



Legal Action

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Brady Center Launches New Lawsuits in Three States

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As legislation designed to give the gun industry unprecedented legal immunity advanced through Congress, the Brady Center launched a new litigation offensive to test the scope and constitutionality of the new law.

The NRA-supported bill, deceptively named the "Protection of Lawful Commerce in Arms Act," was signed into law by President Bush on October 26, 2005, ending a six-year battle in Congress in which over 200 organizations representing law enforcement, crime victims, the legal community, and others joined the Brady Campaign and the Brady Center to oppose the bill. Now the battle shifts to the courts, where Brady Center lawyers recently filed four new lawsuits for gun violence victims. These suits will become key test cases as the courts decide what the new statute means and whether it is consistent with constitutional principles.

Philadelphia, Pennsylvania

Over the last year, the City of Philadelphia has suffered record levels of gun violence. Recent press attention has focused on local Philadelphia-area gun shops as the source of most of the city's crime guns. Two new Brady Center lawsuits seek to hold two of those local dealers responsible for their complicity in funneling guns to criminals.

On July 20, 2005, the Brady Center filed suit for the family of Anthony Oliver, Jr. against the top supplier of crime guns in Pennsylvania — a dealer that negligently sold the gun used to kill Anthony. *Oliver v. Lou's Loans, et al.*, No. 1836 (Pa. Ct. Com. Pleas). Anthony was 14 years old when he was accidentally shot and killed by his friend, Quamere Durham, in July 2004 while paying video games at Quamere's home. Quamere, a 14 year-old who never should have had access to a gun, was showing a .25 caliber Phoenix Arms semiautomatic handgun to his friends when, mistakenly thinking the



Anthony Oliver, center

safety was on, he pulled the trigger and shot Anthony in the stomach. After the children called 911 and tried to staunch Anthony's bleeding with paper towels and toilet paper, Anthony died that night at the hospital.

The suit charges that Lou's Loan of Upper Darby, Pennsylvania, negligently sold guns to a gun trafficker, one of which was used in the shooting. The handgun was one of multiple guns Lou's Loan sold to a gun trafficker who was illegally reselling or trading the guns.

Lou's has been a frequent supplier of weapons to traffickers, straw purchasers, and even convicted felons. Lou's is one of the nation's most prolific suppliers of guns traced to crime. From 1996 to 2000, the shop sold 441 guns traced to crime, ranking it the number one gun dealer in Pennsylvania for numbers of guns sold traced to crime, and 43rd in the nation. Phoenix Arms, the manufacturer of the small, easily-concealable "Saturday Night Special" used to shoot Anthony, continued to supply Lou's Loan even after repeated public disclosures of Lou's record of supplying crime guns. Phoenix Arms also was named as a defendant in the suit.

Eight days after filing Oliver's complaint, the Brady Center filed a lawsuit for the family of Faheem Thomas-Childs, a 10

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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 handgun violence in America.

Sarah Brady
Chair

Michael D. Barnes
President

Dennis A. Henigan
Legal Action Project Director

Brian J. Siebel
Senior Attorney

Jonathan E. Lowy
Senior Attorney

Daniel R. Vice
Staff Attorney

Elizabeth S. Haile
Staff Attorney

Kristen M. Comer
Legal Assistant

LaKeisha L. Jones
Legal Secretary

1225 Eye Street, NW, Suite 1100
Washington, D.C. 20005

Phone
(202) 289-7319

Internet
Click on
www.gunlawsuits.org

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Its supporters named it the “Protection of Lawful Commerce in Arms Act.” It is really the “Protection of Awful Sellers of Arms Act.” Joined by over 200 other organizations, representing law enforcement, crime victims, the legal community and others, we fought for six years to defeat this bill to give special legal protections to reckless gun sellers. Ultimately, the intimidation tactics and big money of the NRA prevailed in Congress. The bill was passed by the Senate in July and the House in October, before it was signed into law by President Bush.

The case for this shameful statute was built on deception and hypocrisy. Gun makers decried a “litigation crisis” threatening them with bankruptcy. Yet they publicly assured their shareholders of “no material adverse impact” from lawsuits. The NRA claimed over thirty states had enacted similar laws. The truth is that *only five states* have passed laws even arguably as broad as the federal bill. The bill’s sponsors in Congress said it was not intended to block suits against irresponsible gun sellers. Yet they voted *against* a Senate amendment that would have allowed suits against gun sellers who were “reckless or grossly negligent”. And some of the most ardent supporters of “states’ rights” in the Congress voted for the bill, even though it deprives state courts of the power to decide cases against the gun industry under state law.

