

## CRT2 EPISODE SCRIPT

### Group 5

# Gun/Control

## *The Criminalization of Black Gun Ownership in America*

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*Guest speakers: Meghna Philip, Jelani Cobb, Dr. Carol Anderson, Dr. Alice Ristroph, Jarrell Daniels*

### Introduction

**HARRY:** Disclaimer: This episode is about guns and racist violence and may not be appropriate for everyone.

**HARRY** (00:09): Hi, my name is Harry. How's that? It's my first Podcast.

**DREW** (00:14): Harry, you can go ahead and take it away.

(audio from news clip—**NEWS ANCHOR:** Flags held high, AR-15s slug over their shoulders.

**Demonstrators** [chanting]: What do we want? Gun Control! When do we want it? Now!

(followed by the sound of a gunshot and “This is America” by Childish Gambino; playing throughout the introduction).

**DREW** (00:29): Guns.

**HARRY** (00:30): Control.

**DREW** (00:31): Gun Control.

**HARRY** (00:32): With tens of thousands of Americans dying every year from gun-related violence, guns and gun control are at the center of American politics.

**DREW** (00:43): My name's Drew.

**HARRY** (00:44): I'm Harry.

**DREW** (00:45): We're students in Prof. Kendall Thomas' Critical Race Theory Seminar at Columbia Law School. Today, we're talking about guns and what they have to do with race in America.

**HARRY** (00:55): We'll dive into the Second Amendment, gun violence and gun control—and how you can't understand that story without understanding it as a *racial* story.

**HARRY** (01:09): —Part 1: The Supreme Court's Last Word.

(“This is America” transitions to the next part).

## Part 1: The Supreme Court's Last Word

([audio from a Supreme Court hearing](#))—**CHIEF JUSTICE JOHN ROBERTS** (01:19): We will hear argument this morning in Case 20-843, *New York State Rifle & Pistol Association versus Bruen*.

**HARRY** (01:27): This summer, the United States Supreme Court decided a case, *New York State Rifle and Pistol Association Incorporated versus Bruen* holding that New York's proper cause requirements for obtaining an unrestricted license to carry a concealed firearm violates the 14th Amendment in that it prevents, to use the language of the court, “law abiding citizens with ordinary self defense needs from exercising their Second Amendment right to keep and bear arms.”

**PHILIP** (01:53): So, at issue before the court in *Bruen* was the constitutionality of New York State's licensing regime for permits to carry weapons. That licensing scheme, one of the strictest in the country, basically leaves control of who gets a gun permit to local police departments.

**HARRY** (02:17): That was...

**PHILIP** (02:18): So, my name is Meghna Philip. I am a public defender in New York City. I represent indigent people who are accused of crimes in Manhattan.

**DREW** (02:28): Amidst an epidemic of mass gun violence in New York and across the country, the Supreme Court decision in *Bruen* was decried by liberal advocates of stricter gun laws seen as endangering the lives of Americans by making guns more readily accessible.

**HARRY** (02:44): Yet, critique of New York's gun restrictions as an unconstitutional infringement on individual Second Amendment rights came not only from gun rights groups, like the National Rifle Association. Criticism came from unlikelier quarters, too. A group of public defenders in New York City weighed in directly through an *amicus* brief in the case – and they did so *against* New York's gun control law.

**DREW** (03:06): For folks who are not civil rights lawyers or law students, an *amicus* brief, briefly, is a brief that's submitted to the court, not by either party to the litigation, but by third parties who have some interest in what's at issue.

**HARRY** (03:20): Meghna Philip is a co-author of that brief.

**PHILIP** (03:23): Here we were not parties to this case. Neither were our clients. But we had something to say about the impact of this policy on our clients and what the Second Amendment *actually* means for our clients day to day—which is very little. It basically doesn't apply to them.

**PHILIP** (03:40): “Gun control,” or this licensing scheme that on its face in New York, maybe politicians can try to tout as an aggressive measure to protect communities or protect people or reduce violence in practice. I think the chief thing it's doing actually is criminalizing low-income communities of color and putting them through the system that we've described because in practice, it is the kind of backdrop for these penal law provisions that we've discussed.

**HARRY** (04:13): Wait. What you're saying is that New York's gun control law is effectively targeting communities of color?

**PHILIP** (04:20): And the way that the criminal law approaches issues in our city and in our contemporary time in America is like to aggressively surveil and police and prosecute low income communities. And so there's a direct thread between this licensing scheme, and then this churning of people through this really violent system.

**DREW** (04:46): We spoke with Meghna about what that violent system looks like here in New York City.

**HARRY** (04:52): Meghna, your clients are involved in the criminal legal system. I'm curious if you could paint a little bit of a picture of what that system looks like.

**PHILIP** (05:01): Every day in criminal court at 100 Centre Street in Manhattan dozens of people are brought in who have been arrested for a range of offenses from violations to misdemeanors to felonies, and they're placed in pens behind the arraignment courtroom. And public defender staff that arraignment courtroom and we are handed files where we're presented with our clients' names and charges and criminal rap sheets. Almost all of the people who are there in those cells behind the courtroom are indigent. They can't afford to hire lawyers to represent them and almost all of them are people of color.

**HARRY** (05:45): I've never actually been there, and I think a lot of people who are listening may never have actually been. I imagine it as just an awful experience back there.

**PHILIP** (05:54): And I didn't even get into kind of what it smells like and what it what it sounds like and how *crowded* it is back there and how scary it is for everyone who is awaiting their first appearance before a judge. Especially if it's their first time going through that process. It's very dehumanizing. Manhattan in particular sends more clients to pretrial incarceration than any other borough in the city. And you've heard of Rikers Island...

**HARRY** (06:22): Yeah, I've heard of Rikers Island.

(news clip [[audio 1](#)] [[audio 2](#)])—**NEWS ANCHORS** (06:27): Riker's Island, New York's massive jail complex. Riker's Island, the biggest jail complex in America.

**PHILIP** (06:31): These are all people, almost all people who are presumed innocent and have not had a trial to litigate the charges against them. But they're being held on bail that they cannot afford to pay.

**HARRY** (06:45): That's such important context.

**PHILIP** (06:46): I think it's very important context for what we were advocating for in our *amicus* brief in *Bruen*, the lived experience of Rikers Island. I mean it is something I have obviously not had to endure. I think the number is 34 deaths in the last 2 years of people incarcerated pre-trial on Rikers.

