

Crime - Guns ⁱⁿ
(Lawsuits)

THE WHITE HOUSE
WASHINGTON

November 9, 1998

MEMORANDUM FOR BRUCE REED

CC: JOSE CERDA
FROM: SIDNEY BLUMENTHAL *SB*
SUBJECT: CLASS ACTION ON GUNS

I've enclosed an article and press release about the new effort to file class actions suits against gun manufacturers. I think this is a very promising idea. Let's talk about it soon.

Los Angeles Times

New Orleans

Is Expected to Sue Gun Manufacturers

■ **Courts:** Lawyers who fought tobacco firms are now helping cities take on a new industry with liability and negligence suits.

By MYRON LEVIN
TIMES STAFF WRITER

New Orleans is expected to file a massive product liability and negligence lawsuit against major handgun makers today, the opening salvo in a campaign against the gun industry by an alliance of anti-tobacco attorneys and local governments.

The suit, which will be announced by New Orleans Mayor Marc Morial, will name 10 manufacturers, including five Southern California firms that make the cheap handguns known as Saturday night specials, said John Coale, a Washington attorney who is part of a nationwide consortium of law firms that has filed two dozen class-action suits against tobacco companies.

Coale said the suit will accuse gun makers of failing to incorporate safety technology to prevent accidental shootings and of saturating the market with more guns than could possibly be bought by legal purchasers—thus assuring that tens of thousands of firearms will wind up in the hands of juveniles and crooks.

New Orleans, Coale added, "will be the first of many cities" to sue in the next few months with the help of the Castano group, a nationwide consortium of law firms, and the National Center to Prevent Handgun Violence. The other cities were not identified.

"We're going to do to this what we did to tobacco," he said. "It's going to be a very large war."

The Castano group, named for the lead plaintiff in one anti-tobacco case, has filed class-action suits against cigarette makers on behalf of millions of allegedly addicted smokers. The cases are pending in various states.

Among the firms to be named in the suit are Lorcin Engineering, Bryco Arms, Jennings, Phoenix Arms and Davis Industries, producers of low-cost handguns that gun-control advocates have dubbed the "Ring of Fire" companies because their plants partly encircle Los Angeles. An attorney for Lorcin, which is based in Mira Loma, declined to comment, and a call to Bryco, of

Please see GUNS, C4

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GUNS

Continued from C1

Costa Mesa, was not returned.

But an official with a firearms trade association called the suit "a shameful use of the courts."

Jack Adkins, director of operations for the American Shooting Sports Council, which is also expected to be named in the suit, said he could not address the specifics of the case before he had seen the lawsuit. But he called it an attempt "to shift responsibility for the il-

legal use of our products."

After tobacco and firearms, "certainly the alcohol industry is just around the corner for them as a target," Adkins said. "Where does this process stop?"

Some 35,000 Americans die from gunfire every year, and in several states, including California, authorities say the death toll from gunfire exceeds that from auto accidents. Most of these result from street violence, although in 1995 accidental shootings of children and teen suicides accounted for about 1,900 deaths nationwide.

DRAFT

**EMBARGOED UNTIL 1:30 PM
ON OCTOBER 30, 1998**

Contact: Naomi Palm
1-800-465-0334 (pager)
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NEW ORLEANS FIRST CITY TO SUE GUN MANUFACTURERS: CENTER TO PREVENT HANDGUN VIOLENCE CO-COUNSEL IN LANDMARK LAWSUIT

New Orleans, LA. New Orleans Mayor Marc Morial today announced that the City of New Orleans has filed the first-ever lawsuit by a city or other government against the gun industry. The suit names fifteen gun manufacturers, three trade associations and several local pawnshops and gun dealers, and seeks to recover the damage to the City from the gun industry's sale of guns that fail to incorporate safety designs to prevent their use by children and other unauthorized users. The Legal Action Project of the Center to Prevent Handgun Violence, which for five years has been bringing innovative lawsuits against the gun industry, has agreed to serve as co-counsel for the City's lawsuit. Louisiana attorney Wendell H. Gauthier, an architect of the legal strategy used against the tobacco industry, will also represent the City in its suit.

"We have been so focused here in New Orleans on fighting crime, getting guns off the street and protecting our citizens," said Mayor Morial. "We have already reduced crime in New Orleans by 40% since 1994. This lawsuit is the next step in making New Orleans the safest city in America."

"This lawsuit is a turning point in our efforts to force the gun industry to make a safer, childproof, 'personalized' product," said Dennis Hanigan, Director of the Center's Legal Action Project and a national expert on the application of product liability law to the firearms industry. "Mayor Morial is showing great courage in becoming the first mayor to take the gun industry to court, and we expect that other big-city mayors may well follow his lead. It's time for the gun industry to be held accountable for the cost of the thousands of tragedies and millions of dollars gun violence inflicts on our nation's cities."

