

February 7, 2013
The Honorable Ted Cruz
The United States Senate
Capitol Hill
Washington, D.C.
Dear Senator Cruz:

Thank you for inviting me to share my expertise concerning the problem of gun violence in America. My published books and law review articles examine, among other subjects, black history, the origins of American gun culture, the judicial interpretation of both federal and state right to keep and bear arms provisions, and the history of mental health care in the United States. My work has been cited in *D.C. v. Heller* (2008), *McDonald v. Chicago* (2010), and many decisions of the U.S. Courts of Appeal and state supreme courts.

Attached please find an article from the Federalist Society publication [Engage published last year: “Madness, Deinstitutionalization & Murder.”](#) The *Engage* article examines the role that the deinstitutionalization of the mentally ill, starting in the 1960s and reaching full fruition in the 1970s, played in increasing murder rates. Of most relevance to the recent tragedy in Connecticut, deinstitutionalization turned what had been a shockingly rare event — random acts of mass murder — into something that horrifies us but no longer shocks us because such incidents happen several times a year. This article is adapted from a chapter in [My Brother Ron: A Personal and Social History of the Deinstitutionalization of the Mentally Ill \(2012\)](#).

That deinstitutionalization increased murder rates is not an impressionistic or anecdotal claim: as the article points out, multivariate correlation analysis by Prof. Bernard Harcourt of the University of Chicago demonstrates a statistically significant negative correlation between murder rates and total institutionalization rates (the sum of prison and mental hospital occupancy) for the years 1928 to 2000. Using an entirely different technique, Prof. Stephen P. Segal of University of California, Berkeley demonstrated in 2011 that three measures of mental health care systems are statistically significant in relation to state-to-state variations in murder rates. Indeed, one-third of this variation can be explained by one factor alone: the relative ease of involuntary commitment of the mentally ill.

The evidence for this includes not only the many examples in the *Engage* article, but also the details of many of the most recent and most horrifying of these mass murders. James Holmes is the man being tried for the murders in Aurora, Colorado. Several weeks before those murders, his psychiatrist was sufficiently concerned about him to contact local police. The exact nature of those contacts, of course, is now tied up in court proceedings,^[1] but for a psychiatrist to break doctor/patient confidentiality suggests that she believed she had a *Tarasoff* obligation to inform the police that her patient was a danger to others.^[2] Unfortunately, Colorado’s current emergency commitment statute creates an extraordinarily high standard of what constitutes “imminent danger to others or to himself”^[3], and James Holmes apparently was not considered an “imminent risk.”^[4]

Similarly, news reports quote a friend of the Lanza family claiming that Mrs. Lanza was attempting to have her son committed at the time he went on the rampage in Newtown,

Connecticut. Because court records on such proceedings are not public, the most that local police officials could confirm was that there was some discussion about future mental health care for the son.[\[5\]](#)

Yet while the connection between deinstitutionalization and these random acts of mass murder is abundantly clear, the focus on these relatively rare crimes (totaling less than 1% of all U.S. murders each year) obscures the far more common murders by mentally ill offenders that receive only local news coverage, because they involve *only* one or two victims.

As the *Engage* article points out, at least 18% of Indiana inmates convicted of murder are mentally ill: a more detailed examination of the data shows that 11% of Indiana murder convicts are suffering from psychotic conditions that have caused them to lose connection to reality. By my estimate, it is likely that there are 1,300 to 1,400 murders a year in the U.S. by such severely mentally ill offenders.

Of these, about 500 likely involve weapons other than firearms. (One example from last Tuesday: a mentally ill woman in Sebastopol, California, charged with stabbing her mother to death.)[\[6\]](#) Any gun-control measures are guaranteed to be ineffective at reducing *non-gun* murders by mentally ill offenders. At best, they can only reduce murders with guns — and only the very optimistic believe that gun-control laws will make anything but a marginal improvement in murder rates.

On the other hand, if we look at the solutions that have been demonstrated to work — such as increasing the number of psychiatric beds available per capita and making emergency involuntary commitment statutes less restrictive (as discussed in Prof. Segal's paper) — we can reduce murder rates *regardless* of weapon type.

However, because these involve state law changes, they must be the subject of state legislation, not congressional action. Congress can shine a bright light on the problems that the well-intentioned policy of deinstitutionalization caused, but state legislatures must take principal responsibility for solving these problems.

There has been considerable discussion of the problems of mentally ill offenders not ending up on the national firearms background check system. As an example, Massachusetts has supplied *one* such name to the national background check system since 1999 (as a test), apparently because the state's mental health law prohibits such disclosures. Fourteen states have submitted less than *five* mental health records during that time.[\[7\]](#)

While it would certainly be good for the states to submit records of involuntary commitments and adjudications of mental defect to the national background check system, this alone will make only a small difference because so many states do not involuntarily commit persons who clearly are severely mentally ill. As an example, Jared Lee Loughner, who shot Rep. Giffords and killed six others in Tucson, was expelled from college because of his bizarre, frightening, and obviously mentally ill behavior.[\[8\]](#) Yet because he was never involuntarily committed, his name was never submitted to the national background check system, and he was able to purchase a firearm without restriction. Similarly, Seung-Hui Cho, the Virginia Tech shooter, because he was

not involuntarily committed for his bizarre, frightening, and obviously mentally ill behavior, was able to purchase a firearm as well. (He was ordered to undergo *outpatient* treatment, but did not do so, and fell through the cracks.)^[9]

The core problem is that states are failing to provide involuntary mental health services to persons who are clearly too ill to recognize that they are ill. In 1960, it was possible to pretend that leaving such persons to their own devices was only an individual tragedy. Today we have too many examples to pretend that this zealous protection of the right of the mentally ill to die of exposure or by their own hands does not also have horrendous consequences for the larger society.

