SECOND AMENDMENT FANTASY:
THE D.C. CIRCUIT'S OPINION IN THE PARKER CASE

On Friday, March 9, 2007, for the first time in American history, a federal appeals court struck down a gun law as a violation of the Second Amendment to the U.S. Constitution. In a 2-1 decision, a panel of the U.S. Court of Appeals for the D.C. Circuit, in *Parker v. District of Columbia,* invalidated the District of Columbia's restrictive handgun law, along with separate provisions of D.C. law requiring that registered firearms be kept unloaded or locked when stored at home. Departing from the conclusions of nine other federal circuit courts, the majority opinion, by Judge Laurence Silberman, found that the Second Amendment right is not limited to the possession and use of firearms in connection with service in organized militias, but rather extends to the personal possession of guns for private purposes like self-defense and hunting. The dissenter, Judge Karen LeCraft Henderson (a George H.W. Bush appointee), found that the majority's ruling contradicted the "unmistakable" ruling of the Supreme Court in *United States v. Miller,* 307 U.S. 174 (1939) that the right to "keep and bear Arms" in the Amendment must be "interpreted and applied" according to its expressed purpose of ensuring the effectiveness of the militia. On May 8, the D.C. Circuit denied rehearing en banc, with Judges Randolph, Rogers, Tatel and Garland voting to grant rehearing.

Since the *Parker* opinion was handed down, the use of guns in the horrific murder of thirty-two innocent people at Virginia Tech has given even more urgent importance to the Second Amendment issue and the implications of the *Parker* decision. Incredibly, when the Bush White House was first asked, following the Virginia Tech shootings, whether it thought "current laws need to be strengthened," the reaction of a White House spokesperson was to offer assurance that "the President believes that there is a right for people to bear arms . . . ." Thus, at a time when the need for stronger gun laws became manifest, the President of the United States sought to hide behind the Second Amendment. The *Parker* opinion no doubt will be used as an all-purpose excuse for inaction on gun violence; a mythical constitutional barrier to strong action by our elected officials to prevent future Virginia Techs and curb the continuing gun carnage that takes an equal number of lives every day in America.

The majority opinion in *Parker* is a tangled web of inconsistency, flawed reasoning, distortion of binding precedent, and misunderstood historical materials, all in service to the court's single-minded determination to rewrite the Second Amendment. The Legal Action Project of the Brady Center to Prevent Gun Violence, which was *amicus curiae* before both the District Court and the Court of Appeals in the case, has closely analyzed the multiple flaws in this history-making judicial opinion. They are presented here as *Second Amendment Fantasy: the D.C. Circuit's Opinion in the Parker Case*, a series of essays presented over the course of several months, each of which will address a separate aspect of Judge Silberman's opinion. We hope that *Second Amendment Fantasy* will stimulate, and enlighten, the public debate over the merits of the *Parker* opinion and the meaning of the Second Amendment.