Reseda, Calif.: Has the court ever given a definition on the 2nd amendment?
Joan Biskupic: No. And this, of course, helps fuel the controversy over how far governments can go to limit guns. The Second Amendment says, "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." In the only case on that language this century, United States v. Miller in 1939, the court said the amendment applies only to weapons that relate to a "well regulated militia," some sort of organized government group like the National Guard.

Vermillion, S.D.: Does the Supreme Court case U.S. v. Miller, in your reading, explicitly state or imply that for any given instance of possession or use of a gun to be protected under the Second Amendment, one must be using it in the carrying out of militia duties? Also, what implications do you see from the court's citation of Aymette v. State of Tennessee?
Joan Biskupic: I think the implication in that case is that the Second Amendment does apply only to a government militia, which isn't very relevant for today's debate over individual firearms rights. Many lower courts have used that interpretation, but recently a trial judge in Texas, in a case just last April (and one that I'll talk more about) said Miller should be more broadly read. This judge, Sam Cummings, ruled that the amendment's text and its history give individuals a right to own guns. The ruling hasn't gotten much attention yet, and it could end up quickly being reversed, but it does add another wrinkle to the controversy. Oh, and that reference in the Miller ruling to a case called Aymette followed the justices' statement that the sawed-off shotgun (which was the subject of the Miller dispute) was not a weapon that contributes to the "common defense."

washingtonpost.com: The [Texas case](#), U.S. v. Emerson (United States v. Timothy Joe Emerson), is available at the [Web site](#) for the U.S. District Court for the Northern District of Texas under the "Notable Cases" section. The amended opinion, memorandum opinion and judgment are available in PDF format only, which requires the Adobe Acrobat reader.

Shokan, N.Y.: How can anyone say that the Supreme Court has not said anything on the Second Amendment regarding the individual right to bear arms? The following Supreme Court cases apply to the Second Amendment, and they all state or imply an individual right:

washingtonpost.com: The questioner proceeded to list a series of Supreme Court decisions, saying they all state or imply an individual right to bear arms. Some, like U.S. v. Miller (1939), were directly related. Others were not. The full text of U.S. v. Miller is available on FindLaw. Joan Biskupic examined the Second Amendment and the Supreme Court in 1995:

Guns: A Second (Amendment) Look (May 10, 1995)

Joan Biskupic: The reality is that only in two major cases has the Supreme Court specifically looked at the reach of the Second Amendment, in 1886 and 1939. In the cases cited by the reader (and the reader included Dred Scott and a recent abortion case), the incidental references to the Second Amendment and a "right to bear arms" did not in any way explain exactly what it means. ... Even the scholars who argue most strongly that there is an individual right, not a collective right, in the amendment, acknowledge that the justices have said little on the topic. When Judge Cummings recently wrote that it gives individuals a right to bear arms, he said "the only modern Second Amendment case" is Miller.
Crofton, Md.: Are we going to learn anything new here given the Washington Post's obvious opinion on the matter?

Joan Biskupic: Oh, please. This isn't part of the editorial page. This is part of the news pages. We're trying to give people the lay of the land on guns from various courts' and judges' perspective. I'll make sure I include former Chief Justice Warren Burger in a minute. ... I think the reader would be particularly suspicious of it, because the late chief justice believed the amendment was "one of the greatest pieces of fraud, I repeat the word "fraud," on the American public." He didn't think the "right" belonged to individuals.

Pennsburg, Pa.: Hi Joan,

First, let me state I'm a life member of the NRA, but also a volunteer Emergency Medical Technician (EMT), and a Vietnam Vet. My question on the Second Amendment is: Is the Bill of Rights reserved for the people? In line with that, I believe the Constitution explicitly states confirmation for an Army and Navy, and it's a fact that the state militias are or can be for all intents and purposes a part of the federal armed forces. With that being the case, how can the Second Amendment not be reserved for the people, and not a state government militia?

Thank You.

Joan Biskupic: You bring an interesting background to the debate, and I'm sorry I don't have a good answer for you beyond what courts have said. You mentioned the Bill of Rights and how the various amendments have been extended to the states, so I want to add that not only have lower courts mostly concluded that there is no right for the people to keep and bear handguns, but they also have restricted the reach of whatever protection the Second Amendment does have. Courts have said the amendment applies only to the federal government, that is, to any kind of federal restriction on guns, and not to any state and local restrictions.

washingtonpost.com: The ongoing debate over the Second Amendment seems to heat up particularly during election years after some high-profile act of violence. The Littleton, Colo., shootings spurred arguments among politicians, lobbyists and regular citizens, some of whom discussed their views on this site (see transcripts). Now Columbine students are in Washington, D.C. to lobby for new gun control legislation (Post story). Is this issue simply a political hot potato, or can it ever really be settled in the courts?