**DREW** (07:05): In the few weeks after recording that interview, that number rose to 35.

**PHILIP** (07:10): The isolation and the violence that people have to suffer when they're detained in jails and prisons. That is also a critical aspect of understanding our decision to intervene in this lawsuit.

**HARRY** (07:23): So how do guns come into the story?

**PHILIP** (07:26): If you are arrested with a gun, and you don't have a license, which is the vast majority of our clients, you can be charged with unlawful possession. There are presumptions in the law that go along with it.

**DREW** (07:41): If the weapon is not loaded but you are found with ammunition, it's considered a loaded firearm under the law. If you were in the car where a gun is found, or someone else has a gun, you're presumed to possess that weapon. And if you are found with an unlicensed gun, the law assumes you were going to use it against someone else. Illegally. All of this means that it is more likely that the judge will order you to spend more time detained pretrial. Time spent at Rikers.

**PHILLIP** (08:11): It is pretty sweeping and significant what it means to be charged with this offense because it is designated as a violent felony. Because of the way sentencing has been determined under the law as well, someone who's convicted of it has to serve at minimum three and a half years in State prison and up to 15.

**HARRY** (08:32): Just for the unlawful possession of a firearm?

**PHILIP** (08:35): Just the sheer act of being arrested and being alleged to carry a gun, along with the context of all these presumptions, makes you vulnerable to spending three and a half to 15 years in State prison and incarcerated pretrial for weeks, months before your case is adjudicated, and the process can have vast ramifications obviously on a person's life. It's really not safe for the communities we serve and the clients that we serve. It's not protecting them.

**DREW** (09:07): But why are people carrying guns in the first place? Meghna told us that...

**PHILIP** (09:11): Many of the reasons that people have told us and that are highlighted in the brief is that they seek to carry weapons because of their feeling of not being safe. And certainly these laws that have been in place for a long time, we can talk about their history in a little bit, but they are not curing violence in the community either. They are not working.

**DREW** (09:33): This theme runs through our episode—as we talk to historian,

**ANDERSON** (09:36): Carol Anderson.

**DREW** (09:37): To New Yorker Staff writer...

**COBB** (09:38): Jelani Cobb...

**DREW** (09:40): And to Jarrell Daniels, an activist who grew up in New York City and who himself was incarcerated for gun-related violence.

**HARRY** (09:48): All of these guests helped us to understand the complex history of guns and gun control in America and how race is at the heart of the story. First, we had a chance to talk to Meghna Philip about the brief she co-authored, which was submitted to the Supreme Court in *Bruen*.

**PHILIP** (10:07): These rights have been, basically, a legal fiction when it comes to low income black and brown people in New York City.

**HARRY** (10:14): Meghna’s brief spoke to the criminalization of the simple possession of a weapon, an act that so many Americans around the country, White Americans—not only are very much entitled to—but who celebrate their freedom to exercise that right. At the same time...

**PHILIP** (10:31): Black and brown people, poor people, are being, you know, targeted and policed and thrown in jail and imprisoned for the same thing. It’s not manufacturers of weapons, it’s not really like the supply of these weapons. It’s so many individual *people* that live in the city, black and brown people, the vast majority, young men especially, who are impacted by this system.

**DREW** (11:00): Meghna’s brief not only illuminated all of these layers of discrimination in the law, It did this by...

**PHILIP** (11:07): By looking at the history of this law, and its racist origins...

([audio from the Supreme Court’s \*Bruen\* hearing](#))—**JUSTICE SONIA SOTOMAYOR** (11:06): I do know that many of the laws conditioned or retained the right of the state to decide which people were eligible.

**HARRY** (11:26): That was Supreme Court Justice Sonia Sotomayor. She’s speaking at *Bruen*’s oral argument about history... (speaking while Justice Sotomayor keeps talking in the background).

**SOTOMAYOR** (11:33) (continuing from the audio recording): That you had to be subject to the approval of the local sheriff or the local mayor, et cetera. And during the Civil War, that was used to deny Black people the right to hold arms. We now have the Fourteenth Amendment to protect that. But why is a good cause requirement any different than that discretion that was given to local officials to deny the carrying of firearms to people that they thought it was inappropriate?

(music transition)

## **Part 2: Bad History**

**HARRY** (12:10): Part 2: Bad History (music continues to play)

**DREW** (12:20): The majority in *Bruen* said that it was relying on history and tradition to determine the scope of the Second Amendment. (music ends)

**CAROL ANDERSON** (12:26) [laughter]

**DREW** (12:28) –You’re a historian. How did they do? (speaking as Anderson continues to laugh in the background)

**HARRY** (12:32): That’s Drew speaking with...

**ANDERSON** (12:33): Carol Anderson. I’m a historian of human rights and I am the Charles Howard Candler professor of African American Studies at Emory University.

**HARRY** (12:43): Dr. Anderson has spent her career researching public policy, race, justice, and equality. Recently, her focus has been on one question:

**ANDERSON** (12:55): Well, don’t Black people have Second Amendment rights?

**HARRY** (12:58): To find out, Dr. Anderson went back.

**DREW** (13:01): Way back.

**ANDERSON** (13:02): So I went back to the 17th Century.

**DREW** (13:05): To the origin of the militia in America. Remember, that word—“militia”— in the Second Amendment?

([audio from the “The Second Amendment as a Freedom Issue” reading](#))—**WAYNE LAPIERRE** (13:12):

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.

**HARRY** (13:21): That was the voice of Wayne LaPierre, CEO of the National Rifle Association.

**DREW** (13:27): So there’s this popular conception of the militia...

**ANDERSON** (13:30): In the NRA lingo, we have this role of the Militia, right? As this incredible, staunch defender against domestic tyranny. And as this bulwark against foreign invasion. Well, when you look at the real history, what you see is that the militia was like “iiih” because during the War for Independence (patriotic, orchestra music with drums starts playing), the militia would sometimes show up to fight. Sometimes they wouldn’t. Sometimes they’d be there for a minute and then they’re like peace out, I’m done, and they take off running (music fades away to the sound of rifles firing). What the militia was really, really consistently good at was putting down slave revolts.

