Courtroom Showdown

"Gunfight" tells the story of how the Supreme Court finally came to rule on the meaning of the right 'to keep and bear arms.'

By JONATHAN KARL

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In 1989, the Yale Law Review created a stir with an article by a self-described liberal calling the Second Amendment "an embarrassment, like the drunken uncle who shows up at the family reunion." Liberals ignore it, the author wrote, but "they would never be so cavalier with an amendment they like."

For most of its history, the Supreme Court also viewed the Second Amendment like that embarrassing uncle, avoiding cases that would force it to rule on the central question: Is the right "to keep and bear arms" an individual right or one that applies only to "a well-regulated militia"? In June 2008, the Supreme Court finally gave an answer—the shunned Second Amendment does indeed apply to individuals, just like its more popular cousins in the Bill of Rights.

In "Gunfight: The Battle Over the Right to Bear Arms in America," Adam Winkler tells the remarkable story of the rag-tag group of libertarian lawyers who challenged nearly a century of lower-court precedent to bring a clear-cut Second Amendment case to the Supreme Court. This is an engaging and provocative legal drama about the six-year courtroom journey of *District of Columbia v. Heller* and a fascinating survey of the misunderstood history of guns and gun control in America.

Mr. Winkler shows that the right to keep and bear arms is "one of the oldest and most firmly established rights in America"—and one that predates the Second Amendment. The colonists, after all, didn't like it when George III banned all exports of firearms to the colonies. At the time, owning a gun wasn't just a right; it was a requirement for anybody who could be called into militia service.

But gun rights in America almost never meant no gun laws. In fact, Mr. Winkler says, "gun control is as much a part of the history of guns in America as the Second

Amendment." That was true even in the Wild West. Frontier towns had strict gun-control laws, many requiring newcomers to check their guns at the city limits. Leaving aside drunk and disorderly conduct, no arrest was more common in the frontier towns like Tombstone and Deadwood than an arrest for illegally carrying concealed weapons. It was Sheriff Wyatt Earp's effort to enforce Ordinance No. 9—"To Provide against the Carrying of Deadly Weapons"—that led to the shootout at the OK Corral.

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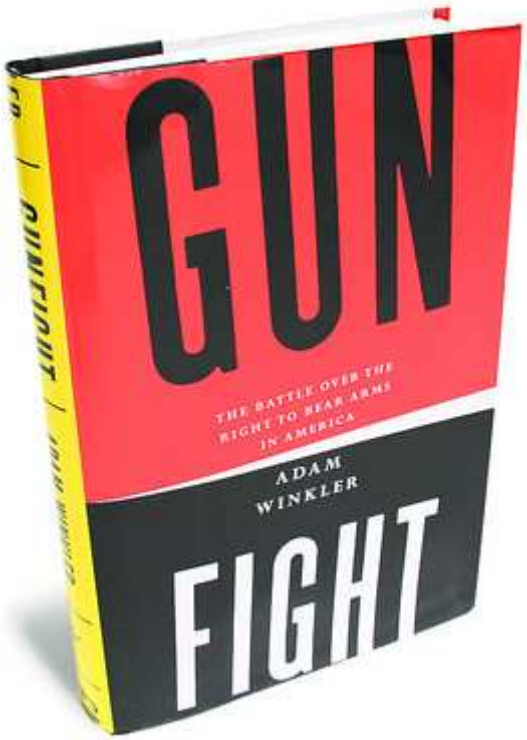

