

---

United States v. Miller  
and  
*Short-Barreled Shotguns*

---

**A Critical Analysis of the U.S. Supreme Court Opinion  
Including an Evidentiary Presentation**



*Copyright 2003*  
*Brian C. Puckett*  
2118 Wilshire Blvd. #447  
Santa Monica, CA 90403  
guns1776@earthlink.net

## Table of Contents

<b>Preface</b> .....	<b>1</b>
<b>The Case</b> .....	<b>1</b>
<b>The State Constitution Reference</b> .....	<b>5</b>
<i>The Two Key Sentences in United States v. Miller</i> .....	7
<i>Deconstructing the Sentences</i> .....	8
A Closer Look at Certain Problems in the <i>Miller</i> Ruling .....	15
Summary of All Problems in the <i>Miller</i> Ruling .....	19
Summary of What is RIGHT With the <i>Miller</i> Ruling .....	21
<i>What Would Justice McReynolds Have Accepted as “Evidence”?</i> .....	22
Short-Barreled Shotguns in Combat and Self-defense .....	23
<i>The Blunderbuss</i> .....	24
<i>Early American and Civil War Use</i> .....	28
<i>Post-Civil War in the American West</i> .....	33
<i>U.S. Shotguns in WW I, WW II, and Vietnam</i> .....	36
<i>20<sup>th</sup> Century Law Enforcement Use of Short Shotguns</i> .....	42
<i>Contemporary Military/Law Enforcement Shotguns</i> .....	50
<i>The Historical Loss Caused by NFA '34 and Other Laws</i> .....	55
Conclusion .....	56

# ***United States v. Miller* and Short-Barreled Shotguns**

**By Brian Puckett**

Both sides of the “gun control” issue have used the U.S. Supreme Court case *United States v. Miller*<sup>1</sup> to support their respective positions. This is possible because of the way the *Miller* opinion (the complete text explaining the final ruling) was written, and in particular because of the way the two key sentences of the opinion were written.

This study examines the reasoning developed in the *Miller* opinion and shows how this reasoning is deeply flawed.

This study also examines the two key sentences in the *Miller* opinion and (1) explains how they are extremely problematic on multiple levels; (2) provides the factual evidence that the two sentences implicitly call for, but which was not provided at the time; and (3) demonstrates that this missing evidence could have, and should have, altered the outcome of Jack Miller’s case, the scope of the National Firearms Act of 1934 (NFA ’34), the history of “gun control” laws in the United States, and the lives of millions of Americans who have suffered under these laws.

## **The Case**

The last time the U.S. Supreme Court issued a direct Second Amendment ruling was in 1939 in the case *United States v. Miller*. The following excerpt from the actual *Miller* Supreme Court opinion explains what the case was about:

An indictment in the District Court Western District Arkansas, charged that Jack Miller and Frank Layton "did unlawfully, knowingly, wilfully, and feloniously transport in interstate commerce from the town of Claremore in the State of Oklahoma to the town of Siloam Springs in the State of Arkansas a certain firearm, to-wit, a double barrel 12-gauge Stevens shotgun having a barrel less than 18 inches in length, bearing identification number 76230, said defendants, at the time of so transporting said firearm

---

<sup>1</sup> 307 U.S. 174 (1939).

in interstate commerce as aforesaid, not having registered said firearm as required by Section 1132d [of the 1934 National Firearms Act]...and not having in their possession a stamp-affixed written order for said firearm as provided by Sec. 1132c [of the 1934 National Firearms Act, or NFA 34]...

A duly interposed demurrer alleged: The National Firearms Act is not a revenue measure but an attempt to usurp police power reserved to the States, and is therefore unconstitutional. Also, it offends the inhibition of the Second Amendment to the Constitution — "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."<sup>2</sup>

The second paragraph above means that Miller's attorney claimed that NFA '34 was unconstitutional because (1) it was fundamentally a federal grab of state police powers, and (2) it violated the Second Amendment, presumably on the grounds that it infringed on the people's (individual citizens') right to keep and bear arms.

A U.S. District Court agreed with Miller's attorney that the regulation of shotguns having barrels shorter than 18 inches violated the Second Amendment, and it dismissed the indictment against Miller and Layton. The federal government appealed the case to the U.S. Supreme Court. The Supreme Court reversed the District Court's ruling, thus upholding the indictment of Miller and Layton.

There are enormous problems with this Supreme Court ruling. One of the most startling is a fact noted in the *Miller* opinion, which was written by Justice James McReynolds:

No appearance for appellees.<sup>3</sup>

In other words, no attorney appeared before the U.S. Supreme Court to argue the Miller/Layton side of the case, nor was a written argument submitted in their behalf. In fact, in a telegram sent to the Supreme Court from Arkansas, Miller's attorney Paul Gutensohn suggested that the case be decided only on the evidence presented by the other side — the U.S. government.<sup>4</sup> This suggestion was gross malpractice. The fact that the case was actually decided based only on the federal government's brief and oral argument was a gross miscarriage of justice.

Here is another problematic section of text taken directly from the *Miller* ruling:

---

<sup>2</sup> 307 U.S. at 176

<sup>3</sup> 307 U.S. at 175

<sup>4</sup> Other recently-discovered documents and the telegram are in the National Archives files of *U.S. v. Miller*, October Term 1938, No. 646.

The Constitution as originally adopted granted to the Congress power—"To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions; To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress." With obvious purpose to assure the continuation and render possible the effectiveness of such forces the declaration and guarantee of the Second Amendment were made. It must be interpreted and applied with that end in view.<sup>5</sup>

Justice McReynolds is saying that the Second Amendment was written to ensure that Americans would always have an effective militia, and that it must be read that way. This is correct. But McReynolds clearly implies, through his subsequent words, his citations, and his two key sentences, that this is the only purpose of the Second Amendment, and therefore all "arms" whose keeping and bearing the Second Amendment protects must pass some sort of test of militia or military usefulness. The problem is that the Second Amendment says no such thing.

If the Founders wanted such a test in order determine which firearms the people could own and use, why didn't they write "...the right of the people to keep and bear military arms shall not be infringed"? If they wanted the Second Amendment to apply only to the separate states, why didn't they write "...the right of the states to keep and bear arms shall not be infringed"? If they wanted the Second Amendment to apply only to some narrowly-defined militia (as opposed to all citizens), why didn't they write "...the right of the militia to keep and bear arms shall not be infringed"?

The simplest, most reasonable answer is that the Founders meant exactly what they wrote. When they wrote "arms", they meant arms in general, and when they wrote "people", they meant people in general — that is, individual Americans — as in every other amendment in the Bill of Rights where the term "people" is used.

The other purposes of the Second Amendment — which were not recognized by Justice McReynolds in the *Miller* opinion — include ensuring that individual Americans would always have the means to defend self, family, home, business, and property. It is inconceivable that the Founders, living in a land harboring dangerous wild beasts, hostile natives, and criminals operating in an environment of minimal law enforcement, gave no thought to this everyday use

---

<sup>5</sup> 307 U.S. at 178

of firearms — not to mention the use of guns to provide food, which many Americans take advantage of to this day.

In fact, self-defense is actually the basis of the militia/military purpose of the Second Amendment. In American history and tradition, the military and militia are ultimately simply individuals acting together to defend themselves and their families, homes, and property. In America the military is considered to be “us”, not some “them” to be used by the government to maintain power. Yet the Miller opinion has no reference to this fundamental individual right of self-defense. Every reference deals with the militia or the military and their relationship to defending the colonies or the state.

### **Author’s Notes:**

1. I use the compound adjective “militia/military” because in American history and law the words are inextricably bound together. The militia is a military force supplementing the regular military, and it must be equipped to fight other military forces. McReynolds himself recognizes this; it is clearly implied by the two key sentences he wrote, where his test of constitutional protection for a firearm refer to both the militia and the military.

2. It is important to recognize that, although the Miller Court viewed the Second Amendment as a right that was strictly limited by militia considerations, they nevertheless saw it as an individual right. Were this not so, the Court could have simply refused to give standing to the two individuals Jack Miller and Frank Layton, and or/stated that it was not an individual right, ending the matter. But the Court did not do this; it heard the case.

3. The Supreme Court apparently grasped the fundamental illogic of interpreting the Second Amendment as a state “right”. The Constitution gives the federal government (specifically Congress) the power to “[call] forth the militia to execute the laws of the union, suppress insurrections and repel invasions: To provide for organizing, arming and disciplining the militia, and for governing such part of them that may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress”<sup>6</sup>. The Constitution gives the federal government (specifically the president) the position of “Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States”<sup>7</sup>

If the right to keep and bear arms were *not* an individual right protected by the Constitution, a state could completely or effectively disarm its citizens by simply passing a law. That would render the preceding constitutional clauses

---

<sup>6</sup> U.S. Constitution Article I Section 8

<sup>7</sup> U.S. Constitution Article II Section 2

meaningless because that state would then *have no militia* (armed citizens) to be called forth by the federal government. The Supreme Court does not accept the notion that there are meaningless words or phrases in the Constitution.

One could argue that the above constitutional dilemma could be “solved” if the federal government established militia armories throughout the several states. The federal government could then hand out guns from these armories when it called forth the militia. But there is an enormous problem with that “solution”: *What would be the sense of including the Second Amendment in the Bill of Rights?* There would be absolutely none. Again, meaningless constitutional words are anathema to the contemplations of the Supreme Court.

Clearly the congressional power is about *supplementary* arming of the militia, in addition to the people’s own private arms. There is no other logical explanation.

### **The State Constitution Reference**

In the *Miller* opinion, Justice McReynolds wrote:

Most if not all of the States have adopted provisions touching the right to keep and bear arms. Differences in the language employed in these have naturally led to somewhat variant conclusions concerning the scope of the right guaranteed. But none of them seem to afford any material support for the challenged ruling of the court below [that the NFA ’34 regulations were unconstitutional].”<sup>8</sup>

If Justice McReynolds expected to find sentences in these state constitutions that specifically conferred an individual right to own shotguns with barrels shorter than 18 inches, of course he did not find them. But the great majority of state constitutions did, and do, contain broad statements of an individual right to own and use firearms (which includes handguns and long guns) for *personal defense*, and which impose no limitations on the types of firearms that may be owned and used. Here are a few examples:

INDIANA — Article I, Section 32 — The people shall have a right to bear arms, for the defense of themselves and the state.

KENTUCKY — Bill of Rights – All men are, by nature, free and equal, and have certain inherent and inalienable rights, among which may be reckoned:

---

<sup>8</sup> 307 U.S. at 182

... 7. The right to bear arms in defense of themselves and of the state, subject to the power of the general assembly to enact laws to prevent persons from carrying concealed weapons.

MISSISSIPPI — Bill of Rights, Article II, Section 12 — The right of every citizen to keep and bear arms in defense of his home, person, or property, or in aid of the civil power when thereto legally summoned, shall not be called in question, but the legislature may regulate or forbid carrying concealed weapons.

MICHIGAN — Article I, Section 6 — Every person has a right to keep and bear arms for the defense of himself and the state.

MONTANA — Article II, Declaration of Rights, Section 12. Right to bear arms. The right of any person to keep or bear arms in defense of his own home, person, and property, or in aid of the civil power when thereto legally summoned, shall not be called in question, but nothing herein contained shall be held to permit the carrying of concealed weapons.

PENNSYLVANIA — Article I, Right to Bear Arms, Section 21. The right of the citizens to bear arms in defense of themselves and the State shall not be questioned.

There are many other examples of state constitutional protections of the individual right to keep and bear arms for self-defense, none of which impose a militia/military test for determining a firearm’s “constitutionality”. Nor do they impose any other test. They confer a broad right to own and use any suitable firearm. That right would certainly include shotguns with short barrels, which have been used for both self-defense *and* military purposes for hundreds of years, as we shall see. Therefore McReynolds’ statement “But none of them [state constitutions] seem to afford any material support for the challenged ruling of the court below” is flatly wrong.

On top of that, McReynolds ignored the several state high court decisions that broadly interpret the State and federal Constitution to protect individual rights to keep and bear arms. There are many, but McReynolds cited none.<sup>9</sup> He prominently cited a negative case that was not relevant.<sup>10</sup> Furthermore, even if the Founders had intended for the Second Amendment to protect only military-type firearms, the *Miller* ruling actually blocked out a class of firearms with a proven militia/military utility, again as we shall see. Thus

---

<sup>9</sup> See, e.g., *Nunn v. Georgia*, 1 Ga. 243 (1846)(early view of federal Second Amendment); *In re Brickey*, 70 Pac. 609, 101 Am St Rep 215 (Idaho 1902)(federal Second Amendment applied).

<sup>10</sup> E.g., *Aymette v. The State*, 21 Tenn. (2 Humphrey’s) 152 (1840) (ban on concealed Bowie knife brandished by an angry wandering disputant upheld).



McReynolds took the arbitrary regulations of a recently-enacted (1934) statute and used them to restrict a broad and ancient right. This reverses the usual way the Supreme Court views possible violations of the Bill of Rights. Normally, the Bill's broad individual protections are used to strike down laws that are vague, overbroad, illogical, dangerous, or slippery-slope infringements of a right. Not in this case.

