

Buyer Beware:

Defective Firearms and America's Unregulated Gun Industry

Consumer Federation of America

February 2005

The **Consumer Federation of America** (CFA) is a nonprofit association of 300 consumer groups, representing more than 50 million Americans that was established in 1968 to advance the consumer interest through research, education, and advocacy.

This report was authored by CFA Firearms Project Director Susan Peschin, firearms consumer safety and policy consultant Whit Collins, and former chief lobbyist for the gun industry Robert Ricker.

CFA thanks the following individuals for their expertise, comments, and review:
Josh Horwitz and Jill Ward of the Educational Fund to Stop Gun Violence
Richard Miller of Monsees, Miller, Mayer, Presley & Amick
Chris Waldrop and Rachel Weintraub of Consumer Federation of America

This report was generously funded by The John D. and Catherine T. MacArthur Foundation.

Introduction

Beyond the rhetorical debate between “gun control” and “gun rights” lies a longstanding and unaddressed problem: every year many gun owners and bystanders are killed or injured by defective or hazardously-designed guns. Consider the following real-life examples that graphically illustrate how guns with safety-related defects can kill or seriously injure gun owners and innocent bystanders:

- A gun owner took his .22 Colt single-action revolver with him on a fishing trip. He was sitting on a rock when the gun fell from his holster, struck a rock, and discharged. The bullet lodged in his bladder, damaging vital nerves and rendering him impotent.¹
- Mike Lewy was unloading his Remington Model 700 rifle in his basement apartment. As he moved the safety to the fire position in order to lift the bolt handle to eject a chambered cartridge, the gun discharged. The bullet went through the ceiling and struck his mother, who was shot in the upper left leg and required hospitalization for more than a month.²
- Carlton Norrell was changing a tire when close friend, William Kerr, accidentally dropped his .41 Magnum Sturm, Ruger Old Model revolver. The bullet struck Mr. Norrell in the temple and drilled a straight line across the front of his skull. Mr. Norrell died eight days later.³

Why do these tragedies occur? There is no question that firearms—like prescription drugs, insecticides, household chemicals, and many other products commonly found in American homes—are inherently dangerous. Consumers can’t use them without risking injury to themselves or others.

The gun lobby maintains that unintentional shootings⁴ generally occur as a result of carelessness on the part of the gun owner.⁵ Firearms industry marketing is replete with

¹ Johnson v. Colt Industries, 609 F. Supp. 776 (D. Kan. 1985), aff’d, 797 F.2d 1530 (10th Cir 1986).

² Lewy v. Remington Arms, Inc., 563 N.E.2d 397 (Ill. 1990).

³ Erik Larson, “Wild West Legacy: Ruger Gun Often Fires If Dropped, But Firm Sees No Reason for Recall,” *The Wall Street Journal*, June 24, 1993.

⁴ Unintentional shootings are often referred to as firearm “accidents.” This characterization, however, implies that injuries occur by chance and cannot be foreseen or prevented. Public health research has replaced the term “accident” with the more accurate term “unintentional injury.” This is based on the recognition that most unintentional injuries are preventable through the application of public health strategies including passive safety devices, public education, modification in product design, or limiting access to specific products.

⁵ “...we urge that you not purchase a firearm.’...and other comments on safe and responsible firearm use,” Third Edition, Sporting Arms and Ammunition Manufacturers’ Institute, Inc., p. 2: “Recognizing that essentially all firearms accidents are the result of carelessness or a lack of knowledge of fundamental safety rules, SAAMI has emphasized educational efforts that instill a clear sense of responsible firearms ownership and use.” Retrieved from the Internet at <http://www.saami.org/> on January 21, 2005..

messages about “responsibility” that emphasize the importance of owner behavior without mentioning the potential dangers of the product. Pro-gun organizations such as the Sporting Arms and Ammunition Manufacturers Institute, Inc. (SAAMI)⁶ suggest that focusing on user education is all that is needed to reduce firearm accidents.⁷

While consumer education does play an important role in injury prevention, no amount of user instruction can eliminate the risks associated with product defects in design or manufacture. Despite the fact that firearms kill nearly twice as many Americans as all household products combined, no federal agency has the necessary authority to ensure that guns don’t explode or unintentionally discharge when they are dropped or bumped. This is unique. The federal Consumer Product Safety Commission (CPSC) exists to make sure that consumers are not killed or injured by common household and recreational products. The agency tries to ensure that toasters don’t catch fire, toys don’t come apart, lawn mowers don’t cut off toes, and the myriad of consumer products within its jurisdiction are safe. By comparison, firearms are exempt from CPSC oversight and *no* other federal agency has the power to ensure that firearms manufactured and sold are safe.⁸

Although the federal Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) licenses manufacturers, dealers, and importers, it has no general safety authority, such as the power to set safety standards or institute recalls. Currently, the civil justice system is the only mechanism available to protect consumers from defect-related death and injury and to ensure that guns are safe and free from defects in design or manufacture. Traditional product liability lawsuits have been of tremendous importance in regulating the safety of firearms and ammunition and compensating consumers who suffer injury or death caused by manufacturer’s negligence.

Exactly how many victims are killed or injured each year by defective firearms is unknown. There exists no coordinated data collection on unintentional firearm injuries and deaths that includes vital information such as the specific type of gun, caliber, and source. Comprehensive data is essential to identify firearms that are exceptionally likely to be involved in unintentional firearms-related injury or death, and to inform the public of the risks associated with such guns.

⁶ The firearms industry has developed its own voluntary standards through an organization called the Sporting Arms and Ammunition Manufacturers Institute, Inc. (SAAMI). These standards are strictly voluntary and therefore manufacturers do not have to comply with them. There is also no way to enforce specific regulations or to penalize companies that do not fully comply.

⁷ *Supra* note 5.

⁸ In addition, no federal agency has the power to set mandatory standards for firearm safety devices such as trigger locks. In 2000 the Consumer Product Safety Commission (CPSC) conducted informal tests on 32 gun locks—16 trigger locks and 16 cable locks. Most of the locks failed. Some could be opened with a paperclip or a pair of tweezers, and some opened just by banging the lock on a table or by hitting it with a hammer. Many firearm safety devices on the market give consumers nothing more than a false sense of security.

The data that does exist on unintentional shooting deaths and injuries comes from the National Center for Injury Prevention and Control (NCIPC) at the Centers for Disease Control and Prevention (CDC). This data does not delineate deaths from defective firearms. According to NCIPC, 802 Americans were unintentionally shot and killed in 2001 alone.⁹ That same year, an additional 17,696 people were treated in emergency rooms for nonfatal, unintentional shooting injuries.¹⁰ Using these statistics, for every one victim that dies in an unintentional shooting, 22 survive with injuries.

While victims of unintentional gunshot wounds are less likely to die than the victims of intentionally inflicted gunshot injuries, all surviving gunshot victims may suffer long-term impairment and permanent disability. One study from the *Journal of the American Medical Association* found that of the more than 17,000 persons with unintentional, nonfatal gunshot wounds treated in emergency rooms annually, about 38 percent had injuries severe enough to require hospitalization. About half of unintentional nonfatal gunshot wounds treated in hospital emergency departments were associated with routine gun-related procedures—including cleaning a gun, loading or unloading a gun, and carrying, showing, or looking at a gun—suggesting that these common gun-handling practices can be hazardous.¹¹

Most of what is known about the risks associated with defective firearms comes from civil cases against the gun industry. For example, court documents have revealed that more than 600 people, including children, have allegedly been killed or injured by unintentional discharges from Sturm, Ruger & Company's Old Model Single Action Revolvers.¹² The Remington 700 bolt-action rifle has been involved in approximately 100 death and injury claims, and thousands of malfunction complaints.¹³ Such cases also shed light into how the industry responds to consumer complaints.

⁹ While these numbers are shocking, they actually reflect a decrease in the number of victims killed unintentionally. Overall, from 1993 to 2001, the NCIPC reports that rates of unintentional firearms deaths fell by 46 percent—down to an average rate of .28 per 100,000. Such reductions may not necessarily represent a drop in the number of victims suffering unintentional gunshot wounds, however, but only a reduction in the number of victims who actually *die* from their injuries. For example, among the unacknowledged factors that may be contributing to this current trend are improvements in trauma care, which increases the chances of surviving an unintentional shooting.

¹⁰ Data on nonfatal injuries collected by the National Electronic Surveillance System, Consumer Product Safety Commission from WISQARS Nonfatal, <http://www.cdc.gov/ncipc/wisqars/default.htm>.

¹¹ Nancy Sinauer, MPH; et al, "Unintentional, Nonfatal Firearm-Related Injuries: A Preventable Public Health Burden," *Journal of the American Medical Association*, Vol. 275, No. 22, June 12, 1996.

¹² Review of the Firearms Litigation Clearinghouse, December 13, 2004.

¹³ "A Deadly Flaw?" news special: interview with attorney Richard Miller, February 7, 2001. Retrieved from *CBS Evening News* website at <http://www.cbsnews.com/stories/2001/02/07/eveningnews/main270170.shtml?CMP=ILC-SearchStories> on January 21, 2005.

This study details what is known about defective firearms, the gun industry's response to the problem, and suggests a comprehensive solution to reducing deaths and injuries from such products. This study is divided into five sections—

Section One: Defective Firearms—Defective Regulation explains why firearms aren't already regulated for health and safety. The section also demonstrates how, over the years, the gun industry has resisted such regulation.

Section Two: Guns Aren't Supposed to Misfire provides a brief primer on how guns are intended to work and the most common types of defects.

Section Three: Worst Offenders outlines the makes and models of the most notorious defective firearms and the cases that uncovered them.

Section Four: Failed Response reveals how firearm manufacturers are often aware of defects for years before anything is done. The section also addresses the various tactics the firearms industry uses in its public response to the problem.

Section Five: Defective Tires and Bad Meat illustrates how consumer safety oversight works for other products and provides one example of a real product recall conducted through a federal agency.

The study also contains three Appendices that list known warnings and/or recalls of 1) Handguns, 2) Rifles, and 3) Shotguns. The appendices are broken out by type of firearm; listed alphabetically by maker and within that chronologically by date of first known public advisory.

To successfully reduce death and injury from defective firearms, the gun industry must be regulated for health and safety. At the very least, manufacturers should be required to recall, repair and refund consumers for products deemed defective. Absent health and safety regulation, defective firearms will continue to threaten public safety.

This study provides an overview from product safety experts, attorneys, civil cases, and the firearms industry to help shed light on this unaddressed problem and how it can be remedied.

Section One

Defective Firearms—Defective Regulation

The U.S. Consumer Product Safety Commission (CPSC) was created by the passage of the Consumer Product Safety Act¹⁴ (the Act) in 1972. The Act has four purposes: 1) to protect the public against unreasonable risks of injury associated with consumer products; 2) to assist consumers in evaluating the comparative safety of products; 3) to develop safety standards; and 4) to promote research and investigation of product-related deaths and injuries.¹⁵

Regulatory jurisdiction under the CPSC extends to approximately 15,000 different “consumer products.”¹⁶ Virtually every product used for household or recreational use falls within CPSC’s jurisdiction, including everything from baby walkers to coffee makers to all-terrain vehicles. The agency even has jurisdiction over pellet and BB guns.¹⁷

The Act gives CPSC three critical powers that support its purpose of protecting the public against unreasonable risks associated with consumer products: 1) to set product safety standards;¹⁸ 2) to ban hazardous products;¹⁹ and 3) to recall products involving substantial product hazards.²⁰ CPSC also has the important function of collecting, maintaining, and analyzing safety information—including information about product-related deaths and injuries.²¹

Interestingly, while CPSC has the authority to require product recalls, the word “recall” never appears in the Act. Recall authority is explained through CPSC’s ability to require

¹⁴ 15 USC §§2051-2082.

¹⁵ CPSA §2(b), 15 USC §2051(b).

¹⁶ CPSA §3, 15 USC §2052.

¹⁷ Although some have suggested that CPSC be given jurisdiction over firearms, the agency is not well-suited for the task. At present, CPSC lacks the resources to adequately oversee the products currently within its jurisdiction. In light of the agency’s resource deficiencies and the Department of Justice’s (DOJ) expertise in the area, CFA recommends that DOJ be empowered with health and safety authority over firearms and ammunition. Additionally, non-powder firearms should be removed from CPSC’s jurisdiction and placed with DOJ.

¹⁸ CPSA §7, 15 USC §§2056, 2058.

¹⁹ CPSA §8, 15 USC §2057.

²⁰ CPSA §15, 15 USC §2064.

²¹ CPSA §5, 15 USC §2054. In addition, CPSC maintains the National Electronic Injury Surveillance System (NEISS) a network of approximately 90 hospitals emergency rooms that reports product-related injuries. CPSC then conducts in-depth investigations on a select number of cases. This system allows CPSC to identify emerging product safety hazards and to quantify the injury rates associated with the products within its jurisdiction.

the repair, replacement, or refund of a product if it is found to be a substantial product hazard.²² These “recalls” can occur when the product fails to comply with existing standards or when it has a design defect that may have caused an injury or death. Due to the high costs associated with issuing mandatory recalls, CPSC primarily conducts voluntary recalls. Under the Act, manufacturers, distributors, and retailers are required to notify CPSC when they learn of an injury or defect associated with their product. Once CPSC knows of the hazard, they can begin the process of instituting a recall.

CPSC’s authority also includes the ability to conduct on-site inspections for the purpose of enforcing the Act.²³ However, CPSC has no authority over consumer products before they are put on the market, and—contrary to popular belief—does not conduct pre-market testing.

Baby cribs provide an example of CPSC’s use of its regulatory authority to address product hazards. According to CPSC, in 1973 it was estimated that as many as 200 infants died annually in the United States from suffocation or strangulation when they became trapped between broken crib parts or in cribs with older, unsafe designs. CPSC recognized the need for safer cribs and, in 1973, circulated mandatory standards. As a result of these and additional voluntary safety standards, deaths from baby cribs have been reduced to about 20 annually²⁴ and occur primarily in older, previously used cribs. CPSC estimates that without safety standards, deaths associated with baby cribs would have increased to as many as 240 deaths annually.

Unfortunately, current federal standards regulating consumer products *do not* apply to firearms or ammunition sold in the United States. In fact, domestically produced firearms and ammunition are specifically *excluded* from any regulation by the CPSC.²⁵

The story of how the National Rifle Association (NRA) led the fight to have firearms and ammunition excluded from the nation’s toughest consumer protection legislation demonstrates the grassroots power of the gun lobby and how it was able build itself into

²² CPSA §15, 15 USC §2064.

²³ CPSA §16, 15 USC §2065.

²⁴ “CPSC Targets Vulnerable, Hard-to-Reach Populations,” CPSC press release, October 6, 2004. Retrieved from the CPSC website at <http://www.cpsc.gov/CPSCPUB/PREREL/prhtml05/05003.html> on January 21, 2005.

²⁵ With the exception of tobacco and firearms, the following products are exempt from CPSC regulation primarily because they fall under the jurisdiction of another agency: motor vehicles or motor vehicle equipment; tobacco and tobacco products; pesticides; firearms and ammunition; aircraft, aircraft engines, propellers, or appliances; boats, vessels, and appurtenances to vessels; drugs, devices, or cosmetics; and food.

the modern day political powerhouse that is feared by many policymakers at both the federal and state level.²⁶

The Senate bill that established the CPSC as the nation's leading consumer protection agency originally included firearms and ammunition among the many products within the agency's jurisdiction. However, when the bill was considered in the House of Representatives, an amendment by Michigan Congressman John Dingle, an NRA board member at the time, was adopted that effectively excluded firearms and ammunition from the supervision of the CPSC. This amendment, which was buried and largely unnoticed in the voluminous language of the bill, did not specifically use the words "firearm" or "ammunition." The amendment cleverly exempted "any article which, if sold by the manufacturer, producer, or importer, would be subject to the tax imposed by section 4181 of the Internal Revenue Code of 1954 (26 USC § 4181)." The IRS tax statute referred to in the CPSCA provides for an excise tax on firearms and ammunition.

Despite the fact that Congress took great care to exempt firearms and ammunition from its oversight when it created the CPSC in 1972, there was no such restriction imposed when the CPSC was later empowered to enforce the Federal Hazardous Substances Act (FHSA).

In 1974, a Chicago-based organization called The Committee for Handgun Control, Inc., filed a petition before the CPSC to have all handgun ammunition in the home restricted as "a hazardous substance" under the FHSA. The Commission initially declined the petition because it claimed that it lacked any authority or oversight over ammunition. The Chicago group filed suit, and a federal judge in Washington, D.C. ordered the Commission to consider the petition.²⁷ The Commission agreed to review the issue and on February 14, 1975, initiated a 60-day public comment period.

United States Senator James A. McClure (R-ID), a longtime NRA supporter, quickly issued a press release attacking the CPSC action and urged gun owners to write the Commission in opposition to the ammunition ban.²⁸ The Associated Press (AP) picked up on the brewing controversy and ran a national story about the McClure press release and the CPSC comment period. Most national newspaper editors in the country wrote about McClure's attack on the CPSC and equated the public comment period to a "national referendum" on gun control.

The media frenzy created by the AP story was further fueled by the heated debate over the issue between some powerful leaders in Congress. Then-Illinois Congressman Abner Mikva (later White House Counsel to President Bill Clinton) demanded that the

²⁶ "The Enforcement Fable, How the NRA Prevented the Enforcement of the Nation's Gun Laws," Handgun Control and The Center To Prevent Handgun Violence, March 21, 2000, p. 4.

²⁷ BB Guns and Gun Control ABC's, James O.E. Norell. Retrieved from the Internet at <http://www.nraila.org/Issues/Articles/Read.aspx?ID=86> on January 21, 2005.