**COBB** (14:20) (speaking to suspenseful background music): So, at the outset there’s an exceedingly paranoid sensibility about the likelihood of uprisings from enslaved people and indigenous people too you will add into that.

**HARRY** (14:35)—That’s Jelani Cobb.

**COBB** (14:37): I am the Dean of the Columbia Journalism School and a Staff Writer for the New Yorker. The right to bear arms can’t really be separated from the circumstances in which people might be expected to bear arms.

**HARRY** (14:53): So a primordial fear, the fear of slave revolt is at the core, at the *heart*, of the Second Amendment. 1787. Philadelphia. That’s the context.

(strings start playing in the background)

**ANDERSON** (15:06) (speaking as strings keep playing): So now when it comes to the Constitution, James Madison has put control of the militia under the federal government. When it got to the ratification convention in Virginia, Patrick Henry, Mr. “Give me liberty or give me death”.

([audio from Patrick Hendry’s “Give me liberty or give me death” speech](#))—**PATRICK HENDRY** (15:25): Is life so dear or peace so sweet, as to be purchased at the price of chains and slavery?!

**ANDERSON** (15:35): Also *big* slave owner, was like “Oh, no, no,” and saying that “Having control of the militia under the feds was absolutely horrific” because what that would do, he said, “We can’t count on those folks from Pennsylvania. We can’t count on those folks from Massachusetts. And when we’ve got a slave revolt, they’re not going to send the militia down to protect us. We will be left defenseless.”

**DREW** (16:06): So Madison and other Federalists, who were desperately seeking to build support for this new Constitution, tried to convince the Southern slaveholders to sign onto the project by assuring them that their right to own human beings would not be disturbed.

**ANDERSON** (16:21): Remember, we already have a pattern of the North basically being held hostage by the South. That if you want this United States of America it's going to cost you, it's going to cost you the Three Fifths Clause. Then there was the additional 20 years on the Atlantic Slave Trade. Then there was the Fugitive Slave Clause.

**DREW** (16:43): And the Second Amendment...

**ANDERSON** (16:44): The right to a well-regulated militia for the security of a free State—that thing is an outlier because it is once again the bribe paid to the South. So sitting in the Bill of Rights is the right to contain and control Black people, the right to deny Black people their civil rights, the right to deny Black people life, liberty, and the pursuit of happiness. That's what the Second Amendment really is. It is steeped in anti-Blackness, steeped in the fear of Black people.

**DREW** (17:28) (spoken to suspenseful music playing in the background): And that fear didn't simply go away once the Constitution was ratified and the United States became a country, because the specter of Black rebellion remained.

**DREW** (17:42): Dr. Anderson told us about how slaveholders' fears came to life with the Haitian Revolution in 1791.

([audio from news clip](#))—**SHARIKA CRAWFORD** (17:48): A formerly enslaved man named Toussaint L'Ouverture emerged as one of the revolution's leaders.

**DREW** (17:54): Enslaved people of the island rising up against the French and seizing the means of production, killing many of their colonial oppressors in the process. The Haitian Revolution was basically American slaveholders' worst nightmare.

**ANDERSON** (18:09): When you say worst nightmare, it was like Freddy Krueger, Michael, and the guy from Silence of the Lambs all together. You can see it in the letters that the founding fathers were writing back and forth to each other going: "Oh, my God, did you see what happened in Haiti?! If that thing gets near us..." And that 'thing' was the quest for liberty, the quest for freedom, the ideas that drove the American Revolution and the ideas that drove the French Revolution. It seemed to be okay, as long as *White folks* were talking about their liberty and their freedom. But the moment black folks started talking about their liberty and their freedom, they were like, "Okay, we have got to quarantine, that mess that is happening down there in Haiti from getting close to our Negroes—to getting close to our enslaved folk.

**DREW** (19:04): After ratifying the Second Amendment in 1791 to ensure that white slaveholders and militias could possess weapons, they also passed laws to criminalize the possession of firearms by Black people. Many of those laws were based on...

**ANDERSON** (19:19): The Negro Act of 1740 in South Carolina becomes the template for the Slave Codes for the rest of the States.

**DREW** (19:28): Dr. Anderson explained how laws criminalizing Black firearm ownership didn't end with slavery but persisted through and long after the Civil War. In fact, they form the basis for the emergence of modern gun regulation.

**ANDERSON** (19:42): Part of what you see happening after the Civil War, after Andrew Johnson, the President...

**DREW** (19:48): Andrew Johnson, that's the president who basically ended Reconstruction after Abraham Lincoln was assassinated.

**ANDERSON** (19:54): Basically welcomed the Confederacy back into the fold in the states like Louisiana, Black Codes, the black codes, were trying to reinstall Slavery by Another Name.

**HARRY** (20:05): In the decades after, the racial domination that had previously been organized through the institution of slavery increasingly became organized through the criminal law, through criminal prosecutions and convictions. The designation of criminality itself became a way of enforcing racial hierarchy. That was expressed profoundly through the Black Codes.

**DREW** (20:29): Convict leasing. The Chain Gang. Forced labor.

**ANDERSON** (20:32): And one of the key elements in the Black Codes was not just the control of labor, but also the disarmament of Black people.

**HARRY** (20:40): So once you were designated as a criminal, you couldn't have a gun.

**DREW** (20:44): Yeah, but it's not just what was written into the law, but what was the unspoken law of the land.

**ANDERSON** (20:50): And you get the rise of these White domestic terrorists...

**DREW** (20:54): She means the KKK,

([audio from a cbs documentary](#) "History of the Ku Klux Klan")—**CBS REPORTER** (20:56): The Ku Klux Klan...

**ANDERSON** (20:57): Who are going around trying to disarm black folk based on the Black Codes, and you begin to think about what that disarmament means: It means that they're vulnerable to the violence that the white community is raining down on them, because the cops were just like: "We can't protect you." Basically, "we're not here to protect you." (spoken as the music transition begins)

(music transition)

**HARRY** (21:26): So, the origin of this country, the origin of the Second Amendment and straight through the end of Reconstruction and gun control laws in America are linked to race and a broader American story of the subjugation and subordination of Black people. (suspenseful music playing in the background)

**COBB** (21:42): It's inextricable. You can't really understand one without understanding the other.



**HARRY** (21:46): But is that all *just* history? Apart from the fact that the Supreme Court is insisting on unearthing history and tradition – taking us back to the founding era and all that to understand the scope of the Second Amendment – does this history all carry through to modern gun laws?

