although *Bruen* purports to present a one-step test, it has become a two-step test in practice.³⁸ Step One requires courts to answer the question of whether the plain text of the Second Amendment covers the conduct at issue in a given statute, and if the answer is yes, only then can courts move

perma.cc/7E24-DXNN] ("[Denning] describes himself as being part of the 'loyal opposition'").

33. See *Vincent v. Garland*, 80 F.4th 1197, 1200 (10th Cir. 2023) (explaining the requirements of *Bruen*'s new test); *United States v. Daniels*, 77 F.4th 337, 357 n.5 (5th Cir. 2023) (Higginson, J., concurring) (analyzing *Bruen*'s new two-step test); *Barris v. Stroud Township*, 310 A.3d 175, 213–14 (Pa. 2024) (showing how state courts must utilize the *Bruen* test); *State v. Wilson*, 543 P.3d 440, 453 (Haw. 2024) (acknowledging but pointing out major flaws with the *Bruen* test).

34. Compare *United States v. Holton*, 639 F. Supp. 3d 704, 711 (N.D. Tex. 2022) (holding 18 U.S.C. § 922(k) to be constitutional under a *Bruen* analysis), with *United States v. Price*, 635 F. Supp. 3d 455, 464 (S.D.W.V. 2022) (holding 18 U.S.C. § 922(k) to be unconstitutional under a *Bruen* analysis).

35. Brannon P. Denning & Glenn H. Reynolds, *Trouble's Bruen: The Lower Courts Respond*, 108 MINN. L. REV. 3187 (2024).

36. 61 F.4th 443 (2023), *cert. granted*, 143 S. Ct. 2688 (2023).

37. Denning & Reynolds, *supra* note 35, at 3195.

38. *Id.* at 3196 (explaining what the authors consider to be *Bruen*'s first of two steps).

on to Step Two³⁹ (which the Supreme Court declared to be *Bruen*'s first step),⁴⁰ which involves analyzing historical analogues to determine if a contemporary firearm regulation is consistent with the nation's history and tradition of firearms regulations.⁴¹ While our panelists expressed optimism that the Supreme Court will clarify some of these questions when they hand down their opinion in *Rahimi*, they also discussed the necessity for litigators to be prepared for any possible outcome.⁴²

Professor Eric Ruben also authored a piece on this issue that, although not focused exclusively on litigation in the lower courts in the aftermath of *Bruen*, still touches on many of the topics discussed during the Symposium's second panel.⁴³ In his Article, Professor Ruben highlights another major challenge lower courts have faced in the wake of *Bruen*: whether the appropriate era to look to for historically analogous laws is the late 1700s or the mid-to-late 1800s when the Second Amendment became applicable to the States via the Fourteenth Amendment.⁴⁴ Specifically in the context of suicide-prevention laws, Ruben notes that courts have struggled in identifying "suicide history" and have, instead, "draw[n] analogies to non-suicide history."⁴⁵ Because the Supreme Court has not given concrete guidance for how courts should look to history or what types of historical laws may be appropriate analogues, Ruben's piece and the Symposium's second panel appropriately posed questions about the viability of the *Bruen* test in situations beyond the scope of the law at issue in *Bruen*.

DOMESTIC VIOLENCE AND GUN VIOLENCE

One of the Symposium's best-attended panels, the third session of the day focused on the relationship between gun violence

39. *Id.* (outlining the circumstances that would lead a court to the second step of *Bruen*).

40. *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 2 (2022) ("The Court rejects that two-part approach as having one step too many.").

41. *Id.* at 22.

42. Denning & Renolds, *supra* note 35, at 3223–24.

43. Eric Ruben, *Scientific Context, Suicide Prevention, and the Second Amendment After Bruen*, 108 MINN. L. REV. 3121 (2024).

44. *Id.* at 3154 ("[T]he tradition must go back to the late 1700s or perhaps the 1800s.").

45. *Id.* at 3158.

and domestic violence.⁴⁶ This panel was moderated by Natalie Nanasi, Director of the Judge Elmo B. Hunter Legal Center for Victims of Crimes Against Women and Associate Professor of Law at Southern Methodist University's Dedman School of Law,⁴⁷ and featured Kelly Roskam, the Director of Law and Policy at the Johns Hopkins Center for Gun Violence Solutions;⁴⁸ Alicia Nichols, the Director of Innovation for the Battered Women's Justice Project;⁴⁹ Julia F. Weber, a consultant with Giffords Law Center;⁵⁰ and Megan Walsh, Visiting Assistant Clinical Professor of Law at the University of Minnesota Law School (and Director of the School's Gun Violence Prevention Law Clinic).⁵¹ While no pieces are being published in conjunction with the Symposium on this topic directly, the day's discussions focused on the "twin epidemic of gun violence and domestic violence."⁵² Once again, given the proximity in time to the oral arguments at the U.S. Supreme Court in *Rahimi*, that case was at the top of mind for panelists and attendees alike.