This year, several urban mayors including Mayor Ed Rendell of Philadelphia, Mayor Alex Ponce of Miami-Unda, and Mayor Richard Daley of Chicago have expressed interest in following the tobacco example in recovering costs from the gun industry. In the last six months,

the gun industry's most powerful trade group, the American Shooting Sports Council, has repeatedly met with big-city mayors to deny responsibility for the design of its manufacturers' products in an attempt to ward off the type of lawsuit now filed by New Orleans. The American Shooting Sports Council is named as a defendant in the New Orleans lawsuit, along with leading gun manufacturers including Smith & Wesson, Sturm Ruger, Beretta U.S.A., Colt, Glock, Lorenz, Bryco, Jennings and Navajo.

"The gun industry has hid behind its mouthpieces at the NRA for many years, but those days are now over," Hanigan said. "The money that manufacturers spent on pro-gun propaganda and misleading advertising could have been used to make guns that can only be fired by authorized owners, sparing us thousands of homicides, suicides and accidents."

"Under the Louisiana product liability statute, a manufacturer can be held liable for damage caused by a product that is unreasonably dangerous in design. In this lawsuit, the City is alleging that guns that fail to incorporate safety systems that prevent their use by children and other unauthorized users are unreasonably dangerous in design. Just as car manufacturers have been held liable for failing to install seat belts and air bags, gun makers should be liable for failing to install feasible safety systems to prevent serious injuries and deaths."

Coincidentally, Center attorneys are also in trial in Oakland, CA representing the parents of a child accidentally killed by a gun that lacked any safety features that could have prevented the accident. In *Dix v. Beretta*, the Center's lawyers ask that Beretta U.S.A. be held responsible for the death of Karso Dix, who was killed by a close friend who believed he had unloaded the gun he had found. Karso was killed by a bullet that remained in the gun's chamber, and the Center is asking for damages for failing to implement feasible design changes that would have prevented the gun from being fired by children. The Dix case is expected to go to the jury in early November.

"Why should the innocent citizens of this City, or any other city, bear the costs of gun violence while the gun industry pays nothing?" Hanigan said. "No longer must it be permitted to evade its share of the responsibility for protecting our communities and particularly our children from senseless shootings. Mayor Morial today has filed a lawsuit to save lives. We are all indebted to him."

The Center to Prevent Handgun Violence, chaired by Sarah Amodeo, was founded in 1982 to reduce gun violence through education, legal advocacy, research, and outreach to the entertainment community. Based in Washington, DC, CPNV's national initiatives include prevention programs for parents and youth on the risks associated with guns, legal representation for gun violence victims, work with the entertainment community to discourage glamorization of guns in the media, and research of the risks associated with guns and the efficacy of gun control laws. More information about CPNV and its affiliated organizations, Handgun Control, Inc., can be found on our website at www.cpnv.org.

FBI - CATES - 2/1/00

Q+A news

PRESIDENT CLINTON PROPOSES STATE LICENSES FOR HANDGUN PURCHASES

January 27, 2000

Guns -
Licenses

In the State of the Union address tonight, President Clinton will propose a system of state-based licenses for handgun purchases. Under the proposal, every purchaser of a handgun must first have a valid state-issued photo license, showing that the buyer has passed a Brady background check and a gun safety training requirement. The President's proposal is part of a comprehensive strategy to keep guns out of the wrong hands and reduce gun violence and accidental shootings. The President also will highlight recent proposals to launch the largest gun enforcement initiative ever and fund the development of "smart gun" technology that can limit a gun's use to its authorized owner. Finally, he will call again on Congress to pass common-sense gun measures.

A STATE-BASED LICENSING SYSTEM FOR HANDGUN PURCHASES. President Clinton tonight will propose a state-based licensing system that would apply to all handgun purchases. Individuals seeking to buy a handgun would be required to obtain a photo license from their state of residence, and to present the license when they purchase a handgun. States would issue a license only if the applicant has: (1) passed a Brady background check; and (2) shown proof of having completed a certified safety course or exam. Under the President's proposal, state participation would be optional, not mandated. For states that choose to adopt a licensing system, federal funds would be provided to help cover the initial development costs. For states that choose not to participate, federally-approved gun dealers or a federal entity would be authorized to issue licenses, in an arrangement comparable to the current Brady check system.

KEEPING CRIMINALS, FUGITIVES, AND OTHER PROHIBITED PERSONS FROM BUYING HANDGUNS. Under the President's proposal, each state licensing authority would regularly cross-check criminal history and other available records to identify license holders who, since obtaining a license, have become prohibited from possessing firearms. Prohibited persons (felons, for instance) would then lose their licenses and their firearms.

PREVENTING ACCIDENTAL SHOOTINGS AND UNAUTHORIZED GUN USE. A recent survey has shown that a third of all handgun owners leave their guns loaded and unlocked. Moreover, the accidental gun death rate of children under 15 in the United States is nine times higher than in 25 other industrialized nations combined. Under the President's plan, applicants for a handgun license would be required to complete a certified firearms safety course or exam. States or certified private entities would administer these safety courses.

