



IMPACT

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...news, views and reviews from the Center for Justice & Democracy

CENTER FOR JUSTICE
& DEMOCRACY
NEWS

Dear Friend,

While the current political situation presents new civil justice battles every day, we are happy to say that the Center for Justice & Democracy is expanding and remains ever poised to fight back.

We have just added a new full-time position to the CJ&D team: Legal Director. This post will be filled by attorney Geoff Boehm, who has a strong public interest law and organizing background, most recently with the NOW Legal Defense Fund. Geoff adds to our already crack staff: Organizing Director Rebecca Hoffman, Administrative Director James Freedland and, of course, Deputy Director Emily Gottlieb.

Emily, our first staff hire, is about to embark on a brand new "career," that of Mom. Emily will be on maternity leave for a few months, and we all wish her the very best.

We are pleased to say that we have been able to add new staff every year since our founding in 1998. That is thanks to the support of our members, group subscribers, individual donors and foundations. If you haven't already joined CJ&D, please see the membership information on page 4 of this newsletter. Thank you.

Sincerely,
Joanne Doroshov
Executive Director

IN THIS ISSUE: FOCUS ON GUNS

Shielding Gun Violence

Each year tens of thousands of Americans are injured or killed by firearms. According to the National Center for Injury Prevention and Control, a division of the Centers for Disease Control, there were more than 28,000 gun-related deaths and over 75,000 firearm-related injuries in the year 2000 alone. The costs of gun violence, both direct (*e.g.*, medical, productivity) and social (*e.g.*, quality of life, pain and suffering), have been estimated to be \$80 billion per year, with injuries from gunshot wounds totaling \$802 million a year in hospital charges nationwide. (This figure does

not include physician fees or follow-up care.)

Despite the harm they cause, guns are virtually the last unregulated consumer product in the United States. The Consumer Product Safety Commission, the federal agency established to oversee the safety of common household and recreational products, is prohibited from exercising any jurisdiction over firearms. In addition, the federal Bureau of Alcohol, Tobacco and Firearms has no power to ensure that firearms and ammunition meet basic health and safety standards.

Civil lawsuits are the only way to shield the public from defective firearms and ensure that guns will be made safer in the future. As Professor Stephen P. Teret, director of the Center for Gun Policy and Research at Johns Hopkins University, wrote in the *Washington Post*, "When needed regulation of products is thwarted by politics, health advocates turn to the courts for help. ...Some argue that legislation is the only proper, legal route for protecting the public's health. But litigation is designed to remedy injustices, and there should be no question about the injustice of

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The Last Line of Defense Against Firearm Defects

On December 29, 1989, Glenn Collins was hunting in Eagle Pass, Texas when his high-power, Remington 700 bolt-action hunting rifle accidentally discharged into his foot without the trigger being pulled while he was unloading it. The seriousness of the wound required that his foot be amputated.

At trial, company documents revealed that Remington knew the rifle could fire without anyone touching the trigger but chose not to market a safer design it had developed. Evidence also showed that the

gun maker had refused to recall the product after its own internal product safety committee found that many pre-1975 Model 700s could go off without the trigger being pulled. The jury awarded the victim \$17 million in damages, \$15 million of which were punitive. Remington later settled the case for an undisclosed amount.

Despite the fact that firearms kill nearly twice as many Americans as all household consumer products, no federal agency has the authority to ensure that guns with design or

manufacturing defects are made safer or removed from the market altogether.

Moreover, the absence of health and safety regulations means that there is no mechanism to recall defective firearms, mandate safety devices or ban unreasonably dangerous guns.

Herein lies the importance of the civil justice system, which remains the only way for consumers to hold the gun industry accountable for deaths and injuries caused by defective

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In Pursuit of Justice...Michael Koskoff and Richard Bieder

Michael Koskoff and Richard Bieder, of the venerable Connecticut firm Koskoff, Koskoff & Bieder, are among this country's most successful trial lawyers.

But it is not just their extraordinary litigation records – representing a Yale University intern who contracted the HIV/AIDS virus during her training, advising the families of those killed in the Oklahoma City bombing or representing numerous victims of medical malpractice – that make them worthy of our great admiration.

Each has a tremendous dedication to social justice, civil liber-

ties and civil rights.

In 1999, Michael Koskoff was lead counsel in a class action against the State of Connecticut for illegal wiretapping. He has won awards from the National Association of Black Patrolmen, the Greater Bridgeport NAACP and the Afro-American Educators Association.

Bieder has a longstanding history of representing our country's most disenfranchised citizens. The Connecticut State Legislature has awarded him a citation for his legal role in an election case of social significance. He also has been recognized by the Stamford Branch

of the NAACP and the Fairfield County Branch of Mothers Against Drunk Driving and received the Driscoll/Tianti Memorial Award, given by the Connecticut AFL-CIO, UConn Labor Education Center and the Connecticut AFL-CIO Women's and Civil Rights Committee.

Mike Koskoff and Richard Bieder contradict every negative stereotype about trial lawyers that "tort reform" groups have espoused for the last 25 years. They are truly outstanding lawyers, dedicated to social justice and deserving of our respect and support.

