



Legal Action

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Court Gives Green Light to Suit by Sniper Victims; Case Threatened by Immunity Bill

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Washington State Superior Court Judge Frank Cuthbertson ruled on June 27, 2003, that the Brady Center's lawsuit on behalf of nine sniper victims may proceed to trial. The court rejected claims by Bushmaster Firearms and Bull's Eye Shooter Supply, the assault rifle manufacturer and seller alleged to have supplied the snipers, that they are immune from liability for allowing the snipers to obtain the assault rifle they used for their deadly attacks. This lawsuit has become a focal point of the debate over federal legislation that would immunize the gun industry from liability for its irresponsible conduct. The immunity bill would threaten the immediate dismissal of the case against Bushmaster and Bull's Eye even though it is currently scheduled for trial in July 2004.

In arguing against dismissal of the case, Brady Center attorneys pointed out to the court that 238 guns, including the rifle used by the snipers, "disappeared" from Bull's Eye in the last three years, an average of more than one gun every week. Although both sniper suspects, John Allen Muhammad and Lee Boyd Malvo, were prohibited under federal law from purchasing firearms, they nonetheless obtained a Bushmaster XM-15 assault rifle from Bull's Eye. In addition to the snipers' assault rifle, over fifty of Bull's Eye's firearms have been traced to crime from 1997 to 2001, including violent assaults and homicides.

The Brady Center also successfully argued that Bushmaster should be accountable for continuing to do business with Bull's Eye despite repeated government audits showing it to be one of the most reckless dealers in the country. Even after the sniper attacks, Bushmaster said that Bull's Eye is a "good customer" and has refused to terminate Bull's Eye as a dealer. Bushmaster specializes in selling assault weapons made to the "latest military design specifications." Its weapons come with added accessories such as flare launchers, "ultimate sniper grips," and "Tactical Assault Sling" adapters that Bushmaster brags will "allow easier assault position carry of your weapon." It has argued that cosmetic changes in its gun designs

exempt it from the 1994 federal law banning assault weapons.

Bull's Eye and Bushmaster argued to the court that as makers and sellers of guns, they are somehow exempt from the rules that apply to all other industries. They urged the court to find a special exemption for the gun industry from the legal duty that applies to everyone



Bull's Eye Shooter Supply, as well as Bushmaster Firearms, can be sued for arming the alleged DC snipers, a Washington judge said.

else in society to act reasonably to prevent foreseeable injury to others.

The court responded with the common sense ruling that Bull's Eye and Bushmaster may be held accountable for their actions. Judge Cuthbertson held, "The facts in the present case indicate that a high degree of risk of harm to plaintiffs was created by Bull's Eye Shooter Supply's allegedly reckless or incompetent conduct in distributing firearms." As for Bushmaster, the judge found that based on the facts alleged by the sniper victims, Bushmaster "knew or should have known that Bull's Eye Shooter Supply was operating its store in a reckless or incompetent manner, creating an unreasonable risk of harm." The court concluded that "this case should be allowed to reach a jury."

On the heels of the Washington court's ruling, the gun lobby continues to push its immunity bill through Congress. That bill, S. 659, would threaten the dismissal of the sniper victims' case against Bull's Eye and Bushmaster

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The gun lobby is intensifying its campaign in Congress to achieve special legal protection for the gun industry. The House of Representatives already has passed a sweeping immunity bill (H.R. 1036) and a majority of the United States Senate is publicly committed to support the Senate version (S. 659). Fortunately, other Senators have declared they will launch a filibuster to block this outrageous legislation. The gun lobby is feverishly working to achieve the 60 Senate supporters needed to break a filibuster. The legal rights of gun violence victims are hanging in the balance.

The gun lobby's case for legal immunity is based on a systematic obfuscation and distortion of basic principles of law.

First, the National Rifle Association and the gun industry insist that, as long as it is legal to manufacture and sell guns, the industry should not be subject to liability. This argument, however, confuses *civil* liability with *criminal* liability. Unlike criminal liability, civil liability for damages does not require a showing that the defendant acted illegally. When a doctor leaves forceps in a surgical patient, the doctor may be liable for negligence, though he violated no statute or regulation. Similarly, when a gun shop is so irresponsible as to "lose" an assault rifle that ends up in the hands of two violent people who were not legally permitted to buy a gun (as in the Brady Center's lawsuit against Bull's Eye Shooter Supply), the shop may be liable for the damages caused by its negligence, regardless of whether it committed a criminal act. When the industry argues that S. 659 allows civil suits against gun dealers for "willful violation" of the law, it is trying to pull

a fast one on Congress. For no other industry is it necessary in a civil case to prove a "willful violation" of the law.

