



GUNS and KIDS

and Execution of a Constitutional Right

By Jack D'Aurora

Guns are a leading killer of children. The Children's Defense Fund reported that in 2008 and 2009, 5740 children and teens, including 299 children under age 10, were killed by guns, and 8162 children and teens, including 847 children under age 10, were injured by guns. In 2008 and 2009, gun homicide was the leading cause of death for black teens, ages 15 to 19; for white teens, ages 15 to 19, it was vehicular accidents followed by gun homicide in 2008 and gun suicide in 2009.

What business does a doctor have asking his patients about guns? On July 30, state Sen. Kris Jordan, R-Powell, asked this question by introducing Sen. Bill 165, which would prohibit physicians from asking patients if there are guns in their home.

Not long ago, Florida passed a law similar to SB 165, which was declared unconstitutional last year in federal court. The case is on appeal. *The Wisconsin State Journal* reported on June 13, 2013, that a similar bill will be introduced in the Wisconsin legislature.

According to the American Academy of Pediatrics, the legislatures in Oklahoma, Tennessee, West Virginia and Virginia previously introduced bills that would restrict physicians from inquiring about firearms. Each bill failed to pass.

Wisconsin Rep. Michael Schraa stated, "Owning a firearm, or not owning a firearm, is a personal decision that has nothing to do with your physical health. Patients should not feel intimidated or harassed by their physicians over the exercise of a constitutional right."

Is Schraa right? Pediatricians don't think so. "For a child, curiosity can be lethal, and guns spark curiosity," stated

Robert Murray, MD, a pediatrician and professor at The Ohio State University. "Pediatricians are trained to evaluate environmental risks for children and seek ways to minimize them. We help parents understand that some of the things they take for granted are real sources of danger for their children. Guns are a public health issue for children, no different than chemicals or electrical outlets."

Guns are a leading killer of children. The Children's Defense Fund reported that in 2008 and 2009, 5740 children and teens, including 299 children under age 10, were killed by guns, and 8162 children and teens, including 847 children under age 10, were injured by guns. In 2008 and 2009, gun homicide was the leading cause of death for black teens, ages 15 to 19; for white teens, ages 15 to 19, it was vehicular accidents followed by gun homicide in 2008 and gun suicide in 2009.

According to Jonathan Groner, MD, a pediatric surgeon and director of Nationwide Children's Hospital trauma program, from 2008 through 2012, Children's Hospital admitted 104 children for gunshot wounds, 29 of whom required care in the pediatric intensive care unit. Five of the injuries resulted in death. Seven injuries were self-inflicted,

seven victims knew the shooter, and 10 other victims were related to the shooter. Twenty-eight children were shot in their homes, and 11 were shot at another home.

A *New York Times* article published on Sept. 28, 2013, revealed that roughly half of the accidental children shootings that were reviewed took place in the child's home, and a third occurred at a friend or relative's home. Groner's personal experience is consistent with the *Times* article: "I have been reviewing the records of injured children for over 20 years, and it is extremely rare for a child to sustain a firearm injury from a criminal. In the vast majority of cases the children are shot by someone they know."

The *Times* article featured several examples of youngsters nationwide who were accidentally shot. A three-year old found a .45-caliber pistol that was hidden under a couch and shot himself in the eye. A 12-year old boy, mistakenly believing he had emptied all bullets from a pistol his father allowed him to use, shot his sister in the mouth. A nine-month old was killed when his two-year old brother grabbed a gun from a dresser drawer and squeezed the trigger.

The *Times* endeavored to identify every accidental gun death for children 14 and under in Georgia, Minnesota, North Carolina and Ohio dating to 1999 and in California to 2007. Cataloging 259 gun incidents, the *Times* "identified roughly twice as many accidental killings as were tallied in the corresponding federal data." The difference is attributed to inconsistencies in determining the cause of death. Circumstances characterized as accidental in one death may be characterized as homicide in another. The problem is that homicide is defined as the killing of another person, whether intentional or unintentional.

How deaths are characterized was the subject of a study conducted by the Harvard Injury Control Research Center (*Injury Prevention* 2002; 8:252-256.). The study concluded that statistics "almost certainly underestimate the number of accidental firearm fatalities that occur each year, at least with respect to other inflicted shootings."

Lower estimates for accidental shootings provide the NRA with grounds for opposing safe storage laws and instead promoting "gun education." The NRA maintains that the number of accidental deaths for children has "decreased 89% since 1975. Today, the odds are more than a million to one, against a child in the U.S. dying in a firearm accident."

Groner disagrees. "The NRA numbers don't include death classified as homicides and suicides. The NRA does not count these children, but *they matter*. There is ample data to suggest that the availability of a firearm in the home greatly increases the risk of homicide and suicide among children. Public health experts believe that if guns were not so accessible, these deaths would not occur."

Gaining accurate information about accidental deaths is impeded by the NRA's long-running battle against gun violence research which began in 1993. That year, the *New England Journal of Medicine* published a study about guns in the home increasing the risk of being shot by a family member or acquaintance. The lead researcher was Arthur Kellermann, MD, who was with the Center for Disease Control.

Seeing the study as an attack on gun rights, the NRA pushed to eliminate federal funding for gun studies. Former Rep. Jay Dickey, R-Ark, spearheaded legislation in 1996 known as the "Dickey Amendment," prohibiting the CDC from using its funding "to advocate or promote gun control."

While not explicitly prohibiting research on gun violence, the legislation effectively stopped it. "Precisely what was or was not permitted under the clause was unclear," Kellermann said, "but no federal employee was willing to risk his or her career or the agency's funding to find out."

After the National Institute of Health published a 2009 study investigating the link behind gun possession and gun assault, Congress extended the equivalent of the Dickey amendment to the NIH. The NRA sees gun research as "junk science designed to paint legal gun ownership as a public health hazard."

Dickey, who admitted he once "served as the NRA's point person in Congress," later had an epiphany. In July 2012, he and Kellermann co-authored an op-ed piece in *The Washington Post* that questioned "why we know more and spend so much more on preventing traffic fatalities than on preventing gun violence, even though firearm deaths (31,347 in 2009, the most recent year for which statistics are available) approximate the number of motor vehicle deaths (32,885 in 2010)."

Dickey and Kellermann maintain that, without research, scientists cannot answer basic questions about how best to prevent gun deaths. "The same evidence-based approach that is savings millions of lives from motor vehicle crashes as well as from smoking, cancer and HIV/AIDS, can help reduce the toll of deaths and injuries from gun violence."

So, why would politicians ever think it good policy to suppress meaningful information about gun violence? According to Dickey and Kellermann, "Most politicians fear talking about guns almost as much as they would being confronted by one."

Murray sees real harm from SB 165. "As pediatricians, we don't care about guns themselves, but we do care about the danger they present to children. Too many kids get killed by guns. All we want to do is minimize that risk."

Groner agrees. "Most pediatricians talk to parents and their children about car seats and other dangers that exist in everyday life. It is unreasonable to forbid doctors from discussing firearms and firearm safety, when firearms kill so many children."



jdaurora@behallaw.com

Note from the author: My thanks to the following physicians for their insights and assistance: Michael Gittelman, MD, Professor, Clinical Pediatrics, Cincinnati Children's Hospital; and Gary Smith, MD, director of the Center for Injury Research and Policy of The Research Institute at Nationwide Children's Hospital.



Jack D'Aurora,
The Behal Group