**COBB** (22:02): Oh absolutely.

**DREW** (22:03): That idea, that the law has disarmed black people in order to prevent them from being able to protect themselves from white violence—both private violence and violence from the State—that idea hasn’t gone anywhere.

**COBB** (22:17): I’m thinking about the Black Panther Party. (spoken with “Paris - Panther Power” playing in the background).

([audio from black panther party meeting in sacramento](#))—**CATHERINE CLEAVER** (22:33): We want an immediate end to police brutality and murder of Black people. We want power to determine the destiny of our black communities. We want land, housing, bread, education, clothing, justice, and peace.

**HARRY** (22:46): That was a clip from a 1968 radio interview with Catherine Cleaver, communication secretary of the Black Panthers. The Black Panthers organized to protect the Black Community from racist violence. They were young and radical, and carried guns.

**DREW** (23:03): Both Jelani Cobb and Dr. Carol Anderson drew our attention to one episode. An episode which illustrates the difference set of expectations for how, when it comes to gun, the law relates to White citizens and Black citizens. (last sentence transitioning into Cobb’s sentence below).

**COBB** (23:16): So, the most notable case of that is when the nascent Black Panther Party marches on the state legislature in California.

([audio from an interview with Catherine Cleaver](#))—**CLEAVER** (23:27): They reported the trip to Sacramento last year, which was a political act to make a political statement concerning the political activities of the state legislature in passing and changing the gun laws as invasion of the State capitol by gangs of thugs and hoodlums.

**HARRY** (23:45): Cleaver is talking about the Black Panthers’ armed appearance at the State capital in Sacramento during the State legislature’s hearing about California’s new gun control law.

**CLEAVER** (23:54) (from the audio interview): These guns that the Black Panthers carry have become the focus of all the press and has generated quite a bit of fear.

**DREW** (24:02): That is how Cleaver describes the White media.

**HARRY** (24:04)—Playing on racial fears.

**DREW** (24:06): Framing the Black Panthers at the State capital.

**CLEAVER** (24:08) (from the audio interview): Which means the fact that the press is involved in manipulating racist feelings in the public so that they will not be outraged by the outrageous activities that the police engage in against the Black Panther Party.

**HARRY** (24:22): This episode is significant because these fears and presence...

**COBB** (24:26): Of specifically Black militants who are armed at the State capital prompts a wave of firearm restrictions. You know, gun control. Gun control and the modern iterations start there.

**HARRY** (24:41): You're saying that modern gun control in the United States starts in California as a response to members of the Black Panthers party carrying weapons in open carry state? Back up. Rewind. Why are the Black Panthers carrying guns in the first place?

(sound of audio rewinding)

**ANDERSON** (25:02): The cops in Oakland were brutal, just brutal. (speaking to sound of unrest in the background)

**HARRY** (25:09): That's Dr. Carol Anderson again. (the sound of unrest continues)

**ANDERSON** (25:11): Gunning down black folk beating up black folk, just brutal. And there was no accountability. None. (the sound of unrest stops). So the Black Panthers were like *e dog gone nuff*...

([audio from an interview with Bobby Seale](#))—**BOBBY SEALE** (25:24): And that time we picked up the gun... we'll be trying to get some peace... (speaking in the background as Anderson continues below).

**ANDERSON** (25:26): And so they said we will police the police! We will be the accountability. And so in *policing* the police, oh, the cops aren't liking it. They're like, "Who are these guys standing over here like 20 feet away from us or so with these guns?" "Who are they?!"

**COBB** (25:45): And they are following California law to the letter, which allows you to be armed, provided you are publicly displaying your firearm.

**ANDERSON** (25:57): They knew the law. They knew about guns. They knew how to carry guns; California was open carry. They knew how close they could stand to the police as the police were making an arrest. They knew the law. And so they tried to arrest the Panthers, but the Panthers weren't doing anything illegal. So the Oakland P.D. runs to Don Mulford, who is an assemblyman in the California legislature.

([audio from a california state legislature meeting](#))—**SPEAKER**: The Member of the California State Assembly for the 16th District.

**ANDERSON** (26:28): And hey're like, "These Panthers are a problem." and Mulford is like "abso-too-ta-lutely. Let's write a law to stop this. Let's make illegal what it is that they're doing" because every time the cops would pull over the Panthers, they couldn't arrest them. That was the Mulford Act that was drafted by John Mulford and a representative of the NRA that basically criminalized the open carrying of weapons the way that the Panthers were doing it.

**HARRY** (26:57): AB-1591 a.k.a. the Mulford ACT made it a felony in California to publicly carry any firearm, openly or concealed, in public places without a license to do so.

([audio from an interview with mulford](#))—**MULFORD** (26:10): From my conversation with legislators today there is great concern about the incident yesterday. There is anger among some of my colleagues.

**BLACK PANTHER REPRESENTATIVE (27:19)** (from the same audio): That is that they made a rule that no one could walk on their property with a weapon. I'm saying this is a bold contradiction and also Mulford is a lie.

**ANDERSON (27:28)**: So you notice that in those hearings what wasn't discussed was how to make the police accountable for the violence that was raining down on that Black community, to make the policing of the police unnecessary because the police were being held accountable, because there are consequences for gunning down unarmed black folk. That wasn't part of the discussion. Instead, it was: How do we make the Panthers illegal?

**COBB (27:56)**: If you have White people with firearms, that doesn't violate the kind of spirit of the law. But if you have, you know, Black people who are showing up with firearms, they are inherently dangerous. That kind of civic creed doesn't extend to black people.

**HARRY (28:14)**: So there's an unspoken sort of social matrix or understanding, in which the right to bear arms is seen as something that applies to white Americans. But when applied to black Americans, for example, with the Black Panthers lawfully carrying firearms in the California State Legislature, that image was implicitly understood as a threat as opposed to a legitimate exercise of the rights of citizens to keep and bear arms.

**DREW (28:41)**: And that is based on the idea that Black people are inherently dangerous.

**ANDERSON (28:45)**: We see this language over and over and over. You see, and you see the media just really preying on it because with you know, the old saying, "If it bleeds, it leads." So crime becomes one of those key pieces to sell, sell, sell.

