

Legal Action Project Celebrates Twenty Years

A lot has changed since the Legal Action Project was founded twenty years ago.

In 1989, public interest lawyers had taken on the automobile industry, Big Tobacco, and polluters, but none sought to have gun dealers pay the price for supplying traffickers with crates full of guns to sell on the streets, or for selling guns to straw purchasers with a wink and a nod. When gun manufacturers sold guns to corrupt distributors and dealers who supplied the criminal market, they knew they would never have to pay for their irresponsible practices. And whenever the National Rifle Association and its allies in the gun lobby rushed lawyers into court to argue that common sense gun laws should be struck down, there were no “lawyers for common sense gun laws” to oppose them. No one had successfully argued in court that gun manufacturers should be held accountable to victims, either for their contribution to the criminal gun market or for failing to make their guns as safe as technologically feasible. No one had successfully argued that gun dealers should be liable for supplying gun traffickers, or that public nuisance law could be applied to clean up the gun industry.

In 1989, the Legal Action Project was created to change all that.

In the two decades since its formation, LAP attorneys have represented victims of gun violence in courts throughout the country, establishing a body of law holding that those who manufacture, distribute and sell guns owe a duty to engage in their business responsibly, and they may be liable for contributing to criminal or unintentional shootings when they fail to do so. LAP attorneys have won precedent-setting rulings in



Gun violence victims represented by the Legal Action Project. Clockwise from top left: Officer Ken McGuire; Daniel Williams; Anthony Oliver, center, with friends; Premkumar Walekar with wife Margaret; Danny Guzman with cousin; Mark Tucker with wife Patricia; Nafis Jefferson; Kenzo Dix with mother Lynn

Massachusetts, Ohio, West Virginia, Indiana, New Jersey, Pennsylvania, Washington, and elsewhere, holding that gun dealers who supply gun traffickers may have to compensate individuals victimized by those guns – and gun manufacturers may be liable for negligently supplying such dealers. As a result of these rulings, gun companies have paid millions of dollars to families whose loved ones have been killed or gravely wounded by gun violence, and some gun sellers have agreed to reform their business practices, going beyond what the law requires to prevent supplying the criminal market.

In other LAP cases, courts held – for the first time – that gun manufacturers may have to pay the price for unintentional shootings that could have been prevented if they had included life-saving safety devices in their guns. When LAP brought its landmark child-proof gun case in California in 1995, gun manufacturers scoffed at the notion that guns should include internal

locks to prevent children and other unauthorized persons from firing them.

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The Brady Center to Prevent Gun Violence is a nonprofit, education, research, and legal advocacy organization established in 1983 to reduce the tragic toll of gun violence in America.

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I am writing this as the new former Director of the Brady Center's Legal Action Project. Recently I was honored to be named to a newly-created post – Vice President for Law and Policy – with overall responsibility for the legislative, policy and litigation work of the Brady Campaign and Brady Center. The Center's Legal Action Project will march forward, stronger than ever, under its new Director, Jon Lowy. Jon has been one of our star lawyers for over a decade. No one is more dedicated to vindicating the legal rights of gun violence victims and protecting our lifesaving gun laws against legal attack.

Jon takes over our litigation program as we face a new era of challenge and opportunity. The Supreme Court's historic ruling in *District of Columbia v. Heller* – interpreting the Second Amendment – to guarantee a personal right to possess guns for self-defense in the home – alters the legal landscape for gun control in uncertain ways. There is no question that the gun lobby, as well as criminal defense lawyers, will seek to use the *Heller* ruling as a weapon against gun control laws across-the-board.

*The fight to protect our nation's
gun laws can be won, but it will
require constant vigilance
and hard work in courtrooms
across the nation.*

As explained in detail in the last issue of *Legal Action*, however, the *Heller* majority opinion indicates that a broad range of gun control laws should be “presumptively legal,” even under the majority's view of the Second Amendment. The fight to protect our nation's gun laws can be won, but it will require constant vigilance and

hard work in courtrooms across the nation. The work of our Legal Action Project will be more important than ever in the post-*Heller* era.