The Last Line of Defense Against Firearm Defects continued...

firearms. Product liability suits not only compensate victims but also serve as the only check on firearm safety, ensuring that guns that are sold are safe and free from defects in design or manufacture. Litigation may reveal how a manufacturer balanced consumer safety against corporate profits in determining whether to redesign a defective product, remove it from the market or recall it. Moreover, jury verdicts, especially punitive damages awards, can cause gun makers to recall or redesign products and ensure that similar products are never put on the market in the future.

“Firearms could contain defects in design or manufacture making them less likely to unintentionally discharge”

For example, in 1995, Remington settled a class action suit for \$31.5 million

after shotgun owners claimed that certain models manufactured over a 35-year period contained barrels made from insufficiently strong steel, making them more likely to explode. As part of the settlement, Remington agreed to upgrade the steel used in its shotguns and to distribute a Shotgun Safety Bulletin warning of the hazard of shotgun barrel explosion.

“Firearms could contain defects in design or manufacture making them likely to unintentionally discharge,” says the Consumer Federation of America. “Guns with safety-related defects can kill or seriously injure gun owners and innocent bystanders, including children. This consequence is the result of the firearm industry's exemption from basic health and safety regulation. No federal agency has the authority to set safety standards for guns; require gun manufacturers to repair, replace, recall, or refund the purchase price of defective

guns; or to mandate warnings. Currently, the only protection afforded those hurt by defective guns is to file a lawsuit after a victim is killed or injured.”

For example, Brandon Maxfield's family sued Bryco Arms and its designer, among others, after the child was rendered quadriplegic at age seven when a family friend tried to unload a .38-caliber Bryco handgun. The weapon was designed in such a way that it could only be unloaded by disengaging the safety. In the process of unloading the gun – which forced him to turn the safety to the “OFF” position – the friend accidentally pulled the trigger and shot Brandon, who was across the room. In 2003, a California jury found Bryco Arms and the designer partly liable for the child's injuries, holding them responsible for a percentage of the \$51 million compensatory damages award.

Similarly, in 1997, Ross

Mathieu's parents filed a lawsuit against Beretta when their 12-year-old son died from a gunshot wound to the head. Ross's best friend had aimed his father's Beretta pistol at Ross's head and pulled the trigger after removing the ammunition magazine, unaware that the gun still had a round in its chamber. The Mathieus argued that the manufacturer had failed to equip the pistol with a chamber loaded indicator, a magazine disconnect safety device or a locking mechanism that would only allow the gun to be fired by someone who held the key or knew the combination. In July 2000, Beretta settled the case for a confidential amount the day before trial.

The civil courts have played an important part in reducing deaths and injuries caused by defective firearms. This role would be severely undermined if Congress and the states pass laws making it more difficult or impossible for victims to go to court.

Shielding Gun Violence continued...

a product that needlessly injures and kills tens of thousands.”

Civil litigation also reduces gun violence. According to the non-profit Violence Policy Center, “The tort system is important to efforts to reduce firearms violence from two perspectives. First, to address the problem of unintentional fatal and non-fatal injuries associated with defectively designed and manufactured firearms and ammunition. Second, to hold accountable sellers and manufacturers who knowingly market and sell their products to such obviously high-risk individuals as criminals and minors.”

The threat of being held legally accountable can lead to changes in the way gun manufacturers and distributors make their products available to the public. For example, after cities began filing lawsuits against gun manufacturers in 1998, Colt Manufacturing Co. announced that it would stop selling most handguns to the civilian market



due to liability concerns. Facing the threat of future multi-million-dollar awards and the prospect of having its insurance canceled, Remington recalled 200,000 air rifles and air pistols within days of settling a case brought by a man who became paralyzed after a Remington air rifle suddenly discharged during a hunting trip even though the safety release was pushed into the “OFF” position.

Guns and Crime

Moreover, there is no doubt that the entire firearms industry has been complicit in allowing unauthorized persons to have access to guns. “It is no secret to anyone in the gun industry that there are major problems with the way guns are marketed and distributed,” says Robert Ricker, a veteran gun lobbyist, former NRA lawyer and the first insider to testify against the

“Manufacturers and distributors could easily identify these rogue dealers, and stop the flow of guns into the criminal market. Instead the industry has adopted a view that nothing is wrong as long as they ‘see no evil, hear no evil, and speak no evil.’”

gun industry. “The industry has known for years that there are too many dealers who don’t care about selling responsibly. Some are blatantly corrupt, make illegal sales, and work hand in hand with gun traffickers to supply the illegal market. Others pretend they don’t realize what’s going on when people come into the gun shop and make straw purchases or buy huge quantities of guns that they will re-sell.” According to Ricker, “Manufacturers and distributors could easily identify these rogue dealers, and stop the flow of guns into the criminal market. Instead the industry has adopted a view that nothing is wrong as long as they ‘see no evil, hear no evil, and speak no evil.’”

