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## LOOPHOLES ARE LETHAL (PART I)

*Federal gun laws are tailored to limit their impact.  
And the consequences can be deadly.*



*For Police Issues by Julius (Jay) Wachtel.* On December 9, two days after a 9-1-1 caller's abusive ex-boyfriend [gunned down Houston P.D. sergeant Chris Brewster](#), his chief [berated Federal legislators](#) for blocking renewal of the "[Violence Against Women Act](#)" (VAWA):

We all know in law enforcement that one of the biggest reasons that the Senate and Mitch McConnell and John Cornyn and Ted Cruz are not...getting the Violence Against Women Act [reauthorized] is because the NRA doesn't like the fact that we want to take firearms out of the hands of boyfriends who abuse their girlfriends. And who killed our sergeant? A boyfriend abusing his girlfriend.

Full stop. VAWA was never a gun control measure. Enacted in 1994, it tightened domestic abuse laws in areas under Federal jurisdiction, such as tribal lands, and allocated funds for victim restitution, investigation and prosecution (for a detailed analysis click [here](#).) What made Chief Art Acevedo so mad? To get a better grasp of where he was coming from let's take a trip down gun-law memory lane.

On Valentine's Day, February 14, 1929, a crew of Al Capone's goons, including two dressed up as cops, lined up seven rival gangsters and machine-gunned them to death. Five years later the Feds enacted the nation's first set of gun laws, the [National Firearms Act](#), which required the registration of machineguns, silencers, and short-barreled shotguns and rifles.

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Done under the Government's taxation power, the focus on "gangster-type weapons" was thought resistant to Second Amendment concerns. Mission accomplished, right? Alas, in February 1933, even before the NFA took effect, a disaffected citizen used an ordinary gun – a .32 caliber pistol that he bought at a pawn shop – to unleash a barrage at President-elect Franklin D. Roosevelt. Although Roosevelt was spared five others were wounded; one, Chicago Mayor Anton Cernak, succumbed to his injuries.

Roosevelt's near-miss built momentum for going after everyday firearms. Concerned about onerous restrictions, the National Rifle Association stepped in and helped draft the nation's next set of gun laws, the [Federal Firearms Act of 1938](#). It required that gun dealers be licensed, keep records and not knowingly sell to felons. Criminal record checks weren't part of the deal. In the end, other than for handing over their ID, gun store patrons would hardly feel a thing. And if they wished to feel nothing at all, private-party transfers and mail-order sales remained completely off the radar.

Twenty-five years later, on November 22, 1963, a 23-year old man peered out a sixth-floor window of the Texas School Book Depository. He had a rifle by his elbow and a revolver in his pocket, [both purchased by mail order under an assumed name](#). As the motorcade passed by, Lee Harvey Oswald opened fire, mortally wounding President John F. Kennedy and seriously injuring Governor John Connally. One hour later he shot and killed Dallas police officer J. D. Tippit. Two days later nightclub owner Jack Ruby used his revolver to shoot Oswald dead.

One might think that gun laws would be back on the plate. But resistance from the NRA, the gun industry and hobbyists slowed things down. In the end, lawmaking took another five years and two back-to-back assassinations: [of Martin Luther King](#), shot dead on April 4, 1968 by an escaped convict, and [of Robert Kennedy Jr.](#), murdered two months later by a disaffected immigrant. Both killings were accomplished with "ordinary" guns. King's killer used a .30-06 caliber rifle, which he bought at a gun store using an assumed name. Kennedy's assailant, who had no criminal record, got his .22 caliber revolver from an acquaintance.

President Lyndon Johnson signed the [Gun Control Act of 1968](#) into effect four months later. Private gun transactions would continue as-is, no paperwork required, and guns would still be handed over immediately, with no confirmation of one's ID nor a criminal record check. But mail-order sales were barred. Most importantly, the GCA established a class of "prohibited persons" who could not possess guns and to whom they could guns not be legally sold or given: felons, fugitives, persons adjudicated

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mentally defective, illegal immigrants, dishonorably discharged veterans, and the few (apparently including Oswald) who had renounced their citizenship.