The Congress can pass it. The President can sign it. We at the Brady Center refuse to let it stand. We will not tolerate this special

interest extravaganza. The legal rights of gun violence victims are at stake and we will not take this lying down.

Before the Presidential ink was dry on the new law, we had pledged to challenge its constitutionality in courts across the country. As described in this issue of *Legal Action*, we have filed four new lawsuits which will serve as constitutional test cases. The constitutional issues also will be confronted in

“The NRA is no doubt still celebrating its victory in Congress. We’re determined to ruin the party.”

the landmark lawsuit brought by New York City, charging the gun industry with contributing to a public nuisance by funneling guns into the illegal market. We expect the gun industry to use the new law to seek dismissal of multiple lawsuits brought by the Brady Center. We will respond by arguing that access to the courts is a fundamental constitutional right that is violated by the new law.

Unlike the fictional Second Amendment rights asserted by the NRA, the rights of injured parties to due process of law are deeply embedded in our Constitution. The new law is unprecedented in constitutional jurisprudence,

because it is the only federal law ever enacted that purports to:

- Shield a single industry from the oldest and most fundamental principle of our liability law — the obligation to act with reasonable care to avoid injury to others.
- Bar access to the courts to a specific category of injured parties — gun violence victims.
- Direct state and federal courts to dismiss pending lawsuits, thus retroactively barring the assertion of claims that were legally valid when the suits were filed; and
- Obliterate common law remedies to injured parties without providing an alternative federal remedy.

The battle to protect the legal rights of gun violence victims from assault by the special interest gun lobby is not over. It has simply shifted, from Congress to the courts. As we have seen throughout the history of the Center’s Legal Action Project, the gun lobby’s influence-peddling is far more successful with spineless politicians than with judges sworn to uphold the law and the Constitution.

The NRA is no doubt still celebrating its victory in Congress. We’re determined to ruin the party.



Dennis A. Henigan
Director, Legal Action Project

Brady Center Launches New Lawsuits in Three States

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year-old Philadelphia boy who was shot and killed as he walked through the gates of his elementary school. The suit seeks damages from the gun companies whose negligence supplied gang members with the Sturm Ruger handgun used to kill Faheem. Thomas-Childs v. American Security et al., No. 3118 (Pa. Ct. Com. Pleas).

The suit alleges that Philadelphia gun dealer American Security (formerly known as Fishtown Lock and Gun) negligently sold the murder weapon in a straw sale to gang members. A known gang member, who was not legally eligible to buy guns, accompanied the straw purchaser to the store, picked out the gun, and supplied the money to the straw purchaser who did the paperwork for the transaction. The store's clerk even charged an additional "handling fee" which the gang member paid. American Security has sold guns to other gun traffickers over the years.

The suit also names as a defendant Sturm Ruger, the manufacturer of the gun used to kill Faheem. The suit charges the manufacturer with selling guns without imposing a Code of Conduct on its dealers to prevent sales to traffickers.

On the morning of February 11, 2004, Faheem was walking to Thomas M. Peirce Elementary School, at 2300 W. Cambria Street in Philadelphia, where he attended third-grade, when a gun battle broke out between gangs. As bullets flew around them, students ran screaming to the school. A crossing guard who tried to herd the children was shot in the foot and Faheem was shot in the face. He was able to speak to police, but then lost consciousness and died after remaining on life support for five days.

Anthony's and Faheem's families are represented by the Brady Center and by Mark LeWinter of the Philadelphia firm Anapol, Schwartz, Weiss, Cohan, Feldman and Smalley. The Brady Center and Mr. LeWinter successfully obtained an earlier settlement from a

Pennsylvania dealer for Tennille Jefferson, whose 7 year-old son, Nafis, was shot and killed with a trafficked handgun.

Buffalo, New York

On July 28, 2005, the Brady Center filed suit on behalf of Daniel Williams, who was 16 when he was shot in the stomach and severely wounded as he played basketball at his home in Buffalo, New York. The suit involves a reckless gun distributor and gun show dealer who negligently enabled gang member Cornell Caldwell to obtain a handgun and shoot Williams. Williams v. Beemiller, Inc. et al., No. I2005-7056 (N.Y. S. Ct., Erie County).