HIGHLIGHTING OTHER INITIATIVES ON FIREARMS ENFORCEMENT AND SMART GUN TECHNOLOGY. The President tonight will also describe his proposal for the largest gun enforcement initiative in history. This \$280 million initiative includes: 1) 500 new ATF agents and inspectors; 2) over 1,000 new federal, state and local gun prosecutors; 3) comprehensive crime gun tracing; 4) funding increases for ballistics testing; and 5) local media campaigns. President Clinton will also call on Congress to support research in "smart gun" technologies that can limit a gun's use to its authorized owner. The President's budget provides \$10 million to fund such research. Finally, the President will emphasize again that it is long past time for Congress to pass common-sense gun measures to close the gun show loophole, ban the importation of high-capacity ammunition clips and require child safety locks.

The President is determined

Every state
requires
licenses for
hunters and
atv drivers.
They shld do
the same
for
handgun
purchases

Guns-
Licensing

Summary: Licensing Legislation

Purpose: The purpose of the legislation is to create a state-based photo license for all prospective handgun purchasers, including those on the secondary market, showing that they have passed a thorough background check and have passed a firearms safety course.

The License: The Secretary of the Treasury will recognize a license issued by a State if the license is issued for a period not to exceed five years, and the license displays a color photograph of the licensee and their date of birth, address, physical description and license expiration. Similar to the NICS system, if a State chooses not to issue licenses, the Secretary will issue the license. Licenses require a \$44 Federal application fee and a \$26 renewal fee, and fees are based on the cost to the Treasury Department for processing applications. The proceeds would go into the general fund. States would be allowed to charge fees as authorized under State law.

Obtaining the License: The bill provides flexibility on where individuals may obtain licenses, and the Secretary of the Treasury and the States are required only to issue the license according to standards set forth in the legislation. The license may be granted to persons who are 21 or older, can legally possess firearms, have passed a NICS check and an FBI fingerprint card check, and have submitted a certificate establishing that they have passed a firearms safety training program within the past six months. Active duty law enforcement officers and active-duty members of the United States Armed Forces are exempted from the safety course requirements.

Firearms Safety Training: Training programs must meet standards outlined in the legislation requiring courses to: (1) provide at least four hours of training, and renewal courses require 2 hours; (2) conduct on a pass/fail basis; (3) address laws on firearms and use of deadly force, proper behavior when armed and confronted by a law enforcement officer, safe handling and storage of firearms with emphasis on reducing the risk of accidental injuries to a child, and the safe use of a gun, including the actual firing of a gun in the presence of an instructor. In order to run a certified course, individuals must apply to the Secretary and pay a fee of \$500 for each place where they conduct training. They must also submit fingerprint cards for all instructors.

Issuing the License: The legislation requires that all licenses must be issued within 30 days of receipt of the results of the criminal history check by the FBI. Technological advances will soon reduce the amount of time needed to complete the checks. Individuals who need a gun sooner for self protection may provide an approval note from their local law enforcement agency.

Ensuring the validity of licenses: The bill still requires gun dealers to conduct NICS checks in addition to checking a valid license, and, as a result, they will have greater assurances that the license is valid. Since private sellers have no means of ensuring license validity, the bill requires the Secretary and participating States to create a system that allows private sellers to check, by telephone or other electronic means, the validity of a license. In addition, the bill requires that NICS checks be conducted at least once every year to determine if license holders have committed crimes or other offenses that would require the revocation of their license.

Effective Date of the Legislation and Costs: The legislation calls for the Act to be effective within 24 months after enactment, and authorizes sums as are necessary to implement the law.

Registration

**Handgun Licensing
Questions and Answers
January 27, 2000**

Q: Wasn't the Brady Law struck down by the Supreme Court under a scheme similar to this? Isn't your proposal unconstitutional?

A: No. The original Brady law was ruled unconstitutional because it mandated state and local law enforcement to conduct background checks on handgun purchasers until the National Instant Check System (NICS) took effect. Under our licensing proposal, state participation would be optional, not mandatory. For states that choose not to adopt a licensing system, federally-approved gun dealers or a federal entity (like the FBI) would be authorized to issue licenses. This is comparable to the way the revised Brady NICS system now operates.

Q: Are you planning to send legislation to Congress for this proposal?

A: What the President outlined tonight are the broad principles of a plan. These principles are that: 1) licensing should be state-based and a state option; 2) to get a license, a handgun purchaser must first pass a Brady background check and a gun safety requirement. We hope to work with the Congress and others to move this plan forward and to develop its details.

Q: How much will this proposal cost? And is it funded in the budget?

A: The ultimate program costs will depend on many variables: for instance, a dozen states already have some form of licensing in place, and that could significantly reduce the funding needed for what is otherwise a new program. The budget does not contain funds specifically for this proposal.

Q: Under your proposal, would showing a gun license substitute for a Brady background check at a gun store?

A: Absolutely not. This proposal would supplement and not replace Brady background checks, which would still be required for sales at federally-licensed gun dealers. In addition, under the President's proposal, each state licensing authority would regularly cross-check criminal history and other available records to identify license holders who, since obtaining a license, have become prohibited from possessing firearms. Prohibited persons (felons, for instance) would then lose their licenses and their firearms.