Recognizing it could be held legally accountable for refusing to ensure that guns are sold safely and responsibly, the firearms industry and its allies have lobbied state legislatures and Congress for immunity. Since 1998 – when cities and counties nationwide began seeking compensation from gun manufacturers and dealers for law enforcement, medical and other costs associated with gun violence – over 30 states have passed laws granting the gun industry immunity from civil lawsuits. In Congress, legislation may soon pass that would prohibit all lawsuits against gun and ammunition manufacturers, distributors, dealers and importers who supply their products to an illegal underground market (see “The Gun Lobby Catches ‘Immunity Fever,’” page 4).

Industry Hypocrites

Not surprisingly, the same forces that want to deny victims of gun violence their day in court have no problem filing civil lawsuits when it suits their own agenda. For example, the NRA is currently seeking \$150,000 in compensatory and punitive damages in federal court after a Virginia middle school refused to allow a sixth-grader to wear an NRA t-shirt depicting men with guns. Similarly, in August 2001, the group sought \$1 million in compensatory damages and \$4 million in punitive damages after the Middlesex, Virginia Board of Supervisors and the county zoning administrator rescinded a man’s permission to hold a shooting camp for kids on his farm. The NRA claimed that his civil rights were violated and that he suffered emotional dam-

age, embarrassment and mental anguish.

Since the gun industry remains unchecked by any regulatory or legislative authority, civil lawsuits remain the only mechanism that can force firearms manufacturers and dealers to change their behavior, thereby protecting the public from future harm.



The Gun Lobby Catches “Immunity Fever”

As of press time, legislation has passed the U.S. House of Representatives that gives the gun industry unprecedented immunity from lawsuits brought by gun violence victims, as well as cities and counties. More specifically, the “Protection of Lawful Commerce in Arms Act of 2003” (H.R. 1036 and S. 659) shields gun makers, dealers and distributors from civil liability for wrongful conduct those businesses engage in, such as negligent sales or defective designs. If enacted, the bill would not only undermine efforts to make guns safer but also make it more difficult for victims of gun violence to seek redress.

The Act would eliminate more than a dozen lawsuits by cities that seek to hold gun makers and distributors responsible for local violence. For example, if enacted, the cities of Newark, Camden and Jersey City, New Jersey could no longer pursue claims of negligence, public nuisance and punitive damages against gun makers for making and selling more guns than could be justified by the legitimate market and for knowing that a substantial portion of their guns would end up in the hands of criminals. In March 2003, a three-judge appeals

panel allowed the case to go forward, explaining that “New Jersey has a strong public interest in protecting the public from the violence and social cost associated with the criminal misuse of firearms,” adding that its decision “reflects our state’s overarching policy that wronged persons should be compensated for their injuries and those responsible for the wrong should bear the cost of their tortious conduct.”

On the other hand, juries remain skeptical of these cases, suggesting that legislation to take away their power to decide lawsuits is wholly inappropriate. In May 2003, a New York jury issued an advisory opinion rejecting a case brought by the NAACP against over 80 gun manufacturers and distributors in New York federal court for causing “disproportionate numbers of injuries, deaths and other damages” to African Americans. The organization is seeking various reforms, such as: forcing manufacturers and distributors to cut off dealers whose guns disproportionately end up being used in crimes; preventing dealers from selling more than one handgun to the same person in a 30-day period; and stopping dealers from making bulk sales to individuals who

only sell weapons at gun shows.

Opposition to this bill from gun-control advocates has been unanimous. Eric Howard, spokesman for the Brady Campaign, said, “The NRA wants to protect corrupt gun dealers and tell states what is allowed in the courthouse and what isn’t.” Such legislation is “going to take away the industry’s incentive to become less negligent and move away from the trade of illegal firearms,” explained Howard. “They’re already negligent, but you’re taking away any incentive to correct the problem.”

The legislation “would slam shut the courthouse doors to victims of gun violence,” argued Mathew Nosanchuk, litigation director and legislative counsel of the Violence Policy Center in Washington, D.C. “Not just the city suits but virtually everyone’s: from gun-owning individuals injured by defective firearms to innocent victims literally caught in the cross fire of the latest high-powered product negligently manufactured and distributed by the industry.”

Denise Johnson, whose husband was killed by the D.C. snipers, wrote in a recent

Washington Post editorial: “No other industry enjoys the protections that the gun industry is seeking. Gun sellers and manufacturers shouldn’t be above the law. If any other product injured my husband and irresponsible sellers played a part, I would be able to bring a case in court. But because Conrad was shot with a gun, my lawsuit would not be allowed. Those who sell guns that are sought by criminals need to be more careful than sellers of other products, not less careful.”

Clearly, enactment of this legislation would not only jeopardize the gains made in firearms safety but also remove all incentives for gun sellers and manufacturers to act safely in the future. As industry whistleblower Robert Ricker recently put it, “My years of experience with the gun industry tells me that, if this bill is enacted, the industry will never become part of the solution to gun violence in this country. Instead, there is the greater danger that bad industry practices will become an even bigger part of the problem.”

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