Williams was shot as he prepared to enter his junior year at McKinley High School where he was a good student and star point guard on the basketball team. As Williams picked up a basketball, a passing car fired at Williams, shooting him in the stomach. The car fled the scene, but police apprehended Caldwell, who was carrying a Hi-Point 9mm semi-automatic pistol. Caldwell shot Williams mistakenly thinking he was a rival gang member.

Caldwell was armed with one of the hundreds of guns trafficked to Buffalo from Ohio by notorious gunrunner James Nigel Bostic. Between May and October 2000, Bostic purchased hundreds of guns from gun dealer Charlie Brown, who was doing business as Great Lake Products, and other gun sellers, at gun shows in Dayton, Ohio. Bostic traveled to Ohio, which, unlike New York, does not require a license to purchase a gun or impose a waiting period, to buy mainly Hi-Point Saturday Night Special handguns for under \$100

a piece, then sold them for two to three times that amount on the streets of Buffalo.

Brown sold the gun used to shoot Williams in one sale of 87 handguns. The suit alleges that Brown was negligent in selling Bostic and his straw purchasers at least 190 Saturday Night Special handguns in all. Bostic sometimes used girlfriends to complete the gun purchase paperwork to avoid being the purchaser of record. However, Bostic selected the guns and paid for them in cash — clear indicators of a straw purchase which Brown ignored.

In addition to the guns recovered in Buffalo, 630 guns sold by Brown were recovered in connection with crimes in New York City, and a semiautomatic rifle sold by Brown was used in the 1999 Columbine High school massacre.

The lawsuit includes claims against Brown's interrelated web of companies. In addition to running a gun-retail operation out of his home, Brown is also the president of MKS Supply, Inc. MKS is the sole distributor of Hi-Point firearms and Brown has a close working relationship with the owner of Hi-Point. Williams has brought claims against

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New York City Lawsuit Ready For Trial

On November 28, 2005, New York City will become the first city in the nation to put its case against the gun industry before a jury. The lawsuit will expose how 11 major gun manufacturers and more than 25 gun distributors contribute to New York City's illegal gun market by continuously selling their guns through a set of high-risk gun dealers that they know or should know are supplying gun traffickers.

Astoundingly, year after year, only 1% of the federally licensed firearms dealers in America are linked to well over 50% of the guns recovered in crime and traced. The gun industry's "dirty little secret" is that it can identify who these "bad apple" dealers are and can stop selling them guns or force them to reform, but gun makers are unwilling to do so. The reason? Profits. Crime gun sales are a large percentage of the gun industry's market. According to expert testimony that will be offered in the upcoming New York City trial, at least 12% of the handguns produced or imported for sale in America in 1996 were used in crime by 2002.

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) crime gun trace data has been immensely helpful to New York City, as it identifies the gun dealers that sold most of the handguns recovered in crime in the city. The gun industry, however, heavily lobbied Congress to pass one bill after another — all designed to keep ATF trace data from ever being disclosed to the public or to aggrieved plaintiffs like New York City. The City was able to secure a federal court ruling ensuring release of the data before Congress passed its last, and most restrictive, bill.

High Crime Dealers

One of the City's experts, Joseph Vince, Jr., a former ATF official, will testify that high-trace dealers are either corrupt or engaged in poor business practices that facilitate the

diversion of handguns to crime. Mr. Vince, along with his colleague, Gerald Nunziato, who formerly headed ATF's national tracing center, prepared exhibits on gun dealers supplying crime handguns recovered in New York. The exhibits show that each of the dealers not only sold numerous crime guns that were traced, but also demonstrate all the other ATF indicators of gun trafficking: selling multiple handguns in single transactions, a short time between sale and recovery of guns in crime, and being unable to account for having sold guns that later were recovered from criminals. Mr. Vince also reviewed New York City gun trafficking investigation files and will testify that ATF's gun trafficking indicators are backed up by hard evidence that gun dealers sold guns in obvious gun trafficking situations.