Q: How do you know criminals won't just produce fake licenses?

A: As with other forms of identification, states have an interest in producing licenses that are difficult to counterfeit. And while no identification is absolutely foolproof, requiring handgun purchasers to produce a handgun license before they are able to buy a gun will

greatly improve upon our current system, which allows criminals to buy firearms from private sellers with no ID, no background check, and no questions asked.

Q: How would you know if private sellers would actually require buyers to show a license? How would you enforce this?

A: One way this licensing plan could work would be to include penalties for sellers or buyers who fail to abide by the license requirement. That is one of the issues we hope to work with Congress and others in determining. But in general, we believe that like the Brady law, our proposal will be another useful tool to keep guns out of the wrong hands.

Q: Is this registration? What is the difference between licensing and registration?

A: No, this is not registration. Registration generally requires firearms owners to register all firearms in their possession with a central government authority. Our licensing proposal would encourage states to create licensing systems that cover prospective sales, not possession, to ensure that all handgun purchasers are legally eligible to possess firearms and know how to safely handle and store them.

Q: Why didn't you embrace handgun registration instead of licensing?

A: The President has stated previously that he believes gun registration is a good idea. But he also believes that the best next step to strengthen our gun laws is a state-based licensing system to help ensure that handgun purchasers may legally possess firearms and can safely handle and store them. This will help law enforcement efforts to keep guns out of the wrong hands, and it can help prevent many accidental shootings.

Q: Aren't you doing this just to support the Vice President's proposal?

A: The President and Vice President have worked together for seven years to reduce gun violence in this country. It is no surprise that they both agree that licensing will help strengthen our nation's gun laws. And they both agree that Congress must enact long-overdue gun measures to close the gun show loophole and require child safety locks.

Q: How many states now have licensing systems?

A: We are aware of at least 12 states that already have some form of a gun licensing system: CT, HI, IL, IA, MA, MI, MN, MO, NE, NJ, NY and NC.

→ why not sue a gang?

GUN LITIGATION CLAIMS

- I. **PRODUCT LIABILITY** – The first set of claims against gun manufacturers involves the application of product liability law to the gun industry. One such claim – design defect – asks the court to weigh the utility of guns against the dangers inherent in these products. Both the fact of widespread gun violence and the trends to design and market more powerful and dangerous guns would support this theory.

A second product liability claim asserts that gun manufacturers should incorporate safety devices into their products. This claim requires proof that guns present an inherent risk of injury and that they can be made safer without undue cost or interference with product performance. The technology to incorporate safety features into firearms has been available since the turn of the century. Some companies have successfully manufactured guns with child safety features, magazine disconnects and warnings that a round is in the chamber. The experience of companies that have used these safety features demonstrates that guns can be viable products even with such features.

Another product liability theory would hold gun manufacturers liable for failing to warn customers of the dangers inherent in their products. To succeed on this theory a plaintiff must show that guns present an inherent risk of injury and that either the warning given was inadequate or the lack of a warning was unreasonable.

Another possible legal claim is that the use of guns constitutes an ultrahazardous activity. This claim asks the court to engage in a risk utility analysis similar to that necessary to claim that there is a design defect.

A. Design Defect

1. Legal Standards

- a) Unreasonably dangerous condition existed in the product
- b) Condition existed at time it left the manufacturer's control
- c) Condition was a proximate cause of plaintiff's injury
- or
- d) Risk/utility analysis (product is defective if its risks exceed its overall utility)

2. Possible Supporting Facts

- a) 1996 – over 34,000 Americans killed by gunfire
- b) 1996 – over 4,500 under age 20 were killed
- c) It is estimated that for every death there are 2 to 3 nonfatal shooting injuries
- d) 1996 – 1,100 deaths from unintentional shootings
- e) 1993 – 526 accidental shooting deaths of children and teens
- f) 1992 – 99,000 individuals treated in emergency rooms for non-fatal firearm injuries
- g) 1994 – firearms were second leading cause of death of people ages 10 to 24