On March 30, 1981 [John Hinckley fired at President Ronald Reagan](#) with another “ordinary gun” – a .22 caliber revolver. He missed, but his shots badly wounded James Brady, Reagan’s press secretary. Hinckley, who had a record of arrests and mental health problems, [bought the weapon at a pawnshop](#) some months earlier. It was delivered immediately, and, as usual, without a record check.

After a decade-plus of lobbying by James Brady’s wife, Sarah, in November 1993 [the Gun Control Act was amended](#) to impose an interim five-day waiting period on the delivery of handguns. That afforded authorities a crucial if brief window for checking criminal and mental health records. (As provided by the original bill, in 1998 the waiting period was expanded into the current national “[insta-check](#)” system (NICS), which applies to the transfer by dealers of all firearms, including long guns.)

*Brady* only affects sales by licensed dealers. Private gun transactions thus remained virtually unimpeded. Neither did the law address domestic violence, which was gaining recognition as a major context for gun misuse. Perhaps surprisingly, this concern was promptly addressed. Unsurprisingly, the law’s reach was circumscribed by narrowly defining two key terms: “intimate partner” and “domestic violence.”

- In 1994 legislators addressed restraining orders, which *Brady* ignored. Their product, Section 110401 of the [Violent Crime Control Act of 1994](#), codified as [18 USC 921\(a\)\(32\)](#), prohibits receipt or possession of firearms by “intimate partners” who have been served with a domestic violence restraining order.

*Intimate partners* are “the spouse of the person, a former spouse of the person, an individual who is a parent of a child of the person, and an individual who cohabitates or has cohabited with the person.” ([18 USC 921\[a\]\[32\]](#))

- In 1996 the late [Senator Frank Lautenberg complained](#) that even though “two-thirds of domestic violence murders involve firearms” most spousal and child abusers don’t get convicted of felonies, thus remain unaffected by *Brady*. His proposal to prohibit gun possession by persons convicted of misdemeanor crimes of domestic violence was approved and codified as [18 USC 922\(g\)\(9\)](#).

*Crimes of domestic violence* are “the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child

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in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.” (18 USC 921[a][33])

It’s in these details where we find the explanation for Chief Acevedo’s angry barrage. Arturo Solis, the officer’s killer, [pled guilty in 2015 to assaulting the 9-1-1 caller](#) (the plea agreement, a State matter, reportedly barred him from having guns.) One year later Solis was arrested for harassing her with dozens of text messages. However, since his victim didn’t clearly fit any of VAWA’s protected classes (not a present or former spouse, etc.) Solis remained free, at least under Federal law, to buy and have guns. (That’s not just our feeble opinion. Check out the statute’s nightmarish [prosecutorial guide](#).) That loophole drove tinkerers in the lower, “Blue” chamber to insert language that [broadened the definitions](#) of “intimate partner” and “crime of domestic violence”:

- *Intimate partner* would include “a dating partner or former dating partner.” Bottom line: past or present boyfriends or girlfriends who are the subject of a domestic violence restraining order would be ineligible to buy or possess firearms.
- *Crimes of domestic violence* would no longer require an actual or attempted assault. Stalking would suffice. Bottom line: a misdemeanor conviction for stalking would prohibit the purchase or possession of firearms.

Naturally, expanding the roster of bad guys (violent domestic abusers *are* mostly men) would substantially enlarge the roster of prohibited gun possessors. For the “Reds” who control the Senate that’s a big no-no. That’s why VAWA’s [“new, improved” version](#) has languished in the upper house since April.

Really, as your retired-ATF-agent-*cum*-blogger well knows, one could argue the complexities and limitations of Federal firearms laws until the cows come home. Thanks to the gun lobby and their subservient lawmakers, when it comes to regulating guns [it’s always been about loopholes](#). We’ll have more to say about that (and even bring in the States for a spanking) next year, in Part II. But for now let’s give Chief Acevedo [the last word](#):

My officers are not a serial number to me...They're my family so when they go down I get pissed...A 32-year-old man should not be dead and it's not just him, it's every day in this country. If you don't understand the emotion I say check your pulse because you don't understand me or you don't understand this profession.