What The Industry Knew

New York City will also show that by the early 1990s, even voices within the gun industry began to recognize that there was a serious problem with "unscrupulous" gun dealers diverting huge numbers of guns into the illegal market. For example, in 1993, the head of the National Shooting Sports Foundation (NSSF), the largest gun industry trade association, reviewed an internal memo that offered a scathing critique of gun manufacturers' distribution systems and called for the industry to take proactive steps to prevent illegal transactions through unscrupulous FFLs. After reviewing the memo and the ATF report which precipitated it, the trade association buried it.

The National Association of Stocking Gun Dealers also published a series of alarms about corrupt firearms dealers in the early 1990s which were ignored by gun manufacturers. Sturm Ruger received similar warnings from its dealers in a 1993 survey asking them what it could do to increase

their sales. Many dealers responded that legitimate dealers were tired of the manufacturers and distributors tolerating and continuing to supply guns to irresponsible dealers and asked Sturm Ruger to exercise greater control over its distribution system. William Ruger Sr., the company's founder, told his marketing manager to ignore them.

The City's case will show that industry leaders also ignored requests from ATF to address the crime gun diversion problem. The City has subpoenaed former ATF officials to contradict defendants' claims that ATF did not want gun makers to take steps to control their distribution chain.

Whistleblower Robert Ricker is also a witness for the City. Ricker will testify that industry leaders ignored his suggestions that the industry take steps to deal with gun trafficking from dealers. Ricker's reform advocacy ultimately cost him his job and led to the dissolution of the industry trade association he led.

Industry Reform

Marketing expert Professor Gary Frazier will testify as an expert witness for the City, explaining that the gun industry's head-in-the-sand approach runs contrary to normal marketing principles. Companies normally want to know everything possible about sales transactions down to the dealer level; the gun industry would rather remain ignorant to keep up the charade that they cannot know about dealer wrongdoing.

Despite industry claims that cases like New York City's will bankrupt the industry, the City does not seek monetary damages. The City seeks a court order mandating responsible business practices: requiring gun makers to monitor their gun dealers and terminate those unable or unwilling to reduce crime gun sales. ●

Supreme Court Allows Suit Against Assault Weapon Manufacturers

On October 3, 2005, the U.S. Supreme Court refused to block a lawsuit by the District of Columbia, as well as several D.C. residents injured or killed by gunfire, against gun manufacturers under D.C.'s Assault Weapons Manufacturing Strict Liability Act. The gun industry claimed that the Act, which makes assault weapon manufacturers and sellers strictly liable for injuries that result from the use of those guns in the District, violates the Commerce Clause of the U.S. Constitution.

The D.C. Court of Appeals had upheld the District's Strict Liability Act and allowed claims by nine individual victims of gun violence to go forward under the Act, rejecting claims by the gun industry that the act regulates out-of-state gun manufacturers in violation of the Commerce Clause. The gun manufacturers then asked the Supreme Court to overturn the D.C. Court of Appeals ruling and strike down the statute as unconstitutional. The Supreme Court denied review.

The Supreme Court's action also paves the way for claims brought by the family of Pascal Charlot, the sixth victim of the D.C.-area sniper shootings in 2002. Pascal was shot with a Bushmaster assault rifle and his family brought suit against Bushmaster under the Strict Liability Act.

The statute, the only one of its kind in the nation, provides that anyone who manufactures, imports, or sells an assault weapon or any firearm which can shoot more than 12 shots semi-automatically without reloading, is liable for all direct and consequential damages that arise from injury or death caused by the weapon in the District.

The Legal Action Project represents the District in its lawsuit, *District Of Columbia v. Beretta U.S.A. Corp.*, No. 00-0000428 (D.C. Super. Ct.), as co-counsel with the District's Office of Corporation Counsel and the law firm of Wilmer, Cutler, Pickering, Hale & Dorr. The law firm of Hogan & Hartson and the Washington Lawyers Committee for Civil Rights and Urban Affairs are co-counsel with the Legal Action Project in the case *Estate of Pascal Charlot v. Bushmaster Firearms, Inc.*, No. 03-2501 (D.D.C.). ●

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Patricia Tucker at Grant's trial

Brown, MKS, Bostic and his straw purchaser, and Hi-Point, for negligently and illegally entrusting the guns to others, and for helping to create a public nuisance.

Williams is represented by attorneys with the Brady Center to Prevent Gun Violence and Terrence M. Connors of the Buffalo law firm of Connors & Vilardo, LLP.