### **The Two Key Sentences in *United States v. Miller***

In the *U.S. v. Miller* opinion, Justice McReynolds wrote:

In the absence of any evidence tending to show that possession or use of a "shotgun having a barrel of less than eighteen inches in length" at this time has some reasonable relationship to the preservation or efficiency of a well regulated militia, we cannot say that the Second Amendment guarantees the right to keep and bear such an instrument. Certainly it is not within judicial notice that this weapon is any part of the ordinary military equipment or that its use could contribute to the common defense.<sup>11</sup>

The two sentences above are the heart of the *U.S. v. Miller* ruling. Along with his remark regarding the purpose of the Second Amendment, they reveal the limited analysis and thinking Justice McReynolds used in deciding the constitutionality of the shotgun regulations of the National Firearms Act of 1934.<sup>12</sup> They also provide the basis for the Supreme Court's reversal of the District Court regarding the indictment of Jack Miller and Frank Layton.<sup>13</sup>

However, these two sentences are packed with an unbelievable mass of problems. Written pursuant to an unusual and particularly unjust Supreme Court disposition – including no representation for the appellees – they are a judicial nightmare of obfuscation, narrow focus, unwarranted precision, self-contradiction, and vague and ambiguous terminology. As well, they embody a reversal of the normal approach to determining a law's constitutionality when fundamental rights are restricted.

### **Deconstructing the Sentences**

---

<sup>11</sup> 307 U.S. at 178.

<sup>12</sup> National Firearms Act of 1934, 26 USC §1132d, 48 Stat. 1237, now 26 USC §5801 *et seq.*

<sup>13</sup> The district court decision is reported at 26 F Supp. 1002 (W.D. Ark. 1939).

Because of the way these two sentences are written, and because of their importance, they are worth examining closely.

**In the absence of any evidence** — Right at the beginning, things have gone wrong. There are at least two reasons for an “absence of any evidence”. First, the indictment did not charge Jack Miller with anything but nonregistration and not having the stamp order.<sup>14</sup> He was not accused of having a non-militia-useful firearm. He had no way of foreseeing that McReynolds might consider that an issue, and therefore had no reason to present such evidence. Second, on the appeal by the government to the Supreme Court, Miller had no lawyer.<sup>15</sup> There was not even a brief of written argument submitted on behalf of Miller. Miller’s appointed trial lawyer Paul Gutensohn, in Arkansas, some nine hundred miles away as the crow flies, was given about two weeks to file a brief and appear for argument in Washington DC. As noted above, he actually sent a telegram to the Supreme Court Clerk suggesting that the court hear the case based on the government’s arguments only. But McReynolds’ opinion ignores these crucial facts.

Additionally, the way the two sentences are written implies that the required evidence — whatever it is — *does not exist, period*. Yet as we shall see, such evidence does indeed exist.

**tending to show that possession or use of** — This is misleading verbal sleight-of-hand. McReynolds writes “*tending to show*”, as though he is open-mindedly willing to consider evidence that *merely suggests* that the possession or use of certain firearms has a militia purpose. But McReynolds knew that no such evidence had been previously presented to the lower court; that no one had any indication that it should be presented at the hearing since no one knew which path McReynolds’ reasoning would take; that no attorney was present for the appellees’ side; that no brief was presented by the appellees’ side; and that no effort had been made by the Court itself to research the matter, which it could have done. Therefore the implication that he will be broadminded in considering non-existent evidence is farcical.

**a "shotgun having a barrel of less than eighteen inches in length"** — The meaning of these words is self-evident. But in context they emphasize the fact that Justice McReynolds was *not* open-minded regarding this case. Even within his own narrow view of the Second Amendment, in which firearms could be subjected to a militia/military usefulness test, he could have said that any regulation of short shotguns as militia weapons was unconstitutional, since the most cursory research would have revealed that they had been used as military arms for hundreds of years, including by the U.S. military during the American Revolution and the Civil War. More broadly, he could have stated that specifying inches of barrel length for any firearm was an arbitrary, unjustified,

---

<sup>14</sup> The indictment is set out above, and in 307 U.S. at 175.

<sup>15</sup> 307 U.S. at 175.

and dangerous unconstitutional infringement of the Second Amendment, whatever its purpose.

By using the National Firearms Act’s ultimately arbitrary figure of “eighteen inches” as the dividing line in his new militia/military usefulness test of constitutionality, McReynolds was clearly trying to make the Constitution fit the NFA ’34 regulations instead of testing the regulations against the broad fundamental protections of the Bill of Rights — in this case, the protections of the Bill’s Second Amendment. In doing so McReynolds violates constitutional principles by supporting the view that arbitrary, minutely-specified regulation of a fundamental right is legitimate.

To understand this better, consider this sentence, which exactly follows the construction of McReynolds’ first key sentence: “In the absence of any evidence tending to show that possession or use of a printing press having a height of less than 18 inches at this time has some reasonable relationship to the preservation or efficiency of a free press, we cannot say that the First Amendment guarantees the right to keep and bear such an instrument.”

Such a statement by a Supreme Court justice would be a gross departure from First Amendment jurisprudence. It would be grounds for removal from office. Why was it, and is it, considered acceptable with respect to the Second Amendment?

**at this time** — This means *at this current time in history*, or *in 1939*. The clear contextual implication of these three words is that Justice McReynolds intends to apply the Second Amendment’s guarantees to particular firearms *only in light of current conditions* — not past events, conditions, or history, and not possible future events, conditions, or history. Those words would allow a complete ban on, for example, all muzzle-loading firearms and all percussion cap firearms, because in 1939 these obsolete guns had no great value as militia/military weapons.

If such a time limitation were applied to the First Amendment, it would allow the banning of hand-cranked printing presses, which have been out of general use by publishers of books, tracts, newspapers, etc. since the beginning of the Industrial Age and have virtually zero use for the press at this time.

This new time limitation test clarifies that McReynolds was unconcerned with the broad individual right aspects of the Second Amendment. He was protecting the NFA ’34. But the Second Amendment has no time constraints written into its protections; like all of the Bill of Rights, it is not frozen in time technologically, but extends into the past and into the future.

**has some reasonable relationship** — The “reasonable relationship” in question is that of sub-18-inch shotguns to the preservation or efficiency of a well regulated militia. Here, not only the meaning of the phrase but the meaning of

the individual words is debatable. The term “reasonable” is subjective in any context. The term “relationship” is inherently broad. This begs the question as to why McReynolds did not write, “The Court can not take judicial notice that a shotgun having a barrel less than 18 inches long *is useful nowadays* to the preservation or efficiency of a well regulated militia.” That would have been a more direct and honest way of stating his new, narrow test of constitutionality.

And like “tending to show”, the phrase “reasonable relationship” feigns open-mindedness. But it was written with full knowledge that no “relationship” would be shown, since no evidence had been previously presented on this unexpected issue or offered for judicial notice on appeal, and the Court itself had sought no evidence.

Furthermore, even if evidence *had* been presented to show a “reasonable relationship”, McReynolds intended to confine it within a narrow window of time (“this time”, or *now*; see above). Thus any past historical “reasonable relationship” could be excluded from consideration.

There is yet another way that McReynolds could exclude evidence that otherwise met his subjective test of having a “reasonable relationship to the preservation or efficiency of a well regulated militia.” That is by requiring the evidence to deal with a limited, highly-specific class of shotguns — that is, shotguns with barrels shorter than 18 inches. Recall the hypothetical case above involving restrictions on sub-18”-height printing presses. Where is the open-mindedness the Court would use when examining such a law, or restrictions of other fundamental rights such as freedom of speech or religious practice?

To emphasize this point, consider that when the Supreme Court has endorsed laws that expand federal power, as via the general welfare or commerce clauses, the Court’s open-mindedness has arguably been vast, to the point of inferring rights or powers not specifically mentioned. Why didn’t the Court consider the Constitution’s Second Amendment vast and all-inclusive — at least broad enough to include shotguns with barrels one-tenth of an inch shorter than 18 inches? Why did McReynolds apply an unusual and unwarranted time-specific limitation of a right? As pointed out above, hand-cranked printing presses have little use nowadays. Using McReynolds’ rationale, they could be banned.

**to the preservation** [of a well regulated militia] — Another strange choice of words. “Preserve” connotes protecting against injury or corruption of original qualities. One original quality of the militia is the great variety of firearms it employed (that is, a tremendous variety of handguns, rifles, and shotguns). Yet McReynolds used the limiting word “today” regarding firearms, indicating that he was not interested in preservation of *the particular types* of militia firearms used in the past, nor in preservation of *the militia tradition* of using a variety of firearms.

To the contrary, he unilaterally decided to re-define suitable militia weaponry as that which was modern — which was useful “at this time” and which “is any part of the ordinary military equipment.”

So what did McReynolds mean by “preservation” of a well regulated militia? Would it truly be “preserved” if the law allowed citizens to be armed only when the state said they could be, and only with firearms the state said they could use? That is certainly not the militia of American history, or the one outlined in the Federalist Papers and other historical and contemporary writings. That is, ordinary civilians supplying their own arms, whatever they were.

**or efficiency** [of a well regulated militia] — Yet another peculiar word choice. In the context of McReynolds’ sentence, “efficiency” relates to the presence or use of sub-18”-barrel shotguns in a well regulated militia in the year 1939. Does McReynolds mean efficiency in neutralizing an enemy? Efficiency in maneuvering under close quarter combat conditions? Efficiency in being lighter in weight, and thus easier to carry? Efficiency in training or drilling with arms? Efficiency in saving raw materials due to smaller shotgun size? Apparently none of these, or he would have ruled in favor of Miller. That is because the short-barreled shotgun meets all of these criteria, and had been used by military forces for hundreds of years.

**of a well regulated militia,** — These words are, of course, taken from the Second Amendment itself, and should be interpreted to accomplish the several purposes intended and written about by the Framers. They mean *of a well-organized, trained, and commanded, and equipped militia*. Well regulated certainly does not imply a militia that is necessarily state-controlled; one of the first model militias was the voluntary association organized by Benjamin Franklin, after the governing proprietors in Pennsylvania declined to create one.<sup>16</sup>

**we cannot say that the Second Amendment guarantees the right to keep and bear such an instrument.** — If the Court “cannot say” this about the “instrument”, then why did it *reverse* the lower court ruling? There were other options available to the Court that would have promoted a just and constitutionally sound outcome. The case could have been held over until Miller had an attorney present to represent him. The Court could have appointed new counsel for briefing and oral arguments on behalf of Miller. It could have remanded the case to the lower court for findings relevant to the issues raised. It could have used its power to determine the relevant facts itself – especially in a case directly involving the Bill of Rights.<sup>17</sup>

---

<sup>16</sup> Autobiography of Benjamin Franklin, 182-83, 230-31 (Yale 2d ed. 2003).

<sup>17</sup> *U.S. v. Miller* arguments (federal government side only) were heard on March 30, 1939. Jack Miller was found murdered on April 6, 1939. The *Miller* decision was handed down on May 15, 1939, at which time Frank Layton was still alive. The Supreme Court reversed the lower court

At least one document argues that the Supreme Court did avail itself of the latter option because the Supreme Court “does not take evidence”. That is an invalid argument. The Constitution gives the Supreme Court appellate jurisdiction “both as to law and fact”. The Court can do virtually anything it wishes in pursuance of this mandate. It does not have to automatically accept facts or evidence, or lack of facts or evidence, from the lower courts. It has the power to discover such facts or evidence, or to confirm such facts or evidence, which in reality is no different from taking evidence. More on this in the following “judicial notice” segment.

Again, since the Supreme Court admitted there was a lack of necessary evidence to make the crucial decision in this case — that is, whether the Second Amendment applied to Miller’s shotgun — why did it go ahead and *reverse* the lower court ruling?

**Certainly it is not within judicial notice** — “Judicial notice” means *official acceptance and consideration of facts that are valid and relevant to this case and which meet the requirements of the Federal Rules of Evidence*.<sup>18</sup> In general, facts that are acceptable under the Federal Rules of Evidence are those found in authoritative treatises and articles or official government reports or regularly compiled statistics. These facts must not be subject to reasonable dispute. They must be capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. In the case of *U.S. v Miller*, under McReynolds’ narrow “militia maintenance” interpretation of the Second Amendment, those facts would involve the use of sub-18”-barrel shotguns in the militia and/or the professional military. Under a more expansive individual right/self-defense interpretation of the Second Amendment, those facts would involve the use of similar shotguns for defense of self, home, family, property, and community.

As noted, the primary reasons there was no presentation of relevant facts “within judicial notice” were two: (1) Miller’s attorney had no reason to believe that these issues would be involved or were relevant. There was no way to know that McReynolds would turn the Second Amendment into a right narrowly limited by its preamble. (2) On appeal there was *no attorney and no brief* or written argument in the Supreme Court for Miller and Layton (why this occurred is irrelevant).

In any event the words “can not take judicial notice” *were not true*. McReynolds should have written “*did not take judicial notice*”, because under the rules of evidence a court may take judicial notice of facts whether asked to or not.

---

and the case was “remanded for further proceedings” those proceedings being unspecified. Miller’s death does not affect any of the arguments presented in this article.

<sup>18</sup> Rule 201 today governs admission into evidence of material by judicial notice. The common law of evidence would have applied in 1939.

Certainly, when examining a fundamental question about the Bill of Rights, a Justice sworn to protect and defend the Constitution is bound to seek out all relevant information. McReynolds could have instructed an appointed expert master, his clerk, and/or others, to do some basic historical and military research into this matter. He did not do so.