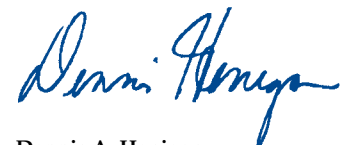
*The work of our Legal Action Project
will be more important than ever
in the post-Heller era.*

In my first column for *Legal Action* almost twenty years ago, I quoted an editorial in the *National Law Journal* calling on lawyers to “aid in the battle to break the vicious cycle of violence.” We are proud to have enabled lawyers to respond to that call. Scores of attorneys, from solo practitioners to partners in the nation's largest law firms, have devoted countless pro bono hours to our cases. In every case, these lawyers have worked hand-in-hand with our incredibly talented and knowledgeable staff of in-house lawyers.

As the Legal Action Project enters its 20th year, it is worth reflecting on some of the Legal Action Project's accomplishments that will stand us in good stead as we face a new set of challenges. This issue highlights some of these accomplishments.

Because the Legal Action Project charges no fees for its work, we are entirely dependent on the generosity of private donors and charitable foundations. We are deeply grateful to all those whose contributions have made our work possible.

With your continued support, twenty years from now we will look back and realize that our first twenty years laid the foundation for even greater success to come.



Dennis A. Henigan
VP for Law and Policy

This issue marks the first *Legal Action* since I took over from LAP's founder, Dennis Henigan, to become the new Director of the Legal Action Project. Denny has been promoted to a new position with broader responsibilities in the organization. That's the price you pay when you know more about gun policy and law than just about anybody, as Denny does. Fortunately for LAP, we can still rely on Denny's expertise and wise counsel. In fact, he's just down the hall.

Denny formed a public interest law firm to reform the gun industry.

I am humbled and honored to follow in Denny's footsteps as Director. Almost 20 years ago Denny did something that had not been done before: he formed what was essentially a public interest law firm that would use the civil justice system to reform an industry – the gun industry. Since then the Legal Action Project has represented victims of gun violence, changing the law and the way the gun industry does business. The Legal Action Project has defended gun laws from legal challenges and LAP reports have provided the factual basis to inform the gun policy debate, exposing how our weak gun laws facilitate an irresponsible gun industry, and how that industry fuels the criminal gun market.

Working as an LAP attorney for the past eleven years, I am proud

to have played a part in some of our victories, including obtaining over \$4 million in settlements for victims of irresponsible gun sellers. These suits have led several gun dealers to stop engaging in multiple handgun sales, and forced a gun manufacturer to alter its distribution practices. Even where we have not prevailed in the courtroom, our cases have helped save lives. One of the great privileges of my career has been to represent Griffin and Lynn Dix, two extraordinary people who lost their 15-year-old son, Kenzo, in an unintentional shooting. Although the Dixes did not win that case before a jury, they won a far greater victory; the threat of liability encouraged a number of manufacturers to begin including internal locks in their guns, saving countless families from the tragedy suffered by Griffin and Lynn.

As Director, Denny guided all of these efforts, and our entire legal strategy. The accomplishments of LAP under Denny's leadership place him in a rarified echelon of the public interest bar, rivaling the likes of Morris Dees and Ralph Nader – and he didn't even siphon off crucial votes in Florida in 2000.

The next decades should be no less productive. During the Bush years we have taken the gun lobby's best shots, from the Orwellian-named "Protection of Lawful Commerce in Arms Act," to the Supreme Court's Second Amendment decision in *District of Columbia v. Heller*, to the Tiahrt restrictions on crime gun data. But despite the gun lobby's best efforts, the Legal Action Project has emerged strong and energized.

In the coming years, Legal Action Project attorneys will fight in courts across the country to prevent criminals from using the *Heller* decision to escape punishment, and to prevent the gun lobby from invalidating common sense gun laws.

During the Bush years we have taken the gun lobby's best shots... But despite the gun lobby's best efforts, the Legal Action Project has emerged strong and energized.

The Legal Action Project will also continue to seek justice for gun violence victims and to hold scofflaw gun companies accountable in court — while we continue to challenge the scope and constitutionality of the federal gun industry shield law signed by President Bush in 2005. And we will also continue to expose how weak gun laws enable the gun violence problem, and how the gun industry's irresponsible conduct fuels the criminal gun market.