- h) Dangerous gun manufacturing trends
 - (1) Greater ammunition capacity
 - (2) Higher caliber or power
 - (3) Greater concealability
 - (4) Point and rapid fire capability (e.g., pistol grips, shoulder straps)
- B. Failure to Incorporate Safety Device
 - 1. Legal Standards
 - a) Product presents inherent risk of injury
 - b) Product can be made safer without undue cost or interference with product performance.
 - 2. Possible Supporting Facts – reasonable safety measures include:
 - a) Magazine Disconnect
 - b) Warning that a round is in the chamber
 - c) Personalization
 - (1) Combination trigger lock
 - (2) Magnetic ring
 - (3) fingerprint recognition
 - d) Child proofing: Lemon Squeezer (1908 Sears, Roebuck catalog)
 - e) 1996 – 1,100 deaths from unintentional shootings
 - f) 1991 GAO report – 31% of accidental deaths might be prevented by child proofing guns and incorporating loading indicators
 - g) 500,000 guns stolen each year
- C. Failure to Warn
 - 1. Legal Standards
 - a) Product presents inherent risk of injury
 - b) Warning (or failure to warn) was inadequate (unreasonable)
 - 2. Possible Supporting Facts
 - a) 1996 – over 34,000 Americans killed by gunfire
 - b) 1996 – over 4,500 under age 20 were killed
 - c) It is estimated that for every death there are 2 to 3 nonfatal shooting injuries
 - d) 1992 – 99,000 individuals treated in emergency rooms for non-fatal firearm injuries
 - e) 1996 – 1,100 deaths from unintentional shootings
 - f) 1993 – 526 accidental shooting deaths of children and teens
- D. Ultrahazardous Activity
 - 1. Legal Standards
 - a) High risk of harm
 - b) likelihood that harm will be great
 - c) Inability to eliminate risk through exercise of care
 - d) Extent to which activity is uncommon
 - e) Inappropriateness of activity to place where it is carried out
 - f) Extent of the activity's value to the community
 - 2. Possible Supporting Facts

- a) 1996 – over 34,000 Americans killed by gunfire
- b) 1996 – over 4,500 under age 20 were killed
- c) It is estimated that for every death there are 2 to 3 nonfatal shooting injuries
- d) 1996 – 1,100 deaths from unintentional shootings
- e) 1993 – 526 accidental shooting deaths of children and teens
- f) 1992 – 99,000 individuals treated in emergency rooms for non-fatal firearm injuries
- g) 1994 – firearms were second leading cause of death of people ages 10 to 24
- h) Risks to urban and housing project population compared to that of nation as a whole

II. DISTRIBUTION AND MARKETING – A second general category of legal claims focuses on the distribution and marketing practices of the gun industry. One contention of plaintiffs in these cases is that gun manufacturers are negligent in the way that they market their products. Negligence arises because the manufacturers breach a duty of care to take precautions to prevent the sale of their guns to criminals. The fact that a small number of dealers account for most sales of crime guns goes directly to the failure of manufacturers to monitor or regulate the distribution of their products.

Another claim is that the way in which manufacturers market their products constitutes a public nuisance. In other words, the lax oversight of the distribution system makes it foreseeable that guns will end up in the hands of criminals and that deaths and injuries will result.

Housing authorities also could assert claims for private nuisance. Such a claim would require proof of an unreasonable interference with the use or enjoyment of land. Housing authorities own and operate public housing and can allege that the actions of gun manufacturers interfere with the safe use and enjoyment of these properties.

Plaintiffs may also have a claim against gun manufacturers for deceptive advertising. Plaintiffs must show that advertising claims are material, false and likely to mislead. Gun manufacturers often claim – explicitly or implicitly – that their products will protect their customers and make them safer. However, studies show that these claims are false. Having a gun in the home makes one far more likely to be injured or killed.

Civil conspiracy presents another possible legal claim. Such a claim asserts that gun manufacturers and dealers conspire together to sell guns in a way that circumvents the legal restrictions on such sales. This includes sales to straw purchasers with knowledge that the products will end up in the hands of unauthorized users – criminals.

- A. Negligence
 - 1. Legal Standards

- a) legal duty to take reasonable precautions to prevent acquisition of guns by unauthorized persons (possibly grounded in state laws against sales to unauthorized persons)
 - b) breach of legal duty
 - 2. Possible Supporting Facts – See II.E below
- B. Public Nuisance -- Unreasonable interference with a right common to the general public
 - 1. Legal Standards
 - a) Deaths and injuries are reasonably foreseeable results of manufacturers' conduct
 - b) Manufacturers' conduct is the direct and proximate cause of deaths and injuries
 - 2. Possible Supporting Facts
 - a) 1996 – over 34,000 Americans killed by gunfire
 - b) 1996 – over 4,500 under age 20 were killed
 - c) It is estimated that for every death there are 2 to 3 nonfatal shooting injuries
 - d) 1996 – 1,100 deaths from unintentional shootings
 - e) 1993 – 526 accidental shooting deaths of children and teens
 - f) 1992 – 99,000 individuals treated in emergency rooms for non-fatal firearm injuries
 - g) 1994 – firearms were second leading cause of death of people ages 10 to 24
 - h) See II.E below
- C. Private Nuisance
 - 1. Legal Standards
 - a) Defendants' actions interfere with the use or enjoyment of land
 - b) The interference is unreasonable.
 - 2. Possible Supporting Facts
 - a) 1996 – over 34,000 Americans killed by gunfire
 - b) 1996 – over 4,500 under age 20 were killed
 - c) It is estimated that for every death there are 2 to 3 nonfatal shooting injuries
 - d) 1996 – 1,100 deaths from unintentional shootings
 - e) 1993 – 526 accidental shooting deaths of children and teens
 - f) 1992 – 99,000 individuals treated in emergency rooms for non-fatal firearm injuries
 - g) 1994 – firearms were second leading cause of death of people ages 10 to 24
 - h) See II.E below
- D. Deceptive Advertising
 - 1. Legal Standards
 - a) Claims are material
 - b) Claims are false
 - c) Claims are likely to mislead

2. Possible Supporting Facts

- a) Claims that guns in the home will make the family safer
 - (1) A gun in the home is 22 times more likely to harm the family than defend it.

