even imprisonment, is not enough. We need to change the way we live, work, and do business in order to prevent pollution.

A preventive approach can be applied to resolving each of our major environmental problems, from hazardous air pollution to the solid waste crisis. In curbing air pollution, a preventive approach means, encouraging companies to follow the lead of firms like Dupont and IBM by committing themselves to drastic reductions in toxic emissions and elimination of toxic substances from their production processes. In resolving the garbage crisis, a preventive approach means promoting the three R's of solid waste management—recycling of as much of the waste stream as possible; reduction of unnecessary packaging and other sources of garbage; and reuse of as many products as possible, rather than using throwaway items.

In these and many other areas of environmental concern, changing our industrial practices, our habits, and our very lifestyles is the key to preventing pollution in the first place. This approach is not only better for the environment, it is better for the corporate bottom line. It will be up to a new generation of legal practitioners to forge innovative strategies for using the law to encourage pollution prevention.

These are just a few of the issues that can and must be addressed if this nation is to survive and prosper in the 21st century. There are many others—the need for affordable housing; the provision of quality health care for all; reproductive freedom for all women; the need to carry on the quest for arms control; the need for a real war on drugs, not one waged with rhetoric alone—and the list could go on and on. As Robert Kennedy said a generation ago, "the future may be beyond our vision, but it is not beyond our control." It is time for a new generation of citizen activists to put their skills to work in addressing the fundamental issues of our times. By doing so, they will be giving continued life and meaning to the principles underlying our Bill of Rights.

THE ASSAULT RIFLE CONTROVERSY

By Glen Morgan

The gun control debate rages in America today, as it has since the early 20th century. After the assassination of President John F. Kennedy in 1963, this debate increased in urgency and ferocity. In the years since that tragedy, the debate has often been a major domestic issue, one that refuses to quietly go away. Huge lobbying interests on both sides of the issue have recently been locked in political and ideological battle in the legislature, in the courts, and in the media. The focus of these arguments has ranged from the definition of the rights provided by the Second Amendment to the ownership of "Saturday Night Specials," but nothing in this debate has captured the imagination and the focus of national attention more than the recent "assault rifle" controversy.

This new twist in the gun control debate revolves around whether people should be allowed to own "assault rifles." Before entering into an analysis of the controversy, the term "assault rifles" must be defined. Handgun Control Inc., as the chief lobbyist for the prohibition of these weapons, defines assault rifles as any automatic rifle designed to be spray-fired in combat. According to the Department of Defense (105), an assault rifle is a selective-fire military rifle, capable of firing on fully-automatic, burst, or semiautomatic, at the option of the shooter. True assault rifles are thus machine guns, which have been heavily restricted since 1934. The gun prohibition lobby, however, has managed to capture the media's attention by expanding the "assault rifle" category to encompass any weapon they see fit. The firearms upon which this article will focus are these semiautomatic rifles that have been targeted.

In approaching the problem this way, one avoids the fact that governments do not give people rights; the people give the government power in order to protect their preexisting rights.

The weakest aspect of the prohibitionist argument is the question of the constitutionality of this type of regulation. Handgun control literature usually avoids this
question, or mentions it in passing as unimportant to the anti-gun lobby. The most common argument used against the Second Amendment is that the Militia clause, in modern terminology, actually means the National Guard. On the surface, this argument makes sense because the National Guard was created to defend the nation against foreign invasion, one of the original purposes of the Militia. However, the Militia in the Second Amendment could not refer to the modern-day National Guard for several reasons. The Bill of Rights was written in order to decrease and limit the absolute power of the government over the individual. The Second Amendment follows this purpose in that it was written to protect the people from the government, not just foreign invasion. The National Guard is under the jurisdiction of the federal government, a hierarchy which was recently upheld by the Supreme Court in Perpich v. Department of Defense (1990). Current federal law defines the Militia in Title 10, US Code section 311, as all able-bodied males between the ages of 17 and 45 who are US citizens. The Militia is thus the common people; the same people referred to in the First, Fourth, Ninth, and Tenth Amendments are protected by the Second Amendment as well.