The industry also argues that sellers of guns should not be liable for the criminal acts of others. However, the courts have long recognized that if a defendant's *negligent* conduct enables someone else to commit a criminal act, the defendant can be liable for the victim's injury. If a landlord fails to repair the lock on the door of an apartment building, allowing a rapist to attack a tenant, the landlord may be liable for the tenant's injuries. Similarly, the negligence of Bull's Eye Shooter Supply enabled the snipers to have access to a military-

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style assault rifle that was perfectly suited to their deadly task. In these examples, we can all agree that the rapist, and the snipers, should be prosecuted under our criminal justice system to the fullest extent of the law. This should not mean, however, that those whose negligence contributed to the criminal acts should escape accountability to the victims of their negligence.

Finally, the gun lobby insists that if irresponsible gun dealers are a problem, they should be dealt with by those who are charged with enforcing our gun laws, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). Indeed, ATF recently

revoked the dealer license of Brian Borgelt, owner of Bull's Eye, because of the shop's shameful record of "losing" not only the snipers' rifle, but over 230 other guns in the last three years alone. Again, the gun lobby's argument is a *non sequitur*. ATF's revocation of Borgelt's dealer license is totally justified, but, at best, it means only that he cannot continue to sell guns. (Apparently ATF recently granted a new license to operate Bull's Eye to a good friend of Borgelt's.) The license revocation does nothing to make him or his business accountable for the damage his negligence already has caused. It does nothing to compensate the victims of his negligence for their injuries. At the same time the gun industry makes this argument, it is well aware that ATF license revocations are rare because of the statutory constraints on ATF's power carved into the law by the NRA's successful lobbying. Having protected the industry from the threat of a strong enforcement agency, the gun lobby now seeks to protect it from the threat of civil liability as well.

The gun lobby's arguments are part of its strategy to "fog up the mirror" to prevent the American people from seeing S. 659 for what it is: crass special interest legislation to exempt gun sellers from the legal rules that apply to every other industry in America. Fifty-four Senate co-sponsors of this bill are still in the fog. We must ensure the rest of the Senate has a clearer view.

Dennis A. Henigan
Director, Legal Action Project

Brady Center Report Reveals “Smoking Guns”

A day after the House of Representatives passed a bill granting the gun industry immunity from lawsuits, the Brady Center released a report detailing dramatic evidence against the gun industry uncovered in the municipal lawsuits. Smoking Guns: Exposing the Gun Industry’s Complicity in the Illegal Gun Market proves that the gun industry has known for years that its distribution system allows guns to flow to the illegal market and that additional safety features on guns could prevent accidental shootings. The industry, however, has refused to take action. In fact, the industry went to great lengths to silence those among its ranks who tried to speak out.

Over the years, insiders like Robert Ricker, a former National Rifle Association lawyer and industry trade association leader, Robert Hass, a former Smith & Wesson executive, Carole Bridgewater, a former officer of the National Alliance of Stocking Gun Dealers, and Robert Lockett, an outspoken dealer, all pointed out problems in firearms distribution and possible solutions. They were all ostracized by their colleagues. Trade association official Doug Painter read a federal report in 1993 that discussed the problem of corrupt gun dealers. When he tried to convince his superiors that the industry should take a “proactive” stand to address the problem, his suggestions were rejected

without anyone else even reading the federal report that sparked Painter’s concerns. When manufacturer Smith & Wesson signed an unprecedented agreement with the federal government, agreeing to make its guns safer and tighten control over distribution, it was shunned by the industry despite the industry’s own research showing that a majority of Americans supported the Smith & Wesson agreement. After a management turnover at the company, the agreement was repudiated and Smith & Wesson was welcomed back into the industry “family.”

The report details evidence that several different federal agencies warned the gun industry of potential trafficking problems involving straw purchases (where someone with a clean record obtains a gun on behalf of someone who is prohibited from purchasing one), large-volume sales, and gun shows. The industry is also aware that guns are transferred to prohibited purchasers before a Brady Act background check is complete. Under federal law, a sale may be completed if a response to a background check is not received within three business days. Recognizing this problem, Wal-Mart Stores recently implemented a nationwide policy to wait to proceed with a sale until a Brady Act check is complete, even if it takes longer than three days.