E. Civil Conspiracy

1. Legal Standards

- a) Combination by 2 or more persons/organizations
- b) to take some concerted action to either
 - (1) accomplish an unlawful purpose, or
 - (2) accomplish a lawful purpose through unlawful means.

2. Possible Supporting Facts

- a) Similarity of marketing actions among manufacturers
- b) Any discovery material? – Educational Fund to End Handgun Violence

F. Marketing Claims -- Possible Supporting Facts

- 1. Dealers sell to persons they know or should know will illegally transfer firearms
 - a) Multiple sales
 - b) Schumer Report – 1% of dealers account for 50% of crime guns sold
- 2. Dealers sell to persons they know or should know will illegally possess the firearms
 - a) Sales to residents of jurisdictions with more restrictive laws
 - b) Schumer Report – 1% of dealers account for 50% of crime guns sold
- 3. Manufacturers' distribution practices -- The result is straw purchases, illegal purchases from "kitchen table" dealers, gun show purchases and thefts from gun stores.
 - a) Using dealers in or around high crime areas
 - b) Using dealers who will sell to people they know or should know will use or possess weapons illegally
 - c) Don't require dealers to have a retail place of business
 - d) Don't monitor ATF tracing data to determine who is selling to criminals
 - e) Don't warn dealer about products that have been the subject of ATF traces
 - f) Don't require that dealers keep accurate records of sales
 - g) Don't require that dealers examine documentation from each purchaser to ensure a proper firearm owner's ID card, valid address, etc.
 - h) Don't require dealers to find out the intended use for a product
 - i) Don't require dealers to provide instruction on the proper use of weapons
 - j) Don't provide dealers with instruction on how to comply with applicable firearms statutes

- k) Don't provide dealers with a protocol regarding how to minimize the risk of transfers to illegitimate purchasers
- l) Don't provide dealers with signs stating that juveniles and felons cannot purchase weapons and that dealers seek to spot straw purchasers
- m) Don't help dealers equip stores to prevent theft
- n) Don't educate public about dangers of gun possession and use.
- 4. Police Department figures showing the guns recovered by manufacturer
- 5. Market saturation in areas with less restrictive laws
- 6. Percentage of new guns used in crimes
- 7. Manufacturers' advertising practices
 - a) TEC-DC9 – Tec-Kote provides "resistance to fingerprints"
 - b) TEC-DC9 – advertised as "assault-type pistol" that "deliver[s] more gutsy performance and reliability than any other gun on the market."
 - c) Tec-Kote also provides lubricity to increase bullet velocities (Ceriale complaint)
 - d) Kel-Tec Sub 9 – "will deliver much higher muzzle energy and penetrating than the relatively short barreled pistol. Further, the Sub 9 has greatly extended range compared to a handgun or shotgun."
 - e) Walther TPH – advertised as "[c]onsidered the ultimate hideaway, undercover, backup gun available anywhere."
 - f) Kel-Tec Sub 9 – "will deliver much higher muzzle energy and penetrating than the relatively short barreled pistol. Further, the Sub 9 has greatly extended range compared to a handgun or shotgun."
- 8. Manufacturers design guns to stimulate demand by those who will use or possess them illegally
 - a) TEC-DC9 – sling swivel to allow shoulder strap to be attached (better mobility and ability to spray bullets)
 - b) TEC-DC9 – Tec-Kote "resistance to fingerprints"
 - c) Small concealable weapons (numerous, including Beretta, Browning, Bryco, Colt, Davis, Glock, H&R, Hi-Point, Rossi, Star, Walther, Lorein, Phoenix, Raven, Smith & Wesson, Sturm Ruger, Sundance, Taurus)
 - d) Bryco Jennings Model 48 – combat style trigger guard
 - e) Kel-Tec – Sub 9 automatic rifle can accept most double high capacity magazines, by rotating the barrel it can be reduced to a size of 7x16 inches

3-13-00
 3-13-00



STATE OF NEW YORK
 OFFICE OF THE ATTORNEY GENERAL
 THE CAPITOL
 ALBANY, NY 12224

ELIOT SPITZER
 Attorney General

Blue / cc JD / Ricchetti
Summit
This is continuing
of the last was some
good ideas for future

(518) 474-7330

March 6, 2000

B

BY TELEFAX

Mr. Bruce Reed
 Director
 Domestic Policy Council
 The White House
 1600 Pennsylvania Ave.
 Washington, D.C. 20500

Copied
Podesta
Ricchetti
Reed

Dear Bruce:

As you know, at the end of last year and the beginning of this one, certain cities and states were negotiating with members of the gun industry to settle filed or anticipated lawsuits. The objective of the lawsuits -- and, of course, of the settlement negotiations -- was to save lives by having the gun companies adopt commercial measures to keep guns out of criminals' hands and incorporate safety devices to prevent gun accidents.