**that this weapon** — There is no ambiguity here. Because the words “this weapon” follow the phrases “shotgun having a barrel less than 18 inches long” and “such an instrument”, it is clear that “this weapon” means any shotgun, of any action type, having a barrel less than 18 inches long.

**is any part of the ordinary military equipment (#1)** — This phrase is wrong-headed even within McReynolds’ own narrow “militia maintenance” view of the Second Amendment. We are focusing here on the words “part of the ...military equipment”. Throughout history, because of logistical and training concerns, armies have always had a pronounced need to equip themselves with a few specific models of guns (“patterns” in Great Britain)<sup>19</sup>, and to make sure that every manufactured unit of each model was identical to all others.

But militias have always been composed of citizens who provide their own firearms — a fact that *McReynolds himself* noted in the *Miller* decision when he wrote: “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.”<sup>20</sup> In contrast to the regular military, the range of weapons owned by citizens is anything *but* identical since they come from no common manufacturer or period in time, have no common caliber, and are bought or otherwise acquired in random ways.

Therefore, even if the Second Amendment’s only purpose were to ensure having a viable militia, there would be absolutely no reason to expect — or to demand — that firearms used by the militia be part of the “military equipment” of any particular armed force of any country at any time in history. Therefore, McReynolds’ apparent requirement that the militia’s shotguns match those of the “ordinary military equipment” is not just arbitrary, it is counterproductive to McReynolds’ own “militia-enabling” purpose of the Second Amendment.

Put another way, if Justice McReynolds were commanding a company of army regulars that was in danger of being annihilated by the enemy, would he turn away a few dozen militiamen who came to the rescue armed with rifles or shotguns that did not match those of his soldiers, or which had barrels a few inches shorter?

---

<sup>19</sup> A model, or pattern, is a standardized mechanical design. Model designation includes changes to past models. Thus the U.S. military’s current M16A2 rifle includes all changes since the original M16 of the 1960’s.

<sup>20</sup> 307 U.S. at 179.

**is any part of the ordinary military equipment (#2)** — A second way that this phrase is inconsistent even with McReynolds’ narrow “militia rights” view of the Second Amendment centers around the word “ordinary”. Why does it have to be *ordinary* military equipment, when both military and militia had used in the past, used currently (1939), and would use in the future, specialized equipment for particular situations? Why the need for a firearm to be “normal” or “ordinary”, especially when the un-ordinariness consisted in being slightly shorter than the 20”-barreled shotguns used by the U.S. military at that very time, 1939?

To appreciate just how short the barrels of the *tens of thousands* of military shotguns owned by the U.S. military in 1939 were, get out a ruler and mark off 20 inches — the length of their barrels. If a ruler isn’t handy, take two sheets of ordinary 8 ½” by 11” typing paper and place a horizontal sheet next to a vertical sheet. They span 19 ½”, just half an inch short of 20 inches.

**is any part of the ordinary military equipment (#3)** — There is yet a third, albeit minor, problem with McReynolds’ words. They are incomplete: “the ordinary military equipment” of *what country and in what era*? Did he mean the ordinary equipment of historical military of various countries? Did he mean the ordinary military equipment of the historical military of North America? Did he mean the ordinary military equipment of the historical military of the United States? Did he mean the ordinary military equipment of the U.S. military of the year 1939? No one knows, though the word “is” and the “today” indicate that he was probably speaking about some modern military.

**or that its use could contribute to the common defense.** — Viewed alone, this is the weakest of McReynolds “constitutionality” tests, and one that is easily be refuted by both historical and contemporary evidence, as we shall see below. But to sum up the counter-argument here, any type of firearm, from small-caliber single-shot muzzleloader onward, could contribute to the common defense – and probably has. If “could contribute to the common defense” were the sole criterion determining whether a firearm were covered by the Second Amendment, every firearm ever made would rightly be covered.

### **A Closer Look at Certain Problems in the *Miller* Ruling**

Here again are the two key sentences of *United States v. Miller*:



In the absence of any evidence tending to show that possession or use of a "shotgun having a barrel of less than eighteen inches in length" at this time has some reasonable relationship to the preservation or efficiency of a well regulated militia, we cannot say that the Second Amendment guarantees the right to keep and bear such an instrument. Certainly it is not within judicial notice that this weapon is any part of the ordinary military equipment or that its use could contribute to the common defense.

Whether analyzed as separate parts or connected into a complete sentence, the precise meaning of McReynolds' sentence is difficult to pin down. But no matter how it is reasonably interpreted, there are logical and factual problems with the ruling that that cannot be brushed aside.

**First Problem.** The problem is that McReynolds and the Supreme Court did not view the main clause of the Second Amendment ("the right of the people to keep and bear arms shall not be infringed") as being primary and independent. Instead, McReynolds viewed it only through the lens of its dependent preamble ("A well regulated militia, being necessary to the security of a free state").

To underscore the problem I will paraphrase author J. Neil Schulman.<sup>21</sup> Imagine the McReynolds court interpreting this hypothetical amendment: "A well-educated electorate being necessary to the survival of a free state, the right of the people to own and read books shall not be infringed." Using McReynolds' rationale, the preamble above ("A well-educated electorate being necessary to the survival of a free state) could be used to uphold a ban on book ownership by any American citizens younger than 21 years of age (the voting age in 1939). Furthermore, using McReynolds' rationale, the words "well-educated" could be used to uphold a ban on all books that were not scientific or academic in nature.

In reality, there is little doubt that McReynolds would have interpreted a "well-educated electorate" in the hypothetical amendment above as simply one important reason not to infringe on the right of the people to keep and read books. Why did he not view the Second Amendment's preamble the same way regarding arms?

It was especially strange and illogical for McReynolds to hold that the Second Amendment is intended *solely* to maintain a state-controlled and state-regulated militia, and is therefore not a broad individual right, considering that the right had been considered as *applying to individuals* in the following:

- English and colonial American common law, as noted in Blackstone's *Commentaries* (1803).<sup>22</sup>

---

<sup>21</sup> See Schulman, J. Neil, *Stopping Power*, Synapse Centurion. 1994. ISBN 1882639030

<sup>22</sup> See II Blackstone, *The Rights of Persons*, in *Commentaries* bk. 1, c. I, 127, 143, 144 (1803).

- The history of colonial North America, in which the *private* keeping and bearing of arms — a matter of life and death in their primitive, hostile environment — was often *required by law*, (see Justice McReynolds’ own citation, *American Colonies in the 17<sup>th</sup> Century*, (3 Volumes, 1904-07), by Herbert L. Osgood – 307 U.S. at 179-80.)
- The writings of the Founders, such as *The Federalist Papers*,<sup>23</sup> which openly contemplate the individual and collective use of privately held firearms *against the state*. This would clearly exclude state control and regulation of these arms.
- The wording of the Second Amendment itself, in which the key clause is explicit regarding “the right of the *people*” and not “the right of the *state*” or “the right of the *militia*”.
- Authoritative historical works on the U.S. Constitution, such as *A View of the Constitution*, V, doc. 9 (1825) by William Rawle; *Commentaries on the Constitution* 746, §1890 (1883) by Justice Joseph Story; *Constitutional Limitations* (1868, 1883) and *Principles of Constitutional Law* sec. IV (1898) by Thomas Cooley

Today there are numerous Supreme Court rulings citing the Second Amendment as a fundamental individual right equivalent to the rights of speech, religion, and press, including the crystal-clear comments of Chief Justice Rehnquist in *U.S. v. Verdugo-Urquidez*, 494 U.S. 259, 265 (1990): “While this textual exegesis is by no means conclusive, it suggests that ‘the people’ protected by the Fourth Amendment, and by the First and Second Amendments, and to whom rights and powers are reserved in the Ninth and Tenth Amendments, refers to a class of persons who are part of a national community or who have otherwise developed sufficient connection with this country to be considered part of that community.” Also, twentieth century scholarship and commentary done by respected authorities such as Leonard Levy, Akhil Amar, Sanford Levinson, Don Kates, Robert Cottrol, David Hardy, Glenn Reynolds, Clayton Cramer and others supports the individual rights interpretation in abundance.<sup>24</sup>

**Second Problem.** The problem is the Court’s peculiar precision regarding the length of the shotgun barrels in question, which is entirely the result of the

---

<sup>23</sup> The Federalist No. 46, at 335 (N.Y.: Wright ed. 1961).

<sup>24</sup> See Amar, *The Bill of Rights: Creation and Reconstruction* (1998), Cramer, *For the Defense of Themselves and the State* (Praeger 1994), Levy, Leonard W, *Origins of the Bill of Rights* 133-149 (Yale 1999 ed.), Levinson, *The Embarrassing Second Amendment*, 99 Yale L.J. 637 (1989)(article on errors of Miller and individual rights protected by Second Amendment), Kates, *Handgun Prohibition and the Original Meaning of the Second Amendment*, 82 Mich. L. Rev. 204 (1983), Kates, *The Second Amendment and the Ideology of Self-Protection*, 9 Const. Comment. 87 (1992), Barnett & Kates, *Under Fire: The New Consensus on the Second Amendment*, 45 Emory L.J. 1141 (1996), Cottrol & Diamond, *The Second Amendment: Toward an Afro-American Reconsideration*, 80 Geo. L.J. 309 (1991), Hardy, *The Second Amendment and the Historiography of the Bill of Rights*, 4 J. Law. & Pol. 1 (1987).

arbitrary but exact wording of the NFA '34 regulations. NFA specifies exactly 18 inches (18.00 inches, to extend it into the hundredths) as the minimum barrel length of a shotgun that may be legally owned without completing special paperwork, paying a special tax (\$200 — high today, and exorbitant in the late 1930's), and waiting possibly several months for “permission” after securing a signature from a local law enforcement leader. Failure to comply with this regulation was, and is today, a felony punishable by up to 10 years in prison per offense.<sup>25</sup> To put this in a stark light, this means that, without the paperwork done and tax paid, possessing a shotgun having a barrel 18.00 inches long is perfectly fine, but possessing a shotgun having a barrel 17.99 inches long (one hundredth of an inch shorter) could result in fines and imprisonment. As a matter of practicality, logic, law, and justice, this is utterly irrational. The Second Amendment speaks of arms, not of arms having barrels at least 18.00 inches long.

Here is another way to look at it. The measurements “17.68 inches” and “18.00 inches” are very close in value in the context of shotgun barrel length. If the National Firearms Act of 1934 had set the minimum unregulated shotgun barrel length at 17.68” instead of 18.00”, there is every reason to believe that Justice McReynolds would have written “In the absence of any evidence tending to show that possession or use of a ‘shotgun having a barrel of less than 17.68 inches in length’ at this time has some reasonable relationship to the preservation or efficiency of a well regulated militia...” Such slavishness to minute, arbitrary specification of rights is not only absurd, it is dangerous to all rights.

Against the magnificent sweep of the American experiment in freedom, the world-altering significance of the American Bill of Rights, there is something sad and pathetic about the highest tribunal in the land grubbing about with inches of shotgun barrels. There is something utterly tragic in this pitiful mathematical delimitation of our great “uninfringeable” right to keep and bear arms.

It would have been in keeping with the other individual rights expressed in the Bill of Rights, and in keeping with the principles of past Supreme Court rulings, had the Court refused to validate any law concerning the irrelevant length of firearm barrels. News articles, in contrast, enjoy First Amendment protection regardless of length.

**Third Problem.** The problem is McReynolds’ tying the “reasonable relation” (or value) of short-barreled shotguns to a “well regulated militia” without specifying what the term “well regulated” means.

For example, what if McReynolds’ idea of a “well regulated militia” was one that was well manned, staffed, organized, and trained, yet was limited to non-

---

<sup>25</sup> National Firearms Act of 1934, 26 USC §1132d, 48 Stat. 1237, now 26 USC §5801 *et seq.*

combat duties such as guarding or patrolling? Such a militia would not need much of the equipment and weapons of regular troops, thus altering the results when determining a “reasonable relationship” between a particular type of firearm and its military usefulness.

But a non-combat militia would not be the kind envisioned by the Founders. They wrote specifically of a militia that could engage and defeat either professional foreign troops (as in the American Revolution) or the professional domestic troops of an American government gone bad.

In his second key sentence, McReynolds mentions a comparison with “ordinary military equipment”, so the clear implication is that he views the militia as a true military force. Unfortunately, what this implies regarding “well regulated” is still a mystery.

**Fourth Problem.** The problem is that even if Justice McReynolds had been presented with facts relevant to his “judicial notice”, *they would still not have established what he wanted to see proved.*

For the sake of explanation, let us agree that by the year 1939 short-barreled shotguns had a long history of use in both the professional military and the militia (as will be demonstrated further in this article). And let us agree to accept McReynolds’ interpretation of the Second Amendment as solely serving to maintain a well regulated combat-ready militia, as opposed to *also* enabling self, family, and home defense. And let us assume that a well-prepared attorney had been present in court to represent Jack Miller and Frank Layton. Given all of this, the task that McReynolds had set before that attorney, as revealed by his two key sentences, *was impossible to perform.*

In other words, it is impossible to prove that the existence of shotguns having barrels a few inches shorter or longer than those of standardized military shotguns would noticeably affect the preservation, or existence, or maintenance, or efficiency, or effectiveness of a well regulated militia.