Inadequate security at manufacturing plants is also a major problem.



Manufacturer Kahr Arms is being sued because its complete lack of security and employee screening allowed a crack-addicted felon to steal guns, one of which was used to kill a young man and then was found, loaded, by a four-year-old child in the yard of an apartment building near the site of the murder.

The industry also knows when dealers are corrupt and refuses to stop selling to them. RNJ Guns in California continued to receive guns from manufacturer Heckler & Koch even after RNJ’s owner and six employees were indicted for federal firearms violations. After Bull’s Eye Shooter Supply of Tacoma, Washington, became infamous for arming the Washington, DC, snipers and for “losing” hundreds of other guns, manufacturer Bushmaster said it would not stop selling to it and declared that it still considered Bull’s Eye a “good customer.”

Manufacturers have long claimed it was impossible to make guns safer when, in fact, the technology has existed for years for devices like integral locks that could prevent unauthorized use of stolen guns. Manufacturers claim that the technology is costly or would not work. Deposition testimony of company engineers, however, was just the opposite; they admitted that the locks could have been included at a cost of just a few dollars per gun.

Despite years of notices from the likes of the Bureau of Alcohol, Tobacco and Firearms, Department of Justice, Department of Treasury, and other federal and state agencies, gun company executives repeatedly claimed that they were unaware of distribution problems that supply the illegal gun market. They further claimed

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with no chance to present any evidence to a jury. The House of Representatives passed a companion bill, H.R. 1036, on April 9, 2003, on the day the world was distracted by pictures of toppling statues in Baghdad. President Bush has said that he will sign the bill if it passes the Senate.

This unprecedented immunity bill would mark the first time any industry received blanket immunity for its negligent conduct. It would override the laws of 44 states and immunize reckless sellers like Bull’s Eye and Bushmaster from having any accountability to the victims of their irresponsible actions. The gun industry is already exempt from federal consumer product safety standards for unsafe or faulty designs of its firearms.

The Brady Center filed the lawsuit, *Johnson v. Bull’s Eye Shooter Supply*, on January 16, 2003, on behalf of the families of sniper victims Conrad Johnson and James L. “Sonny” Buchanan Jr. On June 3, 2003, seven additional victims joined the case – Rupinder “Benny” Oberoi, Iran Brown and the families of Hong Im Ballenger, Premkumar Walekar, Sarah Ramos, Lori Lewis-Rivera and Linda Franklin. In addition to Bushmaster and Bull’s Eye, sniper suspects Mohammad and Malvo are also named in the suit. The suit was filed in Tacoma, Washington, home of Bull’s Eye. The Seattle law firm of Luvera, Barnett, Brindley, Beninger & Cunningham is co-counsel in the case. ●

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Court Denies Gun Industry Attempts to Dismiss Victims' Cases

West Virginia Circuit Court Judge Irene Berger has denied requests by gun maker Sturm Ruger and West Virginia gun dealer Will Jewelry and Loan to dismiss the pending case against them brought by Officer Kenneth McGuire and Detective David Lemongello after they were shot and seriously injured with a Sturm Ruger pistol trafficked from the gun shop. The dealer sold twelve handguns, including the Ruger, to a straw purchaser for a gun trafficker. Sturm Ruger had no policy against such high-volume sales. Judge Berger recognized the validity of the officers' case, ruling that "given the inherent nature of firearms and that Defendants have an ability to guard against negligent distribution of firearms, this Court finds it is not unreasonable to place this duty on the

manufacturer and/or seller of a firearm. Imposing this duty simply requires the Defendants to act reasonably given the nature of their business, and is the same duty that is required daily of other businesses." *Lemongello v. Will Co., Inc.*, 2003 WL 21488208 (W.Va. Cir. Ct. June 19, 2003). The Brady Center is joined by co-counsel, prominent West Virginia attorney Scott Segal of the Segal Law Firm.

On April 2, 2003, Lemongello testified before a subcommittee of the U.S. House of Representatives about the effect of the pending immunity bill on the case. The immunity bill would likely overturn the judge's ruling and require the officers' case to be immediately dismissed.

The immunity bill would also threaten the trial court's ruling in *Hernandez v. Kahr, Inc.*, No. 02-1747C (Mass. Super. Ct. Apr.