**COBB (29:01)**: The idea of the gun as the firearm as, you know, a tool of self-defense has been explicitly tied to the idea of crime, and the merchandising of fear, specifically the fear of Black crime.

**ANDERSON (29:18)**: "They're burning down the cities," "they're looting," "crime," "Black people and crime."

(audio from news clip [[link 1](#)] [[link 2](#)])— **NEWS ANCHORS (29:25)**: The notorious murder suspect known as Black Ed... Linked to the rioting, burning and looting... Has been murdered gang-land style... Described as a 6-foot tall Black male dressed entirely in Blue... The costs is too few cops and too many guns in the city New York... There is definitely a lot of guns on the street, that's probably it.

**RISTROPH (29:47)**: Racial bias in enters into judgements about: Who do we think of violent? Who do we label as violent? Who do we think of as dangerous? What kind of predictions are we going to make about who is going to harm us? Race influences those judgments.

**HARRY (30:04)**: That's Dr. Alice Ristroph. She's a political theorist and a Law Professor.

**RISTROPH (30:10)**: I'm a Law professor at Brooklyn Law School here in Brooklyn, New York. I teach criminal law, criminal procedure, constitutional law.

**HARRY** (30:18): You write in your law review article “The Second Amendment and a Carceral State,” that in a carceral society to bear arms and to use them is what it means to be American.

**RISTROPH** (30:30): We see in American gun law a long tradition of distinguishing between the “law abiding” who are sufficiently loyal to the State, to the political entity to be allowed to have guns—and the criminals, or the “disloyal”—individuals who are not allowed to have guns.

([audio from a speech by Donald Trump](#)): **DONALD TRUMP** (30:52): America must be a sanctuary for law abiding citizens, not criminal aliens.

**RISTROPH** (30:57): Really connecting those categories to political membership, in which if you are a *virtuous* American, then you have guns.

**HARRY** (31:06): Dr. Ristroph explained how what she terms...

**RISTROPH** (31:09): Part of what I call “carceral political theory” ...

**HARRY** (31:12): Can help us see how through our laws, our society fundamentally distinguishes between...

**RISTROPH** (31:19): Between two kinds of people within the State, within our political society, there are going to be law abiding citizens and then there is this other group called criminals.

**HARRY** (31:29): And what does this have to do with guns and the Second Amendment?

**RISTROPH** (31:31): I think it’s very significant that in embracing an individual right to bear arms, the Supreme Court did so along this “law abiding citizens” versus “criminals divide.” I think that ideas about criminality—about who criminals are, are deeply racialized. That association of criminality with black Americans in particular, but also maybe with other racial minorities, I think that association has a long history. Some strands of that way of thinking even predate the Civil War and the end of slavery, in that one of the rationalizations of slavery was that the persons who we are holding as slaves are fundamentally dangerous. Those racialized ideas about criminality become much more prominent after the Civil War, after the Thirteenth Amendment prohibits slavery, except as punishment.

(country music interlude)

**RISTROPH** (32:34): Then I think in the decades after the civil war the kind of racial domination that had previously been organized for the institution of slavery became organized through the institutions of criminal law. By the time of the Heller decision in 2008, that decision is already using a conception of criminality that is already very, very racialized. Which means that the Second Amendment right that is recognized now is likely to, and I think has, provided privileges to White Americans more extensively than to Black Americans. (speaking to country music playing in the background).

**HARRY** (33:23): That brings us right back to where we started, to New York’s guns laws and the Supreme Court case *New York State Rifle and Pistol Association vs. Bruen*. Back to Meghna Phillip, the public defender who wrote the brief. Meghna looked into the history of that New York law – the

Sullivan law. And low and behold. She found that it's rooted in the structural history of racism and racist laws.

**PHILIP** (33:48): 96% of the arrests in the year that we filed our brief of gun possession were Black and Latinx people. (rap music starts to play as Philip finishes her sentence)

**HARRY** (33:56): And so, this is the starting point. New York's firearm licensing requirement originated with a 1911 law, the Sullivan law.

**PHILIP** (34:07): For the Sullivan law in particular, we wanted to demonstrate that underpinning. What our brief talks about is that the origin of that law in the early 1900s was a response to hysteria around immigrants and Black people in New York, laborers... It was very much used to justify policing of those same communities.

(music transition)

### **Part 3: "Good Guy with a Gun"**

**HARRY** (34:34): Part Three, "Good guy with a gun."

**HARRY** (34:41): In your New Yorker essay, the atrocity of American gun culture, which you wrote this summer in the wake of the massacre in Buffalo which killed 10 people and the mass shooting involving Texas, you quote Wayne LaPierre, the CEO of the National Rifle Association, who said after the massacre at Sandy Hook: "The only thing that stops a bad guy with a gun is a good guy with a gun". It strikes me that race comes into this idea, this image.

**COBB** (35:09): There's a fairly good chance that the connotation of good guy with a gun in this society means a White guy with more firepower than the presumably people of color who are the source of menace. One of the best examples of this contradiction was the death of John Crawford in 2014 in the Walmart in Ohio. He is a law-abiding citizen, young man, African American, he was looking at a firearm, which was for sale.

**ANDERSON** (35:44): He's in Walmart that sells weapons, and he picks up a BB gun. And he is walking through the store with a BB gun and a White couple calls into 911. "Dangerous threatening Black man, dangerous threatening Black man."

**COBB** (36:01): The fact that this was a Black man, looking at a legally available firearm in an open carry State, nonetheless prompted a customer to call the police and say that there was an armed man menacing people in the Walmart.

**ANDERSON** (36:21): The videotapes for Walmart because you know, Walmart has cameras everywhere. The videotapes for Walmart show that everything that those folks said that John Crawford was doing with that BB gun was a lie. None of it happened. He wasn't pointing it at anyone. He wasn't threatening anyone.

**COBB** (36:40): He's not menacing anybody, he's actually just kind of picking up the weapon like you would if it were a vacuum cleaner or a piece of sporting goods that you were considering buying.

**ANDERSON** (36:50): And the cops roll in thinking they are in an active shooter situation...

**COBB** (36:53) (with sad music playing in the background): The police show up and immediately shoot him dead. Violated no law. He's an open carry State. He's isn't even open caring, he's open perusing. But he became a vector for the embedded prejudices of the rest of the civilian population with law enforcement acting on their behalf.