²⁸ *Ibid.*

American consumer be protected from a “national scandal of death and injury related to handguns and handgun ammunition. . . .”²⁹

Editorials reached millions of homes all over America and urged the general public to respond in favor of the CPSC request. This “spontaneous gun control referendum” produced a huge response. In 60 days, the CPSC received almost 400,000 responses, almost all of which opposed the handgun ammunition ban. The letters and petitions ran nearly 20,000 to 1 against the ban.³⁰

As described by one NRA insider “when all was said and done, about 400,000 individual Americans made their voices heard. The message was simple: no ammo ban. No CPSC regulations. Ever.”³¹

That same year, the NRA Board of Directors moved to create its now infamous lobbying wing called the NRA Institute for Legislative Action (NRA-ILA). Senator McClure was approached by the new NRA-ILA lobbyists and asked how the NRA could help prevent the CPSC from any “backdoor” regulation of firearms or ammunition.

Senator McClure introduced an NRA-sponsored amendment to the FHSA to deny the CPSC a “foothold” into firearms or ammunition regulation. The NRA was able to generate bipartisan support for the amendment by mailing NRA members and organizing a formidable congressional grassroots mail campaign. This effort became the model that has been used by the NRA over the years to kill many gun violence prevention measures.

Having already passed the U.S. House of Representatives, the CPSC amendment came to a vote in the Senate on July 18, 1975. Senator McClure opened the debate by saying that safety regulation of firearms and ammunition was “indeed a consumer issue—where the consumers of a specific product have made their wishes to be left alone abundantly clear.” The amendment passed on a voice vote, killing the effort to regulate ammunition.³²

Additional legislation was passed in 1981 making it clear that the Commission had no authority to regulate firearms and ammunition.³³

²⁹ *Ibid.*

³⁰ *Ibid.*

³¹ *Ibid.*

³² Congressional Record, Senate, Volume 121, Part 18, July 18, 1975, p. 23569.

³³ 15 USC § 2052.

According to official documents posted on the NRA website, the leadership believes it is a tribute to Senator McClure and the founders of the NRA-ILA that the precedent set almost 30 years ago remains the line that cannot be crossed today.³⁴

State Level Safety Regulation of Firearms

At the state level there have been several successful attempts to regulate the safety aspects of firearms and ammunition despite well-organized efforts by the NRA and the gun industry to prevent the enactment of consumer safety regulations.

Massachusetts

In October 1997, Massachusetts Attorney General Scott Harshbarger became the first Attorney General in the nation to establish safety standards for all handguns made or sold in the state. Attorney General Harshbarger acted pursuant to the Massachusetts Unfair Business Practices Act (Mass Gen. Laws Ch. 93A, Section 2.).

Among various provisions, the new regulations declared the following gun industry practices to be “unfair or deceptive practices” under Massachusetts law:

- (1) the sale of a handgun by a commercial seller that is not equipped with some form of trigger lock;
- (2) the sale of a handgun by a commercial seller that is not equipped with a mechanism to prevent an average 5-year old from firing the gun, such as increasing trigger resistance, altering the firing mechanism so that the child’s hand is too small to operate the gun, or requiring a series of motions to operate the gun; and,
- (3) the sale of a semi-automatic handgun by a commercial seller that is not equipped with a load indicator or magazine disconnect.

The regulations also declared that the sale of a handgun prone to accidental discharge, either by repeated firings based on a single pull of the trigger or firing upon being dropped, is an unfair or deceptive business practice.

On January 14, 1998, the day before the official implementation of the regulations, the American Shooting Sports Council (ASSC), a leading firearms industry trade association and several Massachusetts gun manufacturers filed suit to block implementation of the regulations. The ASSC argued that the Attorney General exceeded his statutory authority in attempting to implement the handgun safety standards. Later that year, a state court trial judge agreed with the firearms industry

³⁴ “Corzine-Kennedy ‘Consumer Protection’ Bills Poor Smokescreen for Back-Door Gun Prohibition,” NRA Fact Sheets. Retrieved from the Internet at <http://www.nraila.org/Issues/FactSheets/Read.aspx?ID=149> on January 21, 2005.

group and granted a preliminary injunction enjoining the implementation of the handgun regulations. The trial court held that it was not an "unfair" practice for gun manufacturers to sell handguns designed in a manner the Attorney General found to be dangerous.³⁵

On June 30, 1999, the Supreme Judicial Court of Massachusetts reversed the trial court's ruling and upheld the regulations as a valid exercise of the Attorney General's rulemaking authority under Massachusetts law. The court held that the Attorney General "may regulate deceptive or unfair acts or practices in the sale of products which fail fundamental requirements of safety and performance."³⁶

The Supreme Judicial Court remanded the case to the trial court, which entered a final judgment in favor of the Attorney General. On April 3, 2000, almost two and a half years after the regulations were first proposed and only after the time to file an appeal of the final judgment expired, the Attorney General announced that implementation and enforcement of the regulations would begin.

It has been argued that the Massachusetts regulations are a model to be followed in other states that have enacted unfair business practices statutes. To date, no other state Attorney General has followed the Massachusetts example.

California

In 1998, Grey Davis, a strong gun violence prevention supporter, was elected Governor of California. In 1999, the California State Legislature passed, and Davis signed, SB 15—a comprehensive legislative proposal requiring all handguns manufactured or sold in California to pass a series of safety and functionality tests prior to being approved for sale to the public.³⁷ SB 15 prohibits the manufacture, importation for sale, sale, lending, or transfer of any "unsafe" handgun.³⁸ Similar legislation had passed in a prior legislative session but was vetoed by then-Governor Pete Wilson.³⁹

³⁵ Civil action commenced in the Superior Court Department on January 13, 1998. The case was heard by Diane M. Kottmyer, J.

³⁶ American Shooting Sports Council, Inc. v. Attorney General, 429 Mass. 871, 711 N.E.2d 899 (Supreme Judicial Court of Massachusetts 1999).

³⁷ The provisions of SB 15 generally do not apply to the sale or transfer of duty firearms to peace officers; private party transfers; transfers that are not required to be conducted by firearms dealers; transfers of curio and relics handguns; certain single-action revolvers; the return of a firearm by a firearms dealer to a person who delivered the firearm to the dealer for service or repair; the return of a handgun by a consignment or pawn dealer to a person who delivered the firearm to the dealer for the purpose of a consignment sale or as collateral for a pawnbroker loan; and the sale or transfer of special firearms used and approved for Olympic competition.

³⁸ California Penal Code, Section 12125.

³⁹ SB 500 Veto Message, Governor Pete Wilson, BILL NUMBER: SB 500 VETOED: September 26, 1997.

Specific firing and drop-safety requirements for new handguns were enacted and the California Department of Justice (CDOJ) is now required to certify independent laboratories to test handguns for compliance with the safety and functionality provisions of this statute.⁴⁰

The law requires that a CDOJ-certified independent laboratory test each new handgun model sold, imported, or manufactured in the state to determine if that handgun model meets the specified firing and drop-safety requirements.⁴¹

As of January 1, 2001, CDOJ is required to compile, publish, and maintain a roster listing of those new handguns that have been tested and certified by the DOJ as “not unsafe” and available for sale in California.⁴² Since the implementation of SB 15, there have been 1,006 handgun models approved for sale in California and five labs approved as certified handgun testing facilities.⁴³

In 2002, Governor Davis signed into law additional handgun safety requirements. Now, all new semiautomatic handgun models sold in California after 2006 must have either a clear loaded-chamber indicator or a magazine disconnect safety, and by 2007, all new handgun models will be required to have both new safety features.⁴⁴

Maryland

In 1988, a major legislative battle erupted in Maryland over unsafe handguns and “Saturday night specials”—cheap, poorly made handguns that are generally regarded as particularly attractive to criminals. That year, the Maryland state legislature proposed the establishment of a “Handgun Roster Board” to determine which handguns were “Saturday night specials” and to set certain criteria to approve other more reliable guns for sale in the state.

The NRA mounted a full-scale legislative assault on the proposal that moved from the halls of the state capitol to a statewide ballot referendum. Despite the fact that the NRA sponsored referendum was narrowly defeated, the political pressure they generated greatly influenced the implementation of what could have been a historic new approach to firearm safety.

⁴⁰ California Penal Code, Section 12127, Section 12128.

⁴¹ California Penal Code, Section 12030.

⁴² California Penal Code, Section 12131.

⁴³ Roster of Handguns Certified for Sale. Retrieved from the California Attorney General's website at http://justice.doj.ca.gov/safeguns/safeguns_new.taf on January 21, 2005.

⁴⁴ SB 489 (Scott), Chapter 500, 2003-2004 Legislative Session, September 24, 2003.

The legislative battle centered around a Maryland Court of Appeals decision that recognized for the first time a cause of action against handgun manufacturers by victims of gun crime.

In the case Kelley v. R.G. Industries⁴⁵ the court found manufacturers and marketers of “Saturday night specials” strictly liable if their guns were used in crime but not liable if their guns were simply misused. In creating the new cause of action, the court defined the “Saturday night special” as a handgun that is “particularly attractive for criminal use and virtually useless for the legitimate purposes of law enforcement, sport and protection of person, property and businesses.”⁴⁶ The court went on to find that these guns had characteristics such as short barrels, light weight, ease of concealability, low cost, poor quality of materials, poor quality of manufacturing, inaccuracy, and unreliability.⁴⁷

The NRA and firearms industry launched a full-scale legislative attack on the Kelley decision in the Maryland legislature. The NRA-backed proposals to overrule the Kelly decision failed in both the 1986 and 1987 legislative sessions.⁴⁸

In 1988, an influential member of the Maryland House of Delegates introduced a bill to codify the Kelley decision. That bill gave NRA and the gun industry the opportunity they were waiting for. Gun safety advocates wanted to codify the Kelly decision and have the state police regulate “Saturday night specials.” The NRA and gun industry’s priority was to counter what they considered the troublesome Kelley decision.⁴⁹ The statute the legislature eventually enacted on May 23, 1988 represented a compromise between gun safety advocates and the gun industry.

The compromise established a procedure to restrict the sale of certain guns using criteria patterned after the Kelley criteria.⁵⁰ These criteria included concealability, quality, safety, accuracy, caliber, and use for sporting or law enforcement purposes.⁵¹ Originally, a panel of law enforcement experts would have been established by the state police to compile a roster of approved handguns.⁵² However, as part of the

⁴⁵ Kelley v. R.G. Industries, 497 A.2d 1143 (Md.1985).

⁴⁶ *Ibid.* at 1154.

⁴⁷ *Ibid.* at 1153-54.

⁴⁸ Monica Fennell, “Missing The Mark in Maryland: How Poor Drafting and Implementation Vitiating A Model State Gun Control Law,” 13 *Hamline Journal of Law and Policy* 37 (1992).

⁴⁹ *Ibid.*

⁵⁰ Statement of J. Joseph Curran, Jr., Attorney General of Maryland, before Maryland House Judiciary Committee in support of HB 1131, March 21, 1988.

⁵¹ Robert E. Powell & Catherine A. Potthast, House Bill 1131: An Enigma, 19 *U.Balt.L.F.* 7,11 (1988).

⁵² HB 1131, 395th Sess. (MD1988).

compromise, the NRA was successful in convincing legislators to substitute a nine-member part-law enforcement, part-citizen advisory Handgun Roster Board for the expert-only board and delete the term "Saturday night special" from the final statute.⁵³ Despite the NRA-negotiated compromise, the Maryland statute set up a relatively effective system that arguably banned the most infamous small, inexpensive, and poorly-made handguns in Maryland.

In April 2000, despite heavy NRA and gun industry opposition, then-Maryland Governor Parris Glendening signed into law a comprehensive bill that revisited the issue of firearm safety and gun design. Under the provisions of The Responsible Gun Safety Act of 2000 (HB 279/SB 211) a firearm dealer may not sell, offer for sale, rent, or transfer in the state any handgun manufactured on or before December 31, 2002 unless the handgun is equipped with an external safety lock. An external safety lock is defined as "an external device that is attached to the handgun with a key or combination and is designed to prevent a handgun from being discharged unless the device has been deactivated."

In addition, firearm dealers may not sell, offer for sale, rent, or transfer in the state any handgun manufactured after December 31, 2002 unless the handgun has an integrated mechanical safety device. An integrated mechanical safety device is defined as "a disabling or locking device that is built into the handgun and is designed to prevent the handgun from being discharged unless the device has been deactivated." The Act also requires the Handgun Roster Board to review the status of personalized handgun technology and report its findings to the Governor and the General Assembly on an annual basis.

Other States' Novel Approach to Gun Safety

A number of states have attempted to deal with the handgun quality issue by enacting what are known as "melting-point" laws. These statutes attempt to regulate the sale of cheap, poorly-made guns by setting a threshold melting temperature for key handgun component parts. The reasoning is that cheaper metal alloys used in some inexpensive, poor quality handguns will melt at much lower temperatures than the hardened machined steel used in most quality handguns. Better made guns will not degrade over time like their poorer quality counterparts, therefore the approved guns will be safer for consumers.

South Carolina established the first melting-point law in 1968. Minnesota, Illinois, and Hawaii have followed suit.⁵⁴ The South Carolina statute prohibits the manufacture and sale of guns with die cast, metal alloy frames or receivers that melt at less than 800 degrees Fahrenheit.⁵⁵ The Illinois and Hawaii laws are essentially the same,⁵⁶ and the

⁵³ James J. Boulet, Jr., "Firearms Folly in Maryland," 3 (1989) *Cited in* Fennell, *Missing The Mark in Maryland: How Poor Drafting and Implementation Vitiating A Model State Gun Control Law*, page 45 *supra*, note 48.

⁵⁴ Haw.Rev.Stat. § 134-15; Ill.Rev.Stat. ch. 38, para. 24-3(h); Minn.Stat. § 624.712(4).

Minnesota law prohibits guns that melt at less than 1,000 degrees, use metal parts that have less than a certain tensile strength, or are made of powdered metal with less than a certain density.⁵⁷

The melting-point standard for guns is clear and easy to administer. In South Carolina, the burden is on the manufacturer to prove compliance, and the state law enforcement division is in charge of enforcing the law.⁵⁸ South Carolina has restricted the sale of approximately 170 handgun models.

A comparison of the treatment of handguns made by one company illustrates how the different approaches taken by Maryland and South Carolina for example, have had mixed results. The gun company known as F.I.E., which is no longer in business, manufactured numerous models of small, inexpensive handguns in the 1970's, 80's, and 90's. Seventy-three F.I.E. models were banned in South Carolina as a result of its melting-point law. The Maryland Handgun Roster board, on the other hand, outlawed only two F.I.E. models and has approved thirty-eight F.I.E. models.⁵⁹

Melting-point statutes like other gun violence prevention measures have, in the past, been vehemently opposed by the both the NRA and the gun industry. The South Carolina experience illustrates why the NRA and the gun industry were unable to stop this simple gun safety measure—the law was a proposal *initiated and supported* by the state's organized gun dealers.⁶⁰ According to John Morris, a gun shop owner in Columbia, South Carolina at the time the law was enacted, "Gun control groups have little following here, and the NRA is opposed to anything and everything ... It was the consumers and gun shops who wanted to get rid of the Saturday Night Specials. There were a lot of low-quality guns being sold to little old ladies for self-defense and endangering them."⁶¹

The European “Proof” System

“Proof” is the European system of compulsory and statutory testing of every new rifle, shotgun, pistol, or revolver or other small arm before it is sold. It is a requirement in most European countries before guns are transferred or sold.

⁵⁵ S.C. Code Ann. § 23-31-180 (Law.Co-op.Supp.1990).

⁵⁶ Haw.Rev.Stat. § 134-16 (Supp.1990); Ill.Rev.Stat. ch. 38, para. 24-3(h) (1991).

⁵⁷ Minn.Stat. § 624.712(4) (1987).

⁵⁸ *Supra* note 48, at 67-68.

⁵⁹ Department of Public Safety and Correctional Services, State of Maryland, Official Handgun Roster (Dec. 5, 1990).

⁶⁰ *Supra* note 47, at 68.

⁶¹ *Ibid.*

Proof testing is designed to ensure that each gun offered for sale will be safe in the hands of the user. It involves the firing of a considerably heavier load than is customary for a particular gun, thereby setting up pressure and stress on the barrel and the action in excess of the pressure generated by standard load cartridges. Such increased pressure is intended to reveal weakness in guns at the "Proof House" rather than in the field where personal injury may result. Once a firearm passes proof testing, the unique proof mark of the proofing house is stamped into the barrel of the gun.

Proof marking in Great Britain dates back to 1637, when the Gunmakers Company of London was granted its Royal Charter. Known simply as "proof," the process was required to protect the public against the many poor quality firearms being made and sold, which not only endangered the public but indirectly brought discredit upon reputable gun makers.

The Gunmakers Company secured its "Ordinances" in 1670 and from that time was enabled to enforce proof in and around London. The original proof marks are still in use today.

The Birmingham Proof House was established in 1813 by Act of Parliament. That statute was specifically requested and supported by the British gun industry. Since 1813, it has been an offense to sell or offer for sale an unproved firearm anywhere in the United Kingdom.⁶²

The provisions of the Proof Acts apply to all small arms, whether of present use or future invention, within certain fixed limits of bore size and projectile weight (with the exception of some military arms). Since air guns are not considered "firearms," they are specifically excluded.

The Proof Acts specify that no small arm may be sold, exchanged or exported, exposed or kept for sale or exchanged or pawned unless and until it has been fully proved and duly marked. The maximum penalty is £1,000 for each offense. Alteration or the forging of proof marks is a more serious offense.

Arms previously proved and bearing apparently valid proof marks are deemed unproved if the barrels have been enlarged in the bore beyond certain defined limits or if the barrel or action has been materially weakened in other respects.

The International Proof Commission (C.I.P.), Secretariat, at the Belgian Proof House, Liege oversees and coordinates the proofing requirements internationally. The C.I.P. has been working since 1914 for the standardization of proof, which also involves standardization of pressure measurements, of chamber and bore sizes and cartridge

⁶² The current British law on "proofing" can be found in the Gun Barrel Proof Acts of 1868, 1950, and 1978 and various "Rules of Proof," most notably those of 1925, 1954, 1986, and 1989.

dimensions. Currently, C.I.P. members include: Austria, Belgium, Chile, Finland, France, Germany, Hungary, Italy, Russia, Spain and the United Kingdom.