Later this year we will be inviting all of you to help celebrate the 20th anniversary of the Legal Action Project. Our accomplishments could not have been possible without your generous support.



Jonathan E. Lowy
Legal Action Project Director

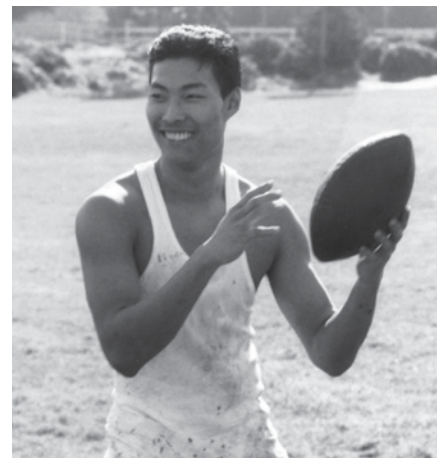
Brady Center Takes Alaska Gun Dealer to Court for Supplying Rifle to Fugitive Murderer

The Brady Center has filed suit on behalf of the family of Simone Young Kim, a 26-year-old man who was tragically shot and killed in Juneau, Alaska on August 4, 2006, while working as a painter at a grocery store. The lawsuit, filed in Alaska state court, legally charges that a Juneau gun dealer negligently supplied the gun to the shooter, even though he was barred from possessing guns.

The shooter, Jason Coday, was a felon, a methamphetamine user, and a fugitive from justice, having fled Nevada with numerous criminal charges pending against him and in breach of his conditions of release. Yet two days before the shooting, he was able to walk into Rayco Sales, a gun shop in Juneau owned by Ray Coxe, and walk out with a Ruger .22 rifle without submitting himself to a background check. Coday was able to do this because, according to Coxe, Coday was shown the gun and was then left alone with it and other unlocked firearms on

the sales floor. Coxe says Coday put cash on the counter and walked out of the shop. Apparently there were no security measures that indicated when a customer or gun was leaving Rayco Sales, much less anything to secure firearms from being taken. Coxe claims that the two video recording systems in the shop happened to malfunction that August day.

The suit alleges that Rayco Sales did not employ the simple security measures recommended by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) as early as August 1996, including never leaving customers unattended while handling firearms, locking firearm display cases at all times, using electronic security stickers on firearms, and placing mirrors in locations within the business to afford increased visibility. Had Rayco Sales followed even some of these recommendations, Coday would not have been able to obtain the Ruger .22 rifle.



Two days after he took the rifle from Rayco Sales, Coday shot Simone Kim, a man he had never met or spoken to, in the head and body multiple times, killing him. Shortly thereafter Coday was arrested. He was convicted of murder and sentenced to 99 years in prison.

The Brady Center's lawsuit was filed against Coday, Rayco Sales, and Ray Coxe, and contends that the gun dealer is liable for Simone Kim's death because he negligently, and potentially illegally, provided the rifle to Coday. Juneau attorney Mark Choate is co-counsel for the Kims. ●

Legal Action Project Celebrates Twenty Years

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But after litigation demonstrated that the safety measures were feasible – and that gun companies risked paying the price if they failed to include them – numerous manufacturers began child-proofing their guns.

Of course, there are still far too many gun dealers and manufacturers who willingly profit from supplying the

criminal market. The gun industry still does far too little to prevent gun violence, and far too much to facilitate and exacerbate it. The Legal Action Project faces our ever-present obstacles – a well-funded and influential industry, weak-kneed politicians – and new ones – gun industry shield laws, special legal exemptions that make it harder for victims of gun violence to obtain

justice in the courts. But as the Legal Action Project welcomes its 20th year of serving gun violence victims and reforming the gun industry, and as we welcome a new Administration that appears far more respectful of victims than its predecessor, it is worth reflecting on how far we have progressed. This issue highlights some of LAP's 20 years of accomplishments. ●

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Legal Action Project Celebrates Twenty Years

Legal Action Project Exposes Gun Industry Insiders

In twenty years of battling the gun industry in court, Legal Action Project attorneys have interrogated gun executives, sales clerks, engineers, traffickers, and hired experts. Here is a sampling of some of what they had to say.