7, 2003). In that case, the family of 26-year-old shooting victim Danny Guzman filed a lawsuit against Worcester,

Massachusetts, gun manufacturer Kahr Arms. Kahr Arms' flagrant disregard for security on its premises directly contributed to Danny's death by allowing guns to be stolen by a drug-addicted employee. The court's ruling allowing plaintiff's claims for negligence and public nuisance to go forward against Kahr Arms sends a clear signal to gun makers that they will pay the consequences if they run their manufacturing plants in a negligent and reckless manner. The Brady Center is co-counsel with Hector E. Piñeiro and Robert H. Beadel of Worcester, Massachusetts. ●

Indiana Supreme Court Sides With Brady Center, Rejects NRA View in Precedent-Setting Gun Storage Case

In a breakthrough ruling on the legal duties of gun owners, the Indiana Supreme Court sided with the Brady Center over the National Rifle Association and held that gun owners must exercise reasonable care to prevent dangerous adults from getting access to firearms. The unanimous Court, in *Estate of Heck ex rel. Heck v. Stoffer*, 786 N.E.2d 265 (Ind. 2003), ruled in April after hearing oral arguments and receiving legal briefs filed by the Brady Center and the NRA. It is the first state supreme court to hold that gun owners must secure their guns from dangerous adults, following cases that have held gun owners liable when children obtained firearms and accidentally shot or killed friends.

In *Heck*, the parents of a drug-addicted felon on the run from police allowed their son, who they described as having a "death wish," to have unfettered access to their home where they kept their unlocked gun. They allowed their son to "hide out" from police at their lake cottage to avoid arrest. Based on their son's history of crime, they locked their checkbook when their son visited, but not their handgun. In August 1997, their son took their gun and used it to kill Allen County Officer Eryk T. Heck in an attempt to avoid apprehension. The NRA filed its brief on behalf of the felon's parents, arguing that as gun owners they had a constitutional right to choose not to secure their gun.

The Court ruled that the shooting was highly foreseeable and that "[i]t is a responsible gun owner's duty to exercise reasonable care in the safe storage of a firearm." The Court noted that gun theft "is depressingly common. Over a quarter million firearms are stolen each year, and this arsenal is used in thirty-five percent of the crimes involving guns." The Court further explained that "[t]hese statistics take on greater significance when juxtaposed with the relatively slight burden of reducing the risk of gun theft."

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"A RECKLESS GUN DEALER ALMOST COST ME MY LIFE. DON'T LET THE GUN LOBBY AND CONGRESS PUT HIM ABOVE THE LAW."



— Kenneth McGuire, Detective / Orange, New Jersey

Detective Kenneth McGuire's career as an Orange, New Jersey Detective was scuffed out when he was gunned down by a career criminal with a rap sheet a mile long.

The gun used in the crime didn't fall from the sky. The criminal got it from a gun trafficker who bought it along with 11 other handguns from a reckless West Virginia gun dealer. Why would anyone want to buy all these handguns except to sell them to criminals? Why would a dealer sell them, knowing they were destined for criminal hands?

A West Virginia judge recently gave the green light to McGuire's lawsuit seeking to hold this gun dealer accountable for its profitable but deadly bulk sale of handguns to a gun trafficker.

The Gun Lobby and some Members of Congress now want to deny him his day in court.

The Gun Lobby is pushing Congress to give irresponsible gun dealers special protection that no other industry enjoys — sweeping immunity from legal action. Don't let Congress block the courthouse doors to Ken and countless other gun violence victims.

Brady Campaign



To Prevent Gun Violence
 Divided With the Million More March
 Renewed Gun Laws Now Free!

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YOU CAN HELP.

Please contact your Senator and tell them to oppose S. 659 and also tell your Representative to oppose H.R. 1036.
 Senate: (202) 224-3121
 House: (202) 225-3121

The Court rejected arguments by NRA attorneys that gun owners have a constitutional right to store guns however they wish. The Court also went out of its way to criticize the NRA for opposing common-sense safe gun storage practices, pointing out that even the NRA's own website admits that "[d]ozens of gun storage devices, as well as locking devices that attach directly to the gun, are available."

