

Blind Eye For Killers

Why should Congress protect reckless gun merchants from lawsuits?

BY BRIAN J. SIEBEL

Tomorrow, alleged sniper John Muhammed goes on trial in Virginia. Have you ever wondered how he and his purported partner, Lee Boyd Malvo, got the assault rifle that was the instrument of their attacks? Or have you thought more generally about how felons and gang members can so easily get handguns, especially in a place like Washington, D.C., where the possession of handguns has been illegal since 1976? Well, the answer is they acquire them—using straw buyers or other methods to get around the Brady Law—from gun dealers outside the District who engage in risky business practices.

The gun industry's "dirty little secret" is that it knows who these "bad apple" dealers are. It could stop selling them guns or force them to reform, but is unwilling to do so. The reason? Profits. Crime gun sales are a large percentage of the industry's market. According to expert testimony in a recent federal lawsuit brought by the NAACP against gun manufacturers and distributors, at least 15 percent of the handguns produced or imported for sale in the United States in 1995 were used in a crime by 2000. Crime guns are the industry's third-largest handgun market segment, behind only guns for personal protection and target shooting.

To protect this critical market and to avoid being held accountable for the crime caused by reckless gun sales, the industry has been lobbying Congress to pass a bill (S. 659) that would grant manufacturers, distributors, and dealers sweeping immunity from suits by gun violence victims. With a companion bill having passed the House of Representatives, and with 55 Senate co-sponsors of S. 659—including Minority Leader Tom Daschle (D-S.D.), who just signed on—the sad fact is that Congress is very close to giving the gun industry unprecedented immunity that will further hurt gun violence victims, the last stop on the industry's deadly distribution pipeline.

According to the bill, unless a manufacturer, distributor, or dealer engages in outright criminal conduct when selling a gun—and most civil lawsuits brought to compensate injured victims are based on *negligent* conduct, not criminal wrongdoing—they would be immunized by S. 659. This would be so even if an amendment offered by Sen. Daschle to tweak the bill's language were adopted. Fortunately, a determined group of senators committed to filibustering the bill if it reaches the Senate floor have so far blocked passage and allowed our courts to continue hearing gun violence victims' legal claims. Those claims deserve to be heard, and those still opposing the bill should not surrender.

HOW LITIGATION EXPOSES

Lawsuits by gun violence victims have begun to expose the industry's dirty little secret, which is exactly why the industry is so desperate to shut them down. In recent years, at least 20 court rulings in 10 different states have held that suits filed by individual gun violence victims, or the urban municipalities that suffer from concentrations of gun violence, state legitimate legal claims that should be allowed to proceed to trial.

These suits have brought to light how the gun industry's reckless—but not technically *criminal*—distribution and sales practices supply felons with guns. If the suits really were "frivolous," as the industry continually claims, the gun industry would have won, rather than lost, its efforts to dismiss them in court. Each suit illustrates why the practice of selling guns to the public needs to be the most accountable of business activities, not shielded from public scrutiny and immunized from legal liability as S. 659 would do. (The Brady Center to Prevent Gun Violence represents, pro bono, many of the injured parties who have brought these suits.) Consider the following cases:

- In *Johnson v. Bull's Eye Shooters Supply*, several victims of the D.C.-area snipers have brought suit in a Washington state court against the companies that supplied the Bushmaster XM-15 assault rifle used in the "one shot, one kill" attacks. Bull's Eye Shooters Supply in Tacoma, Wash., is the store where Muhammed and Malvo acquired the \$1,000 rifle. When the Bureau of

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Alcohol, Tobacco, Firearms, and Explosives traced the murder weapon back to the store, Bull's Eye had no record of having sold the gun to anyone. Malvo has told authorities that he—a juvenile ineligible to buy guns—was able to walk out of the store with the three-foot-long assault rifle. According to ATF audits, this was only one of 238 guns in the last three years that were “missing” from Bull's Eye's inventory, with no record of sale and no legally-required reports that they were missing or stolen. Inexcusably lax security? Or off-the-books sales to convicted felons and dangerous juveniles? Either way, this kind of reckless behavior directly supplies the criminal market with illegal guns. Despite this evidence, Bushmaster Firearms—the company that sold Bull's Eye the sniper's rifle—called the store “a good customer” after learning of its transgressions. The judge has ruled twice that the suit against both companies should proceed to trial, and a preliminary appeal of these rulings has been rejected.