- Q. Now, how in this weighing process do you consider the loss of life? * * *
- A. I know that some people will be killed because of decisions that I have made . . . Some people in accident cases that I have dealt with have been killed, and they wouldn't have been killed if that magazine safety had been in place.
- *Beretta's expert, Seth Bredbury, explaining why Beretta should not be liable for failing to include feasible safety devices in the gun that killed 15-year-old Kenzo Dix in Dix v. Beretta*

- Q. On those occasions when somebody volunteered they had a prior conviction, what was your experience as to what happened then?
- A. If management knew it, the question was put out, "Do you have someone that can do it for you? Is someone with you," along those lines. And the high number salesman, it was a practice * * * I was told, "Well you know, we're dealing with numbers and profit. * * * You should have got somebody to — found out if he had a wife or girlfriend or brother or whatever."
- *Former sales clerk Dana King testifying about straw purchases at a Texas gun dealer in Parmer v. Carter's Country*

- Q. Part of what the Beretta U.S.A. attorneys and sales departments implement is a policy that requires gun dealers who sell Beretta guns to not engage in multiple sales of handguns unless they're satisfied that there's a legitimate need for those guns?
- A. I think so.
- Q. And what is the basis for that statement?
- A. Common sense.
- *President of the Beretta family of gun companies, Ugo Beretta, testifying to his (mistaken) view of Beretta sales policies in People v. Arcadia Machine & Tool, Inc.*

- Q. Now, when you purchased guns from the Sauers shop, did Mr. Sauers ever ask you whether the gun that you were purchasing was for you?
- A. He never asked me questions like that.
- Q. When you purchased guns at the Sauers shop, did Mr. Sauers, or whoever it was behind the counter, ever ask you whether the gun -- if it was for somebody else, whether it was a gift?
- A. I never got asked questions from nobody.
- *Gun trafficker Perry Bruce, who bought 10 handguns from Jon Sauers' Pennsylvania gun shop, testifying in Jefferson v. Sauer's*

" Leaders in the industry have long known that greater industry action to prevent illegal transactions is possible and would curb the supply of firearms to the illegal market. However, until faced with a serious threat of civil liability for past conduct, leaders in the industry have consistently resisted taking constructive voluntary action to prevent firearms from ending up in the illegal gun market and have sought to silence others within the industry who have advocated reform."

— *Former NRA and gun industry lobbyist Robert Ricker in sworn declaration filed in People v. Arcadia Machine & Tool, Inc.*

- Q. [H]as Taurus ever attempted to find out how criminals obtain guns?
- A. Well, let me see, how do people obtain things; I guess we do have some knowledge that people obtain things by buying them or stealing them, I don't know any other way of obtaining anything, or maybe you get it as a gift, I don't know any other way to obtain things. So, I guess we have some knowledge, if criminals have guns, that's probably how they got them.
- Q. And has Taurus ever attempted to find out any more detailed information as to how criminals obtain guns other than what you've given me in your last answer?
- A. I would really have to say we haven't attempted to find out anything more than what we already — what I just told you.
- *CEO of gun manufacturer Taurus, Robert Morrison, testifying in City of Boston v. Smith & Wesson*

1989

Established to take the fight against gun violence into the courts.



1997

Files brief defending the Brady Law in the U.S. Supreme Court. The gun lobby fails to have the entire law invalidated as the Court struck down only a narrow portion.



1994



Files *Merrill v. Navegar, Inc.*, against assault weapon manufacturer Navegar on behalf of victims of the 101 California Street massacre in San Francisco in which eight were killed and another six injured.

1991

Successfully defends Columbus, Ohio ordinance banning possession of military-style assault weapons.



1997

Helps convince the Florida Supreme Court to hold K-Mart liable for selling a gun to a drunk buyer who shot his ex-girlfriend. The jury awarded \$13 million.



20 Years

2003



Files a civil lawsuit for victims of the D.C.-area snipers against the dealer and manufacturer whose gun was used to terrorize the region in the fall of 2002.