Within days of the NRA's high-profile

defeat, gun lobby-backed legislators attempted to ram through the Indiana legislature a bill to undo the decision. The bill would have immunized gun owners from liability for irresponsible gun storage that leads to foreseeable deaths or injuries. The bill was defeated by a three-vote margin in the state House days before the legislative session ended, although gun lobby allies have promised to reintroduce it when the legislature reconvenes. ●

New Jersey Cases Allowed to Proceed to Trial

After almost four years of legal proceedings, the cities of Newark, Camden, and Jersey City, New Jersey, are now finally able to go forward with their cases against the gun industry. Newark and Camden each brought their suits against gun manufacturers, distributors and dealers in New Jersey in June 1999, while Jersey City brought suit in March 2002. Since then, the cases have been through a series of procedural rulings, resulting in a breakthrough appellate court ruling issued on March 11, 2003, in the Newark case allowing the cities to proceed to trial.

The cities allege that the gun industry has been negligent and created a public nuisance by distributing guns without precautions to prevent them from flowing into the illegitimate market and into the hands of criminals and other prohibited purchasers. The continuing necessity to respond to the public nuisance of illegal guns costs local communities millions of dollars in law enforcement, prosecution, emergency response, and school security. The cities seek damages as well as a court order requiring the defendants to exercise reasonable care in their distribution and sales practices.

The New Jersey appellate court agreed with plaintiffs, stating, "New Jersey has a strong public interest in protecting the public from the violence and social cost associated with the criminal misuse of firearms. In our view, such a policy would be undermined by concluding that . . . defendant [gun makers] should be insulated from liability as a matter of law." *James v. Arms Tech., Inc.*, 820 A.2d 27 (N.J. Super. Ct. App. Div. Mar. 11, 2003).

In other municipal cases against the gun industry:

- After being handed a defeat by the Illinois Appellate Court in the City of Chicago's case, defendants appealed the decision to the Illinois Supreme Court on April 9, 2003. The appellate court found that the City of Chicago and Cook County, Illinois, could proceed with their lawsuit against gun manufacturers, distributors and

eleven gun dealers for claims of public nuisance. The Brady Center filed an amicus brief to the Supreme Court on behalf of the International Brotherhood of Police Officers and the Hispanic American Police Command Officers Association asking the Supreme Court to affirm the lower court's decision. The Brady Campaign united with the Million Mom March also filed an amicus brief. The Illinois Supreme Court will hear this case in the fall. *City of Chicago and County of Cook v. Beretta U.S.A. Corp.*, Nos. 95253, 95243, 95280 (Supreme Court of Illinois).

- Although the City of Cincinnati achieved a landmark ruling in the Ohio Supreme Court allowing its case to advance, the City Council recently voted to drop its lawsuit. Following the state Supreme Court victory, the case was sent back to a trial court judge, Judge Robert P. Ruehlman, who was openly hostile to the City's case. The City Council cited difficulties in funding the case, caused by the current economy, in deciding to end the fight. The case was dismissed without prejudice, so if circumstances change, the City can re-file. *City of Cincinnati v. Beretta U.S.A. Corp.*, No. A9902369 (Court of Common Pleas, Hamilton County, Ohio).

- On April 10, 2003, a trial court judge in San Francisco granted gun manufacturers' and trade associations' motion for summary judgment, dismissing the cases brought by twelve California cities and counties. Judge Vincent P. DiFiglia, however, allowed the cases to proceed against a group of retail dealers and distributors. *People v. Arcadia Mach. & Tool, Inc.*, 2003 WL 21184117 (Cal. Super. Ct.). Vowing to continue their fight to hold the gun industry accountable, all twelve of the California municipal plaintiffs have appealed the ruling dismissing the manufacturers and trade associations to the First District Court of Appeal in San Francisco.

For updates on these and other municipal suits against the gun industry, go to www.gunlawsuits.org. ●

Judge Rejects Verdict Against Gun Distributor

On January 27, 2003, Florida Circuit Court Judge Jorge Labarga threw out a \$1.2 million verdict against Valor Corp. entered on behalf of the family of slain Lake Worth Middle School teacher Barry Grunow.

In the first verdict of its kind, the jury found a gun company liable for distributing firearms without safety features to prevent their use by children and other unauthorized users. The shooter, Nathaniel Brazill, stole the gun five days before the murder from a family friend. The .25 caliber pistol manufactured by Raven Arms, commonly referred to as a "Saturday Night Special," and its ammunition were stored in an unlocked box in an unlocked dresser drawer. During the four-week trial, jurors saw a prototype of the kind of built-in locking device that would have prevented Brazill's unauthorized use of the gun. The device was created by a gunsmith in a small workshop in a few days with parts that cost only \$3 to \$4, despite claims by the industry that this kind of safety feature is technologically or economically impractical.