**ANDERSON** (37:20): But nothing happened to the people called that call to 911 that ended up with the death of John Crawford.

**COBB** (37:29): And so there's that dynamic. You know, we've been talking about gun control States. But we also talk about like what happens in an open carry State, under either regime, you could find that it still produces the same outcome.

**DREW** (37:45): That brings to mind...

**ANDERSON** (37:47): The killing of Philando Castile.

**COBB** (37:48): An African American motorist who was pulled over by a police officer in Falcon Heights, Minnesota, just outside of Minneapolis.

**ANDERSON** (37:56): You know, he was a black man pulled over by the police. Following NRA guidelines when the officer asked to see his ID Castile said: "Officer, I just want to let you know I have a license to carry weapon with me but I am reaching for my ID as you have requested."

**COBB** (38:11): And he identified himself as a gun owner, indicated that he had a firearm in the car, and the police officer panicked and killed him...

**ANDERSON** (38:20): Put five bullets in Philando Castile, right then, right there...

**COBB** (38:24): In front of his girlfriend and his girlfriend's young daughter. There was no outcry. There was no major response from the lobby and the organization.

**ANDERSON** (38:34): And here you expect the NRA, that defender of the Second Amendment, to just go off the chain ballistic. And instead, they were virtually silent and then they had to be pushed by their Black membership to say something. And what they said was about as milquetoast and as bland as it could be. "Well, we believe everybody has the right to bear arms regardless of race or gender." And I was like: "What?". Now this is the same NRA that went off the chain at Ruby Ridge and at Waco, calling federal officers who had been shot at some killed "jackbooted government thugs." So we go from "jackbooted government thugs," when it's White folks killing Federal officers. But when it is a Black man with a license to carry a weapon, well, we're going to have to wait until the investigation.

**COBB** (39:31) They were conspicuous in their silence. If this had been an instance in which a White person was a lawful gun owner, it might have played out differently perhaps, maybe, but what we know in this case is that there was a black person who was killed, and that it didn't elicit the kind of response you might anticipate from a gun rights organization.

**HARRY** (39:56): I wonder if one of the things that you're saying is that, in part, White Supremacy is a kind of codex for understanding what on its face looks like a neutral law, but really has racial meanings?

**ANDERSON** (40:06): The only difference was Philando Castile was Black (rock music transition starts playing). Just like Tamir Rice was Black. Just like John Crawford...

(rock music transition)

**HARRY** (40:20) (rock music continuously playing as he speaks): So far in this episode, we've looked at the origins of the 2nd Amendment and seen how it's always been targeted against Black people. We've talked about how the cherished right to own and use a gun—that American idea of self-defense—doesn't work the same way when that right is claimed by White folks and Black folks. Next, we're going to take a look inside the system to talk about how laws criminalizing gun possession function.

#### **Part 4: Inside the System**

**DREW** (40:50): Part 4: Inside the System (rock music ends)

(sound of prison door slamming)

**COBB** (41:01): The logic of the Second Amendment is the enshrinement of a right to self-defense. The communities that are most targeted, and most likely to be interface, policing, prosecution, incarceration around gun possession are also the communities where people are most likely to be killed.

**HARRY** (41:22): By gun violence.

**COBB** (41:24): By gun violence. The people who are most likely to be killed by gun violence are also the people most likely to be penalized for having access to firearms. Most of the people who were killed, the preponderance of people who were killed in gun homicides have had a number of previous arrests. Most of these are people who cannot legally carry a firearm. And so what you see is the kind of convoluted path of, of a discriminatory regime that results in these kinds of outcomes. Black and Brown communities have by and large been unwitting and unwilling participants in a longitudinal study about what gun access actually yields in a society. And the preponderance of guns has not made people safe...

**HARRY** (42:15): Just the availability themselves?

**COBB** (42:16): The availability themselves and what we've seen in particularly poor Black and Brown communities that are plagued by gun violence. And so even a gun control law that has the intent of making communities safer can be drafted into the overall outcome of making those communities less safe.

**HARRY (42:37):** Right. One thing I hear you saying is that gun control laws only really have meaning as a piece of a broader architecture of a regulatory scheme that also includes other systems that have racially discriminatory implications. There are other parts of the system wind up with the criminalization of communities of color, the criminalization of poverty, the foster care system, mass incarceration, the inability to work, essentially, after-post incarceration.

**COBB (43:04):** All of the above. Right, if you were to pick through the zip codes with the highest homicide rates in New York City and we went and hung out in those zip codes. What we would likely encounter are significant numbers of young Black and Brown men who have been cycled through the system starting at age 13-14-15 and who do not have any legal access to firearms, in a place where they are likely to be killed, and everyone knows that they're likely to be killed. And so, it becomes a kind of mess of contradictions, that ultimately lends itself to exactly the kinds of hierarchical outcomes that we're talking about.

**HARRY (43:51):** Jarrell Daniels, grew up in one of those zip codes here in New York City. His life has been shaped by guns and their criminalization. We spoke to him about his experience inside the system.

**DANIELS (44:02):** My name is Jarrell Daniels. I'm currently the Program Director of the Justice Ambassadors Youth Council here at Columbia University's Center for Justice. I'm also a formerly incarcerated activist and scholar and pursuing a law degree, once I get into law school actually. [laughing].

**HARRY (44:20):** Can you just tell us a little bit about your childhood in the Bronx?

**DANIELS (44:23):** I was born on North Central Hospital in the Bronx. I spent my elementary years on Kosuth Avenue, which is relatively a good neighborhood in the Bronx, Uptown. But for middle school, sixth grade, we moved to 177th Street and Walton Avenue. This is in the South Bronx. And this is kind of in the heart of the most poverty-stricken part of the Bronx. It was a real culture shock for us coming from this seeming rural neighborhood in the upper region of The Bronx. The conditions were completely different. We saw people who were homeless, people struggling with mental health and substance use issues in the building, on the steps laid out, people using drugs and then having to walk past those things on the way to school. Then finally making it outside of the building, and you have a hyper police presence. Constant sirens flashing, people being stopped and frisk. Most of my friends or family had contact with the criminal legal system. So this is what I saw as a 6th grader, 7th grader.

**HARRY (45:16):** As a kid, Jarrell moved around a bunch and didn't have one single place he could feel safe and call home.