2003

Five gun sellers agree to alter their business practices in return for being released from lawsuits by California cities and counties represented by LAP.



2003

Publishes report revealing formerly confidential documents and whistleblower statements establishing gun industry complicity in fueling the illegal gun market.



2004

Wins historic settlements in three lawsuits brought by victims of gun violence, yielding record \$4.4 million from three dealers and a manufacturer.



2003



Wins a unanimous Indiana Supreme Court ruling that gun manufacturers and sellers may be liable to the City of Gary for contributing to the city's gun violence problem.

1998
 Wins in Louisiana Supreme Court, upholding a decision that a gun manufacturer can be held liable for a shooting with a gun that lacked a magazine safety.




2000
 Smith and Wesson becomes the first gun manufacturer to settle cases brought by LAP for cities and counties, agrees to make sweeping changes to business practices.



2001
 Wins in New Mexico Supreme Court, upholding a decision that a gun manufacturer can be held liable for a shooting with a gun that lacked a magazine safety.



1999
 In *Merrill v. Navegar*, wins the first appeals court ruling that a gun manufacturer can be held liable for negligence leading to the criminal use of a gun.



2000
 New York City becomes the 32nd city or county to sue the gun industry, of which LAP represents 26.



Twenty Important Milestones in Legal Action Project History

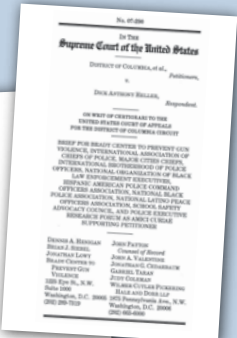
2006
 Reaches a settlement in gun lawsuit.




2006
 Convinces judge to allow two cases on behalf of Philadelphia children killed with guns to proceed despite the federal gun shield law, leading to a settlement against a gun dealer.



2007
 Files brief with the U.S. Supreme Court in the Second Amendment case of *District of Columbia v. Heller*.





2006
 Wins before Indiana Superior Court judge who holds that federal gun industry shield law is unconstitutional.




2007
 Breaks the story that the shooter in America's worst mass shooting, at Virginia Tech, was a prohibited purchaser, helping pass law to strengthen background checks.

2008
 Files two new cases on behalf of gun violence victims in Juneau and Salt Lake City.

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Legal Action Project “Goes Hollywood”

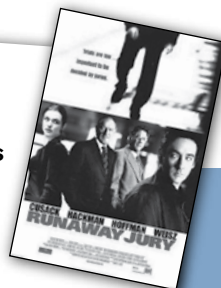
1999

NBC's *Law & Order* emulates LAP cases when “D.A. McCoy” brings criminal charges against an assault weapon manufacturer for its complicity in a mass shooting.



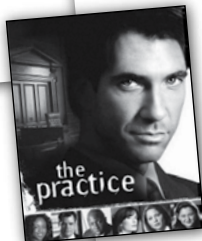
2003

Runaway Jury hits theaters. Relying on LAP lawsuits, the movie stars Dustin Hoffman as an attorney who sues a gun manufacturer.



1999

ABC's *The Practice* models an episode on LAP cases where a couple sues a gun manufacturer for their daughter's murder.



2008

Boston Legal dedicates episodes to concealed carry and shoot-first laws, and the *Heller* decision.



Legal Action Project “Firsts”

During its two decades, the Legal Action Project attorneys have established a number of “firsts,” including:

- Filed the first case ever to go to trial seeking to hold a gun manufacturer liable for the criminal use of its product.
- Won the first appeals court ruling making gun makers liable for negligence that increased the risk of violence.
- Won the first court ruling holding that gun makers could be liable because their reckless sales practices create public nuisances.
- Filed the first municipal lawsuit against the gun industry.
- Revealed the first major gun industry “whistleblower” and introduced his testimony in court cases against the industry.
- Won the first court ruling that gun makers can be liable for failing to install internal safety locks, leading to major safety innovations in gun design.
- Won the first million dollar settlement against a gun dealer for selling a gun to a trafficker who supplied a criminal.
- Won the first settlement for a victim from a gun manufacturer for its role in supplying the criminal gun market.
- Won the first court ruling that the federal gun industry shield law was unconstitutional.