- *Lemongello v. Will Jewelry and Loan*, in West Virginia state court, concerns a dealer in South Charleston, W.Va., and the manufacturer who supplied it without caring whether its sales practices were reckless. In July 2000, the dealer sold a dozen guns at one time to an obvious gun trafficker, but did not call the ATF about his suspicions until after the soon-to-be-crime-guns were out the door and the profits were securely in his pocket. Sure enough, within a few months, one of those guns was used by a multiple felon to shoot two law enforcement officers in New Jersey. The judge in West Virginia has concluded that both the dealer and the manufacturer could be held accountable for their alleged negligence.

- *Anderson v. Bryco Arms Corp.*, in Illinois state court, stems from a three-day shooting rampage in July 1999, when white supremacist Benjamin Nathaniel Smith terrorized Illinois and Indiana. He obtained his gun through a gun trafficker who bought dozens of cheap Saturday night special handguns from an Illinois dealer and then resold them from his home without doing background checks. The Illinois judge has ruled that victims of Smith's rampage have legal claims against both the dealer and the manufacturer who supplied the gun, because their supply of guns to the trafficker allowed Smith to circumvent the Brady Law.

- In *NAACP v. Acusport Inc.*, a federal judge in the Eastern District of New York held after trial earlier this year that “careless practices and lack of appropriate precautions on the part of some retailers lead to the diversion of large numbers of handguns from the legal primary market into a substantial illegal secondary market.” Expert testimony in the case confirmed what the gun industry has long known—that the vast majority of guns traced to crime by the ATF are sold by an identifiable and concentrated set of firearms dealers. Though the court held that the NAACP was not the right party to bring suit, it nonetheless concluded, “The flow of guns into criminal hands in New York would substantially decrease if manufacturers and distributors insisted that retail dealers who sell their guns be responsible.” The case is now on appeal.

Each of these ongoing lawsuits would likely be barred if S. 659 passed.

Several former gun industry insiders have also come forward to expose what the industry knows. Bob Ricker, a former industry trade association executive and former lobbyist for the National Rifle Association, has testified about meetings throughout the 1990s where industry leaders, with their attorneys present, discussed the problem of reckless gun dealers. They deliberately chose to do nothing about it. The industry decided that taking any action would be an admission that it was possible to stem the supply of new guns to criminals, and therefore would increase the risk of being held accountable.

Those within the industry who wanted to take a more responsible approach were quickly ostracized, Ricker added. Even more punishing pressure was brought to bear on Smith & Wesson after it agreed with the Clinton administration in March 2000 to implement widespread reform, including requiring everyone in its distribution network to sign a code of conduct designed to prevent gun trafficking. Furor over the agreement within the gun industry “family” turned Smith & Wesson into a pariah and forced it to drop its code of conduct. The result is that reckless sales practices continue.

CODE OF CONDUCT NEEDED

The logical choice for an industry that sells products desired by violent criminals would be to set up a distribution system to maximize safeguards and accountability. If the gun industry were to voluntarily enforce such a code of conduct, it could end the reckless distribution practices that underlie most current suits against it. By acting responsibly, it could protect itself from litigation *without* a law granting it immunity from its own reckless behavior.

Gun manufacturers could easily set up a responsible system by requiring those who sell their guns to abide by a code of conduct along the lines of the one Smith & Wesson once agreed to implement. The fertilizer industry implemented such voluntary safeguards after just two incidents in the 1990s—at the Oklahoma City federal building and in the basement of the World Trade Center—in which its products had been used by criminals to make bombs. Moreover, a responsible distribution system would not prevent law-abiding citizens from buying guns.

The Department of Justice and the ATF have repeatedly called on gun makers to help law enforcement keep guns out of criminals' hands by, among other things, “identify[ing] and refus[ing] to supply dealers and distributors that have a pattern of selling guns to criminals and straw purchasers.” Who could possibly oppose that?

Unfortunately, the gun industry is not interested in public safety, only profits. They want to keep their dirty little secret hidden behind a wall of federal immunity.

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