**DREW (45:22):** For folks listening, I want to let you know that the next part of Jarrell's story contains descriptions of explicit violence.

**DANIELS (45:29):** My life really began as someone exposed to violence in a young and tender age. The first violent incident I was exposed to was when I was five years old. My mother's best friend had her throat slit in front of me and my sisters. Something like that never leaves you. I carry that with me



to this day. But it didn't end there, my mother ended up having an addiction to crack cocaine in the 90s. My sisters and I were funneled through the foster care system. She came back home, got custody of us, cleaned herself up, then ended up in an eight-year long domestic violence relationship. And that kind of bounced us from the DV shelter to shelter, bounces us from school to school, between Jersey and throughout the five boroughs.

**DANIELS (46:07):** You can't really articulate growing up in those kinds of conditions. We lived in a one-bedroom apartment. It was me and my two sisters, my niece, my stepfather that my mother married. He had a daughter and literally all of us all the kids were in the living room. So it wasn't a living room space, it was just beds lined up next to each other. That was how we survived for six years. "By the time I reached 13 years old, I was like, I can't be in this house anymore. My mother did the best she could, and she never gave up, so I don't fault her for anything.

**HARRY (46:37):** This pretty intense deprivation. The impact of extreme poverty. How does this lead to your contact with the carceral system?

**DANIELS (46:45):** As a developing male in this kind of toxic environment, I adopted a lot of harmful characteristics that males of color kind of take on, this hypermasculinity. So I assumed, because of my peers, and because of what I was seeing in movies, and how the media portray people like me, who lived in these kind of communities, I kind of wanted to live up to that...

**HARRY (47:06):** To a kind of masculine ideal? Like, "What a man is supposed to be"

**DANIELS (47:10):** Not because I wanted to, but because this is what I needed to do to survive. If I wanted to not have my stuff taken from me walking down the street, and I needed people to respect me in my neighborhood. So I engaged in the street culture at a young age but...

**HARRY (47:26):** I'm curious. Our episode and different peoples' stories and perspectives as they sort of weave around this topic. What your relationship was, as a 14-year-old, 15-year-old to guns, what do they mean in your adolescence?

**DANIELS (47:39):** Man guns. Guns is really easy to get a hold of. Like, it's unbelievably easy when you live in a poor community to get access to a firearm. My first time seeing a gun, I was 11 I believe. It was in sixth grade. A friend just showed it to me. He's like: "Look, this is my brother's gun." And I'm like, "oh, this looks nice." I wasn't intimidated, it was my first time seeing it, I was actually curious and interested.

**DANIELS (48:08):** I bought my first gun when I was 13, with the money for my 13th birthday from friends and relatives, and I saved up because I was like: "This is what I want for my birthday. I don't want sneakers, I don't want clothing. I want a gun because I want safety. I want stability. And I want people to take me seriously. I thought the weapon would bring respectability with it.

**HARRY (48:26):** So it was easy to get a gun as a kid growing up in The Bronx.

**DANIELS (48:30):** Guns are so prevalent that if this person said "Hey Jarell I think you're too young to have a weapon," I would literally just go to another person and they would say "Alright, \$500 and I

can get you a weapon.” Most of the weapons we had access to were handguns. There wasn’t really prevalent assault rifles and stuff like that but the handguns are just too readily accessible in poor communities.

**HARRY (48:52):** Last time we talked, you spoke about guns in terms of identity formation.

**DANIELS (48:57):** I’m getting watery eyed a little bit but you know I’m thinking about me as a teenager and me, you know, holding that first gun in my hands and like the power I felt in that moment. I can’t even explain it. But imagine like someone being powerless their whole life, stuff is just messed up all around you.

**DANIELS (49:19):** Every day the news is telling that you’re no good. People like you are no good. Every day you try to get a job, people turn you down. When you’re walking down the street people are holding their purses because of what you got on. Everything in American society is telling you that your Black life is less valued.

**HARRY (49:35):** Then there’s this moment...

**JARRELL (49:36):** That moment you wield the firearm, you feel like Superman. I swear to God you feel like Clark Kent when he goes in the booth and puts the cape on. Nobody can stop you, nobody can diminish you, put you down, nobody can control you. I know that is what young people feel.

**HARRY (49:54):** It’s about exclusion. In this world, you are describing having a different set of options and having a gun makes sense as one of them.

**DANIELS (50:02):** You know, people who live outside of the law and the legal spectrum, it’s because they don’t feel welcome. They don’t feel a part of American society. The person who breaks the law has made a decision that: “I’m not benefiting from this American process, this steps toward the American Dream is something that doesn’t seem attainable for somebody like me.” So: “why not?”

**HARRY (50:23):** You mentioned that you had gotten involved with gangs. Curious: Wow did that first start?

**DANIELS (50:31):** Yeah, I had a friend and we were complete opposites.

**DREW (50:37):** Jarrell told us how because of his unstable housing situation, he wound up living with some kids from his neighborhood. One of them was involved with street life.

**DANIELS (50:46):** Because he was living with us I had no choice, because I didn’t want to go back to a shelter and stay there with my family so I’d rather have us being bunched up in his room together. It felt like we had some type of comradery amongst each other. He was a little bit more into the street life at the time than I was. He was the one who asked me like, do I want to join Bloods? Do I want to join the ranks and be initiated? He was the one who had access to all the firearms. So he was really our external linkage to the people in the neighborhood who had access to drugs that we started selling, to the firearms we started accumulating. I was 14. He was 15.

**HARRY (51:26):** Jarrell rose up in the ranks of the gang culture. During this time, Jarrell said he struggled to keep his family safe and as far away from the guns and the drugs and the violence of street life as he could.

**DANIELS (51:38):** As much as I was off the deep end, I didn't bring anything from the street life back home with me. I didn't bring drugs or weapons into my mother's home. And my mother didn't want to hear gunshots. They didn't make her feel safe. But I had to explain to my mother in real time, like: "Ma, do you want it to be me? Or do you want it to be somebody else?" We didn't have that conversation again after that. And I made it really clear: "Ma, I'm not going to be a victim to gun violence, so I'm going to carry this gun everywhere I go. I don't care if I got to stash it before I go out of the building and come back. I'm not going to be the one out splayed on the street, and you on the TV lying to the news saying, 'I'm a good boy.' I'm not going to do that to you."