The carnage wrought by Bostic's trafficking ring was the subject of a four-part series in the *Buffalo News*, "The Damage Done," in June 2005. The series exposed the deadly role that gun traffickers and the gun industry play in supplying firearms to dangerous criminals and focused on the scores of guns supplied to Bostic by Brown and other Ohio gun dealers.

Raleigh, North Carolina

Most recently, the Brady Center filed a lawsuit on October 17, 2005, on behalf of the widow of a Wake County, North Carolina Sheriff's Investigator, charging that a gun shop's negligence helped arm his killer. Investigator Mark Tucker was shot in the face with a shotgun and killed on February 12, 2004, by Matthew Grant, a convicted felon. The suit includes claims against the shooter and Cary Jewelry & Pawn, who supplied Grant's friend, Van McQueen, with the 12-gauge Mossberg shotgun McQueen used to kill Tucker. The suit claims that Cary Jewelry & Pawn negligently and illegally sold the murder weapon to McQueen.

Three months before the shooting, McQueen and Grant went to Cary Jewelry & Pawn to buy a firearm. Since Grant was a felon prohibited from buying guns, he offered McQueen a beer in return for McQueen purchasing a firearm as a straw buyer for Grant. McQueen is mentally deficient and was obviously intoxicated, and at first the shop's clerk refused to sell him a gun. Three days later, McQueen returned to the pawn shop with Grant, again wanting to buy a firearm. Even though his home address was a local homeless shelter, but yet he had \$120 in cash to buy the weapon, the very same clerk completed the all-cash sale. McQueen then transferred the shotgun to Grant, who used it to shoot Tucker in the face, killing him.

Grant was arrested, convicted of first-degree murder and sentenced to life in prison for murder. Tucker was a 28 year police veteran. He left behind a wife, Patricia, and two sons. Patricia Tucker is represented by the Brady Center and by E. Spencer Parris of the Jones Martin Parris & Tessener Law Offices.

The Brady Center is prepared to defend each of its cases against attacks in the courts based on the immunity legislation and will argue that the statute is an unconstitutional infringement of the due process rights of these victims. Gun dealers and manufacturers began filing motions to dismiss immediately after the legislation was signed into law. ●

Brady Center Seeks Gun Owner Responsibility

The Brady Center's Legal Action Project has filed two briefs *amicus curiae* in California and Massachusetts seeking to hold gun owners accountable for allowing dangerous people to obtain firearms. These filings follow groundbreaking precedents where Brady Center legal briefs helped to convince courts that gun owners should be found liable when they enable others to gain access to guns and cause harm.

In the Massachusetts case of Jupin v. Kask, No. SJ-09538 (Mass. App. Ct.), the Brady Center is urging the Massachusetts Supreme Judicial Court to hold a homeowner liable for the death of a police officer. Westminster Police Officer Larry Jupin was tragically shot while on duty on May 10, 1999. After the shooting, Officer Jupin fell into a coma and died after three and a half years in a vegetative state. Jason Rivers was charged with the murder of Officer Jupin, but was diagnosed as a paranoid schizophrenic and ruled mentally incompetent to stand trial. Rivers has since been committed to a state hospital.

Officer Jupin's widow filed a lawsuit against homeowner Sharon Kask. Kask allowed her live-in boyfriend, Willis Rivers, to store his collection of 30 handguns and rifles in her basement in a flimsy box. She also allowed Jason, Willis's son, to have a key to the house and come and go as he pleased, even when no one was home. Kask allowed Jason to have free access to her home where 30 guns were stored even though he had been AWOL from the army and had a history of mental problems and felony convictions. She knew of Jason's mental instability, continued run-ins with police, and violations of his probation, yet did nothing to ensure that the guns in her home were stored in a way that would prevent Jason from getting access to them. Jason was able to open the box where the guns were stored, take a .357 Magnum handgun, and use it to kill Officer Jupin.

"The Court rejected arguments by the National Rifle Association that gun owners have a right to store guns how they see fit, regardless of the risks posed by allowing access to dangerous people."

Despite Jason's clear history of mental instability and criminal conduct, the trial court ruled that the case should not proceed and that the homeowner was not responsible for how guns were stored in her home. Officer Jupin's widow appealed, and the Brady Center joined the International Brotherhood of Police Officers, Massachusetts Million Mom March and Stop Handgun Violence in supporting an appeal of the ruling. Perhaps recognizing the importance of the case, the Massachusetts Supreme Judicial Court took the case from the intermediate appeals court for an expedited review. The case will be argued in December 2005.