Imagine that a magician waved his wand and eliminated all shotguns throughout time that had barrels 20 to 21 inches long and replaced them with shotguns having barrels 19 to 20 inches long. Common sense tells us that there is virtually zero chance that the world’s military history would not be different in any significant way. So in the hypothetical world in which the 20 to 21 inch shotguns never existed, would it make sense for the Supreme Court to argue that since 20 to 21 inch shotguns never existed, a “reasonable relationship” between them and an effective militia or military could not be proved, thus they would be useless for that purpose and thus did not fall under the protection of the Second Amendment?

No, it would not. Common sense would tell us that since 19 to 20 inch shotguns, just slightly shorter than the existing 20 to 21 inch shotguns, could be used effectively for militia/military purposes. That is exactly what McReynolds should have done, since he was examining a fundamental individual right concerning random shotguns owned by millions of random militia members.

To put it another way: with respect to the actual American militia throughout history, the militia was, and is, armed with every sort of firearm. So how could anyone prove that the *presence or absence* of slightly-shorter short-barreled shotguns had some effect on the maintenance or effectiveness of that militia, well regulated or not? One could not do so.

### **Summary of All Problems in the *Miller* Ruling**

1. There was no competent, well-prepared attorney present to represent Jack Miller and Frank Layton in the Supreme Court proceedings.
2. In deciding the case, the Supreme Court was clear that the Second Amendment protects an individual right, and that therefore Jack Miller had standing — that is, the right to a Second Amendment-based challenge to NFA '34. Thus the Second Amendment is like most of the other Bill of Rights amendments in that it deals with an individual right. Such rights have historically been viewed by the courts as broad, and as limitable only for rational and extremely compelling reasons. Yet McReynolds adopted a narrow, historically incompatible interpretation of the Second Amendment as being solely an enabler of a militia. This interpretation arbitrarily narrowed the right in ways that were irrational, un-historical, and non-compelling. Had he applied such a narrow view to the First Amendment, he could presumably rule that television, or radio, or the internet, do not fall under the protection of freedom of the press because they were not mentioned in the Bill of Rights.
3. Though the Supreme Court treated the Second Amendment as an individual right by agreeing to hear the case from individuals, McReynolds then ruled that shotguns with barrels under 18 inches long are not covered by Second Amendment guarantees. Thus he has prohibited these *same individual citizens* (homeowners, travelers, family defenders) from using the very shotguns that can be most conveniently, practically, and safely be wielded by individuals in the close confines of their homes, or transported by individuals in their cars, or stored by individuals in places secure from children and thieves.
4. McReynolds judges his narrow, “militia-enabling” Second Amendment by the arbitrary rules of NFA '34, instead of judging NFA '34 by the guarantees of the Second Amendment. In other words, had NFA '34 mandated a 16, 17, 19, or

19.75-inch minimum barrel length, McReynolds probably would have used those arbitrary numbers. Congress apparently devised the barrel length regulations in response to the occasional use of short shotguns by the John Dillinger gang and other criminals.<sup>26</sup> We should be grateful that such criminals were not using printing presses or radios to commit crimes, or that Congress' attention did not fix upon the automobiles used by these outlaws.

5. McReynolds implies that there is a test of “reasonable relationship” of certain firearms to a “well regulated militia”, but does not specify what the terms mean.

6. McReynolds seems to demand certain evidence or proof, but does not clearly explain *how*, or *if*, he will apply that proof to his decision. And viewed narrowly, the proof he seems to require is impossible to supply.

7. To make sure the Second Amendment fits into NFA '34's rules, McReynolds apparently applies a window-in-time test to firearms. That is, to be constitutionally protected, so to speak, a gun owned by the random militiaman must somehow be proved to be useful “today”. Judging by this test, McReynolds would have accepted a complete federal ban on antique guns, a ban on advanced or experimental guns, or a ban on modern guns lacking some sort of authoritative documentation of militia/military usefulness.

8. McReynolds seems to apply a test that is incongruent even with his narrow militia-enabling view of the Second Amendment. That is, to be constitutionally protected, a gun owned by the random militiaman must be similar to, and no shorter in barrel length than, firearms that are “ordinary military equipment”. Yet throughout history the private arms owned by militiamen have been of every action type, manufacture, caliber, condition, and length.

9. McReynolds claimed that no state constitutions “seem to afford any material support” for the ruling in favor of Miller and Layton. That is, he says no state constitutions indicate support for a broad individual right to own arms that have no military purpose. That is absolutely wrong at best, and a blatant lie at worst.

10. McReynolds applies the test that a firearm be useful to the common defense, but completely ignores the fact that short-barreled shotguns have been used for military and other common defense purposes for hundreds of years. He also throws out common sense, which tells us that any 12-gauge shotgun loaded with buckshot or slugs, even if the barrel were cut down to less than a foot, could kill or neutralize enemies during combat, and therefore most certainly could contribute to the common defense.

---

<sup>26</sup> See National Firearms Act, Hearings before the Committee on Ways and Means, H.R. 73d Congr., 2d sess., on H.R. 9066, at 6 (Apr. 16, 1934)(testimony of the Attorney General).

To sum things up: in terms of deciding the constitutionality of a law, and in terms of setting reasonable and necessary limitations on a fundamental right, all of the above are not in keeping with traditional procedure or even simple logic.

### **Summary of What is RIGHT With the *Miller* Ruling**

The *Miller* opinion, though bad in applying the law to the case at hand, was correct in explaining two crucial points about the Second Amendment, as follows:

1. The Supreme Court implicitly recognized that the Second Amendment protected an individual right to own and use firearms and rejected the “collective rights” or “states right” interpretation of the Second Amendment. If the Court had agreed with any version of these interpretations, it could simply have refused to hear the case due to appellees’ lack of standing under the Second Amendment.
2. The Supreme Court correctly identified the militia as being *not the military*, but ordinary citizens bearing their own firearms. Here are two relevant quotes from the ruling:

The Militia which the States were expected to maintain and train is set in contrast with Troops which they were forbidden to keep without the consent of Congress. The sentiment of the time strongly disfavored standing armies; the common view was that adequate defense of country and laws could be secured through the Militia — civilians primarily, soldiers on occasion.

The signification attributed to the term Militia appears from the debates in the Convention, the history and legislation of Colonies and States, and the writings of approved commentators. These show plainly enough that the Militia comprised all males physically capable of acting in concert for the common defense. "A body of citizens enrolled for military discipline." 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.

### **What Would Justice McReynolds Have Accepted as “Evidence”?**

Here again are the two key sentences of the *Miller* ruling:

In the absence of any evidence tending to show that possession or use of a "shotgun having a barrel of less than eighteen inches in length" at this time has some reasonable relationship to the preservation or efficiency of a well regulated militia, we cannot say that the Second Amendment guarantees the right to keep and bear such an instrument. Certainly it is not within judicial notice that this weapon is any part of the ordinary military equipment or that its use could contribute to the common defense.

It can be argued that Justice McReynolds was implying that if someone had proved that shotguns with barrels shorter than eighteen inches were militarily useful, the Court would have ruled that the federal restrictions on such shotguns were unconstitutional.

But given the detailed jurisprudence record of Justice McReynolds<sup>27</sup> — especially considering his apparent approval of NFA '34 and his lack of enthusiasm toward an interpretation of the Second Amendment as an individual right irrespective of the militia — this seems unlikely. The fact is McReynolds never clearly says that since the Court can't find any of the required evidence, the Second Amendment definitely doesn't protect unregulated ownership of Miller's type of shotgun. Instead, he notes a lack of evidence of a particular type, and remarks that in view of this lack, the Court "cannot say" that the Second Amendment applies. Then he inexplicably reverses the lower court, thus ruling that the Second Amendment definitely does *not* apply.

Judging solely by McReynolds' words, the only certain thing is that he is outlining three separate, independent tests — but not necessarily the *only* tests — of whether a particular firearm might be constitutionally protected from the regulations of NFA '34, and might therefore be protected by the Second Amendment. In the order he wrote them, these possible tests are:

- (a) Evidence that the firearm would be *currently useful* in the "preservation" or "efficiency" of "a well regulated militia"
- (b) Evidence that the firearm is *currently in use* by the U.S. Military
- (c) Evidence that the firearm would be useful to "the common defense" (that is, defense of community, state, or nation as opposed to self, family, or home defense).

---

<sup>27</sup> McReynolds was a foe of the First Amendment and of equal rights under the Fourteenth as well. He had voted for full censorship of movies in *Mutual Film Corp. v. Industrial Commission*, 236 U.S. 230 (1915). He voted against applying the First Amendment to the States in *Stromberg v. California*, 283 U.S. 359 (1931). He approved of racially segregated law schools in *Missouri ex rel. Gaines v. Canada*, 305 U.S. 337, 353 (1938)(dissenting opinion).



Again, McReynolds does *not* explicitly say that passing any or all of these tests would render the firearm constitutionally protected. Nor does he say that these are the *only* tests he can envision or would apply.

But what if the 1939 Supreme Court *had* clearly said, “If evidence exists that shotguns with barrels shorter than 18 inches are militarily useful, we’ll strike down the barrel-length regulations of NFA ’34.” Could this evidence have been produced? Absolutely yes, as we will see next.

### **Short-Barreled Shotguns in Combat and Self-defense**

As noted above, the evidence that might have changed the opinion of Justice McReynolds and the rest of the Supreme Court in the *Miller* case was never laid out in a brief or otherwise, that evidence being proof of the militia/military usefulness of shotguns with short barrels, including shotguns with barrels shorter than 18 inches. However, this evidence was readily available from historical writings, military historians, and museums — and in the year 1934, possibly from Civil War veterans.

The evidence is still readily available. As presented here, it will consist of quotes and photographs from more modern compilations of facts gleaned from the sources mentioned above — historical writings, military historians, and museums. Rather than re-writing the textual evidence into a new narrative, I offer it directly from the sources. Placed in a generally historical order, and supported by the photographs, the quotes make fascinating reading.

I have leaned heavily on excerpts from *The World’s Fighting Shotguns* by Thomas F. Swearingen. It is thorough, very well researched, and very well illustrated. It is *the* classic study in the area we are directly examining: combat, or “fighting”, shotguns.<sup>28</sup>

I have included post-1939 evidence because, in light of the serious defects of the *Miller* ruling and the current backlash against oppressive “gun control” laws, the constitutionality of NFA ’34 regulations will again be examined. Therefore it is worthwhile to have the evidence at hand in order to head off any misguided attempts to resuscitate the specious rationale of Justice James McReynolds.

#### ***First Short-Barreled Combat Shotgun — The Blunderbuss***

---

<sup>28</sup> Copies available from Ironside International Publishers, Inc. P.O. Box 55, Alexandria, VA, 22313, telephone 703-684-6111. My thanks for permission to use photographs from this book.

**Author’s Note:** The generic term “shotgun” is fairly modern, but this particular type of firearm is hundreds of years old. We are speaking of a firearm designed specifically for shooting multiple sub-caliber projectiles in one blast. As is pointed out in the quotes below, the first common, dedicated shotgun was called (in English) a “blunderbuss”. In the colonial era, long shot-shooting firearms were referred to as “fowling pieces” due to their common usage. The term “scattergun” also designates a shotgun, but the time frame of its origin is uncertain.

Any argument that a blunderbuss is not a shotgun will founder upon the above common-sense observations, and in constitutional matters it will founder upon long-established legal precedent. That is, if one insists that a blunderbuss is not a shotgun because it has a different name, then one must certainly insist that photocopiers, radios, televisions, or internet news organizations are not protected by the First Amendment. Not only are these things not called by the name “press” (as in “freedom of the press”), they are not even the same type of mechanisms. So constitutionally speaking, if a television is covered by the term “press”, then a blunderbuss is most certainly a shotgun.

“By traditional definition, a blunderbuss is a short firearm with either an expanding bore or a flared muzzle designed to scatter a charge of small projectiles in a wide pattern. ... This definition has been generally accepted since at least the middle 1600’s. Before that the usage of the name is a bit vague, but it seems always to have meant a short scattergun [shotgun].” — P. 56, *The Great Guns*, by Harold L. Peterson and Robert Elman. Grosset & Dunlap, 1971.



*Blunderbuss marked “W. Bird” (of London, England), above. Circa 1670. Brass barrel is about 15 inches long. (Photo: The Great Guns)*

“The blunderbuss was the first of the true fighting shotguns. It set the pattern for large-caliber, short-barrel combat shotguns that followed, and it established basic missions and tactics for such guns. The modern short-barrel riot-type shotgun still possesses the same basic characteristics and performs the same missions that occupied the

blunderbuss.” — P. 3, *The World's Fighting Shotguns*, by Thomas F. Swearngen. Chesa Ltd. 1978.

“The earliest known reference to a ‘Donderbuss’ [original Dutch term for blunderbuss] comes from Holland, in 1598, where it is described as a kind of gun useful for repelling boarders on ships.” — P. 56, *The Great Guns*, by Harold L. Peterson and Robert Elman. Grosset & Dunlap, 1971.

“For a few specific uses it [the blunderbuss] was superb. These were mostly in the field of defense at close quarters, or in shooting from horseback or stagecoach at short range.” — P. 56, *The Great Guns*, by Harold L. Peterson and Robert Elman. Grosset & Dunlap, 1971.