Gun Lobby Pushes Guns in National Parks, Airports, and Workplaces

National Parks



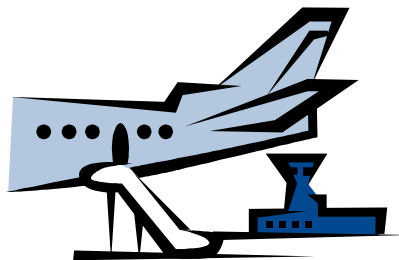
In August 2008, the Brady Center filed formal comments prepared by LAP urging the U.S. Department of the Interior and the Bush Administration to reject a proposed rule that would allow visitors to carry loaded, concealed firearms into national parks and wildlife refuges. The proposed rule would rescind the current consistent federal policy barring concealed carrying. Concealed weapons would be permitted based on the patchwork of state laws that currently regulate each state's parks and refuges.

Current Reagan-era rules allow firearms to be transported in parks and refuges only if they are unloaded and stored or dismantled. These restrictions have helped make the parks some of the safest places to visit in the country. As of the time of publication, the lame-duck Bush Administration appears committed to making the rule final before leaving office.

The Brady Center's comments point out the dangers created by the proposed rule, documenting the many concealed carry licensees who have been arrested for committing violent felonies with their firearms.

The comments note that Utah has granted concealed carry licenses to thousands of non-residents, including citizens of foreign countries, without any background checks or proof of adequate firearms training, and that Florida issued licenses to 1,400 felons.

Atlanta's Airport

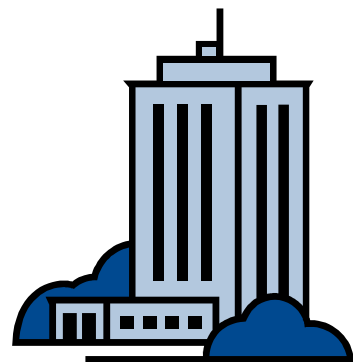


Parks are not the only front in the gun lobby's guns-everywhere campaign. In July 2008, GeorgiaCarry.org filed a lawsuit against the City of Atlanta to force guns into Atlanta's international airport, America's busiest airport. GeorgiaCarry contended that concealed firearms were permitted in the airport under a Georgia law that allowed concealed firearms on "public transportation."

On September 26, 2008, a federal judge dismissed the lawsuit, finding that airports provide private, not public, transportation. The court also noted that airline passengers are forbidden by federal law to carry guns onto airplanes. GeorgiaCarry has filed an appeal of this decision in the United States Court of Appeals for the Eleventh Circuit. The Brady Center plans to file a friend-of-the-court brief defending

the airport's position before the appeals court.

Florida and Oklahoma Workplaces



After several years of defeats, the gun lobby finally succeeded in passing a guns-at-work law in Florida in July 2008. The new law prohibits most employers in the state from barring workers bringing guns onto company property in their vehicles.

The Chamber of Commerce and Retail Federation filed suit to block the law, and the Brady Center filed a friend-of-the-court brief in support of their suit. In July, a federal judge in Tallahassee narrowed the law, but dismissed the lawsuit. No appeal was filed.

On November 19, 2008, the United States Court of Appeals for the Tenth Circuit heard an appeal of our victory in a similar lawsuit filed in Oklahoma, where that state's guns-at-work law was struck down as conflicting with employers' federal duty to provide safe workplaces. ●

Assault Weapons: “Mass Produced Mayhem”

On October 9, 2008, the Brady Center issued a new report on assault weapons. Prepared by the Legal Action Project, *Mass Produced Mayhem* outlines how the availability of assault weapons has altered the balance of power on urban streets between police and criminals, endangering police officers and causing a number of police departments to obtain assault weapons to match the firepower they face. The report also explores the ties between terrorism and assault weapons, and includes a lengthy appendix of more than 200 assault weapon attacks gleaned from available news sources.