When talking about assault rifles, people commonly ask, "Why does anyone need one?" This question is the cornerstone in the foundation of the argument in favor of the prohibition of assault rifles—it is referred to in every piece of handgun control literature written on the subject. The basic reasoning behind this simple question is that owning an assault rifle is unnecessary, therefore it should be illegal. They claim assault rifle ownership must be treated like a privilege and not a constitutional right. An example of this kind of thinking can be found in a current case in Denver County District Court which challenges the constitutionality of the Denver City Assault Weapons Ban. Those supporting the ban claim that the Second Amendment is an extremely limited right provided by the government for the people. In approaching the problem this way, one avoids the fact that governments do not give people rights, rather the people give the government power in order to protect their preexisting rights. The Second Amendment provides the people with the power to prevent the government from usurping their rights by force of arms. Private ownership of weapons with which the people can defend themselves or resist tyranny if forced to do so is a right for Americans, and the ultimate reason for owning an assault rifle. This ownership is like an insurance plan—one hopes it will never be needed, but if the situation arises it will be important to have.

Politicians and powerful zealots have no place to demand the elimination or severe restriction of these assault rifles, since they are exactly the people whose excesses and abuse of power assault rifles are meant to defend against. Fortunately, America has been relatively stable and free from domestic tyranny for hundreds of years, but the most cursory examination of history would reveal that periods of peace and stability like this are very rare. We cannot accurately predict the future, but by studying history, we can attempt to prevent the repetition of mistakes. The framers of the Constitution realized that when government obtained absolute power, the liberty and freedom of the people would ultimately be lost. If the people have no power on which they can fall back to protect themselves, force can easily be used to abridge their rights. Recently, this scenario has occurred in some countries. One can only wonder if the Chinese government would have attempted to crush the students at Tiananmen Square if the students had had firearms. Adolf Hitler used gun control very effectively in strengthening his governmental rule. Even in America, gun control was first used in the post-Civil War South to disarm and control blacks. In New York, the Sullivan Law was passed in 1911 to keep guns out of the hands of immigrants and other "undesirables." Today, the New York firearms restrictions allow the rich and powerful elite to own and carry firearms, but explicitly deny that same right to the poor (indirectly encompassing most minorities), who may need these weapons for self-defense the most. This inequity is effected by requiring the applicant to submit copies of his or her Federal Tax Return form and bank deposit slips. (Instructions, 2)

The common response to the question of the constitutionality of assault rifles by anti-gun proponents is that the Founding Fathers meant citizens could use only muskets, not modern day assault rifles. They argue that the Founding Fathers could not have imagined the destructive power of modern weapons. They are correct in observing that the modern day assault rifle is capable of causing more damage than a musket, but this approach is contrary to the genius of the Constitution. No Founding Father at the Constitutional Convention could have imag-
ined the modern day telephone, yet the Fourth Amendment protecting against unreasonable search and seizure still applies to phone conversations. No one could have imagined television, yet the First Amendment still protects the freedom of the press on television. Telephones have made organized crime and drug trafficking more efficient today than in the 1700s, a single journalist on television can cause much greater damage to reputation than one could in the 18th Century, and modern day firearms are more efficient today than they were then; however, the Bill of Rights still applies to these advancements in technology. The most important Second Amendment decision by the Supreme Court was US v. Miller (1939):

the Militia compromised all males physically capable of acting in concert for the common defense. And further, that ordinarily when called for service these men were expected to appear bearing arms supplied by themselves and of the kind in common use at the time.

One notes that the rifles of the citizens were the same common rifles used by the professional military. Assault rifle ownership is thus exactly what the Second Amendment was designed to protect.