*Blair Flintlock Blunderbuss, circa 1800, above. Typical “Coaching” type gun. Brass barrel is about 12 inches long. (Photo: RooseveltRoom.com)*

“In 1670-71, Sir James Turner wrote that instead of carbines, some of the English mounted carabineers ‘carry Blunderbusses, which are short Hand-guns of a great bore, wherein they may put several Pistol or Carabine-Balls, or small Slugs of Iron’ ” — P. 57, *The Great Guns*, by Harold L. Peterson and Robert Elman. Grosset & Dunlap, 1971.

**Author’s Note:** The term “hand-guns” (in the above quote) meant at that time any small, man-portable firearm, as opposed to larger artillery-type guns.

“During the century from about 1720 to 1820, English gunsmiths produced these intriguing weapons in great numbers. ... The British government bought blunderbusses for the army, the navy, the postal service, the constabulary, and other agencies. Merchant captains acquired them for their vessels, and private citizens purchased them as

a defense against highwaymen on the roads and intruders at home. And there were other buyers — transportation companies, jailers, even shopkeepers.” — P. 57, *The Great Guns*, by Harold L. Peterson and Robert Elman. Grosset & Dunlap, 1971.



*British military Milne's Patent flintlock blunderbuss, 1700's, with folded bayonet, above. Barrel is about 12 inches long. (Photo: Antique Guns, by John Traister)*

“In his Military Guide of 1776, Thomas Simes advised young British officers that a ‘Blunderbuss is a short firearm, with a large bore, very wide at the mouth, carrying several pistol balls or slugs, proper for the defence [sic] of a barrack, staircase, or door.’ In 1779, Captain George Smith became even more specific in his Universal Military Dictionary, declaring that blunderbusses were ‘very fit for doing great execution in a crowd, to make good a narrow passage, door of a house, staircase; or in boarding a ship.’ ” — P. 60, *The Great Guns*, by Harold L. Peterson and Robert Elman. Grosset & Dunlap, 1971.



*British Navy "Sea Service" Blunderbuss with folded bayonet, late 1700's, above. Royal Navy proof marks. Barrel is about 10.5 inches long. (Photo: West Sea Company, www.westsea.com )*

“The English used the blunderbuss for guarding royal mail coaches, just as did Wells Fargo with shotguns in the Old West. Englishmen referred to their gun as a 'coaching gun,' while Americans preferred to recognize the man behind the gun as a shotgun messenger. English travelers in the seventeenth and eighteenth centuries often carried the blunderbuss to ward off highwaymen, just as American travelers carried the shotgun from colonial times to the turn of the twentieth century. There was hardly an English lending house, bank, or substantial home that did not possess blunderbuss armament for protection. A large percentage of American institutions and homes still maintain shotguns for the same purpose.” — P. 2, *The World's Fighting Shotguns*, by Thomas F. Swearingen. Chesa Ltd. 1978.



*British Blunderbuss, marked P. Bond, circa 1790, with folded bayonet, above. A Typical “coaching gun”. Barrel is about 14 inches long. (Photo: [www.Moreau.com](http://www.Moreau.com) online catalog)*

“The extra bullets of the blunderbuss and the wide shot pattern gave the guard a real advantage in such a situation, and it is not surprising that the British postal service armed its coach guards with blunderbusses. Other coachmen and even passengers followed suit, and one form of the arm known as a coaching blunderbuss thus came into use. Although the term was rather loosely applied, coaching models were usually quite short and had only moderately flared muzzles. Compact construction made them convenient to carry in or on coaches.” — P. 65, *The Great Guns*, by Harold L. Peterson and Robert Elman. Grosset & Dunlap, 1971.

“When Meriwether Lewis prepared his initial ‘List of Expenses’ for the Pacific expedition, he included funds for ‘Arms and Accoutrements extraordinary.’ What became the Lewis and Clark expedition was in many ways an infantry company on the move, fully equipped with rifles of various kinds, muskets, and pistols. Among

those firearms were several blunderbusses. Named after the Dutch words for ‘thunder gun,’ the blunderbuss was unmistakable for its heavy stock, short barrel, and wide-mouthed muzzle. Other expedition guns might be graceful in design and craftsmanship but the stout blunderbuss simply signified brute force and power.” — Library of Congress website: [www.loc.gov/exhibits/lewisandclark/preview.html](http://www.loc.gov/exhibits/lewisandclark/preview.html)



*Blunderbuss made circa 1760 that accompanied Lewis and Clark in their cross-continent expedition, 1804-1806, above. Barrel is about 14 inches long. (Photo: U.S. Library of Congress)*

“The blunderbuss saw considerable use by British, European, and American military forces before its ultimate demise. Austrian, Prussian, and British regiments were equipped with the blunderbuss; for example, British General Sir John Burgoyne raised a Light Dragoon Regiment in 1781 equipped with the blunderbuss. Navies employed the blunderbuss as a weapon for repelling boarding parties.” — “*Joint Service Combat Shotgun Program*”, by W. Hays Parks, Special Assistant for Law of War Matters, Office of The Judge Advocate General, U.S. Army, Washington, D.C. Published in *The Army Lawyer*, October 1997

### ***Early American and Civil War Use of Combat Shotguns***

“It [the fighting shotgun] has been used by Americans in every war this nation has fought since the colonists landed on these shores.” — P. v, *The World's Fighting Shotguns*, by Thomas F. Swearngen. Chesa Ltd. 1978.

“[On April 27th] the people delivered to the selectman 1778 fire-arms, 634 pistols, 973 bayonets, and 38 blunderbusses....” — From the inventory of arms turned over to British General Gage by the

citizens of Boston shortly after Lexington and Concord. P. 94-95, *History of the Siege of Boston, and of the Battles of Lexington, Concord, and Bunker Hill*, 6th Ed., by Richard Frothingham. Boston. 1903.

“During the Revolution, General Washington took cognizance of shotgun effectiveness. He encouraged troops to load their muskets with buck and ball, or with plain buckshot to compensate for the poor long range accuracy of the single musket ball. ...General Washington referred to the shot as ‘swan drops.’ His colonial troops enthusiastically loaded one standard musket ball and from three to six buckshot when there was sufficient lead to support the practice.” — P. 3, *The World's Fighting Shotguns*, by Thomas F. Swearngen. Chesa Ltd. 1978.

“The long-barrel [shot]gun, itself, possessed few attributes that could be admired for fighting purposes.” — P. 3, *The World's Fighting Shotguns*, by Thomas F. Swearngen. Chesa Ltd. 1978.

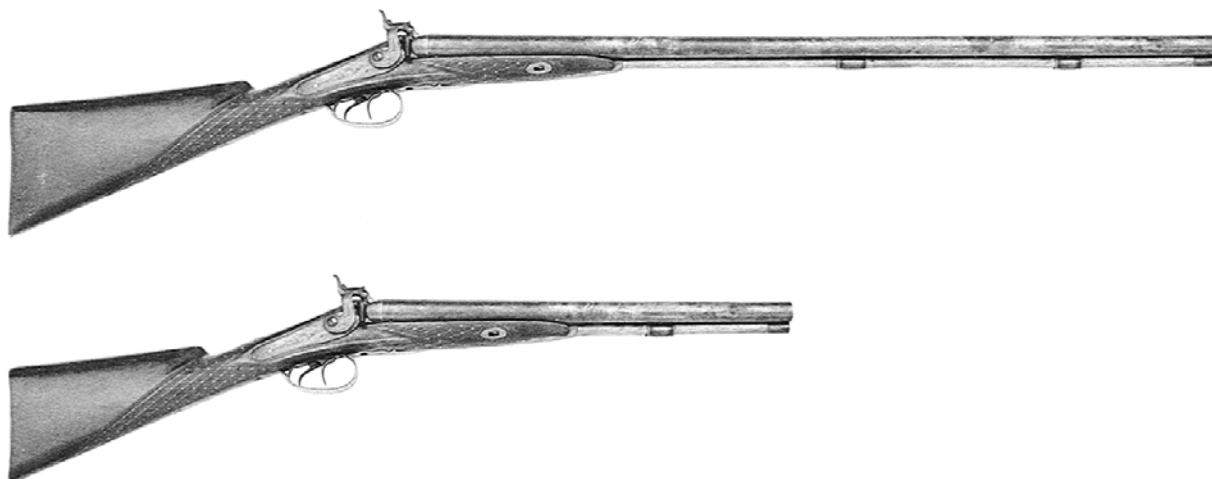
“Short-barreled percussion shotguns were used (primarily by Confederate cavalry) during the Civil War with awesome effectiveness on many occasions. Some cavalry troopers carried their pet double-barrel shotguns during the ‘Indian Wars’ as well.” — P. 131, *U.S. Infantry Weapons of the First World War*, by Bruce N. Canfield. Andrew Mowbray Publishers. 2000.

“Because of a general lack of arms, many southern volunteers equipped themselves with their personal or family double barrel shotgun. For the most part, these guns were European made, with fine English guns much in evidence. ...

Confederate double-barreled percussion shotguns were initially employed unaltered. However, in the mounted units, barrels were often cut back to around 20 inches (50.8 cm) or less to be more maneuverable and handy from horseback. In some cases, stocks were also reduced in length but were seldom cut completely off.” — P. 5-6, *The World's Fighting Shotguns*, by Thomas F. Swearngen. Chesa Ltd. 1978.

“The degree to which [shotgun] barrels were amputated depended upon the whim of the [Civil War] cavalryman, or was dictated by battle damage sustained by the gun. ... Since weapons were scarce, the

damaged portion was simply cut off to restore the gun to action. This resulted in the discovery that shortened guns were more controllable while mounted; therefore, they were better suited for fighting purposes.” — P. 6, *The World's Fighting Shotguns*, by Thomas F. Swearngen. Chesa Ltd. 1978.



*TOP: A typical well-made pre-Civil War double barrel muzzle-loading percussion shotgun. Manufacturer not known. Overall length of this gun is about 49 inches, barrels about 32 inches. (Photo: World's Fighting Shotguns)*

*BOTTOM: Same shotgun photographically altered for comparison. About 1.5 inches has been “cut” off the stock and barrels are now about 16 inches long.*

**Author’s Note:** During the Civil War, similar shortening of actual shotguns vastly improved handling properties when fighting from horseback or in close quarters. As we will see, shotguns with similar barrel lengths are proving their military/militia/police/civilian value today, in the 21<sup>st</sup> century.

“The [LeMat] revolver consisted of a 9 shot cylinder that fired thru a conventional .40 -.42 caliber rifled barrel. The central cylinder pin that would normally be used in a conventional revolver was replaced by a smooth bore secondary barrel of .60-.63 caliber. This central barrel would then serve as a cylinder pin as well as the secondary barrel. Grapeshot would then be loaded into the central barrel providing a devastating charge against the union forces. A removable ramrod for use in charging the shot barrel was inserted in the rammer's lever. The revolver was constructed of blued steel, with grips of



polished walnut, and was a total of 13.25 inches long. The upper, rifled barrel was 6.75 inches long; most were octagonal, though some were round. The lower barrel was 5 inches long. An extension could be attached to the lower/center barrel to form a true shotgun. ...

Designed by Col. LeMat and Gen. Beauregard this handgun was a favorite of General J.E.B. Stewart. The first models were produced by John Krider of Philadelphia. Later during the war they were produced in Europe by various gun manufacturers. Approximately 2900 of these revolvers were produced. The second or first over seas mfg of the revolver was done by Charles Frederic Girard and Son. These were so poorly made that LeMat then moved to the Birmingham Small Arms Company in England. Shipments of the guns were slipped through the Union naval blockade that barricaded the Confederate coasts. ...

Its users included General Beauregard, Maj. Gens. Richard H. Anderson and J.E.B. Stuart, and Colonel George S. Patton.”  
— “LeMat Revolver” by Kerry Barlow, *Civil War Handguns* website, [civilwarhandguns.com/lemats.htm](http://civilwarhandguns.com/lemats.htm)



*LeMat revolver/shotgun, above. The lower 5” barrel is a .60 to .63 caliber (about 20 gauge) shotgun. An extremely short shotgun of purely military origin. (Photo: Civil War Handguns website — <http://civilwarhandguns.com/lemats.htm>)*

“In 1861 agents from both the North and South combed Austria for serviceable weapons. Over 300,000 of the Model 1854 alone were exported to America, secured from the government arsenal in Vienna and from various gunmakers and entrepreneurs. ...

The principal Austrian weapons imported to America were as follows: ...

- *Augustin Carbine (Kammer-Karabiner), Model 1842.* Augustin pattern tube-lock, muzzleloader, cal .71, rifled with 12 grooves. Overall length 30 in. with 14.5 in. barrel. No bayonet. ...  
[Union Col.] George Schuyler purchased 10,000 of these

carbines in 1861 and brought them into the United States after conversion to percussion.” [NOTE: see next citation regarding ammunition for this 14.5-inch barreled firearm].

— P. 133-135, *American Military Equipage, 1851-1872, Vol. I*, by Frederick P. Todd. Charles Scribner’s Sons. 1980.