Joan Biskupic: That's a good point. The last time debate over the Second Amendment reached a pitch was in the mid-1990s after the Waco tragedy and Oklahoma City bombing. This does seem to be one of those issues that should be hashed out in Congress and in statehouses, where lots of voices can be heard. And even if the Supreme Court were to ultimately say there is a Second Amendment right for individuals to own guns (which I doubt will happen in the near future), legislatures still could regulate guns. No constitutional right is absolute. For example, while the First Amendment protects free speech, government can still restrict obscenity and words that might provoke violence.

Washington, D.C.: If this isn't part of the editorial page, then why can't I and the other readers make up our own minds about whether the cases cited by the gentleperson in Shokan, N.Y. directly or implicitly support the right of an individual to bear arms?
Regardless of your views on the Second Amendment, remember that the goals of the First Amendment can only be furthered by a full and open exchange of ideas. Your selective censorship of this person's questions is antithetical to that ideal we all cherish.

**washingtonpost.com:** The list of cases was left off in the interests of space. We can include them, as well as links to the full texts of the opinions if they're available, at the end of the discussion.

**Joan Biskupic:** I love these kinds of questions! And I think the people at dot-com are going to happily provide the list of all the cases cited by the reader from Shokan. They'll have citations, too, so you can look them up.

**Dallas, Tex.:** How is another law going to stop the criminals who do not abide by the law going to do any good? I feel that there are sufficient laws on the books if enforced and held up by the courts to slow down the crime rate. However no law or government can stop an individual or individuals from committing terrible crimes such as Columbine. It is my feeling that the government should be there to prosecute the criminal not to protect society from themselves.

**Joan Biskupic:** You have a point. Several cities and states have strict gun laws and still have serious problems with violence. The District of Columbia is a good example. ... But still, there are other people who think enough isn't being done. The director of a University of Chicago research center wrote on our op-ed page earlier this week that people have increasingly wanted MORE gun control He said that majorities of up to 90 percent back all measures except those that call for the outright banning of guns or restricting them only to the police.

**Sterling, Va.:** Will the recent USSC decision to limit the federal govt's ability to regulate states (which in my eyes is finally getting a bit closer to the Constitution's orginal intent – states granting the federal government limited powers) impact gun regulation? It seems that pro-gun states (e.g., VA, TX) might now try to opt out of the strict (and potentially unConstitutional, now on many fronts) federal laws and impose only their own, more gun-friendly laws.

**washingtonpost.com:** A recent Post story covered the states' rights decisions: [In 3 Cases, High Court Shifts Power to States](June 24, 1999)

**Joan Biskupic:** The court's recent emphasis in favor of state authority indeed could factor into the mix and influence any ultimate decision on firearms rights. And in recent years when the court has looked at gun control legislation, including the Brady Bill two years ago, the issue was federalism. The court by a 5-4 vote struck down part of the law requiring a waiting period for handguns purchases, saying Congress had overstepped its authority in requiring local sheriffs to help with the background checks.

**Alexandria, Va.:** It seems to me that much of the confusion about the Second Amendment arises from the word "militia." Does militia mean a government organization or does it mean a private group of citizens? How does Johnson's dictionary (1755) define "militia"?

**Joan Biskupic:** I don't have Johnson's dictionary handy, but whatever it meant then can't possibly be what it means in our modern world. And I agree that adds to the confusion, as does the generally convoluted way that the amendment was even written – beginning with those clauses. When Chief Justice wrote a 1990 essay in Parade magazine he said, "A state militia, like a rifle and powder horn, was as much a part of life as the automobile is today; pistols were largely for officers, aristocrats – and dueling."
Herndon, Va.: How could-would the 1968 GCA or 1994 Assault weapons ban be challenged in the Supreme Court? What steps need to be taken to have the court listen to a case like that?

Joan Biskupic: Parts of those laws have been challenged over the years. What happens is this: someone is arrested and charged under a provision of the law. The person then defends himself by saying the law is no good, unconstitutional. That's what happened in 1939, when a man named Jack Miller was caught with a sawed-off shotgun and charged in violation of the 1934 National Firearms Act.