Judge Labarga threw out the verdict because he said the award was inconsistent since the jury also determined that the gun was not defective and had functioned as intended. The case is currently on appeal in the Florida state court system. ●

that law enforcement agents told them not to keep track of trace requests and other indicators of trafficking, but not one of them could produce a document or even

name an agent who supports this claim.

Were it not for lawsuits against the gun industry, the public would be unaware of how the industry knowingly supplies the

illegal market. To read a complete copy of *Smoking Guns: Exposing the Gun Industry’s Complicity in the Illegal Gun Market*, go to our website, www.gunlawsuits.org. ●

Highlights from “Smoking Guns”

- When the owner and six employees of gun dealer RNJ Guns & Ammo were arrested in 1996, manufacturer Heckler & Koch initially terminated its agreement with the dealer, but then changed its mind, stating, “[I]t is not our intention to turn away business.”
- Gun trafficker Sean Twomey used an obviously falsified Federal Firearms License and had no California dealer license, but major distributors such as Southern Ohio Guns delivered large amounts of guns to his apartment without question. From prison, Twomey said, “They could care less how many guns I ordered.” When a Southern Ohio employee was asked what Twomey did with all the guns he bought, she replied, “It really is none of my business.”
- An employee of Carter’s Country, a Texas dealer, said that when customers volunteered the fact that they were felons, “we were directed on several occasions, find out if they’ve got somebody with them or can get somebody to come do the legal work to buy the gun.”
- Beretta’s Italian president, Ugo Beretta, conceded that manufacturers should not supply dealers who engage in suspect large-volume sales. He mistakenly believed that his American company only sells through dealers that follow these common sense practices because “the logic of the matter requires that this is what should be done.”
- Robert Ricker, who spent nearly 20 years representing the interests of gun manufacturers, distributors, dealers and owners, filed an explosive sworn declaration in court that exposed the industry’s lies and cover-ups.
- Ricker said the industry has long known that guns enter the illegal black market through “straw sales, large-volume sales to gun traffickers and various other channels by corrupt dealers or distributors who go to great lengths to avoid detection by law enforcement authorities.” The current distribution system “encourages and rewards illegal activity by a few corrupt dealers and distributors,” while putting lawful and conscientious dealers at an economic disadvantage.
- When Ricker and the trade industry group he headed, ASSC, pushed the industry to take voluntary steps to reduce gun violence, even working with the Clinton Administration in October 1997, the industry tried to silence him. Robert Delfay, the head of rival industry group NSSF, wrote a memo that said, “Someone in a position of authority at ASSC needs to direct Mr. Ricker to become silent.” ASSC was forced to fold itself into NSSF. Ricker resigned and Delfay continued to lead the organization.
- Carole and Bill Bridgewater owned and operated a gun store in North Carolina; they also served as officers of the National Alliance of Stocking Gun Dealers. Carole published NASGD’s *The Alliance Voice*, a monthly magazine, for which Bill often wrote. In his editorials, Bill noted that the minimal requirements for obtaining a Federal Firearms License created “one of the most efficient black markets in firearms in history.” Bill discussed the problems with gun show sales, noting “[t]here are very few in this country who want a firearm for illicit purposes who do not know that they can get anything they want at the gunshows.” Carole echoed her husband’s concerns: “We as an industry have failed to ‘police’ ourselves in the past. We must do so now.” Bill also served on the board of ASSC. When his board seat came up for re-election, the pressure was so great to oust him that he resigned for the greater good of the group.
- Robert Lockett, an outspoken Kansas dealer who was named NASGD’s 1994 Dealer of the Year, drafted a column in 1999 for *Shooting Sports Retailer* magazine that manufacturers and distributors should “wake-up” and control their distribution systems: “IF YOU DO NOT KNOW WHERE AND HOW YOUR PRODUCTS ARE ULTIMATELY BEING SOLD – YOU SHOULD HAVE KNOWN OR ANTICIPATED THAT THEY WOULD BE ILLEGALLY SOLD AND SUBSEQUENTLY MISUSED.” The draft copy was circulated among industry leaders and a story appeared about it in the *Wall Street Journal*. When the final column appeared in the magazine, significant edits had been made, by whom Lockett did not know. The magazine would not publish any further columns from Lockett.
- Manufacturer Sturm Ruger surveyed its dealers when it heard about issues in its distribution system. Dealer after dealer outlined problems and how they could be solved. When the company’s marketing manager presented the responses to founder and chairman William Ruger Sr., he was told to drop “the whole thing.” Despite glaring violations of the law and company policies, nothing was done because “when [William Ruger Sr.] tells you to do something, I do it, and it did not go any further.”
- ATF repeatedly put manufacturers on notice of distribution problems by publishing periodic reports and through crime gun trace requests; it urged them to police themselves and even offered help in determining problem dealers and distributors in the manufacturers’ distribution chains. No manufacturer took advantage of this.
- The manufacturers’ claim that they have no control over their distributors and dealers is contradicted by various financial terms in distribution agreements. They require such things as maintaining minimum inventory levels; observing specified price terms; obeying rules about advertising; allowing manufacturers to inspect sales premises, inventory, and sales records; submitting an accurate inventory whenever asked; and submitting financial statements each year so manufacturers can make credit determinations. ●