FIREARMS AND THE HOMEOWNER

The Symposium then split off into a series of breakout sessions that attendees could choose from,⁵³ including one focused on firearm manufacturer liability presented by Georgetown Law's Heidi Li Feldman⁵⁴ and one focused on firearms and the homeowner presented by George Washington University Law

46. *Symposium*, *supra* note 10.

47. *See Natalie Nanasi*, SMU L., <https://www.smu.edu/law/faculty/profiles/nanasi-natalie> [<https://perma.cc/3X54-DYTY>].

48. *See Our Team*, JOHNS HOPKINS, <https://publichealth.jhu.edu/center-for-gun-violence-solutions/about/our-team> [<https://perma.cc/AS5L-KVHS>].

49. *See Alicia Nichols*, LSW, INST. FOR WOMEN'S POL'Y RSCH., <https://iwpr.org/member/Alicia-nicols-lsw> [<https://perma.cc/9GDV-Z5PE>].

50. *See About*, JULIA F. WEBER, <https://www.juliafweber.com> [<https://perma.cc/EJ2X-FNNZ>].

51. *See Megan Walsh*, MINN. L., <https://law.umn.edu/profiles/megan-walsh> [<https://perma.cc/2HUZ-Z37T>].

52. MN Gun Owners Caucus (@mnguncaucus), X (formerly TWITTER) (Oct. 27, 2023, 1:33 PM), <https://twitter.com/mnguncaucus/status/1717972718904291339> [<https://perma.cc/N2GW-Z63A>].

53. *Symposium*, *supra* note 10.

54. *See Heidi Li Feldman*, GEO. L., <https://www.law.georgetown.edu/faculty/heidi-li-feldman> [<https://perma.cc/NR3R-GQPN>].

School's Cynthia Lee.⁵⁵ Professor Lee's piece in this issue expands upon the topics she discussed that day and makes bold proposals for potential reforms to legal doctrines that allow homeowners to use deadly force in defending their home and property.⁵⁶ This Article expands upon an issue that was prominent in news headlines in the spring of 2023: a series of shootings took place in which individuals either mistakenly approached the wrong house or pulled into a driveway to turn their car around and were subsequently shot by the owner of the property.⁵⁷

Professor Lee utilizes her Article to suggest a number of potential reforms to defense of habitation laws across the United States.⁵⁸ To summarize the problem, Lee states that "[t]he defense of habitation . . . [i]n its current form . . . gives the homeowner a license to kill anyone who is perceived to be unlawfully entering or attempting to enter the home, even when that other person is unarmed and is not threatening to harm anyone."⁵⁹ Lee focuses on five potential reforms: state legislatures revising their defense of habitation statutes "to align more closely with the defense of self-defense;"⁶⁰ limiting the use of deadly force in defense of habitation "to entries or attempted entries into the dwelling" where the state had previously extended their defense of habitation statute beyond the four corners of the dwelling;⁶¹ applying the initial aggressor limitation "that currently applies to claims of self-defense to the defense of habitation;"⁶² requiring courts to give an initial aggressor instruction to a jury in a case involving "an individual who is in a state that has extended the defense of

55. See Cynthia Lee, GEO. WASH. L., <https://www.law.gwu.edu/cynthia-lee> [<https://perma.cc/Q2FY-XZ5X>].

56. Cynthia Lee, *Firearms and the Homeowner: Defending the Castle, the Curtilage, and Beyond*, 108 MINN. L. REV. 2889 (2024).

57. See, e.g., Derrick Bryson Taylor et al., *What We Know About the Ralph Yarl Shooting in Kansas City*, N.Y. TIMES (Apr. 19, 2023), <https://www.nytimes.com/2023/04/18/us/ralph-yarl-shooting-kansas-city.html> [<https://perma.cc/R72G-NPG7>]; Jesse McKinley et al., *New Details Emerge in Deadly Upstate Shooting of Woman in Wrong Driveway*, N.Y. TIMES (Apr. 18, 2023) <https://www.nytimes.com/2023/04/18/nyregion/kaylin-gillis-ny-shooting.html> [<https://perma.cc/6KEQ-UZF7>].

58. Lee, *supra* note 56, at 2958.

59. *Id.*

60. *Id.* at 2959.