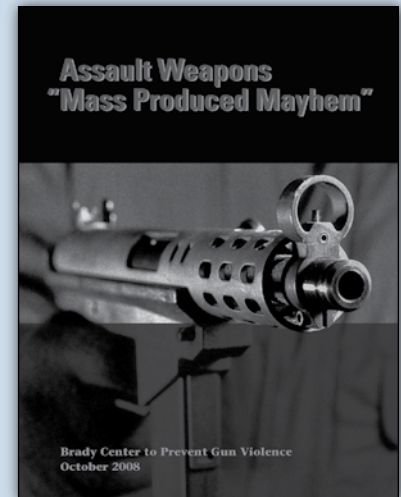
According to the report, in the four years since the federal assault weapons ban expired in September 2004, at least 163 people have been killed and 185 wounded with military-style semiautomatic assault weapons, including at least 38 police officers killed or wounded.

“Our communities are less safe today than they were four years ago, when devastating weapons like AK-47s were not as easily available to thugs and

other dangerous people,” said Paul Helmke, President of the Brady Center, upon release of the report. “We urge policymakers to take action now to get these weapons off the streets.”

The report lists many of those killed with assault weapons since the federal ban, including:

- Stephen Liczbinski, a 12-year veteran of the Philadelphia Police Department, who was killed by bank robbery suspects just days short of his 40th birthday.
- Vicky Armel, 40, a Fairfax County, Virginia police veteran and mother, who was gunned down by an 18-year-old mental patient whose mother helped him practice firing his AK-47 assault rifle. Officer Michael Garbarino died nine days after the attack from his injuries and a third officer was also injured in the attack.
- Siretha White, who died of stray assault weapon fire that came through the windows of her aunt’s Chicago house, where she was at a surprise



party for her 11th birthday, which was two days later. Just over a week earlier, another Chicago child, Starksia Reed, who was a 14-year-old honor student, was killed by stray assault weapon fire as she looked out the window of her home.

- Janet Jorgensen, a 68-year-old grandmother, who was one of eight victims of an assault weapons shooter who attacked shoppers at the Westroads Mall in Omaha, Nebraska during the Christmas season. ●

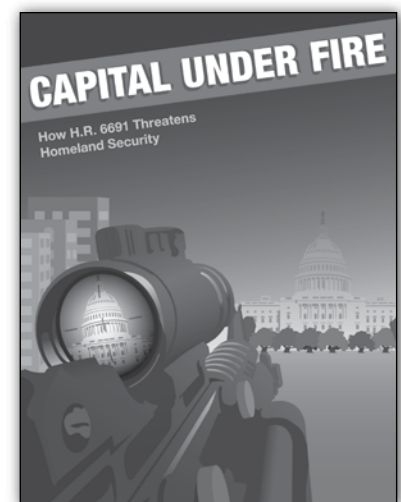
Capital Under Fire: Brady Center Fights NRA Push to Repeal DC Gun Laws

On September 15, 2008, the Brady Center issued *Capital Under Fire*, a report exposing the severe dangers posed by a gun lobby-backed bill, H.R. 6691, that would have eliminated most of the gun laws in the District of Columbia, putting residents, government officials, foreign dignitaries, and tourists at grave risk of harm.

The gun lobby proposal initially would have allowed AK-47s, .50-caliber sniper rifles, and other military-style weapons on the streets of the nation’s capital. After the Brady Center report exposed this danger, the NRA’s allies in Congress were forced to remove some of those dangerous provisions from the bill.

While revised legislation passed the House of Representatives, the bill was blocked in the Senate. The House-passed bill would have removed restrictions barring gun possession by people who have committed many violent or drug-related misdemeanor crimes, by mental patients who had been voluntarily committed to a mental institution, and by the blind. D.C. also would have been barred from passing laws imposing reasonable requirements on gun possession such as basic firearms proficiency.