Junk Gun Manufacturer Found Liable For Making Unsafe Gun

In April 2003, a California jury held a gun manufacturer liable for dangerous design of a handgun. The case, Maxfield v. Bryco Arms, Inc., No. 841636-4 (Cal. Super. Ct. Apr. 21, 2003), was brought with the assistance of the Brady Center by Brandon Maxfield, who was rendered a quadriplegic in an accidental shooting. The jury found Bryco Arms liable for negligence and defective design. The Bryco pistol discharged while a family friend was trying to unload it. Bryco designed the gun so that it could only be unloaded when the safety was off. The gun also had no chamber-loaded indicator, so a user could easily be unaware that it was loaded.

The jury awarded Brandon \$50.9 million dollars in compensatory damages. However, with a bill that would provide immunity to the gun industry pending in Congress, Brandon may be barred from recovering anything from Bryco. The bill, S. 659, would undo the work of the jurors in this case, nullifying their verdict. Although the gun industry touts this legislation as a bar to allegedly frivolous lawsuits, the effect of the bill would be to lock the courthouse door to victims like Brandon Maxfield who have repeatedly proven that their cases are anything but frivolous.

The Verdict Is In: Gun Makers Help Cause Criminal Gun Market

After nearly two months of trial, a federal judge in New York issued a lengthy ruling sharply critical of the gun industry, finding its sales practices funnel guns to criminals and contribute

to the gun violence that plagues communities around the nation. The July 2003 decision by U.S. District Judge Jack B. Weinstein in NAACP v. Acusport Corp., 2003 WL 21689641 (E.D.N.Y. July 21, 2003), found that gun makers have contributed to a public nuisance, but also determined that plaintiff NAACP was not entitled to relief since African-Americans did not suffer unique harm as a result of the industry's misdeeds.

Judge Weinstein ruled that "[t]he evidence presented at trial demonstrated that defendants are responsible for the creation of a public nuisance and could—voluntarily and through easily implemented changes in marketing and more discriminating control of the sales practices of those to whom they sell their guns—substantially reduce the harm occasioned by the diversion of guns to the illegal market and by the criminal possession and use of those guns." His ruling will bolster claims brought by municipalities and individual gun violence victims around the country.

The decision was based in large part on the first courtroom testimony given by industry whistleblower Robert Ricker, a former gun industry trade association leader. Mr. Ricker first approached the Brady Center two years ago, offering to share his inside knowledge of the gun industry's deliberate strategy to do nothing to curb the conduct of rogue gun dealers. Ricker testified before Judge Weinstein that the gun industry has long been well aware that its practices supply the criminal gun market, but gun makers have intentionally rebuffed efforts from inside and outside the industry to prevent criminal access to guns. Hard-liners in the industry ultimately forced Ricker out of his position and eliminated the association he headed because of his efforts

to reform the industry. The ruling is a tribute to Bob Ricker's courage and determination to have the truth be told.

Brady Center Files Second Amendment Amicus Briefs

In February 2003, the CATO Institute, a libertarian think-tank, filed a lawsuit on behalf of several District of Columbia residents seeking to strike down the District's longstanding handgun ban as unconstitutional under the Second Amendment. Parker v. D.C., No. 1:03-cv-00213 (D.D.C. Feb. 10, 2003). A separate suit by the National Rifle Association was filed in April. Seegers v. Ashcroft, No. 1:03-cv-00834 (D.D.C. Apr. 4, 2003). Both lawsuits are inspired by the recent decision by the Fifth Circuit Court of Appeals in Emerson v. United States, 270 F.3d 203 (5th Cir. 2001), cert. denied, 536 U.S. 907 (2002), which for the first time held that individuals have a Second Amendment right to gun ownership for personal purposes unrelated to service in a "well-regulated militia."