Through a series of press announcements, the administration invited itself into the negotiations, only to have the gun manufacturers refuse to meet with you. The administration had, they said, unduly politicized the process. But even as they were refusing to meet with you, the manufacturers were urging that we go forward with our long-scheduled January negotiating session, telling us that they saw a possible consensus beginning to emerge. This was a striking moment. After decades of intractability, the gun industry was telling city and state plaintiffs that a possibility of meaningful reform was at hand.

You did not ask us to listen to the industry's counter-proposals to see whether progress was truly possible. Instead, you insisted that if you were unwelcome, then the cities and states should not go. We did not.

Now I learn that, in secret, you have reopened talks with a subset of the industry and -- for reasons I cannot fathom -- excluded the cities and states whose process you halted. It was exceedingly unwise to exclude those with expertise who established the framework for the

settlement, and thus it is not surprising that, as one of your staff members told us on Friday, your current settlement efforts "are going nowhere".

Despite the foregoing, the White House potentially brings to the table resources and national regulatory power unavailable elsewhere. As things now stand, I can participate only from afar. The *only* goal should be saving lives by changing conduct within the gun industry. To that end, I set forth below: (1) how we got to the current stalemate; (2) where the emerging consensus was before your entrance; and (3) how the powers at the disposal of the federal government can recapture the momentum that has been lost.

1. How we got to the current stalemate

As you know, the federal government used the press to invite itself into the ongoing negotiations between the gun manufacturers and the cities and states. Speaking on behalf of New York State, I welcomed your participation.

In anticipation of the next negotiating session, my staff and I expended a great deal of time and effort educating members of the administration on the history and status of our proposals and negotiations -- negotiations that began in the summer of 1999 when New York reached out first to the industry and then to a widening circle of litigants. Due to your late entrance, we met (on an accelerated schedule) with the administration repeatedly both in New York and Washington. You asked us to provide you with our legal theories, settlement outlines, and negotiating drafts, all of which we did gladly.

Shortly before the January meeting, however, the gun industry refused to have the White House at the table. They feared, they said, that your presence would politicize what were already difficult talks. In response, you urged that no city or state attend the January session if you were unwelcome, and exhorted us all to stick together. We acceded, and canceled the negotiations, despite the industry's request that we continue without you. As a result, we never heard the industry's scheduled response to our proposals regarding downstream distribution.

Now it seems that solidarity is a one way street. In secret, with select manufacturers, the Departments of Treasury and Housing and Urban Development (HUD) restarted the very negotiations that you, personally, asked our group to eschew. Apparently considering our presence superfluous, you nonetheless find our work product essential; I am told that the administration is using our settlement framework and our negotiating drafts. I can only conclude that this is at your direction.

I was also disappointed by your behavior after I learned of the secret talks and informed the White House of my concerns. While my follow-up calls to you went unreturned, HUD staff quietly began to call others amongst the cities and states to inform them of "recent

developments." I hope you understand that we can differentiate between genuine teamwork and the ploy of someone caught with his hand in the cookie jar.

2. Where we were before the administration "joined" the negotiations

I believe that before you injected yourself, support on both sides of the table was beginning to coalesce around a few broad principles. Prior to your involvement, we had discussed with the industry a Code of Conduct that would govern design, safety, and distribution of handguns, and would establish an enforcement mechanism to ensure compliance:

Principle 1: Manufacturers will take responsibility for their downstream sales. For years, manufacturers have argued that once a gun leaves their factory, they have no control over it. It was none of their business, they argued, how their guns happened to end up in the hands of murderers, rapists, and drug dealers, or why a small number of gun dealers sold the disproportionate number of guns used in crime. Until our recent discussions, the manufacturers felt that it was not their job to cut off renegade dealers, but rather the federal government's job to revoke their licenses. In short, they laid the failure to shut down renegade dealers squarely at your feet.

Some companies are now recognizing that they have a responsibility to use their economic power to combat the criminal market. They appear prepared, for the first time, to use their contract rights to exercise control over their distributors and retailers. In short, by using the same kind of contractual pass-through rights that are used in many other commercial contexts, some are ready to cut off wholesalers who keep selling guns to those dealers who sell too many guns into the criminal market.

Perhaps the most important conceptual shift is the manufacturers' recognition of the principle that they could and should prevent sales to straw purchasers. While we had not yet agreed to specific terms, proposals under discussion ranged from outright restrictions of multiple sales to restrictions on the timing of delivery of purchases.

Principle 2: Manufacturers will not design or sell handguns that are unduly appealing to criminals. It is no secret that certain gun manufacturers have targeted criminals as a distinct market, going so far, for example, as to advertise guns that are "fingerprint resistant." There was broad consensus among the manufacturers that guns should not be designed specifically to appeal to criminals. There was no consensus, however, as to what makes a gun attractive to criminals. Barrel length? Color? Large magazine capacity? Price?