“In 1861, the Federal government purchased 10,000 Austrian-made carbines (KammerKarabiner, Model 1842). This muzzle-loading .71 caliber firearm resembled a shotgun: it had a 14.5" rifled barrel and no bayonet... The government issued three types of ammunition for this carbine: buckshot and ball combined, ordinary buckshot, and round balls (see illustration). Two of these three were specially suited for use in shotguns. Most of the ammunition actually purchased was of the buckshot, or buckshot-and-ball type. ... [See Footnote 34, following]

*Footnote 34.* Berkeley R. Lewis, Notes on Ammunition of the American Civil War — 1861-1865; The American Ordnance Association, Washington, D.C., 1959. Colonel Berkeley Lewis retired from the U.S. Army Ordnance Corps. There is an appendix, "Ordnance and Ordnance Stores Purchased by the Ordnance Department, U.S.A., January 1, 1861 to June 30, 1866". It shows that the government paid \$66,193 for 10,051 "foreign carbines" (p. 26). The three cartridge types are shown in Fig 1, on p. 2. Foreign muskets in cal. .69, .70, and .71 were supplied with U.S. ammunition of cal. .69, buckshot-and-ball, and ordinary ball (Table IV, p. 10). The Appendix, under heading "Class 8"..., provides data that show users of the Austrian carbine mainly were supplied with shotgun-type ammunition. Specifically, the government bought:

- 6,021,220 rounds of cal. .69 buck & ball ammunition at a cost of \$86,982;
- 2,735,180 rounds of ball ammunition – which quantity includes both .54 and cal. 69 balls – at a total cost of \$51,273;
- 830,014 pounds of buckshot at a cost of \$78,432.”

— “U.S. v. Miller Revisited”, from *Jews for the Preservation of Firearms Ownership* website. (<http://www.jpfo.org/miller.htm>); and from *Notes on Ammunition of the American Civil War, 1861-1865*, by Berkeley R. Lewis. The American Ordnance Association. 1959.



*Austrian Augustin Carbine (Kammer-Karabiner), Model 1842, above. Barrel is 14.5 inches long. (Photo: Jews for the Preservation of Firearms Ownership, [www.jpfo.org](http://www.jpfo.org))*

### ***Post-Civil War Use of Shotguns in the American West***

**Author’s Note:** I have included information on short-barreled shotguns used by army scouts, lawmen, bank messengers, coach companies, and regular civilians for a good reason: these guns were carried for use against criminals and American Indians in close-quarter combat. Their widespread popularity for this purpose indicates equal value for militia/military close quarter combat. This is confirmed by the Civil War-era use of such short shotguns, and by modern use of such short shotguns by the U.S. and other military organizations.

“On the other hand, [during the Indian Wars from 1866 through 1891] sawed-off double-barrel shotguns were carried by civilian Army scouts as common armament, along with repeating rifles and pistols.”  
— P. 7, *The World's Fighting Shotguns*, by Thomas F. Swearengen. Chesa Ltd. 1978.



*Thomas Barker “Belgium” model, circa 1880s, above. Typical Old West fighting shotgun. Barrels about 12 inches long. (Photo: World’s Fighting Shotguns)*

“The appearance of breech loading in the post-Civil War era made the double-barrel shotgun more popular than ever as a fighting weapon. . . . Since its primary employment was either from horseback or from stage coach, barrel lengths were constantly reduced until they arrived in the vicinity of 18 inches (45.7 cm).” — P. 62, *The World's Fighting Shotguns*, by Thomas F. Swearingen. Chesa Ltd. 1978.



*L.C. Smith double barrel from Texas, circa 1880s, above. Typical Old West fighting shotgun. Barrels about 12 inches long. (Photo: World's Fighting Shotguns)*

“Practically all breech-loading shotguns reported to have been employed as fighting weapons by famous and infamous gunfighters of the Old West were modified in some form to increase their usefulness in the eyes of the owner. All of these fighting shotguns appear to fall into three categories. The first, and by far the most common, consisted simply of guns with barrels cut down to from 17 to 24 inches (43.2 to 61 cm). These shortened barrels gave the gun an overall length similar to that of the Winchester saddle gun, and were sometimes carried in carbine scabbards. . . . All of these guns were of large caliber, with 10 gauge predominating.

The next category consisted of shotguns with barrels severely shortened to from 9 to 16 inches (22.9 to 40.6 cm) but with the stock left essentially intact. These guns proved to be quite handy from horseback or stage coach. They were second in population density and were also of 10 and 12 gauge. It appears that this type of weapon found favor with shotgun messengers both on stage coaches and on trains, as well as with some lawmen.

The third class was made up of guns with barrels and stocks both severely amputated. . . . Probably the most notable gun manufactured in this configuration was the Auto and Burglar, a 20 gauge [10.1 inch or 12.2 inch barreled] double-barrel produced by the Ithaca Gun Co.” — P. 63-64, *The World's Fighting Shotguns*, by Thomas F. Swearingen. Chesa Ltd. 1978.



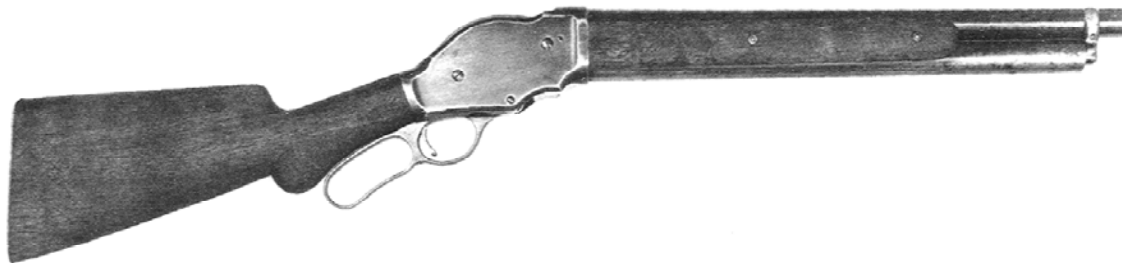
*Bridge Gun Company sawed-off double barrel, circa 1880s, above. Found in an abandoned stage station, Arizona. Typical stagecoach guard shotgun. Barrels about 12 inches long. (Photo and information: *World's Fighting Shotguns*)*

“In the spring of 1887, the lever-action shotgun started flowing from the production line. It was designated the ‘Winchester, Repeating, Lever-Action, Shotgun, Model 1887.’ ...

When the Winchester Model 1887 became plentiful in the Old West, Sheriffs, deputies, range detectives, Wells Fargo messengers, rangers, and others who depended upon a gun for their livelihood and to defend their lives and property were quick to recognize its combat potential. Such men began purchasing the gun in increasing quantities to replace the old double-barrel hammer guns they had been using. ...

One of the first things the westerners did to modify their guns for fighting purposes was to cut the barrels back to handy lengths. On the model 1887, barrels were cut anywhere from immediately in front of the magazine lug [about 16.75 inches] on out to around 24 inches (61 cm). ...[continued]

Arizona Ranger, Clarence Beatty, had the barrel of his second-model Winchester, lever-action, 10 gauge shotgun reduced to 17.5 inches (44.5 cm). ...Arizona Rangers, Jack McRedmond and Joseph Pearce, were also fond of a short-barrel Model 1887. The technical details of their guns are not now available, but the specifications were apparently close to those of the Beatty gun.” — P. 172-176, *The World's Fighting Shotguns*, by Thomas F. Swearingen. Chesa Ltd. 1978.



*Winchester Model 1887 lever action, above. Owned by Arizona Ranger Clarence Beatty. Barrel is 17.5 inches long. (Photo and information: World's Fighting Shotguns)*



*Winchester Model 1887 lever action, above. Owned by Wells Fargo Messenger Jeff Milton. Barrel is 18 inches long. (Photo and information: World's Fighting Shotguns)*

### ***U.S. Shotguns in WW I, WW II, and Vietnam***

#### **Author's Notes:**

(1) Examples of U.S. military shotguns with barrels slightly longer than 18 inches are given below in order to emphasize the obvious. That is, if shotguns with 20-inch barrels are so useful in war that the U.S. military has bought tens of thousands of them since the turn of the century (which is the case), then it is utterly absurd to believe that shotguns with barrels a few inches shorter would

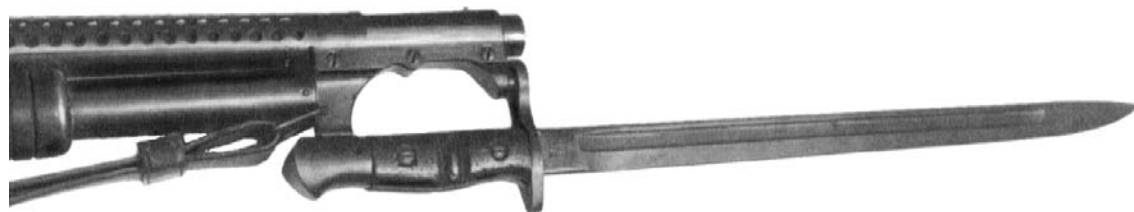
be useless. The proof of this: American troops have used such sub-18-inch shotguns since the Revolution, as shown above, and continue to do so today as will be shown below.

(2) The reason most U. S. military shotgun barrels are no shorter than 20 inches has nothing to do with ergonomic or ballistic reasons. It is the result of two competing factors: (a) the desire to have a very short, maneuverable shotgun, and (b) the desire for the shotgun's magazine to hold what the military considers a minimum number of extra shells. From the turn of the century on, this number has normally been five.

The extra shells in most modern military shotguns are contained in a tubular magazine beneath the barrel. Five nominal 2 <sup>3</sup>/<sub>4</sub>-inch 12 gauge shells (which before firing are about 2.35 inches long), plus magazine spring, require a magazine tube nearly 16 inches long.

Therefore the tens of thousands of short shotguns ordered by the U.S. military through WWII *could* have had magazine tubes and barrels about 16 inches long (there's no point in having a barrel shorter than the magazine tube). This barrel length would cause no militarily significant loss in power and would provide a great increase in stowage and maneuverability — the very reasons that such short shotguns are popular for military and police applications today.

However, the military had (and still has for some of its shotguns today) one further requirement — the ability to attach a bayonet. Twelve-gauge shotgun barrels were too large in diameter to attach the existing bayonets in the normal manner, which required passing the end of the barrel through the hole in the bayonet guard. So a special adapter was designed that clamped onto the barrel. Attaching the bayonet adapter to the shotguns required about four more inches of shotgun barrel. (See photo.) Thus the great majority of these original-style shotguns (used well beyond WWII) are 16 + 4 inches = 20 inches long.



*Winchester Model 1897 Trench Gun, above, showing bayonet mounting adapter and perforated heat shield. The tubular magazine is below the barrel, butting up against the bayonet adapter. (Photo: A Collector's Guide to United States Combat Shotguns, by Bruce N. Canfield.)*

The need for bayonets on post-WW II shotguns was a debatable subject, and the method of attaching them was later altered, obviating the need for the clamp-on adapter. But even before the Vietnam War, troops desired more rounds in their shotguns, and experience in Vietnam seems to have settled the issue — more was better. Thus the total length of most military shotgun *magazines* grew to about 20 inches, allowing it to hold more shells, and the barrel length remained the same to match it.

(3) Many post-1934 military and police shotguns have barrels that are 18 inches long or slightly longer. That is not because 18 inches is ballistically significant, but because the manufacturers who supply the military and police also sell these same shotguns to the general public. Therefore they make certain the barrels comply with the NFA '34 regulations. However, the military and police also use shotguns with barrels much shorter than 18 inches.

(4) Short-barreled shotguns holding a single round have been used in combat, as is seen with the example of the M79 grenade launcher (below) when used as a modern blunderbuss. Of course, shotguns holding just two rounds (doubled barrels) have been used by American soldiers and law-enforcement since before the Civil War era.

“The first known [official] procurement of shotguns by the United States, specifically for combat purposes, occurred around the turn of the century, when several hundred commercial Winchester Model of 1897 slide-action (‘pump’) repeating shotguns were purchased by the War Department. ... Little is known regarding these early U.S. military combat shoguns other than that they were standard Winchester M1897 12-gauge guns with ‘riot’ length (20”) barrels. These short-barrel shotguns loaded with 00 buckshot shells soon proved to be awesome weapons for close-range combat use.” — P. 131, *U.S. Infantry Weapons of the First World War*, by Bruce N. Canfield. Andrew Mowbray Publishers. 2000.

“When the United States entered World War I in 1917, General John J. Pershing was given command of the American Expeditionary Forces. Among his early acts was a request for shotguns with which to arm his troops. ...

The War Department adopted the short-barrel, riot-type, slide-action, magazine repeating shotgun as being the most suitable for trench warfare. ...

Altogether, nearly 30,000 shotguns were procured for American use in France.” — P. 9, *The World's Fighting Shotguns*, by Thomas F. Swearngen. Chesa Ltd. 1978.



“The Germans were terrified of the horrible effectiveness of the shotguns. . . . German troops showed little enthusiasm in assaulting or raiding American positions when the prospect was good for encountering shotguns. . . . [In response to an official German protest against American use of shotguns, dated September 15, 1918]... the [U.S.] Army Judge Advocate General was tasked to prepare a legal opinion. In a very detailed study, the Judge Advocated General pointed out that the shotgun was an old and approved weapon of war, having been used for this purpose for centuries.” — P. 10, *The World's Fighting Shotguns*, by Thomas F. Swearngen. Chesa Ltd. 1978.