Proponents of the bill claimed that it was needed to “restore Second Amendment rights in the District of Columbia” even though the Supreme Court’s decision in *Heller* made clear that under the Second



Amendment, a wide range of gun laws are “presumptively lawful.” ●

Ninth Circuit Considers Scope of Heller

Nordyke v. King, now pending in the United States Court of Appeals for the Ninth Circuit, provides the first opportunity for an appellate court to construe the scope of the Second Amendment right recognized by the Supreme Court in *District of Columbia v. Heller*. The case arises from an ordinance, passed in 1999 by Alameda County, California in response to widespread gun violence, restricting possession of firearms on County-owned property. The Ordinance did not preclude the purchase of guns from gun retailers elsewhere in or outside of the County, transportation of guns on County roads, gun shows on non-County property, or events (including gun shows) that comply with the County's guidelines. Russell Allen Nordyke sued the County in September 1999 to challenge the Ordinance, asserting that it prevented him from operating profitable gun shows on County fairgrounds and that he had a Second Amendment right to possess and sell guns on County property.

The trial court ruled in favor of Alameda County in 2007. Nordyke appealed that decision to the Ninth Circuit. After the parties completed their briefing, the Supreme Court decided *District of Columbia v. Heller*. The Ninth Circuit then asked the parties to provide additional arguments on the impact of the decision on Nordyke's case.

The Brady Center filed an amicus brief for Alameda County, contending that the Second Amendment right recognized in *Heller* did not support invalidating Alameda County's ordinance. The brief argued, among other things, that the right recognized in *Heller* was limited to possessing guns in the home for self-defense, and did not provide a right to sell guns on

government property. The Brady Center was joined on the brief by the City of Oakland, California; the City and County of San Francisco, California; the Legal Community Against Violence; California Peace Officers' Association; California Police Chiefs' Association; California State Sheriffs' Association; Youth Alive!; Coalition To Stop Gun Violence; and Violence Policy Center. The National Rifle Association, in its amicus brief for Nordyke, suggested how far it may go in seeking to extend *Heller*, arguing that implicit in the Second Amendment right is a right to buy and sell guns on government property.

The parties await a decision from the Ninth Circuit. ●

Post-Heller Litigation: Challenges by Criminal Defendants and Challenges to City Gun Ordinances

Since June 2008, when the U.S. Supreme Court decided *District of Columbia v. Heller*, at least forty criminal defendants in courts around the country have moved to dismiss

criminal charges filed against them for firearms possession. Criminal defendants seeking to have their cases dismissed based on *Heller* include a felon who pulled a gun on a police officer, a sex offender who raped his two younger sisters, controlled substance users and dealers, domestic violence misdemeanants, and those possessing machine guns and other illegal weapons.

Fortunately, the courts so far have rejected these arguments, recognizing that *Heller* allows reasonable restrictions on firearm possession, such as laws against felons and domestic violence misdemeanants in possession of firearms.

The gun lobby has also invoked *Heller* to challenge city gun ordinances. Within two days of the *Heller* decision, lawsuits were filed in the Illinois cities of Chicago, Evanston, Morton Grove, and Oak Park, seeking to challenge citywide ordinances on handgun possession and transportation, and in San Francisco, California, seeking to end the prohibition on keeping firearms in public housing. These lawsuits are still pending. ●

Guns, Domestic Violence, and Justice Scalia

Colloquy between Assistant to the U.S. Solicitor General Nicole Saharsky and Supreme Court Justice Antonin Scalia during the argument in *U.S. v. Hayes* on November 10, 2008.

JUSTICE SCALIA: And this was misdemeanor assault and battery, wasn't it?

MS. SAHARSKY: Yes, that's right. I mean, I really –

JUSTICE SCALIA: So it's not that serious an offense. That's why we call it a misdemeanor.

MS. SAHARSKY: Well, I mean, certainly the offense is this particular case was serious. The charging document reflects that Respondent hit his wife all around the face until it swelled out, kicked her all around her body, kicked her in the ribs –

JUSTICE SCALIA: Then he should have been charged with a felony, but he wasn't. He was charged with a misdemeanor.

The Hayes case, discussed in the Fall 2008 issue of Legal Action ("Brady Center Asks Supreme Court to Reverse Ruling that Would Arm Domestic Violence Abusers"), will determine whether thousands of convicted domestic abusers will be purged from the Brady background check system. The Brady Center submitted an amicus brief on behalf of the United States, contending that federal law prohibits Mr. Hayes, the domestic violence criminal, from possessing a firearm.