In the California case of Liranzo v. Liranzo, No. A109338 (Cal. Ct. App.), the Brady Center is urging the California Court of Appeal to recognize that gun owners owe a duty not to give firearms to people with a history of dangerous conduct. In this case, Michael Liranzo was shot and wounded after his uncle Andrew gave his cousin Randall access to a

.38 caliber handgun. Randall had one pound of marijuana on him when he shot Michael, and was a long-time drug and alcohol abuser. Randall had also been arrested and convicted for transporting one of Andrew's guns through a federal park. Shortly after Randall's arrest, Andrew learned of the arrest and said, "I better get that gun back," yet he took no action to take the gun back from Randall.

Despite Randall's drug and alcohol abuse and arrest for violating a gun law, the California trial court ruled that Andrew had no duty to avoid giving Randall access to a firearm. Michael appealed and the Brady Center filed a friend of the court brief in the case, urging the appeals court to reverse the lower court and allow the case to proceed. The Brady Center was joined in its brief by the California Million Mom March, Legal Community Against Violence, and Women Against Gun Violence.

The Legal Action Project and former Brady Center legal intern Daniel Swanson, now of the Washington, D.C. law firm Crowell & Moring, prepared the friend of the court briefs in the Jupin and Liranzo cases.

The Center previously helped to convince courts in Indiana and Kansas to require gun owners to secure their guns away from children and dangerous adults. In an Indiana Supreme Court ruling in Heck v. Stoffer, 786 N.E.2d 265 (Ind. 2003), the Court ruled that gun owners have a duty to prevent dangerous adults from having access to firearms. The Court rejected arguments by the National Rifle Association that gun owners have a "right" to store guns how they see fit, regardless of the risks posed by allowing access to dangerous people. This ruling followed a similar success in the Kansas Supreme Court, which held that gun owners must keep guns away from people such as children who might misuse them. Long v. Turk, 962 P.2d 1093 (Kan. 1998). ●

Smith & Wesson Settles Suit for Defectively Designing and Failing to Child-Proof Gun

The Legal Action Project assisted in a case brought on behalf of Royce Ryan, a brain-damaged boy shot in the face with a defective Smith & Wesson handgun in Wichita, Kansas. Smith & Wesson agreed to settle the suit on April 28, 2005, in order to have the case against it dismissed. The settlement marks the first time a gun manufacturer has paid to settle a claim for failing to childproof a gun.

Eight year old Royce was unintentionally shot in the face by his friend, Jared McMunn, on April 15, 1998, with a Smith & Wesson 9 mm handgun. Jared thought the gun was unloaded and, while showing it to the other kids, squeezed the trigger. Because the gun lacked a chamber-loaded indicator, a simple device to show whether it was loaded, Jared did not know that one bullet remained in the chamber. The shooting would never have taken place if Smith & Wesson had properly designed the gun. The shooting left Royce with permanent disabilities and extensive brain damage.

Royce and his mother filed suit in Pennsylvania state court against Smith & Wesson, alleging that the Model 915 was defectively designed without a chamber loaded indicator.

The Ryans also alleged that the gun had a defective magazine disconnect safety, a device that is supposed to prevent a gun from firing when the magazine is removed, and that the gun was defective because it lacked child-proofing features.

Trial Lawyers for Public Justice, as well as the law firms of Pottroff & Ball and Megaffin, Brown & Lynch of Kansas, represented the Ryans. Ryan v. Koehler International, Inc., No. 2072 (Pa. Ct. Com. Pleas).

7th Circuit Blocks Release of Crime Gun Data

After several years of litigation and two separate rulings against them, the NRA and ATF finally prevailed in their effort to suppress public access to crime gun trace data that identifies the dealers that contribute most to the illegal gun market. On September 12, 2005, the 7th Circuit Court of Appeals ruled that a restrictive Congressional appropriations rider, known as the "Tiahrt Amendment," makes the data "immune from judicial process." The rider had been passed at the urging of the gun industry and the NRA and now prevents valuable crime gun trace data from being turned over under the Freedom of Information Act (FOIA) or through court subpoena.