Let me emphasize that this problem of mass murder by the deinstitutionalized mentally ill is not unique to the United States. My *Engage* article gives examples of many such mass murderers in Europe as well, and at rates not so terribly different from us, *in spite of Europe's generally stricter gun-control laws*.

What is this going to cost? Perhaps nothing at all. Enclosed please find [a draft of a paper I prepared for the Independence Institute after the Aurora shootings last year: "Reforming Colorado Mental Health Law."](#) My estimate, based on figures put together for a Colorado task force looking into this problem, suggests that the states are spending about \$3 billion a year in current and future costs prosecuting and incarcerating mentally ill murderers. Costs for prosecution and imprisonment of other severely mentally ill felons are likely on a similar scale.^[10] You can provide a lot of mental health services, both inpatient and outpatient, for that kind of money without even considering the other social costs that deinstitutionalization has produced.

The United States is at something of a crossroads here: we can remain focused on gun control, or we can look at the root cause of not only the random acts of mass murder, but many other serious social maladies. The deinstitutionalization of the mentally ill has played a destructive role not only with respect to crime, but also with the degradation of urban life, and with the barbarous degradation of mentally ill people, who are a large fraction of the homeless in our country.^[11]

Deinstitutionalization of the mentally ill is the root cause of most of these shocking acts of mass murder, and the much more common but less publicized murders that happen every day in America, which *very* seldom involve high-capacity magazines or scary looking black rifles.

Pretending that gun control is going to have much of an impact on this is like putting a Band-Aid on an arm with a severed artery. It is only a short-term solution, because it covers up a deeper problem. It is time to recognize and solve the root problem.

Very Truly Yours,
Clayton E. Cramer

[1] Mark Greenblatt, Carol McKinley, and Mike Gudgell, "James Holmes' Psychiatrist Contacted University Police Weeks Before Movie-Theater Shooting: ABC Exclusive," ABC News, August 6, 2012, <http://abcnews.go.com/US/james-holmes-psychiatrist-contacted-university-police-weeks-movie/story?id=16943858#.UCGGtfaPWzk>, last accessed February 6, 2013.

[2] *Tarasoff v. Regents of the University of California*, 17 Cal.3d 425 (1976)(obligates mental health workers to warn individuals or police of threats of violence by patients). Other courts have imposed variations of *Tarasoff* in most other American jurisdictions.

[3] Colorado Revised Statutes 27-65-105(a)(I) (2011).

[4] "Did CU Officials Consider James Holmes 'High Risk' For Violence?" The Denver Channel, August 16, 2012, <http://www.thedenverchannel.com/news/did-cu-officials-consider-james-holmes-high-risk-for-violence->, last accessed February 8, 2013.

[5] Jana Winter, "EXCLUSIVE: Fear of being committed may have caused Connecticut gunman to snap," Fox News, December 18, 2012, <http://www.foxnews.com/us/2012/12/18/fear-being-committed-may-have-caused-connecticut-madman-to-snap/#ixzz2KB2OXmv4>, last accessed February 8, 2013.

[6] Paul Payne and Martin Espinoza, "Sebastopol woman accused of killing mom had a history of arrests," Santa Rosa (Cal.) *Press-Democrat*, February 7, 2013, <http://www.pressdemocrat.com/article/20130206/ARTICLES/130209699/1350?p=all&tc=pgall>, last accessed February 7, 2013.

[7] David Uberti, "Mass. keeps mental health data from FBI gun checks," *Boston Globe*, January 28, 2013, <http://bostonglobe.com/news/nation/2013/01/28/massachusetts-among-worst-sharing-mental-health-data-for-gun-background-checks/WmvEKsnUWsQWxvvsXwLY5O/story.html>, last accessed February 8, 2013.

[8] Peter Grier, "Jared Lee Loughner: what is known about Tucson, Arizona, shooting suspect," *Christian Science Monitor*, January 10, 2011, <http://www.csmonitor.com/USA/2011/0110/Jared-Lee-Loughner-what-is-known-about-Tucson-Arizona-shooting-suspect>, last accessed February 8, 2013.

[9] Richard J. Bonnie, James S. Reinhard, Phillip Hamilton and Elizabeth L. McGarvey, "Mental Health System Transformation After The Virginia Tech Tragedy," *Health Affairs*, February, 2013, <http://content.healthaffairs.org/content/28/3/793.full>, last accessed February 8, 2013.

[10] Using the numbers from Clayton E. Cramer, "Reforming Colorado Mental Health Law," Independence Institute, 9-10, scaled up to the United States as a whole.

[11] Clayton E. Cramer, *My Brother Ron: A Personal and Social History of the Deinstitutionalization of the Mentally Ill* (2012), 146-50.

Clayton E. Cramer is a software engineer and historian. His sixth book, [Armed America: The Remarkable Story of How and Why Guns Became as American as Apple Pie](#) (Nelson Current, 2006), is available in bookstores. His web site is www.claytoncramer.com.