There is no need to guess, and no need to predict. Data can resolve the inquiry. By combining their own sales figures with Bureau of Alcohol, Tobacco and Firearms ("ATF") traces showing which models are used in crime, manufacturers can see exactly which guns are used disproportionately by criminals. Thus in our Code of Conduct, we were negotiating with

manufacturers to discontinue models that are or may become disproportionately used by criminals. Debate over barrel length, color, and price would evaporate, and the heart of the problem -- guns desirable to criminals -- is addressed.

Before you announced your interest, we designed the compliance system in the Code of Conduct to work by counting the number of trace *requests* that ATF makes of manufacturers; each time a manufacturer answered the request it was put on notice of which model was used in crime and to whom the manufacturer had sold it. With you now at the table, the manufacturer no longer has to do the math. Your cumulative data can directly answer the questions.

Principle 3: Manufacturers will design guns to be as safe as reasonably possible for purchasers and their families. Many manufacturers agreed with this principle so wholeheartedly that some were prepared to negotiate concrete deadlines for the introduction of specific safety features, such as selling every gun with an effective lock; requiring magazine disconnect safeties (which greatly reduce accidental firings) on all guns sold to the public; recalling guns that accidentally fired when dropped; and committing to specific dollar set-asides for research and development on gun safety, including smart gun technology.

A stumbling block for manufacturers was with guns procured by the government. Manufacturers argued that federal government specifications -- particularly the FBI's -- called for guns that *lacked* certain safety features, such as magazine disconnect safeties. Your ability to assist on this point is self-evident.

Principle 4: Compliance with the Code of Conduct must be verified. Once the Code of Conduct is in place, we must all have assurances that it is actually being followed. The cities and states were clear with the industry that we would not accept ATF as the sole monitor. Over the years, Congress has severely limited ATF's resources and powers. And, as a federal agency, ATF quite properly owes its fealty not to a private code of conduct but to its authorizing and appropriating statutes.

Our answer was a private monitor who would function as an independent, private-sector inspector general. A kind of super-auditor, the monitor would have full access to the books and records of the manufacturers and their distributors, investigative capability, and the power to force any non-compliant signatories to the agreement to adhere to its principles.

Among the many serious issues in the negotiations, the monitor question proved particularly difficult. Some in the industry insist that ATF be the monitor. Others realize that a clean bill of health from the plaintiffs' monitor would be a potent, almost irrebuttable, statement of a manufacturer's good corporate citizenship. In short, the industry will never receive the full benefit of a Code of Conduct without the sign-off of someone universally viewed as more independent than ATF.

3. How you can restart the lost momentum

All of the provisions of the Code of Conduct were crafted in the absence of a federal presence at the negotiations. With a federal presence, the possibilities expand significantly. By bringing available tools to bear, you should be able to break through the deadlock that your staffer described to me.

Use federal contract money as an incentive

First, you have a potent enticement at your disposal: the federal purse strings. Manufacturers sell countless firearms to federal law enforcement and the military. Others seek grants for "smart gun" technology. Progress could be swift if you made gun manufacturers' adherence to a Code of Conduct a prerequisite for receiving grants or for doing business with the government.

Create transparency in the crime gun market: Make ATF trace data public

You have invaluable data at your disposal, namely the ATF trace records showing exactly how guns get from manufacturers to wholesalers to the retailers who are portals into the underground market. While current data obviously would need to be withheld to protect ongoing investigations, older data should be made available to the nation, so that the public, the press, scholars, lawmakers, and the industry can see for themselves just how and where crime guns have flowed over time.

Sunshine is the best known cure for social ills. Knowledge leads to solutions. Consequently, I propose that all ATF trace data (save identifying information about the police officers who recovered the gun and about individual final purchasers) be made public and placed on the internet.

There is clear legal authority for the release of the data. Specifically, 27 C.F.R. § 178.25 ("Disclosure of Information") provides: "Upon the request of any Federal, State or local law enforcement agency, the regional director (compliance) may provide such agency any information contained in the records required to be maintained by the Act or this part." The ATF trace data falls within this definition. The Department of Law of the State of New York, of which I am head, is a "state agency" under the regulation. I, therefore, request the trace data, which -- by regulation -- you "may" provide to me. The debate about crime guns will be advanced enormously by transparency, as academicians, the press, the public, legislators, and the judiciary use the information to craft the appropriate policy solution to a thus-far intractable problem.

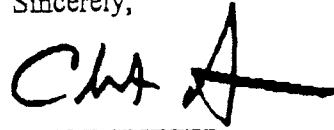
In conclusion, although disappointed and angry at the way that you have proceeded, I am hopeful that the resources of the federal government will be used in a productive fashion. I trust

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that this letter is the first step in clearing the air, and that we will be able to move forward together in a true partnership.

I look forward to hearing from you.

Sincerely,

A handwritten signature in black ink, appearing to read "Chs A" with a long horizontal stroke extending to the right.

ELIOT SPITZER

cc: Gun Litigation Negotiating Group