The data was first requested under FOIA in March of 2000 by the City of

Chicago. ATF's crime gun trace data would allow Chicago to identify the high-risk dealers that sell the majority of guns later recovered in crime and traced by ATF, as well as the manufacturers who supply them. ATF withheld crucial information, arguing that the release of the information might interfere with ongoing criminal investigations. Chicago filed suit, with the Legal Action Project supporting the City as amicus curiae, and in 2001 the 7th Circuit first ordered ATF to produce the data. The Court rejected ATF's claim that release of the information would interfere with ongoing investigations and held that the public's interest in the information trumped ATF's arguments against release. ATF appealed that ruling to the U.S. Supreme Court.

Meanwhile, Congress did the NRA's bidding by passing riders to the 2003 and 2004 ATF appropriations bills, prohibiting government funds from being used to release firearms tracing data compiled by law enforcement agencies. The riders caused the U.S. Supreme Court to send the case back to the 7th Circuit, where ATF argued that it was now barred from releasing the data. The 7th Circuit Court of Appeals again disagreed, ruling that the appropriations amendments did not overrule the requirements of FOIA and holding that ATF could release the data without spending appropriated funds.

Congress passed the "Tiahrt Amendment" on November 20, 2004, seeking to nullify the 7th Circuit's ruling and prohibit valuable crime gun trace data from ever being disclosed to the public. ATF asked the 7th Circuit for a rehearing and the Court of Appeals found that the new, even more restrictive rider, required a ruling in favor of ATF. The legislation will prevent any member of the public from requiring ATF to turn over crime gun trace data under FOIA or through a subpoena. The City of New York was able to obtain crime gun trace data from ATF, under court order, just before the Tiahrt Amendment went into effect. ●

Fox News Forced to Retract False Statements About Florida's New Shoot First Law

After appearing on Fox News on September 30th, Brady Center attorney Daniel Vice was appalled to hear Fox News commentators on "The Big Story" encourage businesses to sue the Brady Center for educating Floridians about Florida's new Shoot First law. The Brady Campaign has been informing tourists about the law — which allows Floridians to use deadly force as a first resort when they feel threatened, even in a public place — by handing out fliers and running advertisements in newspapers in Europe and the United States.

Fox News legal commentator Judge Andrew Napolitano claimed that the Brady Center was incorrect in stating that the law applies to the use of deadly force in public places, and wrongly asserted that Florida residents may use deadly force only on their own property. Napolitano went on to encourage individual hotels and businesses to sue the Brady Campaign for misrepresenting the law. Brady Center attorneys drafted a letter to Fox News Chairman Roger Ailes on October 4th, demanding a retraction. The following day, Judge Napolitano retracted his statement, on the air, saying that the law does indeed apply if you are in a public place. ●



Has the NRA's 2nd Amendment Extremism Infiltrated the Supreme Court?

Supreme Court Chief Justice John Roberts channeled the NRA during his confirmation hearings while answering questions from Senator Russ Feingold (D-Wis.) about the Second Amendment. On the issue of whether the Second Amendment guarantees only a collective right of the people to be armed as part of a state militia, or an individual right to be armed for private purposes, Roberts said this was an "open issue" left undecided by the Supreme Court. While acknowledging the Supreme Court's opinion in United States v. Miller, 307 U.S. 174 (1939), Roberts said the Miller case had "sidestepped" the issue. He ignored language in Miller that the "obvious purpose" of the right to keep and bear arms in the Second Amendment was "to assure the continuation and render possible the effectiveness" of state militias and that the guarantee of that right "must be interpreted and applied with that end in view."

Roberts also gave a conspicuously incomplete account of rulings by federal appeals courts, creating the false impression that only two federal circuit courts (the Fifth and the Ninth) had decided the meaning of the Second Amendment and that the two were in conflict on the individual vs. collective rights issue. In fact, virtually every federal appeals court has decided this issue and only one, the Fifth Circuit in United States v. Emerson, has endorsed the individual rights view. Since the Emerson opinion in 2001 (which was joined by only two circuit court judges and actually upheld the gun law at issue), the individual rights view has been rejected by the Fourth, Sixth, Seventh, Ninth and Tenth Circuits. The First, Second, Third and Eighth Circuits also have issued definitive rulings rejecting the individual rights view. Faithfully echoing the spin on the case law typically given by the NRA, Justice Roberts managed to avoid mentioning this remarkable degree of judicial consensus on the meaning of the Second Amendment. ●

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