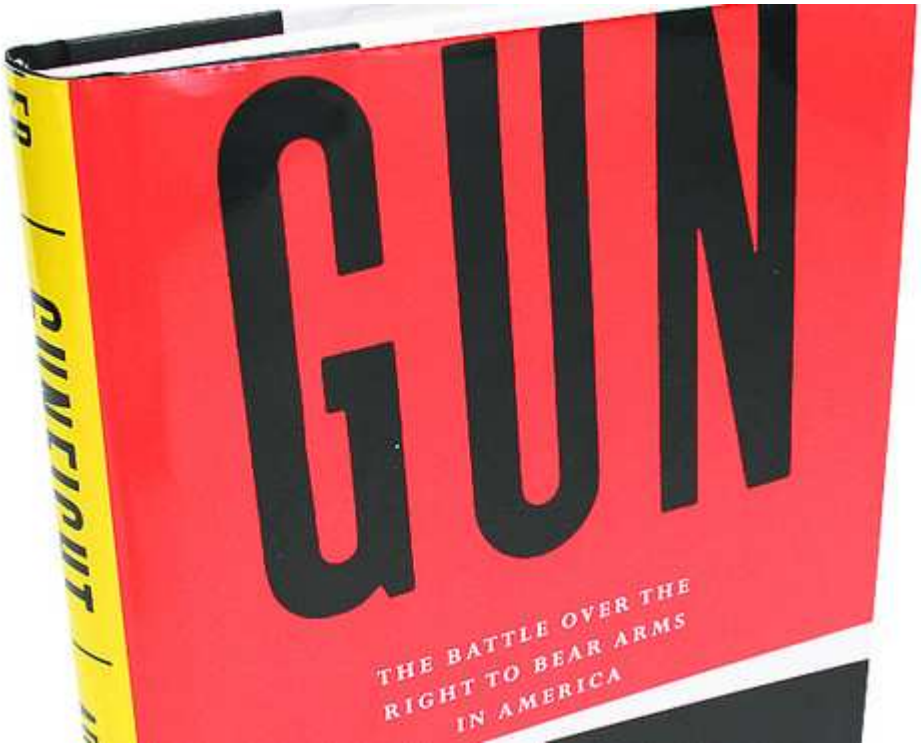

Gunfight

By Adam Winkler
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By the time Washington, D.C., passed its gun law in 1976, however, gun control had moved to a different level of restriction. The Washington law banned all handguns and required that any rifles or shotguns within city limits be kept in an inoperable state—unloaded and either disassembled or locked. You could have a rifle, but you were not allowed to use it against someone breaking into your house. Activists considered the Washington law a model for the whole country. The founder of one gun-control group that lobbied for the law put it starkly: "We have to do away with the guns."

Talk like that gave birth to the modern NRA. When it was founded in 1871 and for a long time after, the NRA's primary mission was promoting gun safety. The organization even helped to draft federal gun-control laws. But in the mid-1970s, Democratic Rep. John Dingell, an NRA board member, urged a new focus, comparing laws requiring gun registration to the registration laws that the Nazis used to disarm the Jews. "Dingell fatefully advised the NRA to set up a full-time professional lobbying arm to fight off regulations and roll back the [gun-control] laws of the 1960s," Mr. Winkler writes. "That advice would shape gun politics for decades to come."

But the NRA directed its efforts at Congress and state legislatures, not the courts. When two libertarians, Bob Levy and Clark Neily, set out to challenge the District of Columbia's ban—the "Heller" in the lawsuit refers to Dick Heller, a D.C. resident who

tried to buy a gun but wasn't allowed to do so—the NRA wanted no part of it. "The nation's leading gun rights organization was firmly opposed to their lawsuit—and would do almost anything to stop it," Mr. Winkler writes. NRA lawyers feared that the suit was too risky; if the case reached the highest court, the law-and-order justices might uphold the ban, affirming the theory that the Second Amendment doesn't apply to individuals.

It took almost six years for the case to make its improbable journey to the Supreme Court. For their lead lawyer, Messrs. Levy and Neily chose Alan Gura, a newly minted graduate of Georgetown Law School who practiced out of a one-person office in Alexandria, Va. "He had no paralegals or even a secretary to help him," Mr. Winkler notes. In the end, Mr. Gura had to battle not only the NRA but also the Bush administration. Solicitor General Paul Clement, fearing a wave of challenges to federal gun prosecutions if the court ruled for the plaintiffs, used his time before the court to urge the justices to send the case back down to the lower court without itself making a ruling.

In the end, the outgunned libertarians prevailed. The 5-4 decision, written by Antonin Scalia, affirmed the right to bear arms as an individual right and struck down the District's law as a rights violation. But Justice Scalia's decision didn't end there. "Like most rights, the right secured by the Second Amendment is not unlimited," he wrote. It is not "a right to keep and carry any weapon whatsoever in any way whatsoever and for whatever purpose."

Even as he affirmed the right to keep and bear arms, Justice Scalia's decision effectively affirmed the constitutionality of most gun-control laws on the books. Mr. Winkler says that the court's decision "validated a compromise position on guns," in which gun ownership is protected and reasonable gun-safety laws are allowed. That may sound like common-sense interpretation of the Second Amendment, but it is one that took the Supreme Court more than two centuries to discover.

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