“[T]he...provision of the Hague convention, cited in the protest, does not...forbid the use of this...weapon. . . .[I]n view of the history of the shotgun as a weapon of warfare, and in view of the well-known effects of its present use, and in the light of a comparison of it with other weapons approved in warfare, the shotgun...cannot be the subject of legitimate or reasonable protest. . . .The Government of the United States notes the threat of the German Government to execute every prisoner of war found to have in his possession shotguns or shotgun ammunition. Inasmuch as the weapon is lawful and may be rightfully used, its use will not be abandoned by the American Army. . . . [I]f the German Government should carry out its threat in a single instance, it will be the right and duty of the...United States to make such reprisals as will best protect the American forces, and notice is hereby given of the intention of the...United States to make such reprisals.” — Secretary of State Robert Lansing’s response to the government of Germany’s protest against use of shotguns in combat during World War I. From “*Joint Service Combat Shotgun Program*”, by W. Hays Parks, Special Assistant for Law of War Matters, Office of The Judge Advocate General, U.S. Army, Washington, D.C. Published in *The Army Lawyer*, October 1997.



*Winchester Model 1897 Shotgun with bayonet, above. Used WWI and WWII. Barrel is 20 inches long. Note that the bayonet is significantly longer than the shotgun barrel. (Photo: World's Fighting Shotguns)*



*Winchester Model 1917 with bayonet, above. Barrel is 20 inches long. Used WWI and WWII. Note that the bayonet is significantly longer than the shotgun barrel. (Photo: World's Fighting Shotguns)*

“[In World War II) The United States Marine Corps was the largest and most serious user of shotguns as combat weapons. ...

The Marine Corps found shotguns to be ideal for use in Pacific jungles. The only weapon superior to it in dealing with the Japanese massed banzai attack was the water-cooled heavy machine gun. During patrols or attacks in the foliage, typical of Southwest Pacific islands, shotguns had no peer. ...

Shotguns [with military specification 20-inch barrels] participated in all battles in which the Marines were involved during World War II.” — P. 13, *The World's Fighting Shotguns*, by Thomas F. Swarengen. Chesa Ltd. 1978.



*WWII era Winchester Model 12 with bayonet, above. Barrel is 20 inches long. Note that the bayonet is significantly longer than the shotgun barrel. (Photo: World's Fighting Shotguns)*

“In the late 1950's, the United States became involved in events in Southeast Asia. ... Nearly 100,000 fighting shotguns were sent to South Vietnam, with Ithaca and Savage supplying the bulk. ...

The characteristics of the guns supplied by both companies were nearly the same. Ithaca provided their standard [Model 37] police shotgun in a military finish. Basically, this was the same gun sold to the Army during World War II. It was a 12 gauge, five-shot, takedown gun possessing a sandblasted, Parkerized finish on its exterior and

interior. Its barrel was 20.1 inches (51.1 cm) long, and it had a full choke. ...

A few of the guns are reported to have been equipped with the Trench Gun bayonet adapter. This was also a standard gun at Ithaca. In fact, both guns were made available to police agencies in precisely these configurations.” — P. 265-266, *The World's Fighting Shotguns*, by Thomas F. Swearingen. Chesa Ltd. 1978.



*Ithaca Model 37 as used in Vietnam, above. Barrel is 20.1 inches long.*

“While not classified as such, the widely issued and effective M79 40mm grenade launcher was sometimes used in Viet Nam in much the same manner as a shotgun. The M79 was a single shot weapon with a ‘break-open’ action much like the familiar single barrel sporting shotgun. ...It was decided to develop a canister round loaded with buckshot. This 40mm canister round was given the designation of ‘XM576E1’. The 40mm buckshot round converted the [14-inch barreled] M79 into an awesome shotgun-like weapon, albeit a single shot. ...

The M79 was superseded by the M203 grenade launcher which could be attached to the M16 rifle. The buckshot canister rounds could also be used with this weapon and gave a grenadier the often valuable option of a deadly close combat weapon.” — P. 157-158, *A Collector's Guide to United States Combat Shotguns*, by Bruce N. Canfield. Andrew Mowbray Publishers, 1992.



*U.S. Military M79 grenade launcher shown with buckshot cartridge, above. When shooting buckshot rounds, this was simply a modern, single-shot blunderbuss. Barrel is 14 inches long. (Photo: World's Fighting Shotguns.)*



*U.S. Military M203C grenade launcher, above, attached to M4 rifle and below, unattached. Buckshot cartridge (above) also fits this launcher, making it a modern blunderbuss. Barrel is 12 inches long. (Photo: uncredited)*

### ***20th Century Law Enforcement Use of Short Shotguns***

**Author's Note:** This section on short-barreled law enforcement shotguns is included because such firearms are usually employed in conditions closely approximating military combat – relatively short-range encounters with an armed or otherwise dangerous enemy or antagonist. Thus, firearms that are useful to law enforcement are useful to the militia or military, and vice versa. This is verified by the near-identical configurations of the police (or “riot” shotguns) and the military versions of shotguns produced for decades by various companies. In fact, it is common for police departments to use military-pattern

arms. This can be seen from photos and text excerpts below. Other short shotguns used by law enforcement are also shown.

Shotguns with 18 and 20 inch barrels are shown to emphasize the obvious. That is, that cutting off .25” (a quarter of an inch) or even three, four, or more inches from the barrels of these shotguns would make no overall difference in their effectiveness for military close quarter combat. In fact quite the opposite is true for many applications, as is proven by the many examples of military and police shotguns with barrels shorter than 18 inches – including many used by the military and police in this year, 2003.



*Piedmont double barrel shotgun, above. Prohibition era, carried by a sheriff. Barrels about 12 inches long. (Photo and information, World’s Fighting Shotguns)*

“The Ithaca Gun Company of Ithaca, New York, began marketing a very unusual fighting shotgun in 1922. Designated the Auto and Burglar Gun, it was a 20 gauge, double-barrel, box-lock, hammerless type that had very short barrels and employed a pistol grip instead of a conventional shoulder stock. ...

The Auto and Burglar Gun was produced from its introduction until 1934, when the newly enacted National Firearms Act destroyed the market. ... There is some debate on the subject, but it appears that Ithaca may have transferred remaining stocks to the British with which to arm Home Guard and Military units after the Dunkirk Disaster during World War II. ...

The first series of Auto and Burglar Guns, commonly referred to as the Model A, exhibited 20 gauge cylinder bore barrels, 10.1 inches (25.6 cm) long [later increased to 12.2 inches], chambered for 2.75-inch (7 cm) shells. ...

When the Auto and Burglar Gun appeared on the market, the first sales appear to have been made to banks around the Chicago area. As the fame of the utility and firepower of the Auto and Burglar Gun spread, some paymasters, express messengers, and night watchmen purchased it as standard armament for their jobs. Police and sheriff’s departments around the country purchased a few. ...

The Ithaca Auto and Burglar Gun followed the configuration pattern set by the gun of ‘Doc’ Holliday. In turn it set a modern precedent for law enforcement weapons that is still being followed. The Remington Model 17 and Model 31, 20 gauge, slide-action Special Police guns followed the Auto and Burglar Gun concept. Like the Auto and Burglar Gun, these weapons employed a pistol-type grip, rather than a shoulder stock. ...It [the Auto and Burglar Gun] set the modern pattern for law enforcement special-type fighting shotguns and has taken its rightful place among this unique breed of pure fighting guns. The gun has faded into oblivion because of restrictive legislation and old age, but the design precedent it set remains.” — P. 80-85, *The World's Fighting Shotguns*, by Thomas F. Swearingen. Chesa Ltd. 1978.



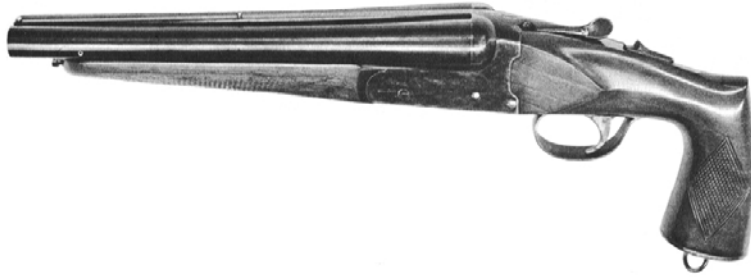
*Ithaca Model A Auto and Burglar, above. Barrels 10.1 inches long.  
(Photo: World's Fighting Shotguns)*

“Nearly four decades after Ithaca terminated production of their Auto and Burglar Gun [that is, circa 1970], R. Bruce McCarty, president of Holland Firearms, Inc., of Houston, Texas, realized that modern police forces were in need of a similar gun. He contracted with the well-known Spanish arms firm of Sarasqueta for a modern version of the old Ithaca Auto and Burglar gun [see above]. ...

Holland Firearms named their gun Auto-Burglar, in proper recognition of its predecessor. ...

The barrels were just over 10.1 inches (25.6 cm) long and were cylinder bore by specification. ...

The Holland Auto-Burglar Gun was not really a special-purpose gun, but was a practical, close-range, law enforcement fighting weapon.” — P. 85-88, *The World's Fighting Shotguns*, by Thomas F. Swearingen. Chesa Ltd. 1978.



*Holland Auto-Burglar, above. Barrels 10.1 inches long. (Photo: World's Fighting Shotguns)*

“Since the Model 12 Riot Gun had been withdrawn from production in 1963, Winchester no longer possessed a production riot gun for sale to police agencies or the military. This situation was eliminated in early 1965 when the Model 1200 Riot Gun became available. The Model 1200 Riot Gun was simply a sporting gun with a short [NFA '34 compliant], 18-inch (45.7 cm) cylinder-bore barrel. It is best described as a 12 gauge, twin action bar, hammerless, five-shot, tubular-magazine, aluminum-receiver, takedown, slide-action, repeating shotgun with a front-locking, rotating bolt. All riot guns were assembled from components taken straight from the sporting gun production line.” — P. 218, *The World's Fighting Shotguns*, by Thomas F. Swearingen. Chesa Ltd. 1978.



*Winchester Model 1200 Riot Gun, above. Barrel is 18 inches long. (Photo: World's Fighting Shotguns)*

“The Savage-Stevens Guard Gun, marketed by Savage Arms Corp., Westfield, Massachusetts, is the latest [this was written circa 1978] in a lineage line of sawed-off double-barrel shotguns that were held in such high esteem in the Old West. The characteristics that set the Guard Gun apart from its predecessors is the fact that it is

manufactured as a short-barrel fighting shotgun and is not cut down at the whim of its owner. ...

The Guard Gun received its name from those sawed-off shotguns employed in law enforcement, correctional institutions, banks, and security companies in years past. ...

In earlier years, under another model designation, it possessed 18.125-inch-long (46 cm) barrels.” — P. 75-76, *The World's Fighting Shotguns*, by Thomas F. Swearingen. Chesa Ltd. 1978.



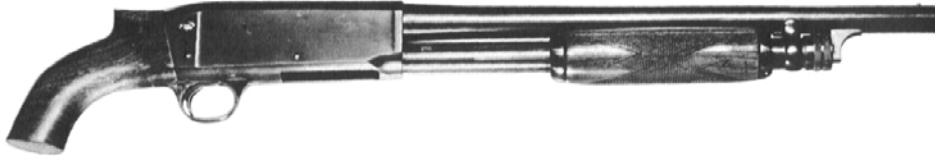
*Stevens Model 311R Guard Gun, above. Barrel is 20 inches long. (Photo: World's Fighting Shotguns)*

“When the development program was completed, Remington [Arms Co.] had produced [by the early 1920's] its now famous Model 17 Special Police gun.

The Model 17 Special Police Gun, which was popularly known as the Police Special, was a straightforward, external modification to the standard sporting gun. It was a 20 gauge, five-shot weapon, displaying a barrel only 15.1 inches (38.4 cm) long. It had no buttstock. Instead, an unusual-shaped pistol grip was mounted on the rear of the receiver. This gave the gun an overall length of 25.2 inches (64 cm) and a weight of 4.5 pounds (2 kg) unloaded. ...

The Remington Model 17 Special Police Gun was the first manufactured repeating whipit gun. It set the trend for this fighting-shotgun pattern that has since spread worldwide. ... This trend has transformed the whipit gun from a special-purpose type of weapon into a standard form of fighting shotgun.” — P. 234-235, *The World's Fighting Shotguns*, by Thomas F. Swearingen. Chesa Ltd. 1978.





*Remington Model 17 Special Police Gun, above. Barrel is 15.1 inches long. (Photo: World's Fighting Shotguns)*

“In the early 1960’s, the Los Angeles Police Department and the Los Angeles County Sheriff’s Office became concerned about the difficulty of maneuvering a standard-length, riot-type [20-inch barreled] shotgun inside police cruisers. Safety padding and general cosmetic dressing had caused interior space to collapse, virtually confining passengers to their seats. Entering or departing the cruiser safely with a shotgun was difficult. Handling a long gun or maneuvering it inside late-model cruisers was nearly impossible.”  
— P. 263, *The World's Fighting Shotguns*, by Thomas F. Swearingen. Chesa Ltd. 1978.

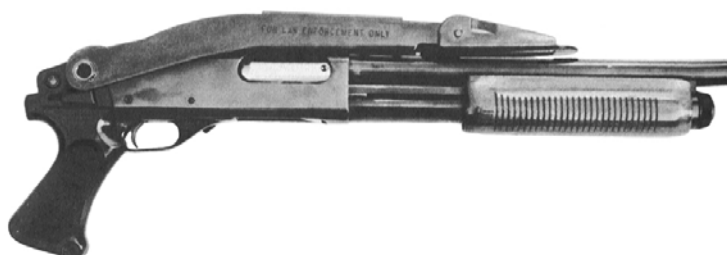
“Police departments in the Los Angeles area pioneered short shotguns possessing 16-inch barrels and buttstocks shortened nearly 2 inches for use in patrol cars. ...After experiments proved the feasibility of shortened shotguns for police use, Los Angeles County Police Departments purchased the Ithaca Model 37 DS Police Special with a 16.5-inch (41.9 cm) barrel.” — P. 216, *The World's Fighting Shotguns*, by Thomas F. Swearingen. Chesa Ltd. 1978.