Sterling, Va.: In reading much of the questions and answers today, it appears that the Constitution has been skewed by the courts for while some time. For example, the Constitution is a document in which the states gave certain rights to the federal government (and reserved all others) and in which the rights of individuals were spelled out. Strictly the Constitution only applied to the federal government, that is a person, a company, and a state could NEVER violate a person's Constitution rights or do anything unconstitutional. That was by definition. Since the late 1700s, the courts have expanded the federal powers, while limiting the rights of individuals and powers of State in all issues, but very importantly in the gun control issue. Do you think individuals or states will ever get these rights and powers back?

Joan Biskupic: This Supreme Court has been reversing some of that trend. (You might want to look at some of the stories on federalism.) Justice Clarence Thomas has been particularly sympathetic in his writings to the point you make. But it's hard to imagine that this court or any other future one would return to the picture you paint of two centuries ago, given the current national structure, economy, etc.

Washington, D.C.: I'm not an optimist or very nice – I think it'll take a few NRA members' children getting murdered by criminals with guns to change things. Let's get it on. Or maybe a few more James Bradys to get shot in the head. How stupid can someone be to to oppose a trigger lock. This isn't a slippery slope. Look to the civilization, history and experience of the UK and Europe – sure a Dunblanne here and there but not thousands of people a year. Do you think things will ever change? What will it take? Am I that far off?

Joan Biskupic: I think we're getting a feel here for how emotional and polarizing the debate over guns can be ... which is probably why it's best ultimately revolved by legislatures rather than courts.

Blacksburg, Va.: Why is the "militia" clause of the Second Amendment such a touchy issue? Isn't the statement "the right of the people ... will not be infringed" self-explanatory and unambiguous? After all, it's not like the amendment uses vague terms like "unreasonable search" or "high crimes and misdemeanors." Isn't the "militia" clause an independent clause? Shouldn't the "militia" clause be regularly ignored?

Joan Biskupic: "Unambiguous"?? It's amazing how, at the hands of the nation's courts, lawyers and other legal players, simple words like "militia" and "right" can take on multiple, conflicting meanings. ... And I think that there often is no unanimity on what seemingly plain words mean because it's not really about just the words, it's about what those words protect, or alternatively, penalize.
Arlington, Va.: Do citizens have the right to bear nuclear arms under the Second Amendment?

Joan Biskupic: Hmmmm. A new question for the new millennium.... But we get your point.

Danville, Pa.: "The right of the people" appear in the First, Second and Fourth Amendments. If we believe that "the right of the people" that term specifically can be challenged, then who is to say that we cannot challenge it in the First and the Fourth?

Joan Biskupic: The Supreme Court has indeed said that the First Amendment right to free speech and Fourth Amendment right to be free of unreasonable searches are individual protections. .. And in the future those interpretations might guide what it says about the Second Amendment. But for right now, there is no case on the court's docket or on the near horizon. So we'll keep battling it out.

Thanks to all, even the critics. While the Supreme Court is in recess, we'll continue taking on other legal topics, as well as any lingering questions over the term's big cases, how the court works, what the justices are doing this summer (road trips!) .... Next week, we'll look first at some of the big jury verdicts in recent personal injury cases.

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washingtonpost.com: For the reader who was interested in the cites by the person from Shokan, N.Y., here is the list. Not all of the opinions are available online, but those that are available can be found on FindLaw.

- Scott v. Sanford, 1857
- U.S. v. Cruikshank, 1876
- Presser v. Illinois, 1886
- U.S. v. Beard, 1895
- Robertson v. Baldwin, 1897
- Patsone v. Pennsylvania, 1914
- U.S. v. Brown, 1921
- Near v. Minnesota, 1931
- U.S. v. Miller, 1939
- Murdock v. Pennsylvania, 1943
- Reid v. Covert, 1957
- Carlson v. Green, 1980
- U.S. v. Lewis, 1980
- South v. Maryland, 1855
- U.S. v. Verdugo Urquidez, 1990
- Hafer v. Melo, 1991
- Twining v. New Jersey, 1908
- Powell v. Alabama, 1932
- Grosjean v. American Press Co., 1936
- Gideon v. Wainwright, 1963
• **Duncan v. Louisiana**, 1968
• **Moore v. East Cleveland**, 1977
• **Planned Parenthood v. Casey**, 1992
• **Griswold v. Connecticut**, 1965