Federal Data Collection: the Gun Lobby's Ball and Chain

The collection of information on products is critical to a regulatory agency's ability to respond effectively to specific product hazards. Since firearms are not federally regulated like other consumer products, data on gun deaths and injuries is limited to incidents of murder compiled by the FBI's *Uniform Crime Reports* and information culled from death certificates. There exists no coordinated data collection on gun injuries and deaths that includes vital information such as the specific type and caliber of weapon. In addition, data on firearm manufacture, sales, stolen guns, and guns used in crime collected by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) is often non-specific and inconsistent.

The NRA and gun industry have consistently blocked efforts to improve federal firearms data collection. In 1996, the NRA succeeded in prohibiting the Centers for Disease Control and Prevention (CDC) from even studying firearm-related injuries. At first, the NRA accused CDC researchers of bad science despite being praised by a federal review for high quality work. The NRA then pushed legislators to close the CDC's National Center for Injury Prevention and Control (NCIPC), which conducts research on product-related injuries as well as assault and suicide and tried to force the center to stop firearm research.⁶³ Finally, the NRA targeted CDC's appropriation and successfully lobbied Congress to cut NCIPC funds.⁶⁴

Most recently, the NRA pushed for, and succeeded in passing, several pro-gun provisions in the fiscal year 2004 omnibus spending bill.⁶⁵ The most egregious provision reduced the time that the ATF can retain records of approved gun sales—from the current 90 days to a maximum of 24 hours. Unfortunately, sometimes firearm sales are approved when they should have been denied. In such cases, ATF must initiate a "firearm retrieval" to recover the gun from the illegal purchaser. If the record of such a sale is destroyed, it will be virtually impossible to retrieve the purchased guns.

A June 2002 General Accounting Office study conducted for Senator Richard Durbin (D-IL) found that 97 percent (228 of 235) of firearm retrievals initiated during the first six months of the current 90-day rule could not have been completed under a 24-hour

⁶³ "Defunding the CDC's National Center for Injury Prevention and Control," ILA Research & Information Division, Fact Sheet, National Rifle Association, 1996. Retrieved from the Internet at <http://web.archive.org/web/19970619145518/www.nra.org/research/ricdcfs.html> on January 21, 2005.

⁶⁴ In 1996, the House Appropriations Committee approved an amendment to cut the budget for the Centers for Disease Control and Prevention by \$2.6 million, the exact amount spent by the CDC's National Center for Injury Prevention and Control on firearms research. A similar campaign was launched in the Senate and the final measure diverted the firearm funds to brain injury research.

⁶⁵ P.L. 108-199.

rule.⁶⁶ Therefore, 228 prohibited persons (i.e. felons, persons convicted of domestic violence misdemeanors, fugitives, etc.) would have been able to keep their illegal guns if the records had been destroyed within 24 hours.⁶⁷

Another provision passed in the 2004 omnibus appropriations bill prohibits public release of any information regarding firearms production or sale that is required to be kept by gun dealers and manufacturers. In addition, no information regarding records of multiple handgun sales (where 2 or more handguns are sold to the same buyer within five days) or gun tracing information that is reported to ATF can be released to the public. ATF had previously made this information available to the public through Freedom of Information Act ("FOIA") requests.⁶⁸

An “after-the-fact” approach is not enough

One factor that propelled the CPSA through Congress in 1972 was recognition that a lawsuit filed after a death or injury has occurred is an incomplete approach to product safety. During the debate on the CPSA on the floor of the House of Representatives, Congressman Edward Roybal of California argued:

The time has come for Congress to insure that defective and hazardous goods do not find their way into the marketplace. Prior to this act, the Federal Government has never had a comprehensive program to protect consumers from injuries due to defective products. Rather, Congress has utilized a knee-jerk, hit-and-miss approach which has produced legislation to meet a crisis situation in one area and completely overlook the larger problem. Until now, it has been the courts which have been in the forefront developing protection for people injured by defective products. The growth of the doctrine of “strict liability” over the last 15 years is the necessary outgrowth of a society of the mass-produced and multi-handled product. The problem with the approach is that it can only aid people

⁶⁶ The General Accounting Office (GAO), *Potential Effects of Next-Day Destruction of NICS Background Check Records*, July 2002.

⁶⁷ Both the Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI) have recommended longer retention periods for approved gun sales. The DOJ argued, in a case before the U.S. Supreme Court, that a rule permitting records of allowed transfers to be retained for up to six months was entirely consistent with the Brady Act. The FBI stated unequivocally in its March 2000 *Operations Report* on the National Instant Check System (NICS) that an adequate document retention period was needed in order to improve the ability of the system to prevent prohibited persons from acquiring firearms. The report recommended a one-year retention period and noted that the Advisory Policy Board concurred with that recommendation.

⁶⁸ FOIA was enacted by Congress in 1966 to give any person the right to request and receive access to documents, files, and other records in the possession of any agency of the federal government. The accessibility of this information is important to inform the public about what the government is or is not doing with regard to matters of public concern, such as firearms trafficking. Such government records often contain facts that can be helpful to public safety.

after they have suffered injury but it cannot protect them from the initial contact with the improper goods....⁶⁹

Due to successful efforts to block federal safety regulation of guns, the only remedy today for those injured or killed by defective firearms is through our civil courts. As Congressman Roybal argued in 1972, the time has come for Congress to enact comprehensive and uniform product safety regulatory reforms to insure that defective and hazardous firearms do not find their way into the marketplace.

⁶⁹ Congressional Record, House, Volume 118, Part 24, September 20, 1972, page 31388.

Section Two

Guns Aren't Supposed to Misfire

Many firearms can and do fire unexpectedly. Unintentional discharges can occur without the user pulling the trigger or when the user believes the gun is unloaded or in safe mode, including instances when there is a reasonable expectation that the gun is safe for routine unloading and cleaning. More thoughtful and conscientious design could prevent almost all of these unexpected discharges. Unfortunately, many firearm manufacturers do not consistently incorporate available and affordable safety devices into their product designs.⁷⁰

Manufacturers often claim that relying on safety mechanisms encourages lax gun handling.⁷¹ This claim is as dubious as believing that airbags in cars encourage speeding. Firearm manufacturers, like automobile manufacturers, should be required to meet minimum safety standards for guns distributed to the general public.

Guns and Cars: Two Peas in a Pod

When used improperly, firearms and automobiles are products capable of inflicting damage and death to the user and innocent bystanders. The gun lobby likes to point out that both products are tools capable of productive or unproductive use, depending on the operator. What the gun lobby fails to point out is that the Federal Government regulates automobiles for safety while guns are completely exempt from similar regulation.

Until the 1960s, automobile death and injury was considered an inevitable aspect of general car ownership and operation. Blame for injuries caused by accidents was attributed to the “nut behind the wheel,” or the “sleepy/inattentive/incompetent” driver. However, when consumer advocates, and then the Federal Government, began to look at the actual design of automobiles and roads and took steps to change those designs, automobile death and injury rates plummeted. Automobile regulation has mandated the creation of dozens of safety innovations, from seatbelts to collapsible steering columns, cutting highway deaths nearly in half over the years.⁷²

Today, automobiles must meet safety standards before reaching the consumer, and if a safety defect is detected after distribution, the government has the power to force the manufacturer to issue a recall. Unfortunately, safety regulation of firearms remains

⁷⁰ *Supra* note 5.

⁷¹ *Ibid.*

⁷² According to the National Center for Health Statistics, the U.S. death rate from motor-vehicle accidents has dropped from a high of 28.5 in 1969 to 15.4 in 2002.

stuck in a pre-1960's mindset. A poorly designed gun produced in the United States that shoots out of the wrong end of the barrel is not subject to any regulatory scrutiny.

Another key idea that has made consumer product regulation work is an acceptance that people do make mistakes and sometimes act carelessly. But when they do, the design and distribution of the product can mitigate the consequences. Safety innovation in the automobile industry has shown that regulated design saves lives and prevents injuries, even when people make mistakes or behave irresponsibly. The same approach should apply to firearms. In fact, the emotional stress and adrenaline rush associated with using a gun, especially in lawful self-defense, makes any potential defect in design or manufacture doubly hazardous.

Unfortunately, the gun industry continues to avoid federal health and safety regulation and often blames the consumer for accidents and product malfunction. While there are many safety innovations for firearms, in the absence of a federal regulatory agency with the power to mandate their inclusion they have been incorporated episodically, if at all.

Despite the fact that technology to make firearms safer has been around for more than a century, manufacturers have almost uniformly chosen not take advantage of it.⁷³ For example, people often believe a pistol is unloaded after the magazine has been removed. However, many guns are designed so that a round remains in the chamber ready to be fired even in the absence of the magazine. Two available devices could help reduce the number of unintentional shootings and prevent some deaths that result when a user intentionally pulls the trigger believing the gun to be unloaded. A magazine disconnect safety prevents a pistol from firing once the ammunition magazine has been removed, and a loaded chamber indicator ensures that people will always know when a gun is loaded.

Figures 1. and 2. show firearms designed with a bevy of inexpensive, yet effective, safety devices. Compare this with figure 3., which shows a firearm that is sold without a comprehensive safety system. This firearm has been responsible for needless unintentional injuries. (See Maxfield v. Bryco.)⁷⁴

⁷³ Melvin Claxton, "Defective Firearms Go Unchecked," *The Detroit News*, December 14, 2003. Retrieved from the Internet at <http://www.detnews.com/2003/specialreport/0312/16/a13-7201.htm> on January 21, 2005.

⁷⁴ Maxfield v. Bryco Arms, et al., Superior Court of the State of California, Alameda County, Case Number 841636-4, (January 31, 2002). Brandon Maxfield was accidentally shot in the face at close range by a family friend who was unloading a Bryco Model 38 when it discharged. The police determined the 20-year-old friend was careless in unloading the gun around children but it was also apparent that the pistol lacked certain safety features. There was no easy way to tell the Model 38 was loaded and it could fire even after the gun's magazine was removed. Additionally, the gun's design increased the possibility of accidental discharge because the gun's safety has to be turned off when the gun is being unloaded.

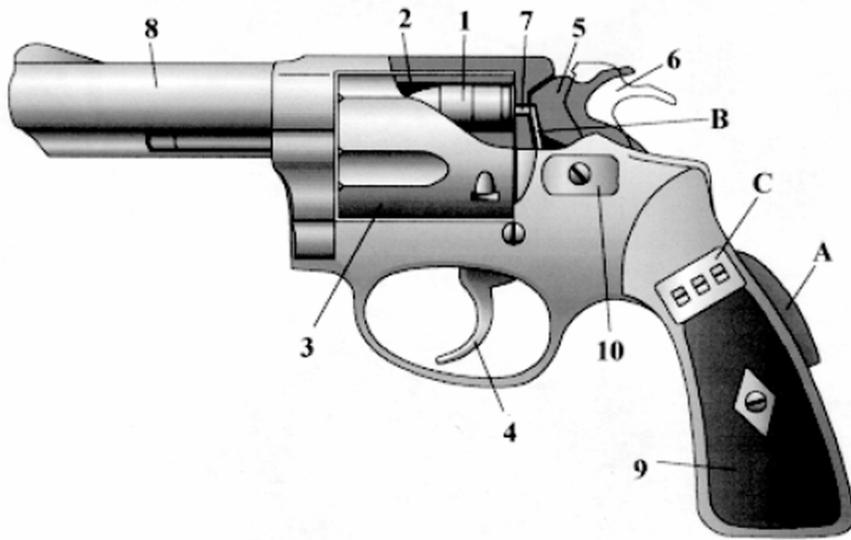


Figure 1: Revolver equipped with known effective safety devices: A – grip safety; B -- drop safety, transfer-bar type; C built-in lock, button-combination type. Numbered components are: cartridges (1) stored in multiple chambers (2) rotating cylinder(3). When trigger (4) is pulled, cocked hammer (6) falls forward (5) and strikes firing pin (7) firing cartridge and discharging bullet from barrel (8). Other main components include: handgrip or gripframe (9); cylinder release lever (10), which opens cylinder for loading and unloading.

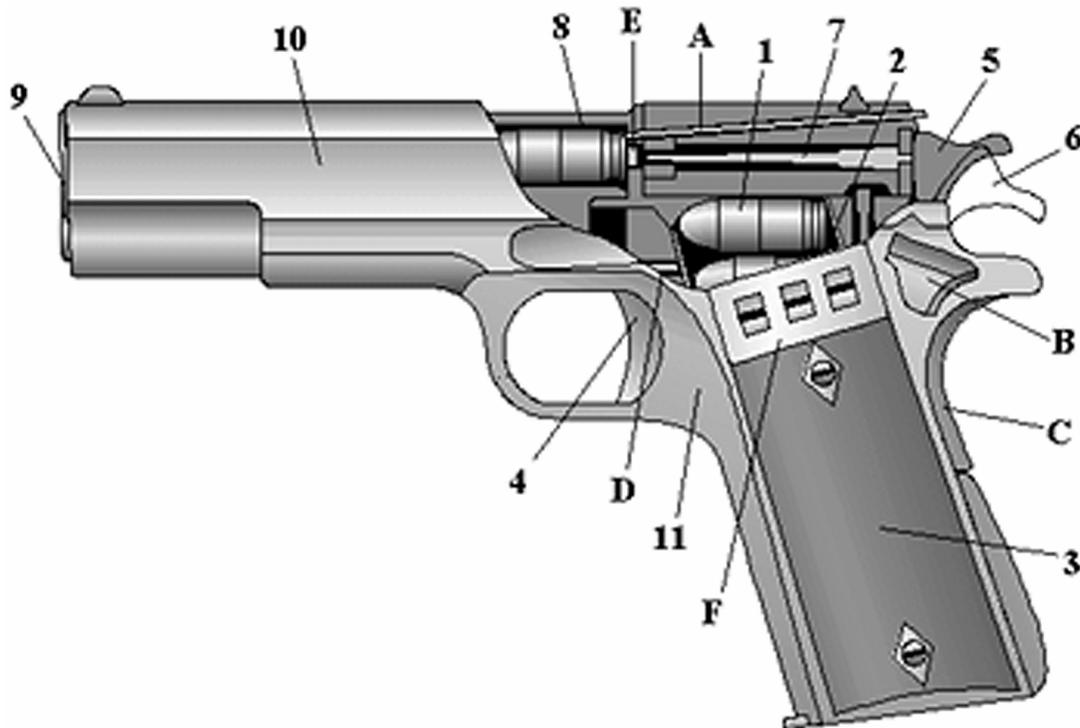


Figure 2: Pistol equipped with known effective safety devices: A – loaded chamber indicator; B -- manual safety; C -- grip safety which also serves as part of drop safety linkage; D – magazine interlock safety; E – drop safety, firing-pin block type; F – built-in lock, button-combination type. Numbered components are: cartridge (1) ready to feed from magazine (2): commonly in grip of pistol (3). Trigger (4) releases cocked hammer (6) to fall (5) and strike firing pin (7). Firing pin impacts chambered cartridge (8), which fires bullet from barrel (9). Momentum energy from shot drives slide mechanism (10) backward, opening breech and expelling fired cartridge case. A new loaded cartridge, again at 8., will enter chamber as slide rides forward and closes.



Figure 3: Bryco pistol (phantom view) is equipped with only a single manual safety and cocking indicator

This section describes how a gun operates and details some of the common scenarios that cause unintentional discharge. It also highlights the available safety systems incorporated into the guns in *figures 1. and 2.* that help prevent injury.

Firearms 101: What Are They and How Do They Work?

What Are They?⁷⁵

“Firearms” refer to weapons that use a powder charge to fire a projectile. Non-powder guns, including BB and pellet guns, use a surge of air or other force (e.g. a spring or pump) to fire projectiles. Non-powder guns are not considered firearms.⁷⁶

⁷⁵ Tom Diaz, *Making a Killing: The Business of Guns in America*, The New Press, 1999, pp. 33-35.

⁷⁶ Although non-powder guns are not covered by this report, several have been voluntarily recalled by their manufacturers due to design defects. ASTM International is a voluntary standards development organization, which has established a voluntary industry standard on non-powder guns. The existing ASTM voluntary standard for non-powder guns should be strengthened to address loading and feeding in all multi-shot air guns to ensure that an air gun will load, feed, and fire properly; consider specifications that allow the user to ascertain whether an air gun is loaded; consider setting a uniform standard for safety mechanisms to automatically engage when an air gun is loaded and ready to fire; review age limits in the standard for users of air guns by velocity level; consider uniform standards to determine the velocity limit of air guns for public use; and consider warning language that would adequately warn consumers of the dangers of a child under 16 using the air gun, adequately warn of the dangers of killing someone with the air gun, and adequately warn of the potential hazard of the air gun appearing unloaded when it actually contains a BB or a pellet.

There are two main categories of firearms—**handguns** and **long guns**.

Handguns are designed to be fired from one hand and usually have an overall length of less than 18 inches. **Handguns** are either **pistols** or **revolvers**.

Pistols are generally semiautomatic⁷⁷ and require a separate pull of the trigger for each shot. These firearms are also called "autoloaders" or "self-loaders." A pistol carries its extra cartridges in an ammunition **magazine**, which is usually located in the handle or "grip" of the handgun. Spring pressure moves the ammunition cartridges up the magazine. Each time the pistol is fired, a new cartridge moves up and loads into the firing chamber.

A **revolver** is a firearm with a round cylinder that serves as the magazine and acts as a firing chamber when aligned with the barrel. Single-action revolvers require that the hammer be manually cocked (pulled back) to rotate the cylinder before each shot. Double-action revolvers can also rotate the cylinder by the pull of the trigger with each fired shot.

A subcategory of handguns called Saturday night specials or "junk guns" are inexpensive short-barreled handguns made of inferior materials. They can be either pistols or revolvers and because of their low quality, inaccuracy, and price, these firearms have no sporting purpose and are often traced to crimes.