Fortunately, the Fifth Circuit's reasoning in Emerson has been rejected by every federal appeals court to consider the issue since. In December, the Ninth Circuit issued a stinging repudiation of the Emerson court's flawed reasoning. Silveira v. Lockyer, 312 F.3d 1052 (9th Cir. 2002), petition for cert. filed, July 3, 2003 (No. 03-51).

To help expose the Emerson court's errors, the Brady Center filed amicus briefs in both cases pointing to recent historical scholarship that indicates that the Second Amendment was fully grounded in service in the "well-regulated Militia" in place when the Bill of Rights was ratified.

Brady Center Files Brief Supporting Rhode Island Concealed Carry Policy

The Brady Center filed an amicus brief supporting Rhode Island's decision to deny two men concealed carry permits in a case pending before the Rhode Island Supreme Court, Mosby v. McAteer, No. 01-161-A.

The plaintiffs who were denied permits to carry concealed handguns sued the Attorney General's office and the Rhode Island Bureau of Criminal Identification for violating their due process rights. Under state law, the Rhode Island Attorney General has the discretion to grant or deny concealed handgun permits by determining "need" when reviewing applications.

The brief was filed on behalf of the Brady Center, the Rhode Island Police Chiefs' Association, and the Rhode Island Chapter of the Million Mom March. The parties urged the court to uphold the lower court's decision allowing the Attorney General to decide when to issue these permits. The lower court had found that because the Rhode Island constitution does not provide a right to carry a loaded concealed gun in public, the plaintiffs could not require the Attorney General to follow elaborate procedures before denying the permits. Plaintiffs argued that the right to bear arms in the Rhode Island Constitution requires that the concealed weapons statute be administered as a "shall issue" law, removing the Attorney General's discretion over the issuance of concealed weapons permits. The Brady Center brief highlighted research demonstrating that most states experience increases in violent crime, murder, and robbery when they adopt such "shall issue" laws. ●

Victims Of Gun Violence Cry Out: "Let Us Be Heard!"

At a July 16, 2003, Capitol Hill press conference urging the Senate to stop S. 659, the NRA-backed bill that would give sweeping immunity from lawsuits to the gun industry, the message was clear: victims want their day in court.

Kenneth McGuire, a former New Jersey police officer, told of a day in January 2001 when he and his partner David Lemongello were almost killed by a criminal with a gun that had been sold by a West Virginia pawn shop to a straw purchaser for a gun trafficker.

Lynn Dix told the tragic story of how her 15-year-old son Kenzo was killed by another child because the Beretta gun, left accessible by the child's parents, did not have a simple safety feature to warn that the gun was loaded.

Sherialyn Byrdsong recounted a terrible day over the July 4th weekend, 1999, when her husband, beloved Northwestern basketball coach Ricky Byrdsong, was brutally gunned down by a white supremacist with a gun supplied by a retail dealer to a gun trafficker.

Speaking in his native Spanish through Hector Piñero, an attorney serving as co-counsel in their case with Brady Center attorneys, Juana and Berjilio Hernandez described how their son and nephew Danny Guzman was killed on Christmas Eve 1999 in front of a Worcester, Massachusetts, nightclub with a gun stolen from the Kahr Arms manufacturing facility, due to its utter lack of security.

Tenille Jefferson relayed the story of how her seven-year-old son Nafis was killed by a friend with a gun found under an abandoned parked car. The gun was one



James Ballenger III, husband of Hong Im Ballenger, who was shot and killed by the snipers outside the beauty store she managed in Baton Rouge, Louisiana, urged the Senate to stop S. 659. Former Montgomery County Chief of Police Charles Moose, left, also spoke out against the bill.

of many purchased by a drug-addicted gun trafficker from an irresponsible dealer.

James Ballenger III, Vickie Snider and Rupinder "Benny" Oberoi brought to life the horror of the sniper shootings from last October. Mr. Ballenger's wife and Ms. Snider's brother were killed with a gun that had mysteriously disappeared from a Tacoma, Washington, gun shop, one of 238 such guns. Mr. Oberoi was wounded by the snipers, but survived.

In every one of these cases, judges across the country have held that these victims have legitimate cause to sue and have the right to let a jury decide their cases. ●

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