“During 1965, the Los Angeles County Sheriff’s Office negotiated with Ithaca to Produce a special Short-barrel variation of the Model 37 DS Police Special. This gun became the standard sheriff’s cruiser armament during 1966. The Los Angeles Sheriff’s Model 37 DS Police Special was a very striking piece. It was a standard 12 gauge, five-shot Deerslayer equipped with a 16.25-inch (41.3 cm) barrel. ... The overall utility of the modified Police Special caused other west coast police departments to begin favoring the same gun, which further brought it to the attention of other departments around the country.”  
— P. 264-265, *The World's Fighting Shotguns*, by Thomas F. Swearingen. Chesa Ltd. 1978.



*Ithaca Model 37 DS Police Special, LA County Sheriff's Dept Modification, above. Barrel is 16.25 inches long. (Photo: World's Fighting Shotguns)*

“A shotgun of the Executive Protective Service of the Secret Service [circa 1978] is a 13-inch (33 cm) barrel, five-shot, standard Model 870 equipped with the Remington folding stock. This abbreviated-barrel weapon possesses an overall length of just 23 inches (58.4 cm).” — P. 258, *The World's Fighting Shotguns*, by Thomas F. Swearingen. Chesa Ltd. 1978.



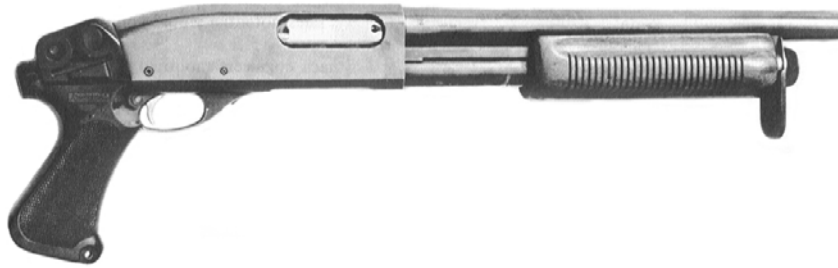
*Remington 870 Executive Protective Service shotgun, above. Used by U.S. Secret Service circa 1978. Barrel is 13 inches long. (Photo: World's Fighting Shotguns)*

“In 1974, the Los Angeles Police Department SWAT Team had a requirement for a shotgun that could be both activated and made to possess high maneuverability in close quarters. The 870 P was chosen. Its barrel was shortened to 14 inches (35.6 cm), and the pistol grip from a Remington folding stock was substituted for the wooden stock. This resulted in a weapon with an overall length of 24 inches (61 cm).

...

When all facets of the Model 870 P and its accessories are viewed simultaneously, it can be seen why the gun can claim title to being the most advanced slide-action shotgun manufactured. Its combat

worthiness was proven in multiple military tests, and its versatility is unquestioned.” — P. 258-259, *The World's Fighting Shotguns*, by Thomas F. Swearingen. Chesa Ltd. 1978.



*Remington Model 870 PD SWAT modification, above. Barrel is 14 inches long. (Photo: World's Fighting Shotguns)*

“High Standard offered the Crouch gun to the market in June 1967 as the Model 10, Series A, Police Shotgun. It was a gas-operated, five-shot, tubular magazine-fed, semiautomatic, twin action bar, 12 gauge shotgun capable of reliable firing high brass or Magnum 2.75-inch (7 cm) shells only. ... The gun displayed an overall length of 27.1 inches (68.8 cm) and a height, measured over the flashlight and pistol grip, of 9 inches (22.9 cm). It was equipped with an 18.1 inch (46 cm) cylinder bore barrel. ...After the law enforcement community acquired some experience with the Model 10A gun and had thoroughly examined the concept, comments for improvements were received by High Standard. ...Before the first production run of Model 10A guns was sold, an improved version was born. After just 3 years of series A gun production, the new version was announced in August 1970 as the Model 10, Series B, Police shotgun.” — P. 371-378, *The World's Fighting Shotguns*, by Thomas F. Swearingen. Chesa Ltd. 1978.



*High Standard Model 10A Police Shotgun, above. Designed by Al Crouch. Barrel is 18.1 inches long. (Photo: World's Fighting Shotguns.)*



*High Standard Model 10B Police Shotgun, above. Barrel is 18.1 inches long. (Photo: World's Fighting Shotguns.)*

### ***Contemporary Military/Law Enforcement shotguns***

**Author's Note:** As the preceding text and photos show, Justice McReynolds was absolutely wrong to imply that there was no evidence of a militia/military use for very short shotguns in the years leading up to 1939. Clearly there was tremendous demand and use of such shotguns. But even if history had agreed with McReynolds in 1939, the following photos and text show that his reasoning would not apply today. The plethora of short and very short modern military and

law-enforcement shotguns manufactured today (2003) shows the great value and high demand for such firearms for close quarters combat situations — the same sort of situations that homeowners sometimes deal with unexpectedly in the middle of the night.



*Ithaca Model 37 "Stakeout" Police shotgun. Barrel is 14 inches long. (Photo: World's Guns — [www.world.guns.ru](http://www.world.guns.ru))*

“Undercover operatives and others may choose the pistol grip (cruiser) version for maximum compactness and concealability, or opt for a synthetic Speed Feed® stock for quick reloading in critical situations. Patrol cars and vehicles crowded with electronic equipment and MDT's are the ideal setting for the quickly deployable ‘compact’ model with its fast-handling 14" barrel and optimally controllable conventional stock.” — *Mossberg* website catalog: <http://www.mossberg.com/pcatalog/Law.htm>)



*Mossberg Model 590A1 Compact with "Cruiser" grips. Barrel is 14 inches long. (Photo: Impact Guns – [www.impactguns.com](http://www.impactguns.com))*

“The blunderbuss and the shotgun established the character of the modern military shotgun: a multiple-projectile weapon for close-range combat. — “Joint Service Combat Shotgun Program”, by W. Hays Parks, Special Asst. for Law of War Matters, Office of the Judge

Advocate General, US Army, published in *The Army Lawyer*, Oct. 1997, DA-PAM 27-50-299 16

“The Combat Shotgun will be employed by personnel in each of the armed services in international armed conflict, internal armed conflict, and military operations other than war and will be used for missions to include the execution of security/interior guard operations, rear area security operations, guarding prisoners of war, raids, ambushes, military operations in urban terrain, and selected special operations.” — U.S. military specifications for new Joint Service Combat Shotgun, as detailed in the Joint Operational Requirement Document and further amplified in the contract Purchase Description. From “Joint Service Combat Shotgun Program”, by W. Hays Parks, Special Asst. for Law of War Matters, Office of the Judge Advocate General, US Army, published in *The Army Lawyer*, Oct. 1997, DA-PAM 27-50-299 16

“Five samples of the Benelli M4 Super 90 were delivered to Aberdeen Proving Ground, Maryland, on August 4, 1998. The guns were put through intensive, grueling tests for safety, function and performance, subject to mud, sand, baking heat and extreme cold. The M4s beat out the competition to be chosen as the new U.S. ‘Joint Service Combat Shotgun.’ “ — *Benelli* website: [www.benelliusa.com](http://www.benelliusa.com).



*U.S. Military Benelli M4 Super 90, above. Barrel is 18.5 inches long. (Photo: Benelli)*

“M1 ENTRY: available only to law enforcement or to holders of a special tax stamp, this is essentially a Tactical with a 14" cylinder-bore barrel for demanding police operations.” — *Benelli* website: [www.benelliusa.com](http://www.benelliusa.com).



*Benelli M1 Super 90 Entry with alternate buttstock, above. Barrel is 14 inches long. (Photo: Impact Guns website—[www.impactguns.com](http://www.impactguns.com))*



*Fabarm FP-6 Entry Model, above. Barrel is 14 inches long. (Photo: Fabarms via Impact Guns website—[www.impactguns.com](http://www.impactguns.com))*



*Franchi SPAS 12 with folding stock, above. Barrel is 18 inches long. (Photo: Franchi)*

“Selected and used by the US Border Patrol with thousands in daily service. The Border Patrol model features the proven pump action with a 14" or 18" cylinder bore barrel. Extended magazine tube with a total

capacity of 6 rounds (14") or 7 rounds (18"). Black synthetic stock & fore grip and Multi-Purpose Tactical Sling. Rust-resistant finish.”

— *Wilson Combat* website – <http://www.wilsoncombat.com>



*Remington 870 modified by Wilson Combat for U.S. Border Patrol. Barrel is 14 inches long. (Photo: P&T Partners – <http://www.pt-partners.com> )*

“In a tactical situation that calls for the close-in performance of a shotgun, you want maximum firepower and unquestioned reliability, shot after shot. That's why more and more departments are buying the Model 11-87™ Police. This law enforcement version of our famed Model 11-87 shotgun is all business. Remington's gas-operated autoloading action has long set the standard for functional reliability and durability.” — *Remington Arms* website: [ww.remingtonle.com](http://www.remingtonle.com)



*Remington Model 11-87 Police semi-automatic shotgun, above. Barrel on this version is 14 inches long. (Photo: Remington Arms)*

“The MAG-7 shotgun was developed by the Techno Arms PTY company of South Africa. It is intended specially for close combat and operations in confined spaces, like the room-to-room searches. This kind of combat requires compact and maneuverable firearms capable of high stopping power. In the terms of stopping power and short



range firepower in general the 12 gauge shotguns are hard to beat, but most shotguns of conventional design are too long or has too small magazines for confined spaces operations, so designers of the Techno Arms developed a new concept of the shotgun, mixing the concept of the compact submachine gun and the concept of the pump shotgun.”  
— *World Guns* website, [www.world.guns.ru](http://www.world.guns.ru)



*Techno Arms MAG-7 12 gauge shotgun. Barrel is 12.6 inches long. (Photo: World.guns.ru)*

### **The Historical Loss Caused by NFA '34 and Other Laws**

Though it is a side issue, I include this comment by Thomas Swearingen because it is important.

“It has been extremely difficult to locate or obtain factual data on some fighting shotguns. Those guns with short barrels that played such an important role in American history have disappeared, for the most part. Enactment of the National and Federal Firearms Acts and the Gun Control Act of 1968 placed a prohibition on the unlicensed ownership of all shotguns with barrels less than 18 inches (45.7 cm) in length, and whose overall length is less than 26 inches (66 cm). These laws caused most of the fine old historical guns formerly employed by famous and infamous Americans to be destroyed. Fortunately, some have been saved in museums and private collections.” — P. vi, *The World's Fighting Shotguns*, by Thomas F. Swearingen. Chesa Ltd. 1978.

## Conclusion

The National Firearms Act of 1934 banned certain firearms that were extremely useful for militia/military purposes. The primary impetus for the ban seems to have been that criminals occasionally used short or “sawed-off” shotguns. However, that is an absurd and dangerous rationale, since criminals use every other sort of firearm, as well as telephones, cars, printing presses, computers, copiers, binoculars, night vision equipment, etc.

McReynolds and the 1939 Supreme Court were wrong about the militia/military utility of very short-barreled shotguns. As the citations and photos show, they were used hundreds of years before 1939, and are being used today by the military, by law enforcement, and other citizens. However, “regular” citizens wishing to own a shotgun with a barrel shorter than 18 inches must today pay a special tax.

In any case, there is no constitutional basis for the federal ban on short shotguns, and every reason to just leave them alone. They are simply one more effective, compact variant of the guns which people have used for centuries to defend self, family, home, community, and country.

It is worth observing, as a final note, that the utility of short shotguns extends to space travel. Consider this Associated Press news report:

Monday, May 5, 2003 Posted: 9:52 AM EDT (1352 GMT)

*by Kenneth Bowersox, Donald Pettit and Nikolai Budarin aboard a plane to Moscow after their Soyuz return*

MOSCOW (AP) -- It could have been a lot worse for the two Americans and one Russian whose landing ended up nearly 300 miles off course and their recovery hours late.

In 1976, a Soyuz spacecraft came down in a freezing squall and splashed into a lake; the crew spent the night bobbing in the capsule.

Eleven years before that, two cosmonauts overshot their touchdown site by 2,000 miles and found themselves deep in a forest with hungry wolves. That's when Russian space officials decided to pack a sawed-off shotgun aboard every spacecraft. (END QUOTE)

Under the Constitution, Americans have the right to arm themselves with the most efficient and useful firearm for a particular situation. Certainly the odds of

an American citizen having to deal with a home intruder are astronomically greater than a Russian cosmonaut landing off-target and having to fight off wolves.

Most of the evidence presented above that demonstrates the militia/military utility of short-barreled shotguns, including shotguns with barrels much shorter than 18 inches, was available for “judicial notice” to the 1939 Supreme Court. Even more evidence is now available. If the Supreme Court re-examines the Miller decision, let us hope that concern for the credibility of the Court and the rights of American citizens leads them to correct the many problems contained in that ruling.