**DREW (52:18):** When he was 17 years old...

**DANIELS (52:19):** Literally 20 days after my 17th birthday...

**HARRY (52:22):** Jarrell shot someone.

**DREW (52:25):** No one died, but everything fell apart.

**DANIELS (52:28):** Me having to resort to violence in this situation really was the eye-opener for me. And I was like: "I can't live this life no more. I know I'm going to end up in jail." Long story short, a year and a half after the incident happened, there is a gang indictment.

**HARRY (52:43):** In 2012, he was arrested, and charged as part of a larger prosecution, including for criminal possession of a weapon.

**DANIELS (52:48):** It was a 41-count indictment, it ranged from weapons possession, serious assaults, including non-fatal shootings, and also the drug distribution of possession. So those were the range of charges. The key element that tied all the pieces together was the charge of conspiracy. Sadly I removed myself from that situation right after it happened. I mean, here I am making all of these strides to change my life around. Eighteen months later I am being arrested. I'm not on the run, I'm living my life normally. The indictment kind of derailed and backtracked what I had going on. I understood the accountability for the harm that had been done. I tried to advocate. I was not the kind of monster that the prosecutor's office tried to paint me out to be. All they were reading was this one incident on the paper. They didn't know anything about my other system contact: with ACS, DHS—Department of Homeless Services—my foster care contact. They didn't know about my exposure to trauma and violence in the household. They didn't know none of these things about my life.

**DREW (53:47):** Jarrel described a childhood interrupted by poverty, by drug addiction, by intimate partner violence, by an uncaring foster system, by *profound* inequality in access to educational opportunities and employment.

**HARRY (54:02):** He ultimately grabbed a gun and sought out membership in gangs as a way of staying safe. And he was incarcerated and endured all of the violence of the system of incarceration, including at Rikers Island.

**PHILIP (54:17):** I think that's one of the biggest problems our society has now, right now. It erases the violence of these systems and the lived experiences of these people.

**HARRY (54:27):** That's Meghna Philip again, the public defender who we talked to at the top of the episode.

**PHILIP (54:32):** It's kind of disingenuous not to look at that whole picture. You know, this knee-jerk operating punitively, that's kind of been the whole M.O. of the criminal justice system and the system of mass incarceration that our country suffers from. It's not good or just or safe. That full picture and full conversation needs to be contended with. Especially comparing the way gun possession has operated for these communities, or how it's been controlled, with the kind of free and easy access that NYPD officers who are retired have. On the other end of the spectrum, it's basically impossible for low income people of color to have a license to carry a weapon. Those are the same communities that are surveilled, disproportionately stopped and frisked.

**COBB (55:22):** What has been the kind of guiding factor has been the enshrinement and maintenance and reinforcement of a particular White supremacist ethic.

**HARRY (55:31):** Right. Through gun control...

**COBB (55:33):** Through gun control, through many levers, many different elements, gun control being one of them.

**HARRY (55:38):** We're recording a week where there was a mass shooting at a gay club in Colorado, that killed five people and wounded many more. It's not the first one in this country. This has become like a motif of our adult lives is dealing with these kinds of mass tragedies. And so yeah, there's a lot of heartbreak and vulnerability and fear.

**PHILIP (55:59):** Vulnerable people are, lives are destroyed routinely from gun violence in this country. That repeated tragedy and that failure of this country to get a handle on it has become the justification or the excuse for targeting vulnerable communities and people by the criminal justice system that I think is just entirely missed in most of the conversations. About the actual impact of these policies, which are not serving to reduce these kinds of mass violent tragedies and are not serving to reduce the supply of weapons or the manufacture of these weapons, and instead are just resulting in tearing apart people's lives day in and day out.

**HARRY (56:42):** There is violence written all over this system. Like violence runs every which way. And from the mainstream media angle on guns and gun control there is an obfuscation of the ways in which there are violent systems affecting your clients.

**PHILIP (57:00):** But the fact is, this is a complicated story is a complicated reality, and to just ignore the kind of the violence of the of these systems, the violence of the courts, the violence of jails and

prisons, and the violence that then continues to perpetuate while just focusing on other kinds of extreme violence in order to perpetuate these policies that are day in and day out just mostly impacting marginalized people in our city.

**DANIELS (57:32):** The moment we were indicted, the first news article said: “Throw the book at them.” They didn’t consider the fact that we were teenagers; they didn’t under the full circumstances of our arrest. All they knew was that the D.A.’s office did an indictment, and they said that we were gang members. And that wasn’t a full holistic sense of who I was. It definitely didn’t explain my potential as a human being to grow and evolve out of that way of thinking.

**HARRY (57:58):** Making guns illegal, putting people in prison without addressing the underlying inequality that makes neighborhoods so dangerous to be a kid, it means further destabilizing communities. Taking people from their homes, from their families.

**DANIELS (58:12):** Because you incarcerate generations of people at lump sums at a time, you take away people who could have potentially been mentors. Who could have stopped this senseless violence. Right so the problem is not gun violence, the problem poverty. We need to figure out how to address poverty [a piano and violin starts playing in the background], how to give people opportunities so that they can go on and lead the kind of lives society wants them to lead. I’m gonna be honest, I only really felt value in my life since coming home, but it took for someone to give me the platform and opportunity for me to build up the courage and space to feel valued enough to go out and do that. If I came home and I got turned down from job after job, I would have been and I’m telling you this honestly from the bottom of my heart, if I didn’t have any job, I would have been back in the streets.

(the piano and violin music transitions plays as the credits are mentioned)

**HARRY (59:12):** We would like to thank everyone who took part in the making of this episode.

**DREW (59:17):** Dr. Carol Anderson and Dr. Ristroph.

**HARRY (59:20):** Dean Jelani Cobb. Meghna Philip.

**DREW (59:23):** Jarrell Daniels.

**HARRY (59:24):** Sound Editor Elias Passas.

**DREW (59:27):** Web editor Christopher Sina Faroghi and podcast consultant Stephen Matthews.

**HARRY (59:33):** Of course, thanks to Professors Kendall Thomas and Flores Forbes and to Columbia Law School.

**DREW (59:40):** And to Michele Wilson.

**HARRY (59:41):** And our classmates in the Critical Race Theory seminar.

**HARRY (59:46):** And thanks to the good people at Wonder Media Network.

(music fades, concluding the episode)