Long guns are firearms that are designed to be fired from the shoulder and include **rifles** and **shotguns**. By law, rifles have a barrel length of 16 inches or more and shotguns have a barrel length of 18 inches or more. Rifles and shotguns with barrel lengths less than 16 and 18 inches respectively (e.g. sawed-off shotguns) are subject to strict federal tax licensing and registration.

A **rifle** is a firearm with spiral grooves in its barrel. A **shotgun** usually has a smooth bore (inside of the barrel) and fires shells containing numerous pellets or a single slug.

Repeating firearms may be handguns, rifles, or shotguns. By operating a mechanism on the gun, they allow the shooter to load another round after a shot has been fired. Manually operating a bolt, lever, pump, or other mechanism extracts and then ejects the empty case after the gun has been fired. It then reloads a new shell or cartridge into the chamber and cocks the gun. Unlike repeating firearms, semiautomatic guns do this automatically when fired.

⁷⁷ Pistols are often referred to as "automatics," which can be confusing since they require a separate trigger pull for each shot. True automatic pistols fire more than one shot per trigger pull and are known as machine pistols. Machine pistols are regulated like machine guns.

Assault firearms can be semiautomatic, full automatic (firing more than one bullet per trigger pull), or select fire (the firearm can be set to fire either semiautomatic or full automatic) rifles, shotguns and handguns that are designed for military and law enforcement use. They are not particularly suitable for sporting use.

Ammunition consists of four parts assembled into what is called a **round** or **cartridge** (see figure 4): the **projectile** (e.g. bullet, shotgun pellets, or a single shotgun slug) is the part that leaves the gun when fired; the **powder** or **propellant**, which is a highly combustible compound; the **primer** that ignites when struck by a firing pin and sets off the powder; and a **case** or **shell** that holds everything together. The word “bullet” is often used incorrectly to refer to ammunition (e.g. “that firearm holds a lot of bullets”). As described here, the bullet is just one component of a round (e.g. “that firearm holds up to 10 rounds”).

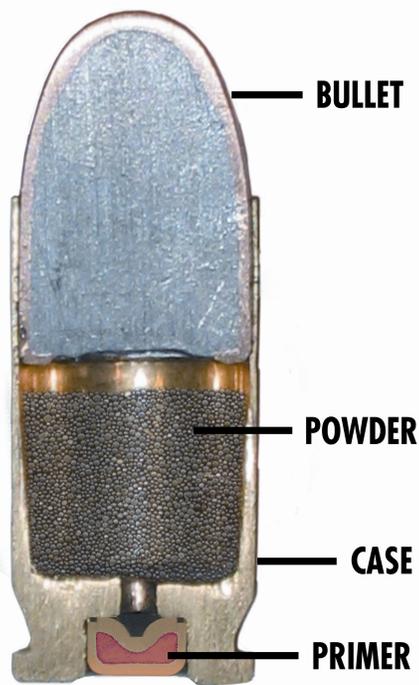


Figure 4: sectional view of loaded cartridge

In the case of rifles and handguns, ammunition size is generally expressed in terms of the diameter of the bullet, measured either in hundredths of an inch (as in 40 caliber or .40 of an inch) or millimeters (as in 9 mm). For shotguns, ammunition is expressed as a measure of the diameter of the barrel and the size of the pellets in a given round (e.g. 12-gauge OO buckshot). The term “magnum” refers to a cartridge with an especially powerful propellant charge, usually achieved by lengthening the case.

How Do Guns Work?

All firearms work by internal combustion. The expansion of gasses from the propellant drives a bullet from the firing chamber through the gun's barrel. (See *Figure 5 below*) This process expels a bullet from the muzzle of the gun at velocities that often greatly exceed the speed of sound. With semiautomatic pistols, the force of the fired shot both finishes one process (ejects the shell) and begins a new one (feeds a new cartridge into the chamber).



Figure 5: handgun bullet exiting muzzle

An ammunition cartridge fits into the **firing chamber** of a gun (*Figure 6 below*). The chamber is typically made of steel strong enough to withstand the extreme forces produced when the cartridge is discharged. The **barrel**, which is slightly smaller in diameter than the bullet and is also made of very strong steel, begins at the front of the firing chamber. The rear of the firing chamber is a flat surface called the **breech face**. A **firing pin** sits just behind the breech face. When the trigger is pulled, the firing pin moves forward through a hole in the breech face, striking the primer cap, igniting the propellant, and causing the cartridge to discharge.

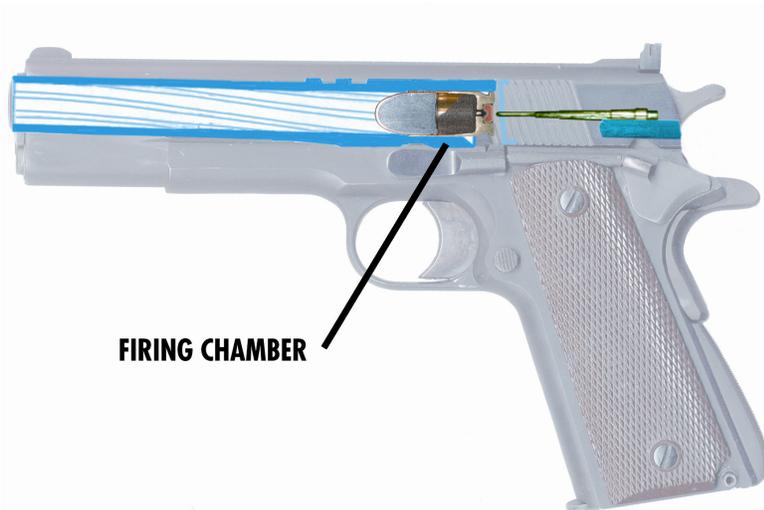


Figure 6: phantom view of pistol barrel with chambered cartridge, firing pin

In a semiautomatic pistol the gases released when a cartridge is fired press the walls of the cartridge case against the interior of the firing chamber and force the base of the cartridge case back against the breech face. The rearward pressure of the cartridge case against the breech face causes the breech face, which is part of a moveable component called a **slide**, to begin moving backward. The empty cartridge case is pulled from the chamber by the **extractor**. The slide's backward movement is stopped by the lower frame of the pistol, just after the cartridge case collides with the **ejector**. The impact of the moving cartridge case against the rigid ejector pushes the cartridge case out of the firearm through a hole in the slide called a **port**. In a revolver, the cartridge case remains in the firing chamber until ejected by hand.

The high temperature and pressure that firearms generate with each fired shot may degrade and damage the gun over time. For example, common police service pistol cartridges may develop pressures of 30,000 pounds per square inch in a pistol's chamber and barrel, which wears on the barrel and makes the gun more susceptible to unintentional firings. This otherwise normal wear and tear can be especially hazardous in defective firearms. The physical battering from firing can cause defectively designed or manufactured parts to fail dangerously and unpredictably.

A **safety** is a device on a firearm designed to provide protection against unintentional discharge. As will be discussed in greater detail below, there are many variations of safeties used by modern gun makers. Safeties may be passive, which remain set as a built-in device (e.g. firing pin safety), or active, which are intentionally set to "on" or "off" by the user (e.g. thumb safety). It is commonplace for firearms issued by military and police to have numerous safety features. Individual consumers have as great or greater need for well-designed systems of active and passive safeties, because even a reasonably well-informed consumer may not have the same level of training or expertise as military or police personnel using the same or similar weapons. In addition, firearms kept in the home or on some business premises present the hazard of theft or mishandling by untrained adults or children.

Common Types of Unintended Discharge

Drop fires and slam fires: Guns that fire without a trigger pull

When a gun discharges without a trigger pull it is often the result of an everyday occurrence like being dropped, bumped around in a glove box, or tapped against a window. While understanding that dropping a gun may not be the best handling technique, it is a common occurrence. When a gun is dropped, an unintentional discharge can be prevented if the gun is equipped with any number of devices known as drop safeties. (See Figure 7 below)

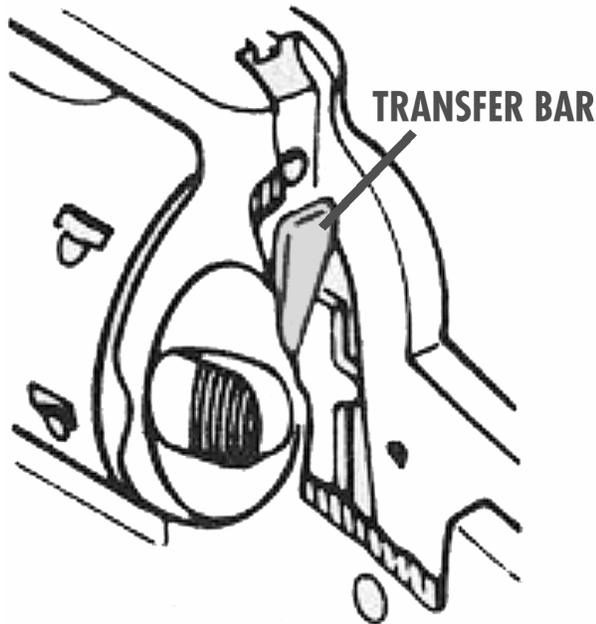


Figure 7: drop safety: revolver transfer bar type

Lack of a drop safety is one of the most serious design defects and yet one of the easiest for a manufacturer to fix. A well-designed drop safety prevents the firing pin from moving forward and striking the cartridge unless the trigger is pulled. A firearm without a drop safety can be set off inadvertently because the impact from being dropped or jarred will cause the firing pin to come in contact with the cartridge. Semiautomatic firearms without drop safeties are especially hazardous because they may continue to fire uncontrollably from repeated impacts, until their cartridges are exhausted.

Even with the most rigorous training, human error ensures that guns will be dropped from time to time. However, with the implementation of simple available designs, a dropped gun does not have to lead to injury or death.

Firing pin safeties and drop safeties are often extensions of the same system. Firing pin safeties block forward movement of the firing pin until the user activates the firing system. (See Figure 8 below)

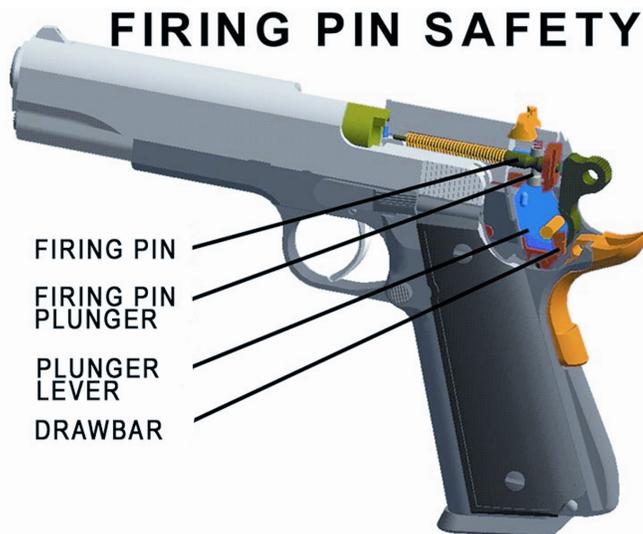


Figure 8: firing pin safety; plunger blocks firing pin until gun is firmly gripped

Inadvertent Discharge: “I thought the gun was unloaded”

There are many circumstances where the trigger of a gun is depressed without the expectation that the gun will fire a projectile. This is known as “dry fire” and refers to firing the gun without the presence of a cartridge. When considering the purchase of a firearm, a prospective buyer may dry fire the gun to get a feel for the trigger pull or when a gun owner finishes stripping and cleaning their weapon he or she may dry fire it to make sure all the parts are working together. All too often, young people who find a gun want to dry fire the firearm for fun. Whatever the reason, many people have been injured when they think they are dry firing only to learn the hard way that the gun was actually loaded. (For examples, see Dix v. Beretta⁷⁸ and Mathieu v. Fabrica D'Armi Pietro Beretta SPA and Beretta U.S.A.⁷⁹) Unfortunately, most guns do not incorporate available systems that notify the average user that the gun is loaded and/or ready to fire. To mitigate this hazard, every firearm should incorporate a comprehensive safety system that adequately indicates the presence of a cartridge in the chamber, the state

⁷⁸ Dix v. Beretta U.S.A. Corp., Cal.App. 1 Dist., 2002. Kenzo Dix was unintentionally shot by his fifteen-year-old friend, Michael Soe. Michael believed that he had unloaded his father's gun by removing the loaded ammunition magazine from the handgun and replacing it with an empty magazine but a cartridge remained in the handgun's firing chamber.

⁷⁹ Mathieu v. Fabrica D'Armi Pietro Beretta SPA and Beretta U.S.A., No. 97-CV-12818-NG (U.S. District Court for the District of Massachusetts). Ross was playing with his best friend, who took a pistol from his father's closet, removed the ammunition magazine, aimed the gun at Ross's head, and pulled the trigger, unaware that the gun still had a round in its chamber.

of readiness to fire, and, in magazine-fed firearms, a device that disables the firearm when the magazine is removed.

Loaded Chamber Indicator

It should be clear to the user, and to any other knowledgeable bystander, whether or not there is a round in the chamber. This is especially true for handguns, which—because of their relatively short barrels—can be pointed in any direction almost instantly. Each semiautomatic handgun should have a loaded chamber indicator (LCI) that can be seen from both sides, with the gun held in either hand, and that can be felt manually through gloved hands. (See *Figure 9 below*) The LCI should also be a dedicated mechanism, not one that has to serve other purposes such as cartridge extraction.



Figure 9: loaded chamber indicator positioned just ahead of rear sight and behind ejection port; ready to fire indicator shows at rear of slide below rear sight. This pistol is loaded and ready to fire

Ready to Fire Indicator

In many firearms, a user or bystander cannot readily tell whether the gun is cocked (i.e. the firing pin is ready to strike). Like the LCI, this type of indicator should be centrally located, highly visible, and tactile. (See *Also Figure 9 above*) In many firearms, the position of an exposed hammer is an indication of state of readiness to fire. (See *figure 10 below*)



Figure 10: cocked hammer signals revolver ready to fire if loaded

Magazine Disconnect Safety

A magazine disconnect safety prevents a self-loading weapon from discharging when the magazine is removed, even if a round remains in the chamber. A common user mistake is to remove the magazine from a pistol and assume the firearm is disabled.

Unfortunately, many firearms lack a magazine disconnect safety. Lack of a magazine disconnect is a prime cause of inadvertent discharge in the hands of children.

Administrative Handling: “I was just unloading the gun.”

In addition to safeties that protect against common and foreseeable user errors, manufacturers should include safety mechanisms that protect against unintentional discharge when firearms are engaged in “administrative handling.” Administrative handling refers to necessary manipulations of the firearm other than shooting such as loading, unloading, and decocking. Unfortunately, many manufactures still make firearms that are so poorly designed that they are hazardous during routine administrative handling.

Safe Decocking on a Loaded Chamber

Decocking a firearm allows the user to lower the hammer without engaging the firing mechanism and discharging the gun. Safe decocking can be accomplished by a dedicated mechanism, unrelated to the firing system, which positively blocks any movement of the firing pin during decocking. (See figure 11, below) In poorly designed firearms, decocking can require manipulation of the trigger while a round is present in the chamber. Additionally, manipulation of the trigger can also cause the firearm to discharge.



Figure 11: hammer-drop safety deactivates pistol safely while pistol remains loaded; extension of pin above hammer indicates that cartridge is in chamber

Unloading Without Cycling the Firearm

In firearms with fixed magazines,⁸⁰ there should be a way to safely unload the cartridges without cycling the firearm (i.e. engaging the firing mechanism) to eject them one by one. There are many circumstances where a firearm is loaded and some or all of the cartridges are not discharged. For instance, at the beginning of a day of hunting, a hunter may load cartridges into a rifle with a fixed magazine but will not have the opportunity to take a shot. The hunter should be able to remove the cartridges without having to cycle the cartridges through the action of the firearm.

Unloading While the Firearm is on Safe

In all cases, manufacturers should design firearms that can be safely loaded and then unloaded without having to disengage the manual safety. It is not sound design practice for the manufacturer to require the user to take the gun out of safe mode in order to unload unspent cartridges. (For examples, see Bryco and Winchester 94 in Section Three.)

Firearms and automobiles really are like two peas in a pod. There is no more reason to allow firearm manufacturers to make guns that fire unexpectedly, killing and injuring bystanders and users, than there is to allow automobile manufacturers to sell cars that suddenly burst into flames or have faulty braking systems. But what separates these

⁸⁰ Fixed magazines are part of the firearm and cannot be detached.

two peas in a pod is that, unlike cars, there is no federal agency that has health and safety authority over gun makers. The firearms industry is left to self-regulate and decide what, if any, safety mechanisms to include with its products. The result, as revealed in the next section, can be deadly for the consumer.

Section Three The Most Common Offenders

Firearms that are defectively designed result in a constant stream of deaths and injuries. The appendices list more than 140 models with safety problems. Some firearms are notorious due to the sheer volume of unintentional deaths and injuries associated with certain models—some have been problematic for generations. The following firearm models have been dubbed “the most common offenders” because of the high number of complaints associated with them. These manufacturers are aware of the safety issues associated with these guns.

Glock Pistols



Figure 12: Glock Pistol lacks “on-off” manual safety control, other user safety assists.

Glock pistols have been involved in more than 45 lawsuits⁸¹ relating to unintentional shootings, even though they have been on the market only since the late 1980's. Many of the Glock pistol incidents involve law enforcement. Police officers have had Glock pistols inadvertently discharge in a variety of situations including while holding unresisting suspects at gunpoint. For example, a driver stopped during a sex sting operation was unintentionally shot and wounded by a Tampa police officer in April 2002. The officer used his Glock service pistol to knock on the driver's window. According to Tampa police authorities, the gun went off unintentionally.⁸²

⁸¹ *Supra* note 12.

⁸² Tamara Lush, "officer shoots man during prostitution sting," *St. Petersburg Times*, April 25, 2002.