61. *Id.*

62. *Id.*

habitation beyond the four corners of the dwelling” who “uses deadly force against someone entering to attempting to enter the curtilage, the workplace, or a car;”⁶³ and removing the benefit of the self-defense presumption in cases where a defendant “use[s] a firearm to shoot an *unarmed* person who unlawfully enter[s] or [is] attempting to unlawfully enter their workplace, car, or curtilage.”⁶⁴ These reforms, Lee argues, “set the tone” for what is and is not tolerated behavior in a society shared with firearms.⁶⁵

NON-CARCERAL SOLUTIONS TO GUN VIOLENCE

The final panel at the Minnesota Law Review’s 2023 Symposium focused on non-carceral solutions to gun violence through a myriad of lenses.⁶⁶ This panel was moderated by Billy Clark, who serves as the Senior Litigation Attorney & Second Amendment Issues Manager at Giffords Law Center,⁶⁷ and featured Jacob Charles of Pepperdine Law,⁶⁸ Christopher Lau of the University of Wisconsin-Madison Law School,⁶⁹ Michael Ulrich of Boston University School of Law,⁷⁰ and Kelly Sampson of the Brady Center to Prevent Gun Violence.⁷¹ This group focused their discussions on alternative solutions to the growing problems of incarceration being the go-to solution for addressing any and all firearm-related harm.⁷² Each individual on the panel brought a different background to the discussion, whether that be from litigation, public health research, alternative policy advocacy, and community-based violence intervention programs.⁷³

63. *Id.* at 2960.

64. *Id.* at 2961.

65. *Id.* at 2962.

66. *Symposium*, *supra* note 10.

67. *See Billy Clark*, GIFFORDS L. CTR., <https://giffords.org/people/billy-clark> [<https://perma.cc/B7T3-45AZ>].

68. *See Jacob D. Charles*, PEPPERDINE, <https://law.pepperdine.edu/faculty-research/jacob-charles> [<https://perma.cc/9SQ9-M9UZ>].

69. *See Christopher Lau*, U. WIS.-MADISON L. SCH., <https://law.wisc.edu/profiles/christopher.lau@wisc.edu> [<https://perma.cc/3CUP-BQSC>].

70. *See Michael R. Ulrich*, BU SCH. OF PUB. HEALTH, <https://www.bu.edu/sph/profile/michael-ulrich> [<https://perma.cc/CBB4-KP46>].

71. *See Kelly Sampson*, BRADY UNITED, <https://www.bradyunited.org/about-us/our-team/experts/kelly-sampson> [<https://perma.cc/ZAR7-M2DV>].

72. *Symposium*, *supra* note 10.

73. *Id.*

In this issue's opening piece, Professor Jacob Charles traces the "escalating punitive measures" that have been put in place against gun offenders over the course of our nation's history.⁷⁴ Recognizing the "tragic consequences that harsh sentencing imposes," Professor Charles offers three "extra-doctrinal" avenues for potential reform.⁷⁵ The first, private regulation through business policies, encourages businesses to "leverage their market power to force gun industry actors to change certain practices aimed at decreasing the sales of weapons to potentially risky users. . . ."⁷⁶ In the past, as Charles notes, businesses changing their sale policies on handguns can result in marked reductions in the suicide rates.⁷⁷ The second reform Professor Charles suggests came up repeatedly during the panel's discussions: changing the legal strategies used in firearms-related lawsuits.⁷⁸ Discussing extreme-risk protection orders (ERPOs), which allow for the temporary barring of individuals who pose a risk of imminent harm to themselves or others from purchasing or possessing firearms, Charles notes that these laws can be enforced "without invoking the state's penal apparatus."⁷⁹ Further, the increase in civil lawsuits against gun manufacturers has the potential to turn attention away from prosecuting "street-level gun possession by young people" and, instead, change the narrative by "linking homicidal violence with militarized weapons-industry groups."⁸⁰ Thirdly, Charles emphasizes the importance of community violence intervention programs in reducing gun violence and restorative justice programs in allowing offenders to assimilate back into their communities.⁸¹

Professor Charles's piece ends on a similar note to how the Symposium's discussion of this topic did: a reckoning that the traditional approach of incarceration as the go-to solution to gun law violations simply has not worked. In Charles's words, this approach "has not meaningfully dampened the violence and has,

74. See Jacob D. Charles, *Firearms Carceralism*, 108 MINN. L. REV. 2811 (2024).

75. *Id.* at 2875–76.

76. *Id.* at 2877.

77. *Id.* at 2878.

78. *Id.* at 2879.