The next major argument used against the legal private ownership of assault rifles is that they are the "weapons of choice" of organized crime, drug dealers, and criminals. This "weapons of choice" phrase has been applied to every category of firearms that the gun prohibitionist lobby has attempted to ban over the last decade: first pistols, then "Saturday Night Specials," then "plastic guns," and now assault rifles. The anti-gun lobby should make up its mind about what the "weapon of choice" is for criminals and should then attempt to determine if prohibition will stop the criminals from obtaining these weapons. Prohibition of illegal drugs has failed to prevent the widespread drug problem in America, what makes these people believe that banning assault rifles will stop criminals from obtaining them as well? If only law-abiding people follow this law, and they disarm themselves, in what way will this ban affect crime? Why would violent criminals, who defy the most fundamental laws daily, follow a law restricting their choice of methods? It is quite obvious that only the law abiding are hurt by this type of prohibition.

Are assault rifles the "weapons of choice" for criminals? According to the New York Police Department's 1989 Firearms Discharge Assault Report, out of 339 perpetrators who possessed or used a firearm in incidents involving the police, only two of those guns could be considered assault rifles. (9) According to this report, a New York police officer was more likely to shoot himself accidentally (nine officers did just that) than to be fired upon by a criminal with an assault rifle. (New York 11) It should be noted that according to a report by The Institute for Research on Small Arms in International Security (1989), 3,706,810 assault rifles were legally owned by Americans. Are there this many deranged criminals intent on killing as many people as possible in America? Obviously, the vast majority of these people are law abiding citizens exercising their perceived con-

Why are so few criminals using their "weapons of choice"?

Of course, not all police officers believe this. Baltimore County Police Spokesman Leonard Supenski once stated, "We're tired of passing out flags to widows of officers killed by drug dealers with Uzis." If one consults FBI statistics, however, one finds that only one officer in the history of US law enforcement had ever been killed by an Uzi.

According to the FBI's 1987 Uniform Crime Report (the most recent available), only 0.5 percent of all homicides in America were caused by assault rifles. The report makes no distinction between murders and self-defense killings. Knives, blunt instruments, hands, feet, and strangulation killed 35 percent of all homicides victims that year. According to the Los Angeles Police Department, less than three percent of the confiscated firearms were assault rifles in 1987. In San Francisco 2.2 percent of firearms seized by the police were assault rifles. Why are so few criminals using their "weapons of choice"? There are many simple reasons:

- Assault rifles are expensive, they cost anywhere from $350-$1500 or more.
- Assault rifles are difficult to conceal because they are large and cumbersome.
- Assault rifles are not as powerful at close range as a sawed-off shotgun, or even an ordinary hunting rifle.
Judicial system, not the tool Purdy used. Although most of his income, and was probably the money with drug dependency. (Kempsky 4) This support provided Social Security Administration because of his alcohol and approved in late 1984 for disability support from the system that he was homicidal and suicidal before he was criminal history, nor the diagnosis by the mental health systems to deal with an acknowledged danger to society, a man who was often put back on the streets despite clear indications of his danger to society. These facts were relegated to obscurity in the clamor for assault rifle prohibition.

These facts were also left out of the media and the legislative debate. A California state Congressman wildly stalked into a legislative meeting brandishing an AK-47 for the media, demanding that these evil weapons be outlawed, a demand that was fulfilled in California. At the same time, the nightly news was showing pictures of watermelons apparently disintegrating when shot by assault rifles. It was later revealed that the newsmen were disappointed when the AK-47 bullets only punctured unimpressive holes in the watermelons, and in order to fulfill their desires of portraying these weapons as the evil force they were, showed watermelons exploding when shot with a common hunting rifle, while the shooter falsely wielded an AK-47. This biased news coverage helped to hype the assault rifle ban, but the assault rifle ban had no effect on crime. Instead, people who had never committed a crime before were arrested for owning these weapons.