Additionally, because of their short, light trigger pull, Glock pistols have allegedly been involved in numerous household shootings involving young children. For example, in January 2004 a Nashville, Tennessee police officer was unintentionally shot to death by his 3-year-old son. The boy grabbed his father's .40-caliber Glock service weapon from a kitchen table.⁸³ In September 2004, the 3-year-old stepson of a Marshall County, Alabama deputy sheriff unintentionally killed himself with a Glock pistol.⁸⁴

The specific safety issues associated with Glock pistols

Listed below are several safety-related issues associated with Glock pistols. Reference to the Handguns Appendix clearly shows that, as with numerous other firearm designs, a Glock pistol's internal design can result in unintended discharges:

- The Glock pistol's exceptionally easily discharge firing mechanism lacks a voluntary "On-Off" manual safety. The user cannot lock the firing action "Off" in order to unload the pistol and render it completely safe.⁸⁵
- Glock states that its trigger mechanism provides three "independent and automatic" safety functions that take the place of a manual safety control. However, analysis of a Glock pistol's trigger-bar mechanism shows that as soon as its trigger-mounted bar is pressed inwardly 1/10th of an inch by any contact of a few ounces, all three aspects of the Glock "safeties" are disabled, meaning that they are not "independent and automatic."⁸⁶
- Even after extensive training, a gun handler may be surprised or impacted during lawful self-defense or law enforcement activity, causing an involuntary muscular contraction. In August 1996, a surrendering driver was accidentally killed with a Glock .40-caliber pistol during a traffic stop by a St. Lucie County Florida Sheriff's deputy.⁸⁷ An opinion rendered by ergonomics expert Dr. Roger Enoka stated that a "mirror image" contraction of the officer's right hand occurred because the officer increased the grasp of his left hand during handcuffing. Dr. Enoka cited the fact that a number of police forces and institutions have studied such unconscious muscular contractions since 1989. While using a Glock, unconscious muscular contractions can result in the trigger finger inadvertently

⁸³ Associated Press report, January 4, 2004 (The ultra-compact 9mm Model 26 Glock was the officer's backup gun, which he had left on a bedroom bureau. It should be noted that ultra-compact pistols in general have a toy-like appearance that has been known to attract small children).

⁸⁴ George Jones, "child killed accidentally by deputy's gun," *Sand Mountain Reporter*, September 14, 2004.

⁸⁵ Retrieved from Glock's website at http://www.glock.com/safe_action.htm on January 21, 2005.

⁸⁶ *Ibid.*

⁸⁷ Lancaster v. Glock, No. 98-14113-CIV-PAINE, United States District Court for the Southern District of Florida.

curling toward the tiny trigger bar and freeing the firing action.⁸⁸ This phenomenon is completely unlike the conscious motion required to snap a conventional manual safety lever to the “Off” or “Fire” position.

- Glock firearms are easily convertible to fully automatic (i.e. machine gun) fire because of their design similarity to some machine pistols. Glock’s U.S. patent references as a design basis the Heckler & Koch VP70 machine pistol, which was the first successful polymer-frame pistol/submachine gun.⁸⁹ Glock’s own machine pistol, the Model 18, closely resembles other Glock firearms except for an additional automatic fire control that adds one ounce to the Model 18, as compared with the weight of the otherwise similar Model 17. In 1987, inventor Jorge Leon patented a simple device that converts any Glock pistol to fully automatic fire capability. The legal Leon device can be installed or removed in less than a minute, as can some bootleg conversions. It is currently available for police and military buyers.⁹⁰ A warning by the Association of Firearm and Toolmark Examiners cites law enforcement advisories about the ease of illegal conversion by criminal gangs. Some police departments reportedly consider any Glock possessed by gang members to be a machine pistol until proven otherwise. (AFT report in Handguns Appendix)

Remington Rifles



Figure 13: Remington Model 700 bolt-action rifle

Remington 700, 721, 722, 40X, and 600 series bolt-action rifles have discharged unexpectedly when the safety control is moved to “Off” from a position of “Safe.” Remington itself calls this defect “Firing on Safety Release” (abbreviated “FSR” in

⁸⁸ *Ibid.*

⁸⁹ Glock 1990 U.S. patent # 4,893,546 references the 1972 Siedel U.S. patent #3,678,800.

⁹⁰ Leon’s 1998 U.S. patent #5,205,763 is referenced on the website of the Phoenix Firearms law enforcement supply corporation in Richardson, TX. The device is called Fire Selector System for Glock Pistols (FSSG). Site has video of converted Glock pistol. Retrieved at www.fss-g.com on January 21, 2005.

Remington documents). Firing on safety release is the most common but not the only type of Remington rifle unintentional discharge that can occur without the trigger being pulled. Remington also has had hundreds of customer complaints for firing when the bolt is closed (FBC), firing on bolt opening (FBO), and firing when jarred or bumped (JO).⁹¹

Plaintiff attorneys allege that Remington was aware of the problem with its bolt-action rifles even before the fire control system utilized in the Model 600 and 700 rifles was patented in 1950.⁹² The problem was emphasized in 1975 when Remington experienced numerous malfunctions of its Model 600 rifles resulting in firings upon release of the safety, culminating in the company recalling its 600 series in October 1978, only a few days after Remington settled the lawsuit Coates v. Remington Arms Company, Inc.⁹³ for \$6.8 million:

- John Coates, an attorney, was unintentionally shot by a Remington 600 on a hunting trip. As his son moved the safety lever to “Off,” preparing to unload the rifle, it fired, leaving Coates permanently paralyzed. At the time, this was the largest cash settlement in Tort law history.⁹⁴

Several months later, on January 2, 1979, Remington’s self-appointed Product Safety Subcommittee decided not to recall the more than 2 million Model 700 rifles that had already been sold “just to find 20,000 that are susceptible,” citing cost as the reason.⁹⁵ Instead of recalling the firearms, Remington opted to fund various safe gun handling advertisements in firearms magazines. The ads were published under the name of the Sporting Arms and Ammunition Manufacturing Institute, with no indication of any problem in the Remington Model 700.

⁹¹ Correspondence: Richard Miller, Esq. to *SHOOTING INDUSTRY* business journal, July 14, 1993.

⁹² “Varmint Rifles,” *Consumer Reports*, March 1968, p 157. *Consumer Reports’* review of the Remington 700 found that it “exhibited a potentially dangerous flaw as first tested. There was so little clearance between the trigger and the trigger guard that when the trigger was pulled with the safety on (something you or a friend might do when sighting down the rifle or trying it for feel), the trigger sometimes failed to return to its forward position. And with the trigger in the back position, the rifle would fire without warning the next time the safety was moved to the fire position. The malfunction persisted for more than 100 firings before the trigger wore in and performed normally. An unwary buyer might have caused an accident by then. Although we judged the deficiency more a sample defect than a design shortcoming, we nevertheless downrated the Remington 700 because of it. We would warn anyone buying a rifle to test the safety in the store. If the trigger can be moved with the safety on, make sure it returns to its full forward position after you pull it.” It should be noted that *Consumer Reports* has not tested firearms since 1968.

⁹³ *Ibid*, *supra* note 91.

⁹⁴ Retrieved at <http://www.joejemail.com/Biographical.htm> on January 21, 2005.

⁹⁵ Minutes of Meeting: Remington Product Safety Subcommittee, January 2, 1979. See also, *Supra* note 13.

Despite the fact that Remington had convened a Product Safety Subcommittee to evaluate complaints about the Model 700, it responded to every customer complaint with a form letter blaming the consumer for “amateur gunsmithing” or improper cleaning or lubrication. When Remington could not attribute the complaint to one of these causes, it stated that the company was unable to duplicate the problem and that the consumer must have inadvertently pulled the trigger.⁹⁶ According to attorney Richard Miller, who has litigated numerous cases on Remington rifle defects, “To this day, Remington has never publicly admitted (as it does in internal documents) that its bolt action rifles are susceptible to intermittent unexpected discharges without pulling the trigger.”⁹⁷

Unfortunately, by the year 2000, more than 1,500 customer defective product complaints had been received by Remington. More seriously, approximately 100 lawsuits, some involving death or paralysis, had been brought against Remington because of unintended discharges of these powerful rifles.⁹⁸ For example:

- Mike Lewy was unloading his Remington Model 700 rifle in his basement apartment when it fired immediately upon release of the safety. The bullet went through the ceiling and struck Mr. Lewy’s mother who was sitting in a chair in the living room. She was shot in the leg and required hospitalization for more than a month.⁹⁹ Two separate juries reviewed the evidence and each unanimously found that Remington was responsible not only for the accident caused by its defective product, but also for knowing of the problem long before the accident and failing to do anything about it.
- In October 2000, 9-year-old Gus Barber of Montana was killed when his mother’s Remington 700 unintentionally discharged as she moved the safety to “Off” while unloading the firearm. The bullet traveled through a horse trailer before striking Gus, who had not been visible to his mother. Gus died as his family rushed him to the hospital.¹⁰⁰

The Barbers mounted an effort to have Remington 700s recalled. In March 2002, after extensive television and newspaper coverage, Remington voluntarily “recalled” all bolt-action rifles made before 1982 that were equipped with a device called a bolt lock. The bolt lock was removed so that users could load and unload these Remington 700s

⁹⁶ *Supra* note 91.

⁹⁷ *Ibid.*

⁹⁸ *Supra* note 13.

⁹⁹ *Supra* note 2.

¹⁰⁰ Barber v. Remington Arms Sporting Goods Properties, Inc. and E.I. DuPont DeNemours and Company, CV01-83-BU-LBE, United States District Court for the District of Montana, Butte Division.

without having to release the safety, thereby reducing but not eliminating the possibility of a FSR malfunction.

The so-called "Safety Modification Program" affected more than 2.5 million 700, 721, 722, 40X, and 600 series rifles made before 1982.¹⁰¹ With the same trigger/safety problem as the 600, these models were finally recalled more than 20 years later, after decades of disputing the existence of a manufacturing design defect and decades of death and serious injury as a result. By this time, several outside parts and accessory makers had built a steady business in providing complete replacement trigger assemblies for Remington 700-family rifles.¹⁰² Later models of these rifles, as well as Remington's bolt-action pistols, are also subject to similar safety recalls (See Rifles Appendix).

According to Richard Miller, every Remington 700-based rifle made since 1950 "can fail unbeknownst to the user. Every single one, including the one they're making today."¹⁰³ In 2004, the company issued a safety modification program for a number of their current Model 710 rifles. They also extended the similar program affecting their pre-1982 bolt-action rifles.¹⁰⁴

¹⁰¹ Retrieved from the Internet at www.remington.com on January 21, 2005.

¹⁰² Examples retrieved at <http://www.brownells.com/Default.aspx> and <http://www.gunaccessories.com/TimneyTriggers/index.asp> on January 21, 2005.

¹⁰³ Melvin Claxton, "Faulty Remington Rifles Shatter Lives," *The Detroit News*, December 14, 2003. Retrieved from the Internet at <http://www.detnews.com/2003/specialreport/0312/16/a13-7201.htm> on January 21, 2005.

¹⁰⁴ *Supra* note 101.

Saturday night special Handguns



Figure 14: Bryco/Jennings pistol evidence image from *Maxfield v. Bryco* case

The pistol shown in figure 14 (above) is a Bryco/Jennings Model 38 semiautomatic and is similar in design and manufacture to many other guns commonly known as Saturday night specials or “junk guns.” Die-cast metal and other forms of low-priced construction are used to make Saturday night specials inexpensive to manufacture and purchase. Many of these pistols, such as the Bryco 38, have one manual safety but no internal automatic drop safety. When first sold, the Bryco retailed for about \$100. Other .380-caliber pistols, made of steel and equipped with more comprehensive user safety systems, commonly cost several times as much.¹⁰⁵

There have been at least three dozen lawsuits against Bryco/Jennings for making and distributing allegedly defectively designed firearms.¹⁰⁶ The company has lost or settled

¹⁰⁵ For example, the all-steel .380-caliber Walther Model PPK, has an automatic drop safety, loaded chamber indicator, and a manual safety that allows unloading and loading while set to “on.” Common retail prices of this and numerous similar guns are between \$400 and \$600.

¹⁰⁶ *Supra* note 12.

more than two dozen of these cases and is currently in bankruptcy. The bankruptcy arose in 2002 after a jury awarded 7-year-old Brandon Maxfield \$49 million in damages. Brandon was unintentionally shot in the face at close range with a Bryco 38 and left a quadriplegic. The jury found that the Bryco pistol was defectively designed.¹⁰⁷

The Maxfield v. Bryco court found that when the user, a family friend, was trying to follow Bryco's instructions for unloading the Model 38, there was no safe way to engage the safety lever. The safety must be turned off to either unload or load the gun. The Bryco Model 38 semiautomatic, like many other Saturday night special types, lacks the ability to load or unload with the safety on. Additionally, the lack of a drop safety that will function when the manual safety is "Off" makes such weapons even more dangerous to handle. (See Handguns Appendix citations for Bryco/Jennings, Davis, Lorcin, Phoenix Raven.)

Small pistols with this simple mechanism have stiff operating springs and are often chrome-plated, making them slick and hard to load or unload while controlling the user's grip. It is therefore difficult for many users to handle such handguns without inadvertently placing a finger near the trigger.

Typical of Saturday night specials, the Bryco Model 38 can fire after the ammunition magazine is removed. In fact, because one of the pistol's cartridge magazines was dark in color and seated below the surface of the butt, an untrained user could not tell if the magazine was already out of the gun.¹⁰⁸ Bryco/Jennings has equipped more costly 9mm models of its pistols with magazine interlock safeties. Promotional material for the Jennings Nine contains a statement on the benefits of a magazine safety.¹⁰⁹ However, Bryco continued to make the lower-priced Model 38 without this device and has never issued a recall or replacement parts program to correct this dangerous design omission.

The potential for a deadly accident is compounded in numerous Saturday night special guns by the lack of a firing pin block, which prevents firearms from discharging if they are dropped or jarred while ready to fire.¹¹⁰

- Jeffrey Hollingsworth of Pennsylvania was unloading a Bryco Nine in 1994 when it slipped from his grasp, fell to the floor and discharged. He lost sight in one eye

¹⁰⁷ *Supra* note 74.

¹⁰⁸ *Supra* note 74. Testimony of family friend Larry Moreford.

¹⁰⁹ Jennings brochure states "We are proud to reintroduce the Bryco 59 pistol as the New Full-Featured model Jennings Nine." It goes on to state, "The new Magazine Out Safety blocks the trigger bar. This disables the pistol so it cannot fire when the magazine is removed." This introductory material specifies that the Nine also contained an internal drop safety. However, in later Jennings Nine user's manuals, the owner is cautioned: "Do not to rely upon this safety device, it may fail without warning. In the same manuals, the section describing the internal drop safety is simply crossed out and stamped: "DISCONTINUED."

¹¹⁰ *Ibid.*

and suffered extensive brain damage and facial disfigurement. Hollingsworth sued Bryco and the case was settled under terms of confidentiality. As in many alleged defective firearm cases, the settlement includes a strict agreement prohibiting Hollingsworth or his attorney, Steven Shisler, from revealing the settlement amount. They are also barred from discussing information obtained from Bryco during the lawsuit about the safety record of the company's guns.¹¹¹

Single-Action Revolvers

Sturm, Ruger & Company's Old Model Single-Action Revolver



Figure 15: Old Model Ruger single action revolver

More than 600 people, including children, have been killed or injured by unintentional discharges from the "Old Model" revolvers.¹¹² This revolver was manufactured from 1953 until 1972. It incorporated no positive safety device and is therefore extremely prone to discharge when dropped or bumped. The design of the gun was modified in 1973 to include a transfer bar safety, which prevents the gun from firing when dropped. However, by the time the gun was redesigned, 1.5 million of the original revolvers were in the hands of consumers.¹¹³

It took Sturm, Ruger 10 years after they terminated the production of the Old Model to offer any remedy to the hazard posed by the gun. In 1982, the company offered to retrofit Old Models with a transfer bar safety, but only a fraction of the guns have been

¹¹¹ *Supra* note 73.

¹¹² *Supra* note 12.

¹¹³ Erik Larson, "Wild West Legacy: Ruger Gun Often Fires If Dropped, but Firm Sees No Need for Recall," *The Wall Street Journal*, June 24, 1993.

retrofitted.¹¹⁴ The company still distributes flyers telling owners of Old Model revolvers, "Ruger wants to give you, and install FREE, a unique new improvement."¹¹⁵ Despite Ruger's knowledge of the defect in the design of the Old Model, the company still has not issued a recall of the guns. Even though these guns have not been produced since 1972, they still cause death and serious injury. For example, in 1990 Andrew Baxter, a minor, was shot in the abdomen when his father's Old Model unintentionally discharged. The gun was manufactured and purchased in 1968, more than 20 years prior to the accident.¹¹⁶

Colt Single-Action Revolver



Figure 16: Colt Single-Action revolver; original design copied by many current makers

Other single-action revolvers suffer from similar safety-related problems. For example, in 1986 a federal appeals court upheld a punitive damages award of \$1.25 million against Colt in a case involving the unintentional discharge of a single-action revolver.¹¹⁷ Plaintiff Johnson had taken the handgun with him on a fishing trip. He was sitting on a rock when the gun fell from his holster, struck a rock, and discharged. The bullet lodged in his bladder, damaging vital nerves and rendering him impotent.

¹¹⁴ *Ibid.*

¹¹⁵ *Ibid.* See also, Ruger's website at <http://www.ruger-firearms.com/>, which offers safety upgrade for Old Model single-action revolvers in the "Special Safety Announcements" section.

¹¹⁶ Baxter v. Sturm, Ruger & Company, 644 A. 2d 1297 (Sup. Ct.1994).

¹¹⁷ Johnson v. Colt Industries, 609 F. Supp. 776 (D. Kan. 1985), aff'd, 797 F.2d 1530 (10th Cir 1986). The court in Johnson observed that the jury could have viewed the manufacturer's conduct, in characterizing the gun as a throwback to the Old West, "as putting marketing concerns ahead of safety concerns."