79. *Id.*

80. *Id.* at 2881 (quoting Angela McLeod, *An Abolitionist Critique of Violence*, 89 U. CHI. L. REV. 525, 547 (2022)).

81. *Id.*

at the same time, destroyed families and communities through dragnet policing.”⁸² And while, as Kelly Sampson noted during the panel, we are “aiming for answers” to these problems, the Symposium concluded by focusing on the reality that answers may not be readily apparent. Actual reform in the gun violence prevention movement is going to take time, and the esteemed guests of the *Minnesota Law Review* in attendance at our 2023 Symposium offered incredibly important perspectives on tangible solutions that can save lives and reduce the harm caused by guns.

CONCLUSION

Despite pushback from the Minnesota firearm community,⁸³ the staffers and editors of the *Minnesota Law Review* have no regrets in hosting “Aiming for Answers: Balancing Rights, Safety, and Justice in a Post-*Bruen* America.” No legal issue worth discussing has ever existed without vigorous debate and dissent. But the debate surrounding this issue is why must continue having the challenging conversations about how we can fix the gun violence epidemic in this country. The adage that “the only thing that stops a bad guy with a gun is a good guy with a gun,”⁸⁴ unfortunately, has not borne any worthwhile fruit. If

82. *Id.* at 2887.

83. See, e.g., MN Gun Owners Caucus (@mnguncaucus), X (formerly TWITTER) (Oct. 30, 2023, 7:45 PM), <https://twitter.com/mnguncaucus/status/1719153670569234708> [<https://perma.cc/PQ4A-NUFT>] (calling our event “the U of MN Law School’s anti-gun symposium”); Marc Olivier (@molivier1A), X (formerly TWITTER) (Oct. 27, 2023, 11:07 AM), <https://twitter.com/molivier1A/status/1717936060443865170> [<https://perma.cc/A7TK-HME9>] (“[T]his symposium is indoctrination for law practitioners, policymakers.”); Pete the Cat (@PeteCatMN), X (formerly TWITTER) (Sept. 28, 2023, 9:00 AM), <https://twitter.com/PeteCatMN/status/1707394890391232675> [<https://perma.cc/KS9F-ZMCT>] (referring to the Law Review staff and editors as “a bunch of buffoons”); igK (@igKress), X (formerly TWITTER) (Sept. 28, 2023, 4:15 PM), <https://twitter.com/igKress/status/1707504343014854657> [<https://perma.cc/V5Q3-AGBT>] (questioning whether the Symposium would just be “a room full of people scheming on how to disarm the American public”); Mike Glenn (@glennimages), X (formerly TWITTER) (Sept. 29, 2023, 4:30 PM), <https://twitter.com/glennimages/status/1707870455133061159> [<https://perma.cc/LLG5-TMLM>] (referring to the Symposium as a “gun control rally”).

84. See Peter Overby, *NRA: ‘Only Thing That Stops a Bad Guy With a Gun Is a Good Guy With a Gun’*, NPR (Dec. 21, 2012), <https://www.npr.org/2012/12/21/167824766/nra-only-thing-that-stops-a-bad-guy-with-a-gun-is-a-good-guy-with-a-gun> [<https://perma.cc/54TJ-L7BC>].

increased gun ownership was the key to firearm safety, America would be the safest place on earth when it comes to gun violence.⁸⁵ By hosting a space for this conversation and subsequently publishing the incredible scholarship contained in this issue, the *Minnesota Law Review* hopes to shine a light on an ever-present issue and give litigators, educators, researchers, and everyday people an inside look into how the law interacts with gun ownership. It is only then, with a truly informed populace, that we can have meaningful and productive conversations about how to solve America's gun violence crisis. The staffers and editors of the *Minnesota Law Review* thank you for engaging with these issues and working to make the United States a safer place.

85. Compare Jennifer Mascia & Chip Brownlee, *How Many Guns Are Circulating in the U.S.?*, THE TRACE (Mar. 6, 2023) <https://www.thetrace.org/2023/03/guns-america-data-atf-total> [<https://perma.cc/5WB9-5R8T>] (estimating there being over 377 million guns in circulation in the United States), with Chris Gilligan, *U.S. Remains an Outlier in Firearm Possession*, Gun-Related Deaths, U.S. NEWS (Jan. 30, 2023), <https://www.usnews.com/news/best-countries/articles/2023-01-30/how-the-u-s-compares-to-the-world-on-guns> [<https://perma.cc/F5ZG-QK6Y>] (finding the United States to rank fourth among the forty largest countries in the world in terms of having the highest rate of deaths due to firearms despite being the world leader in gun ownership with more civilian-held guns than citizens).