The lesson one learns from all this is that gun control in general, and specifically the assault rifle prohibition, misses the point entirely. Trying to legislate against an inanimate object that has legitimate uses for self-defense and ultimate protection against tyranny as guaranteed by the Second Amendment will do very little to decrease crime. This type of legislation provides a very dangerous precedent for further restrictions on personal liberty. Instead, one must focus on the root causes of crime like poverty and drug abuse, and the methods used to deal with criminals. Gun control is often just a convenient scapegoat for politicians whose crime policies have failed. When over half of the nearly 50,000 people who die in car accidents each year are caused by drunk drivers, law enforcement and the legislature focus on the drunk drivers, not their cars. (It should be noted that car ownership is a privilege, not a right like gun ownership.) One must not focus on the tool used by the criminal, but the criminal himself. This is the only way America will solve its gun crime problem. America can have either a completely free society or a completely safe society, but not both. The closer this country moves towards one of these goals the farther it gets from the other. A lack of crime is usually only guaranteed by a totalitarian state where one actually has very little safety or freedom. With the correct focus on the root problems of crime and

Assault rifles are simply not practical for most criminals outside of Hollywood.

Purdy with assault rifles, it mentions neither his previous criminal history, nor the diagnosis by the mental health system that he was homicidal and suicidal before he was approved in late 1984 for disability support from the Social Security Administration because of his alcohol and drug dependency. (Kempsky 4) This support provided most of his income, and was probably the money with which he purchased the weapon he used to commit the murders. In some sense the incident can be viewed as a government subsidized mass murder. Rather than serving as a justification for more gun prohibition, this Patrick Purdy incident points to the failure of the judicial and mental health systems to deal with an acknowledged danger to society, a man who was often put back on the streets despite clear indications of his danger to society. These facts were relegated to obscurity in the clamor for assault rifle prohibition.
criminals, safety in a free society can coexist with personal liberties and individual checks on governmental tyranny.

One must not focus on the tool used by the criminal, but the criminal himself. This is the only way America will solve its gun crime problem.

This concept is captured in a slight modification of a popular slogan used by the pro-gun lobby—if guns are outlawed, only the government will have guns.

The assault rifle controversy is only one aspect of the gun control debate in America. Both sides of the issue have persuasive arguments and many facts to support their views. This article attempts to persuade people to support legal assault rifle ownership, however the reader should be challenged to do research on the subject and test these arguments. Do not be convinced or persuaded by this article alone, but let it encourage the reader to find out what is true. One must avoid believing sensationalism and becoming caught up in emotional waves of panic without discovering the facts behind the headlines. This article will end with a few statements from people who know best about the power of gun control.

The right of the citizens to keep and bear arms has justly been considered as the palladium of the liberties of a republic; since it offers a strong moral check against the usurpation and arbitrary power of rulers; and will generally, even if these are successful in the first instance, enable the people to resist and triumph over them. (US Supreme Court Justice Joseph Story, Commentaries on the Constitution of the United States 1833)

Americans have the right and the advantage of being armed—unlike the citizens of other countries whose governments are afraid to trust the people with arms. (James Madison, Federalist Papers #46)

...to disarm the people; that it was the best and most effectual way to enslave them... (George Mason, 3 Elliott Debates on the Constitution) 380

The most foolish mistake we could possible make would be to allow the subjected people to carry arms, history shows that all conquerors who have allowed their subjected peoples to carry arms have prepared their own downfall. (Adolph Hitler Edict of March 18, 1938)

Make searches and hold executions for found arms; unless this is done the victory of socialism is impossible. (Vladimir Lenin March 4, 1919)

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**Glen Morgan is a Columbia College junior, Downstate Chairman of New York College Republicans, and Chairman of College Republicans at Columbia University.**

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**The Case for Gay and Lesbian Marriage**

By Mielle Abbey-A Schwartz

Courts and legislatures grant a heterosexual couple the legal right to marry. (Krause 37) Why has this legal right not been extended to include gay and lesbian couples? The legal definition of family has no doubt broadened:

In Moore v. City of East Cleveland, for example, the Supreme Court granted constitutional protection beyond nuclear families to extended families. Despite this social and legal evolution, [however,] courts and legislatures continually have refused to grant gay and lesbian couples family status. (Harvard ed. 94)

Even the legal substitutes for marriage, common-law marriage and marriage by contract or declaration, have been denied to gay and lesbian couples, while available under some jurisdictions to heterosexual couples. (94)

Is this prohibition of same-sex marriage constitutionally justifiable? Are the proposed interests of states in prohibiting same-sex marriage justifiable by the stan-