Hawes Firearms Co. Western Marshall Revolver

This revolver, made by Sauer & Sons of Germany, is another replica of the antique Colt and has no positive safety. Clara Sue Cobb was wounded and left a paraplegic after a Western Marshall revolver on the back floorboard of a car in which she was a passenger discharged without the trigger being pulled. The Louisiana woman was 18 at the time.¹¹⁸

This model has also been imported and sold under numerous other trade names: Great Western, Hy Hunter, Chief Marshall, Montana Marshal, and others. Rimfire versions have also been imported as: Hawes Deputy Marshal, Western Duo (.22/.22 Magnum) Herters, Buffalo, Texas Scout, Omega, Excam TA-22, HS-21, Geroco Liberty 13, Kimel, Guy Jones, others.¹¹⁹

The SKS Semiautomatic Assault Rifle



Figure 17: SKS rifle; Soviet/Communist China combat weapon

More than 300,000 SKS semiautomatic rifles were imported into the country in the late 1980's and early 1990's.¹²⁰ They have proven to have major design and safety problems. Built primarily by the Chinese Defense Agency, these imported rifles can unexpectedly fire in full-automatic mode while being loaded without the trigger being pulled (See Rifles Appendix—Navy Arms). The SKS chambers the same round as the Soviet AK-47 assault rifle. In runaway full-automatic mode, the SKS can fire at the rate of more than 1,000 rounds a minute.

- In 1995, Sacramento area resident William Ferrante was killed instantly when his SKS gun unintentionally discharged and shot him in the face. The 46-year-old man was killed by a full-automatic slamfire while loading his SKS at a practice range. Farrante was being coached about the use of a strip loader used to insert

¹¹⁸ Melvin Claxton, "Firearm Defects Take Toll," *The Detroit News*, December 15, 2003. Retrieved from the Internet at <http://www.detnews.com/2003/specialreport/0312/16/a10-8000.htm> on January 21, 2005.

¹¹⁹ Gun Parts Corporation, *World Guide to Gun Parts*, Various editions. See also, www.gunpartscorp.com. See also, Marstar-Canada parts and models interchangeability information site at www.marstar.ca.

¹²⁰ *Supra* note 118.

cartridges into the magazine of the rifle. While the strip loader was being pressed into the gun's action, the rifle's bolt slammed closed on a chambered cartridge and began firing uncontrollably. The recoil of the first shot kicked the muzzle into the air, and a subsequent series of fully automatic shots spun the muzzle toward Ferrante. A Sacramento County Sheriff's Department spokesman stated that it was the final shot in the magazine that struck Ferrante's face. Inspection of the rifle by authorities found that the gun had not been illegally modified to fire in the full-automatic mode.¹²¹

According to product liability attorney David Garrett, SKS carbines and rifles have been involved in more than 100 similar unintentional shooting deaths and injuries. Verlin Sanders was one of the victims that Garrett represented:

- In 1995, Verlin Sanders was watching a friend load a round into the chamber of a Chinese SKS when the gun began firing in full-automatic mode. His friend hadn't touched the trigger and did not have a firm grasp of the machine-gunning rifle. Sanders was hit twice in the back and suffered extensive internal injuries. A woman standing next to him had her arm blown off.¹²²

Garrett also stated that many SKS defect cases are initially investigated as crimes by police, who are often unaware of the gun's tendency to fire fully automatically on its own.

In 1993, Navy Arms Co., a New Jersey gun importer selling the weapons in the United States, issued an SKS slamfire warning (See Rifles Appendix—Navy Arms). Because there is no national recall system for firearms, many SKS gun owners are still unaware of the danger.

The Navy Arms warning states in part:

Some Chinese SKS semiautomatic rifles may pose a serious risk of bodily injury or death. Some of these rifles may have a manufacturing defect of the engaging surfaces in the trigger-hammer-sear assembly, which can cause intermittent failure of the sear to hold the hammer in a cocked position. This condition can result in the unexpected firing as a round is chambered, without pulling the trigger, or if the weapon is jarred or dropped. This condition may also result in sudden and unexpected automatic fire and loss of control of the firing weapon.

Navy Arms has offered to supply new sears for Chinese SKS rifles purchased from them. The Chinese government has never recalled or issued warnings about the SKS.

¹²¹ *THE NEW GUN WEEK*, June 10, 1996.

¹²² *Supra* note 118.

Probable Reasons for SKS Slamfires

- The design of the rifle's breech bolt includes a free-floating firing pin that is not detained by either a firing pin safety device or a hold-back spring. Even during normal firing, the tip of the SKS firing pin strikes lightly on the next chambered round. This 1940s military design was made for use with WWII-era Russian/Soviet military cartridges that had relatively insensitive primers. Modern sporting ammunition, of the type commonly purchased for hunting, may have far more sensitive primers. As noted in the above examples, simply closing the SKS breech bolt can and has set off such "soft-primer" cartridges, leading to the uncontrolled firing of one or more unexpected shots, with no trigger contact.
- It is reportedly also possible for the firing pin to freeze in the forward-firing position. Every time the bolt closes, it can set off another round. This type of slamfire typically empties the full magazine. In that instance, the round may be set off before fully seating in the chamber. An explosion outside the chamber can endanger the shooter or bystanders, even possibly detonating all other cartridges in the magazine. Regular inspections and thorough cleaning are recommended on numerous SKS enthusiast websites.¹²³
- Coagulated lubricant, firing residue, and/or wear can jam the sear of the SKS and cause machine-gunning. This may occur even if suitable ammunition is used and the safety lever is set to "On." The SKS trigger control group has only a trigger-block safety. There is no safety control that can be set to detain the SKS's hammer or sear components.¹²⁴

Winchester Model 94 Rifle



Figure 18: Winchester Model 94 rifle; first models had no manual safeties

¹²³ Reported in "FAQ's—SKS Slamfires"—OG's Curio and Relics Firearms Pages enthusiast website. Retrieved on the Internet at <http://www.geocities.com/Yosemite/Gorge/4653/> on January 21, 2005.

¹²⁴ 1969 U.S. Army Training Circular #TC 9-56: SKS RIFLE—SIMONOV TYPE 56.

The Model 94 rifle was introduced in 1894 as Winchester's first lever-action gun designed for use with modern high-powered ammunition. Most commonly used as a deer-hunting rifle, more than 5,000,000 Model 94s have been produced to date.¹²⁵ These rifles can unintentionally discharge in at least three different ways: when half-cocked in the "safety" hammer notch; when moving the finger lever without touching the trigger; and during unloading.

The Model 94 is based on a 1860's lever-action design originally meant for rimfire ammunition. Made substantially the same until about 1992, early models of the rifle have no safety except for a half-cock position of the exposed hammer, which is supposed to keep the firing pin off the cartridge. The user is expected to carry the gun set this way, until prepared to fire—at which time he cocks the hammer fully back with his thumb and pulls the trigger. Many product liability cases were brought against Winchester when this half-cock failed in the field and the hammer fell forward discharging the gun. This would occur, for instance, when the exposed hammer caught on an obstruction like a branch or twig and was nudged out of the half-cock position and discharged the gun.¹²⁶

In 1992, Winchester finally brought out a new version of the Model 94 that included a rebounding hammer¹²⁷ and a manual safety that can be set to block the hammer fall.¹²⁸ In 2002, Winchester replaced the manual hammer-block safety with a thumb switch "on-off" safety, which also blocks the hammer internally when set by the user. This safety can be set during loading and unloading.¹²⁹

Unfortunately, the first 5 million or more Model 94s have no hammer block or other manual safeties. A search of state fish and game hunter safety websites shows many instances of unintentional discharges while unloading hunting rifles. Numerous entries identify Winchester 94 rifles. Wounds to the feet and legs are common, as well as wounds to bystanders.¹³⁰ The type of injury is directly related to the functioning of the

¹²⁵ *SHOOTING INDUSTRY*, March 1996.

¹²⁶ "Intentional vs. Accidental Shootings: A New Target?" *New Targets: An overview of Firearms Litigation*, 1999. Retrieved from the Internet at <http://lp.findlaw.com/> on January 21, 2005.

¹²⁷ A rebounding hammer (also called hammer rebound) retracts slightly after striking the firing pin and before coming to rest. When in the "at rest" position, there is no spring pressure forcing it toward the firing pin. A rebounding hammer is often combined with a hammer-block safety.

¹²⁸ A hammer-block safety prevents the hammer from contacting the firing pin, so that the gun will not fire unless the hammer is fully cocked or the trigger is fully pressed. This may be a passive internal device requiring no active contact by the user, or it may also be a manual device that the user must set "on" or "off."

¹²⁹ Winchester New Model 94 Manual (2003). Retrieved from the Internet at <http://www.winchesterguns.com/> on January 21, 2005.

¹³⁰ See Oregon Hunter Education Program, Hunting Incident Summary 1996, 1997, 1998, and 1999. Retrieved from the Internet at http://www.dfw.state.or.us/outdoor_skills/ on January 21, 2005.

rifle. The user must hold the rifle with the barrel outward or downward in order to move the lever action while loading or unloading. When this happens, the muzzle of the gun may stray from a safe direction or drop downward toward the user's foot or leg.

Winchester's decision to add manual safeties to its new Model 94s has not fully addressed the allegation that the rifles have a design defect. A December 2003 report by *The Detroit News* found that unintended discharge may occur when the user moves the finger lever without pulling the trigger.¹³¹ The report cites two incidents where the trigger may have been prematurely released by closing the lever:

- In 1978, Lois Mamo, a Michigan resident, was severely wounded when a Winchester 94 went off after a family member in another room adjusted the gun's lever, without pulling the trigger. The bullet went through the kitchen wall and struck Mamo in the stomach and arm. It sent fragments into her liver and nearly severed her right hand. Ms. Mamo still has shrapnel in her body.
- In November 2003, Michigan gunsmith John Tunney Jr. was repairing a customer's Winchester '94, similar to the one that wounded Mamo 25 years earlier. The customer mentioned that there was a round in the chamber and that the rifle had a tendency to fire without the trigger being pulled when the lever was adjusted. Tunney pointed the rifle at a safe backstop and racked the lever without touching the trigger. On the very first attempt, the rifle discharged.

The Remington Model 11 Semiautomatic Shotgun



Figure 19: Remington Model 11 semiautomatic shotgun

More than 850,000 Remington 11s were made and sold from 1911 to 1948 and many are still currently in use. It has been found that fragile parts in the gun's action can break away, causing cartridges to be set off when ammunition is feeding into the chamber (See Shotgun Appendix). This sometimes results in the shotguns firing repeatedly until the shells in their magazines are exhausted. No pressure on the trigger is required for this firing to occur.

Until a revision in 1928, the Remington 11's manual safety lever was located inside the trigger guard, forward of the trigger. This created a situation in which rapid game shooting and/or use with gloved hands could be very hazardous. The revision replaced

¹³¹ *Supra* note 118.

the “safety in front of trigger” placement with a cross-bolt button safety located behind the trigger guard. According to Remington’s current website, this change was made to reduce the possibility of inadvertent firing.¹³²

The Remington Shotgun Barrel Class Action

In 1995, Remington et al entered into a settlement of class action claims brought by owners of certain Remington 12-gauge shotguns including: Remington 12-gauge Model 870, 1200, 11-87, 3200, and Sportsman 58, 12-A or 12-P shotguns. The action named all of these models manufactured between 1960 and June 1995. This was substantially all shotguns made by Remington during those years.¹³³

This shotgun liability suit was filed against the Remington Arms Company, Inc., E. I. du Pont de Nemours and Company, and Sporting Goods Properties, Inc., the du Pont subsidiary formerly known as Remington. The complaint alleged that the type of steel formerly used for the barrels of these shotguns (American Iron and Steel Institute C-1140 modified steel) constituted a manufacturing defect that could and had resulted in the explosion of the barrel in use.

In 1997, the Court approved payments to more than 477,000 class members, who owned more than 750,000 eligible shotguns. It was paid out of a 31.5 million dollar fund established to meet current and future claims.¹³⁴

Incidents as described in this section should be cross-referred with the Appendices at the end of this study. This aggregate body of information makes it clear that numerous firearms can and do fire unexpectedly, without contact with their triggers. Many of these firearms fire ammunition too powerful to allow for true “aim in a safe direction,” while engaging in normal gun handling. In the following section, we will examine the firearms industry’s common responses to such safety information, lawsuits, and resulting efforts to establish gun-related consumer safety standards and regulations.

¹³² James Tipton, “The Remington Model 11: An American Classic,” Remington Society of America: (“This [1928] change made it unnecessary to place the finger inside the trigger guard to operate the safety. The result was a significant reduction in the possibility of an unintended discharge caused by accidental contact with the trigger in the process of operating the safety”). Retrieved from the Internet at <http://www.remington.com/magazine/history/m11.htm> on January 21, 2005.

¹³³ Garza v. Sporting Goods Properties, Inc., 1996 WL 56247, W.D.Tex., 1996.

¹³⁴ Garza Class Action Settlement Notice of May 30, 1997.

Section Four The Gun Industry's Response

"We believe the gun industry has taken every precaution to make sure it produces a safe product...Gun manufacturers are meticulous businessmen. They will do nothing to undermine the public's confidence in their products."

-NRA Director of Public Affairs Andrew Arulanandam.¹³⁵

Public Relations vs. Public Safety

Like many American industries, the bottom line is the primary concern of the gun industry when considering consumer safety.¹³⁶ If product liability claims can be settled for pennies-on-the-dollar, or litigation prolonged to discourage legitimate claims, the gun industry wins. If product recalls can be avoided or costly model upgrades put off, the industry wins.

As outlined in Section Three of this report, the firearms industry has long known that millions of guns in America share design features that expose their owners and those around them to increased danger.¹³⁷ Yet firearm manufacturers have undertaken few industry-wide efforts to improve product safety.¹³⁸

Many firearm manufacturers seem to ignore technology—including their own—that would make guns safer and less apt to unintentionally discharge. Internal memos, gun patents, and employee depositions show that many safety features are inexpensive, easily incorporated into existing models, and have been available for decades.¹³⁹ Additionally, most manufacturers appear to routinely disregard customer complaints and refuse to recall guns even after losing or settling lawsuits. Some gun makers go further, using confidentiality agreements as part of legal settlements to conceal information about allegedly defective firearms.¹⁴⁰

In consumer product safety matters gun makers police themselves. Most manufacturers treat safety as the responsibility of the gun user, thereby placing millions of unsuspecting gun owners at risk. With more than 190 million guns scattered across

¹³⁵ *Supra* note 73.

¹³⁶ Affidavit of Robert A. Ricker, IN SUPPORT OF PLAINTIFFS' OPPOSITION TO DEFENDANT MANUFACTURERS' MOTION FOR SUMMARY JUDGMENT, Consolidated California Cases, March 7, 2003.

¹³⁷ *Supra* note 73.

¹³⁸ *Ibid.*

¹³⁹ *Ibid.*

¹⁴⁰ *Ibid.*

the country in 35 percent of all homes, just about every community is affected. At least 9,485 people were killed—and another 127,000 wounded—in unintentional shootings from 1993 to 2001.¹⁴¹

No one knows how many of these shootings were caused by defective firearms, because no private or government agency keeps such records. But studies indicate that basic, built-in safety features could save hundreds of lives and prevent thousands of injuries each year. Congress has been informed of the dangers of poorly designed guns. In 1991, the General Accounting Office (GAO) prepared a study for Congress that determined 23 percent of accidental shootings could have been prevented by a simple safety feature.¹⁴² The report found that installing an indicator that showed whether the gun was loaded—much like the feature in a \$10 disposable camera that indicates remaining exposures—could have saved 345 lives in 1988, the year the study was commissioned.

The firearm industry's response to the GAO study shows in very real terms how the American gun industry approaches the responsibility of making and distributing safe products.

Gun Makers and Firearm Safety—It's All About Individual Responsibility

In 2002, in response to proposed legislation that would have required the firearms industry to produce so-called “childproof” and “accident proof” firearms, SAAMI, the leading trade association for the American gun industry, distributed a brochure laying out the industry's arguments against government mandated safety standards. The brochure entitled “A Responsible Approach to Firearm Safety,” addressed the conclusions of the GAO report from 1991. The SAAMI brochure paints a vastly different picture of the gun industry's safety record than that described by the GAO. The brochure reads:

“Firearms Safety Depends on You” is the central theme of the SAAMI safety message. It emphasizes that the ultimate responsibility for firearms safety rests with the firearms *user* and *owner*...

Legislation has been proposed that would require the firearms industry to produce so called “childproof” and “accident proof” firearms. The 77-year involvement of the Sporting Arms and Ammunition Manufacturers' Institute (SAAMI) in successful safety education and firearms accident reduction and its experience and knowledge in proper design and handling of firearms compel it to seriously question this proposed legislation and its efficacy in accidental firearms accidents.

¹⁴¹ National Safety Council, *Injury Facts*, 2003 Edition.

¹⁴² The General Accounting Office (US). *Accidental shootings: many deaths and injuries caused by firearms could be prevented*. Washington: GAO; 1991 Mar. Pub. No.: GAO/PEMD-91-9.

In proposing this legislation, one senator stated that the need for federal regulation of firearms safety design is demonstrated by a Government Accounting Office (GAO) study that concluded that some firearms accidents could be prevented by a “childproof safety device,” other firearms accidents could be prevented by a “chamber-loaded indicator” and that additional consumer education and observance of firearm safety rules could also prevent firearms accidents. Although the GAO report may be well intended, its methodology is unsound, it lacks understanding of issues of firearms design and the majority of its conclusions are unfounded. *Indeed, reliance on the mechanical safety devices discussed (even if they were technically feasible) could lead to an increase, rather than a decrease, in the number of firearms accidents. (emphasis added)...*

... one of the tenets of the industry sponsored safety program emphasizes “Don’t rely on your gun’s ‘safety,’” because such mechanical devices could possibly fail. Also, reliance on such devices may tend to give a false sense of security at the expense of ignoring the basic safety rules when handling any firearm.¹⁴³

Contrary to the teachings of the SAAMI safety brochure, consumers, for decades, have relied upon countless “mechanical safety devices” to ensure the safety of users and bystanders of consumer products. For example, everyday Americans drive our nation’s freeways traveling at dangerously high speeds, public safety depends in large part upon the reliability of the hundreds of mechanical safety devices contained in the average automobile that help to mitigate this risk.

Known Safety Features Ignored By the Industry

In many cases, the omission of safety features by gun makers has made the simple errors or omissions of gun users catastrophic. That was the case in the shooting of 7-year-old Brandon Maxfield mentioned in Section Three.

Brandon was accidentally shot in the face at close range by a family friend who was unloading a Bryco Model 38 when it discharged. The police determined the 20-year-old friend was careless in unloading the gun around children, but it was also apparent that the pistol lacked certain safety features—making the gun even more dangerous to handle. There was no easy way to tell the Model 38 was loaded and that it could fire even after the gun’s magazine was removed. Additionally, the gun’s design increased the possibility of accidental discharge because the gun’s safety has to be turned off when the gun is being unloaded.

On March 31, 1994, six days before Brandon Maxfield was injured, Bryco informed its insurance company that it had developed a magazine safety “to prevent the shooter from pulling the trigger and shooting when the magazine is removed.” “This extra safety is being added,” Bryco officials told the insurer in a memo, “because it appears that inexperienced shooters may think they have unloaded the pistol by removing the

¹⁴³“A Responsible Approach To Firearm Safety,” Sporting Arms and Ammunition Manufacturers’ Institute, Inc, (2003). Retrieved from the Internet at <http://www.saami.org/> on January 21, 2005.

magazine. When in fact the barrel chamber may still contain a cartridge and shoot if the trigger is pulled." Despite this acknowledgement, the company continued to make the Model 38 without a magazine safety.¹⁴⁴

Bryco and other gun manufacturers have long been aware of the benefits of a magazine disconnect. In 1911, John Browning, one of the nation's foremost firearms inventors, first patented a magazine disconnect. In a series of articles about defective firearms published in *The Detroit News* in December of 2003, it was revealed that the magazine disconnect was developed to "insure absolutely against the dangerous accidental firing sometimes liable to occur if the trigger is pulled after the magazine has been withdrawn, in the belief that all cartridges have been removed from the arm with the magazine, whereas the loaded cartridge last fed to the barrel still remains in the chamber."¹⁴⁵

Tens of millions of firearms in America lack safety features like loaded chamber indicators or magazine disconnects. *The Detroit News* series also listed several U.S. gun patents dating back to the early 1900's to show positive proof that American gun makers were aware of the dangers and had developed ways to fix the most basic firearm safety flaws.¹⁴⁶ Many of these safety features have never been implemented on a wide scale. Some examples cited in *The Detroit News* article include:

1908- Loaded chamber indicator

Inventor: James J. Peard "The main object being to provide a positive and reliable device for indicating whether the chamber of the barrel is empty ... to remove all uncertainty as to the charged or empty condition of the chamber of the barrel."

"Another object of the invention is to provide a chamber-indicator which shall be simple and inexpensive in construction, and the indicating positions of which shall be readily distinguishable by a touch as well as at a glance, so as to constitute a reliable indicator of the condition of the chamber, in the dark as well as in the light."

1912- Magazine disconnect

Inventor: Georges Vander Haeghen "A number of accidents occur in connection with automatic firearms owing to the fact that if the firearm is loaded and the magazine withdrawn, persons little acquainted with the operation of these firearms often believe it to be unloaded while in reality a cartridge remains in the barrel."

¹⁴⁴ *Supra* note 73.

¹⁴⁵ Melvin Claxton, "Firearm patents addressed safety," *The Detroit News*, Sunday, December 14, 2003. Retrieved from the Internet at <http://www.detnews.com/2003/specialreport/0312/16/a10-8000.htm> on January 21, 2005.

¹⁴⁶ *Ibid.*

"The present invention has for its object to obviate such accidents by providing means for setting the weapon automatically at a position of safety immediately after the magazine is withdrawn."

1922-Magazine disconnect

Inventor: George H. Tansley "The invention relates particularly to a safety device of the type which renders the firing mechanism of the pistol inoperative when the magazine is withdrawn or partly withdrawn from the nominal position. It is well known that the user of an automatic pistol frequently assumes that the withdrawal of the magazine necessarily leaves the pistol in inoperative condition and that the trigger may then be safely pulled without danger of discharge. As a matter of fact, however, one cartridge may remain in the firing chamber even after the magazine is withdrawn and this common erroneous assumption on the part of the user constitutes a serious source of danger in connection with automatic pistols."

In 1914, announcing that "the foremost consideration in firearms manufacturing is to produce a weapon that is safe under all conditions," Smith & Wesson unveiled a new gun to the world. The advertisement for the new "Smith & Wesson Automatic" handgun promised it all (*See figure 20, next page*).

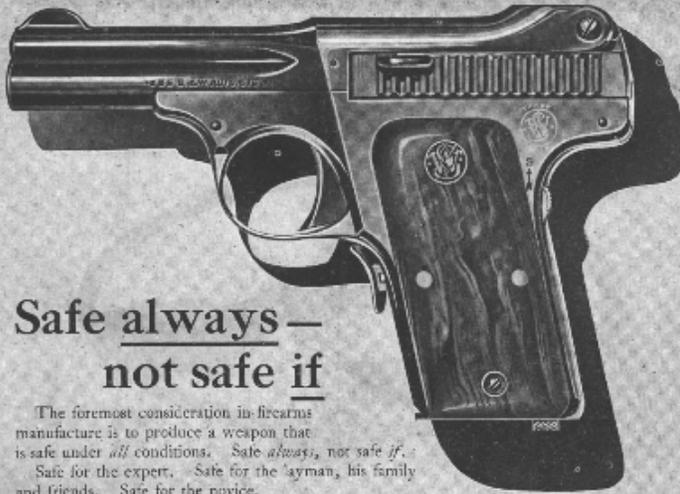
"Safe for the expert,"

"Safe for the layman, his family and friends. Safe for the novice. Safe from the child and the careless. Safe from all possibility of discharge from a blow, fall, or any kind of accident."

"The nervousness of the beginner or the startled woman, the curiosity of the child, cannot transform S&W automatic into an uncontrolled weapon of destruction."

Now, 90 years later, most American gun makers produce firearms that fall far short of the standards set by Smith & Wesson in the design of its original safe gun.

Unfortunately, even Smith & Wesson has retreated from some of the design features used in its "doubly" safe firearm. In addition to internal safety features that prevented the gun from accidentally discharging if dropped or jarred, the firearm had a manual safety and grip safety. The grip safety and the trigger had to be depressed at the same time, making it nearly impossible for young children to accidentally fire the gun. This feature forced the gun handler, according to Smith & Wesson, "to think before firing."



Safe always — not safe if

The foremost consideration in firearms manufacture is to produce a weapon that is safe under *all* conditions. Safe *always*, not safe *if*.

Safe for the expert. Safe for the layman, his family and friends. Safe for the novice.

Safe *from* the child and the careless.

Safe *from* all possibility of discharge from a blow, fall, or any kind of accident.

Smith & Wesson Automatic

"The gun that makes you think"

It's doubly safe —

No one can discharge this gun unintentionally

The nervousness of the beginner or the startled woman, the curiosity of the child, cannot transform the S. & W. Automatic into an uncontrolled weapon of destruction.

The automatic safety under the trigger guard cannot be operated by mere pressure of the hand in

None but human agency can discharge the S. & W.

It is *mechanically impossible* for the cartridge to be exploded until the automatic safety has been released. And "to make assurance doubly sure" there

Four other points of superiority

Added to the improved safety devices are the facility with which it can be loaded, mechanical perfection, and accuracy, for which the S. & W. firearms have been famous for over half a century, together with ease of cleaning.

And finally the S. & W. Automatic is .35 caliber.

Every gun expert, every business man, every family man, every family woman should know about the S. & W. Automatic. Write for catalog, or ask your dealer for the S. & W. Automatic today.

SMITH & WESSON, 706 Stockbridge St., Springfield, Mass.

TO DEALERS—The S. & W. Automatic is revolutionary in many of its features, and you should be ready to answer the many questions the public will ask. Special booklet B will give you full information. Write for it at once.

grasping the butt. Two motions (which with practice merge into one) must be made by the middle finger before this automatic safety releases.

Definite intention, preceded by instruction and practice, is necessary to make these motions.

You have to think before firing.

is a hand-operated, non-automatic safety which may be used to lock the mechanism, making it impossible to pull the trigger.

You are protected *automatically* from the dissatisfaction and possible dangers of using cheap or unsuitable ammunition. The S. & W. .35 Automatic Cartridge is made specially for this gun and you are always sure of getting the right ammunition. Carried in stock wherever S. & W. Automatics are sold.

PLEASE MENTION NATIONAL SPORTSMAN WHEN WRITING TO ADVERTISERS

Figure 20: Model 1913 Smith & Wesson pistol stressed consumer safety

Confidentiality Agreements

Gun manufacturers' insistence on confidentiality agreements is common in product liability settlements. The agreements have kept critical information about the safety record of gun manufacturers from the public and are a prime example of how the gun industry conceals information about injuries and fatalities connected with its products. As outlined in other sections of this report, the industry has done so with the help of Congress and the NRA. There are no current requirements to report complaints and

injuries to any federal or state agency, and gun manufacturers cannot be compelled to inform gun buyers of problems others have had with their weapons.

When police officer Randall Smith was accidentally shot in the head by a fellow law enforcement officer with a Glock semiautomatic pistol in 1995, he sued the manufacturer, claiming the weapon was defectively designed and unreasonably dangerous. Glock settled the lawsuit. The settlement contained a confidentiality agreement preventing Officer Smith, whose injuries left him permanently brain damaged, from talking about the case or revealing any details he learned about Glock before the settlement. His lawyer also is barred from talking about the case by the confidentiality agreement. Such agreements are standard policy for Glock when settling lawsuits. *The Detroit News* documented more than 50 lawsuits against Glock in the past eight years. In those with confirmed settlements, Glock insisted on confidentiality agreements.¹⁴⁷

According to a former plant manager of Davis Industries, at the time a leading Southern California based manufacturer of small, inexpensive handguns, a common practice used to avoid expensive litigation when a consumer was injured by a Davis firearm was to offer an immediate payment of \$1,000 in return for the offending firearm. The former industry official claimed the type of consumer who would purchase a Davis handgun tended to need the money especially if they had been injured. More often than not the injured consumer agreed to the quick settlement. Additionally, the company would retrieve the offending firearm before word of a potential problem was widely publicized.¹⁴⁸

Playing “politics” with public safety

In mid-1997, Smith & Wesson announced that it would begin a program of voluntarily providing "trigger locks" with all new handguns sold. President Bill Clinton publicly praised the announcement and asked then Smith & Wesson CEO Ed Shultz if such a program could be instituted on an industry-wide basis. President Clinton wanted all the major manufacturers to follow Smith & Wesson's lead on the gun safety issue. Ed Shultz and other industry leaders felt that the industry's public image was suffering as a result of the persistent problem of child access to firearms in the home. Industry leaders were also aware of the highly successful gun lock program started in 1988 by O.F.Mossberg & Sons, one of the nation's leading shotgun manufacturers. Industry leaders realized that a flexible, voluntary approach, designed to reduce the risk of possible industry liability, was preferred over rigid legislatively-mandated requirements. Some gun industry executives like Shultz felt voluntary action, with the blessing of the Clinton White House, would stave off an effort to pass legislation requiring a "one-size-fits-all" trigger lock approach.¹⁴⁹

¹⁴⁷ *Supra* note 73.

¹⁴⁸ *Supra* note 136.

¹⁴⁹ *Ibid.*

On October 9, 1997, at a ceremony in the Rose Garden, President Bill Clinton announced that his Administration had reached a voluntary agreement with a number of firearm manufacturers to supply child safety devices with all new guns sold beginning in January 1999.

The deal was the result of negotiations with American Shooting Sports Council (ASSC), then a leading firearms industry trade association. The President and leaders of the firearm industry labeled the resulting agreement a "breakthrough...in our efforts to protect children from gun violence." Clinton also praised the industry, stating:

Today, because of the voluntary action of the firearms industry, millions of our citizens will receive this protection. I'm pleased to announce that eight of the largest handgun manufacturers will now provide child safety devices with every new handgun they sell. This will affect eight of 10 handguns made in America, and it will save many young lives.¹⁵⁰

ASSC Executive Director, Richard Feldman, spoke for the gun industry at the Rose Garden ceremony and expanded upon the President's comments:

Within the coming year, most major handgun manufacturers will institute company policies of providing safety devices with all handguns shipped in the United States.¹⁵¹

The terms of the gun lock agreement were posted in gun industry publications and on the ASSC web site. Soon after the ceremony, the ASSC placed advertisements in the *Washington Times* and *Roll Call* highlighting the agreement participants. The ads stated that the participating companies "currently have, or will soon institute, policies which provide security devices with firearms they ship." Gun industry publications later listed several more companies that joined the agreement after it was announced. In all, 20 handgun manufacturers were listed in the December 1997 issue of *Shooting Industry* magazine as agreement participants.

When the White House agreement was announced, firearm legislation was pending in Congress to mandate that all new handguns be sold with safety devices.¹⁵² The firearms industry was anxious to avoid any mandatory requirements.

¹⁵⁰ *Broken Promises: The Failure of the Trigger "Lock" Deal Between the Gun Industry and the White House*, Violence Policy Center, October 1998. Retrieved from the Internet at <http://www.vpc.org/studies/brokagre.htm> on January 21, 2005.

¹⁵¹ *Ibid.*

¹⁵² See, S.10, The Violent And Repeat Offender Act of 1997 and S.428, The Child Safety Lock Act of 1997.

The industry's successful move to avert mandatory locking device legislation by promoting the voluntary Clinton/industry agreement was confirmed by then-White House spokesman Mike McCurry at a press briefing the day the agreement was announced. In response to a reporter's question about the prospects for legislation mandating safety locks, McCurry responded:

When industries step forward and voluntarily do these things, the ease of implementation is greater, the likelihood of litigation over rulemaking or regulation is less, and you get the job done. I think we had a decision by the private sector to step forward today and say they're going to get the job done.¹⁵³

The gun industry publicly insisted that the companies were acting purely out of a desire to be good corporate citizens. On the day the agreement was announced, Feldman told *The New York Times*, "We very much want to be the responsible industry, and perceived that way by the public." Without White House action, Feldman told the *Times*, the industry would eventually have offered the locks anyway, "but not as quickly."¹⁵⁴

According to gun industry publications, however, participants in the voluntary agreement openly acknowledged that the deal's greatest benefit was that it killed any federal legislation mandating that safety devices be sold with new handguns.

The December 1997 issue of *Shooting Industry* noted:

The agreement reached between Clinton and the firearms industry means that the White House will not push for mandatory legislation on trigger locks, and anti-gunners have admitted those proposals are basically dead in the water....

Most gun industry insiders were enthusiastic about the results of the Rose Garden ceremony. Glock's vice president and general counsel Paul Jannuzzo, summed up the feelings of most gun industry executives:

I'm not at all comfortable with someone like [Representative] Charlie Schumer (anti-gun Congressman) telling us how to lock up a pistol or revolver or shotgun or anything else. Lord knows that if he or someone like him—whether it be [Senators] Feinstein, Boxer or Kennedy—wrote legislation like that, there would be some firearm that it would be impossible to fit. And that would probably outlaw the firearm. I'd much rather have something on a voluntary basis where we can make the decision as to what fits mechanically our own products as opposed to somebody whose real goal is to outlaw firearms deciding how they should be locked up.¹⁵⁵

¹⁵³ "Clinton Applauds Gun Makers at Historical Ceremony," *Shooting Industry*, December 1997.

¹⁵⁴ James Bennett, "Gun makers agree on safety locks," *The New York Times*, Late Edition - Final, Section A , Page 1 , Column 3, October 9, 1997.

¹⁵⁵ *Ibid.*

Feldman went on to explain the political significance of the White House deal:

“Unprecedented” is an overused word, but this really was unprecedented. I hope when we look back on the event we won't talk about that we were there, but that it was a turning point in the way we handle firearm issues in this country. If we don't start playing smart politics, we're going to lose.

When a reporter at the White House briefing asked McCurry whether the new agreement meant that the White House saw no need for legislation, he responded:

It's our view that the industry's step forward today made a commitment to do this...we, of course, will expect full implementation of that and don't have any reason to think that it won't happen.

Many leaders in the gun control movement were not happy about the White House agreement. Kristen Rand, of the Violence Policy Center, declared, "The big winners today are America's gun manufacturers, not America's children." White House press secretary Mike McCurry responded to Rand with the comment, "That sounds like sour grapes."¹⁵⁶

The White House had wanted to invite gun control activists Jim and Sarah Brady to the ceremony but backed off when Feldman informed them that the gun company representatives would not show up if representatives of Handgun Control (now known as the Brady Campaign to Prevent Gun Violence) were in attendance. This was the only firearm-related conference the Bradys were not invited to during Clinton's term as president¹⁵⁷.

The National Rifle Association was angry that industry leaders had decided to work with “the most anti-gun president in US history.” A strongly worded letter from Wayne LaPierre, National Rifle Association's executive vice president, blasted the companies represented at the ceremony. LaPierre wrote, “You have helped Clinton to co-opt, to steal yet another issue. And he will use it to destroy you.” He continued, "I can tell you that many of our mutual friends on Capitol Hill feel betrayed."¹⁵⁸

Joe Tartaro, former president of the Second Amendment Foundation and editor of *Gun Week*, saw things differently:

They (the industry) were going to make that announcement (concerning security devices) no matter what. By accepting the invitation of the White House to make

¹⁵⁶ *Ibid.*

¹⁵⁷ *Ibid.*

¹⁵⁸ Letter from Wayne LaPierre, Executive Vice President of NRA to gun industry executives dated October 10, 1997.

the announcement jointly with the President, they ran a risk. The stakes were pretty high. But they got exposure they would not have gotten any other way. It's interesting that some of the gun groups are beating up on the industry and ASSC for meeting with Clinton, and the anti-gunners are beating up on Clinton for meeting with the gun people.¹⁵⁹

The Litigation Saga

In 1998, New Orleans became the first city in the nation to file suit against the gun industry. Shortly thereafter, the City of Chicago and Cook County, Illinois filed a second lawsuit. The lawsuits and the novel legal theories relied upon by lawyers for the Cities of New Orleans and Chicago attracted the attention of municipal and county officials across the United States, who for years faced widespread gun violence in their communities. Since New Orleans' lawsuit was filed, approximately 32 additional cities and counties and one state have filed similar suits against gun manufacturers, dealers, and distributors.

The gun lawsuits were based upon the successful litigation model used against the tobacco industry. For decades, the tobacco industry tried to conceal its complicity in creating the serious harm caused by tobacco products. The public only saw tobacco-related disease as the result of a choice made by the smoker, with little relation to the industry's conduct. The large number of state and municipal lawsuits filed against tobacco companies changed that perception by exposing the tobacco industry's wrongdoing.¹⁶⁰ The public now understands that the tobacco industry chose to design and market its products in certain ways--by manipulating nicotine levels, by marketing to children, by suppressing research findings, and by lying about product dangers--that fueled a public health crisis of huge proportions. Litigation forced tobacco companies to the settlement table, where they finally acknowledged responsibility for the harm they had caused and agreed to pay large sums in damages to state and municipal governments.

The municipal gun lawsuits attempt to expose gun industry misconduct in the same way. Gun violence causes grave and serious harm in America. Roughly 30,000 people are killed each year with firearms, making it second only to motor vehicles as the most frequent cause of injury death in the United States.¹⁶¹ In 1997, 64,000 people were treated in hospital emergency rooms for nonfatal firearm injuries.¹⁶² It has been alleged,

¹⁵⁹ "Gun Makers and Trigger Locks: An Industry Coup," *Gottlieb-Tartaro Report*, November 1997.

¹⁶⁰ Kelder GE Jr, Daynard RA. "The role of litigation in the effective control of the sale and use of tobacco," *Stanford Law and Policy Review* 1997;8:63-98.

¹⁶¹ Murphy, L. "Deaths: final data for 1998." *National Vital Statistics Report* 2000;48(II):1-105.

¹⁶² "Nonfatal and fatal firearm-related injuries—United States, 1993-1997," *MMWR Morbidity and Mortality Weekly Report*, Volume 48, pp. 1029-34, 1999.

as in the tobacco litigation, that gun violence stems from gun industry wrongdoing in the way it designs, distributes, and markets its products. By bringing suit, cities, counties, and states are trying to change the way the gun industry conducts itself, designs weapons, and sells its products, thereby saving lives.

As Sections Two and Three of this report reveal, misuse of firearms by unauthorized users is a serious but preventable problem. All too often a curious child discovers a loaded gun in their own or a friend's home and handles it as if it was unloaded and death or severe injury result.¹⁶³

The National Institute of Justice estimates that 34% of handgun owners keep their guns loaded and unlocked.¹⁶⁴ Moreover, a 1991 General Accounting Office study found that nearly a third of unintentional firearm deaths occurred either because a very young child was able to fire the weapon or because the person firing the gun was unaware it was loaded.¹⁶⁵

One way to dramatically reduce unintentional shootings is to design handguns to be inaccessible to young people. Although it is critical that gun owners properly secure firearms kept in the home and that all recreational shooters receive training and education, many injury control experts say that changing the design of a product is the most effective way to reduce injury.¹⁶⁶

Turning a Blind Eye

Most of the municipal lawsuits filed against gun makers alleged that the industry “facilitates illegal gun trafficking.” Plaintiffs assert that to sell more guns and make higher profits, the industry has established a “willfully blind” distribution system, which results in the channeling of hundreds of thousands of guns from the legal marketplace into the hands of criminals and juveniles.¹⁶⁷

Firearms are distributed through a primary market, consisting of transactions involving a federally licensed industry, and a secondary market, in which both buyers and sellers are unlicensed. In the primary market, the three layers of sellers—manufacturers,

¹⁶³ Center to Prevent Handgun Violence, *A school year in the U.S.A.*, October 1998. See also, Violence Policy Center, *Kids Shooting Kids*, March 1997.

¹⁶⁴ Police Foundation. *Guns in America: results of a comprehensive national survey on firearms ownership and use*, Police Foundation, 1997.

¹⁶⁵ *Supra* note 142.

¹⁶⁶ Polston MD, Weil DS. “Unsafe by design: using tort actions to reduce firearm-related injuries,” *Stanford Law and Policy Review* 1997;8:13-24.

¹⁶⁷ Brian J. Siebel, “City Lawsuits Against the Gun Industry: A Roadmap for Reforming Another Deadly Industry,” *St. Louis University Public Law Review*, Vol. XVIII, No. 1, 1999.

distributors, and dealers—are all licensed by ATF and must comply with recordkeeping requirements and background checks. However, once an individual acquires a firearm, there is virtually no federal regulation of future transfers of that weapon in the secondary market.¹⁶⁸

In many of the suits, it is alleged that gun manufacturers know that the system is regularly subverted by firearms dealers willing to look the other way when people with clean criminal records buy guns on behalf of others who are disqualified.¹⁶⁹ Law enforcement's ability to prevent illegal sales is severely hampered by the lack of federal investigators overseeing the industry's sales in the primary market. Congressional restrictions on computerizing gun sales records and loopholes in the law that make gun trafficking convictions difficult to obtain frustrate law enforcement efforts to reduce illegal gun trafficking.¹⁷⁰ These constraints appear to be the result of heavy lobbying by the gun industry and the NRA.

According to the US Bureau of Alcohol, Tobacco, Firearms and Explosives, "[v]irtually all new firearms used in crime first pass through the legitimate distribution system of federally licensed firearms dealers," and a substantial portion of handguns sold through this legal marketplace ends up being used in crime.¹⁷¹

Sales to "straw purchasers" are a leading source of firearm diversions.¹⁷² One major federal study of gun trafficking found that straw purchasing accounted for almost 50% of the firearms trafficked into crime.¹⁷³ Some well documented multiple sale cases involve hundreds, or even thousands, of straw-purchased guns.¹⁷⁴

Corrupt firearms dealers are also a significant part of the problem. Undercover sting operations in Chicago, Detroit, and Gary, Indiana, revealed that some dealers do not like to turn away paying customers, even if they openly admit to being criminals or juveniles.

¹⁶⁸ Department of the Treasury (US), *A progress report: gun dealer licensing & illegal gun trafficking (statement of Raymond W. Kelly, Under Secretary)*. Washington: Department of Treasury (US); January 1997.

¹⁶⁹ *NAACP v. AcuSport, Inc.*, 271 F.Supp.2d 435, (E.D.N.Y. 2003).

¹⁷⁰ *Ibid.*

¹⁷¹ Department of the Treasury (US), Department of Justice (US) *27 cities report: gun crimes in the age group 18-20*. June 4, 1999.

¹⁷² *Supra* note 169.

¹⁷³ Department of Treasury (US), *ATF Performance Report: the Youth Crime Gun Interdiction Initiative*, February 1999.

¹⁷⁴ Department of the Treasury (US), Bureau of Alcohol, Tobacco and Firearms. *The Youth Crime Gun Interdiction Initiative: the illegal youth firearms markets in 17 communities*. July, 1997.

For example, Chicago launched an extensive undercover investigation in 1998. Over a three-month period, the Chicago Police Department sent two-person teams into the 12 gun stores located in Chicago suburbs that had sold the highest numbers of guns traced to crimes committed in the city. Both agents carried identification indicating that they lived in Chicago, where it has been illegal to own handguns since 1982. Only one of the agents carried a firearm owner identification card, which is required under Illinois law to purchase a firearm in the state. The agent who did not have the required card nevertheless did the talking, placed the cash on the counter, and walked out with the gun. The agents also openly bragged about needing the gun to "settle a score," to resell to drug gangs, or to use in other criminal enterprises, yet in each case the suburban dealer sold the firearm. Some dealers even counseled the agents in how to avoid federal paperwork that might trigger an investigation.¹⁷⁵

The dealers approached in Michigan and Indiana engaged in similar conduct even after the Chicago sting was aired nationally on *60 Minutes*. One Michigan dealer was captured on videotape saying, "It's highly illegal," yet went ahead and made the sale. Some dealers have pumped literally thousands of guns into the illegal market.¹⁷⁶

Plaintiffs suing the gun industry allege the industry takes advantage of weaknesses in the law to market guns to criminals and juveniles.¹⁷⁷ For example, evidence presented in a case in New York suggests that the industry deliberately targets areas with lax gun control laws, knowing that guns purchased there will be trafficked into states and cities with tougher gun laws.¹⁷⁸ A sworn affidavit issued by a former Senior Vice-President of Marketing and Sales at Smith & Wesson in this case admitted the industry's complicity:

The company and the industry as a whole are fully aware of the extent of the criminal misuse of firearms. The company and the industry are also aware that the black market in firearms is not simply the result of stolen guns but is due to the seepage of guns into the illicit market from multiple thousands of unsupervised federal firearms licensees. In spite of their knowledge, however, the industry's position has consistently been to take no independent action to insure responsible distribution practices.¹⁷⁹

¹⁷⁵ John O'Connor, "Gunmakers win state court ruling," *The Associated Press*, Friday, November 19, 2004.

¹⁷⁶ Department of the Treasury (US), Bureau of Alcohol, Tobacco and Firearms. *Following the gun: enforcing federal laws against firearms traffickers*, June 2000.

¹⁷⁷ *Supra* note 169.

¹⁷⁸ Expert Report of Lucy Allen and Jonathan Portes (May 1, 1998) filed in *Hamilton v. Accu-Tek*, 62 F. Supp. 2d 802 (E.D.N.Y. 1999).

¹⁷⁹ Affidavit of Robert I. Hass [paragraphs] 20-21 (Feb. 20, 1996) filed in *Hamilton v. Accu-Tek*, 62 F. Supp. 2d 802 (E.D.N.Y. 1999).

If the gun industry exercised more control over its distribution network, firearms trafficking could be dramatically reduced.¹⁸⁰ A system of training, monitoring, and disciplining dealers could be instituted, much in the way that certain businesses require dealers to be "authorized" before being able to sell the manufacturer's product line. Other industries selling products for which the danger of misuse is high have instituted marketing controls, including franchising retail sales outlets, restricting retail sales through distribution contracts, and requiring safe sales practices at the retail level.¹⁸¹

Why has the gun industry refused to exercise more control over its distribution network? This question was addressed by US District Court Judge Jack Weinstein in a recent lawsuit filed by the National Association for the Advancement of Colored People (NAACP) against the firearms industry in federal court in New York.¹⁸² In the published opinion of the case, Judge Weinstein issued certain findings of facts and conclusions of law. After hearing the testimony of former NRA attorney and industry trade association executive Robert Ricker, Judge Weinstein ruled at page 521 of the opinion:

"19. Robert Ricker demonstrated what the industry knows about the diversion of firearms from the legal to the illegal market and how guns are diverted. His opinions were based on his years of experience as a National Rifle Association ("NRA") executive and a high official of one of the principal gun industry trade associations, his participation in industry-wide planning and strategy meetings, and his work with all branches of the industry. Mr. Ricker testified that the industry knows that crime gun traces are indicators of problems at the dealer level and are adequate notice to all up-stream distribution partners of these problems. He testified that traffickers often report guns stolen to throw off a trace, thus covering their participation and inflating the number of guns reported stolen. *He also testified that the reason industry members gave for not addressing the clear dangers posed by unsupervised dealers causing widespread harm to communities was: "if the industry took voluntary action, it would be admitting responsibility," and "the concept that if you are proactive and take steps to remedy the problem, then you have recognized that you are responsible partially for the problem." This testimony is credible and is accepted.*" (Emphasis added).¹⁸³

Although firearm injuries and deaths impact victims and their families the hardest, gun violence also creates significant costs for public entities responsible for protecting public welfare and keeping communities safe. Cities, counties, and states have had to absorb billions of dollars in costs directly resulting from gun violence. These costs include

¹⁸⁰ *Supra* note 169.

¹⁸¹ Expert Report of David Stewart (May 1, 1998) filed in Hamilton v. Accu-Tek, 62 F. Supp. 2d 802 (E.D.N.Y. 1999).

¹⁸² *Supra* note 169.

¹⁸³ *Ibid.*

outlays for injuries to public property, medical care, police investigations, emergency rescue services, coroner services, jails and prisons, security at schools and other public buildings, funeral services for unknown victims, disability benefits, and youth intervention programs. In addition, there are escalating indirect costs, such as lost tax revenues from declining real estate values in neighborhoods hit by gun violence.

Several studies have attempted to estimate the total public costs associated with firearm-related injuries. The studies have arrived at the same conclusion: the costs are exceptionally high for the taxpaying public.¹⁸⁴ For example, *The Los Angeles Times* did a report on the public costs stemming from the experience of one teenager, now a paraplegic as a result of a gunshot wound, estimating a total public cost of more than a million dollars for a single shooting victim.¹⁸⁵ Given that gun violence disproportionately affects the poor and that gunshot victims typically do not have health insurance,¹⁸⁶ firearm injuries clearly place an enormous financial burden on the public each year.

To date, 33 cities and counties and one state have filed lawsuits against the gun industry. In order of filing, they are: New Orleans, LA; Chicago and Cook County, IL; Miami-Dade County, FL; Bridgeport, CT; Atlanta, GA; Cleveland, OH; Wayne County and Detroit, MI; Cincinnati, OH; St. Louis, MO; Alameda County, Berkeley, Sacramento, San Francisco, and San Mateo County, CA; Compton, Los Angeles, and West Hollywood, CA; Camden County, NJ; Boston, MA; Newark, NJ; Camden, NJ; East Palo Alto, Englewood, and Oakland, CA; Los Angeles County, CA; Gary, IN; Wilmington, DE; Washington DC; Philadelphia, PA; New York City; and New York State.

The Smith & Wesson Agreement

The tragic shootings in the late 1990's at schools across the country made Smith & Wesson's CEO Ed Shultz realize the firearms industry had to change the way guns were made, marketed, and sold. "I always said, 'All we have to do is train kids and make sure those guns are locked up,'" Shultz explained. "When (Jonesboro) Arkansas happened, I changed. I said, 'OK, we have to find another solution.'"¹⁸⁷

Smith & Wesson began instituting policies and practices designed toward exercising greater control over its gun distribution system. The company implemented a dealer "Code of Ethics" which placed restrictions on those dealers participating in its "stocking dealer" program. The company warned dealers that it might terminate sales to those who did not agree to refrain from making sales to "straw purchasers" or to anyone that the dealer had reason to believe made a false or misleading statement to acquire a

¹⁸⁴ Cook P, Ludwig J. "Gun violence: The Real Costs." *Oxford University Press*, 2000.

¹⁸⁵ Sipchen B., "Putting A Price Tag On Violence," *The Los Angeles Times*, June 5, 1994.

¹⁸⁶ Gunderson L., "The financial costs of gun violence," *Annals of Internal Medicine*, 131:483-4, 1999.

¹⁸⁷ Matt Bai, "A Gunmaker's Agony," *Newsweek*, May 22, 2000, p. 32.

gun.¹⁸⁸ Smith & Wesson also developed a detailed sales training manual for sales associates of Smith & Wesson-owned retail outlets.¹⁸⁹

After cities and counties began bringing lawsuits, initial discussions of a possible settlement broke down because of pressure on industry leaders by the NRA. The NRA was upset that some gun company CEOs were negotiating with representatives from the Clinton administration and US Conference of Mayors.¹⁹⁰

Shultz decided that Smith & Wesson would keep talking about possibilities for resolving the litigation and reducing firearms misuse. Shultz eventually decided that the company should agree to many of the changes that the cities and counties sought. Shultz explained that the decision to start doing more “came because I couldn’t answer the question, ‘Was I doing everything I knew how to do to prevent accidents?’” When he asked himself, “Would I put locks on our guns if it might save one child? The answer was yes.”¹⁹¹

On March 17, 2000 the nation’s largest handgun manufacturer entered into a historic settlement agreement with the Department of Housing and Urban Development, two state Attorneys General, and a number of the cities that had sued the company. Smith & Wesson agreed to initiate more dramatic changes in the way guns are designed, marketed, and distributed.¹⁹²

The agreement required Smith & Wesson to sell its guns only through authorized dealers and distributors, who must abide by a strict set of terms and conditions:

- Dealer/distributors could not sell at a gun show unless background checks were conducted on all sales at the show, and sales were not made until the check was completed.
- Dealers/distributor customers must pass a certified firearms safety course or exam.
- Annual training and testing was required on how to recognize suspect sales and how to promote safe use and storage.

¹⁸⁸ Deposition of Christopher Killoy taken in the *California Firearm Case* on June 25-26, 2002.

¹⁸⁹ *Ibid.*

¹⁹⁰ Kerby Smith, “Smith & Wesson Speaks Out,” *GUNS & AMMO*, August, 2000, p. 44.

¹⁹¹ Jeffrey L. Seglin, “When Good Ethics Aren’t Good Business,” *The New York Times*, March 18, 2001, p. B4.

¹⁹² Settlement Agreement between Smith & Wesson and Department of Housing and Urban Development (HUD), signed March 17, 2000.

- Any dealer that sells a disproportionate number of guns traced to crime would have supplies cut off.
- Security to prevent gun theft must meet minimum standards.
- Dealers could not sell more than one handgun to the same person in less than 14 days.
- Weapons and gun features attractive to criminals, such as semiautomatic assault weapons or large-capacity magazines, could not be sold, nor guns that do not meet minimum design criteria.

The agreement also required Smith & Wesson to implement safer gun designs and warnings, including:

- Installing internal locking devices on all guns within two years.
- Developing personalized technology as part of all new gun designs within three years.
- Spending 2% of revenues on developing personalized technology.
- Installing child safeties and load indicators, and a second, hidden serial number on all guns.
- Distributing stringent safety warnings to buyers about the danger of improper handling and storage.

The agreement also provided for direct oversight by the cities and counties that brought suit to ensure that its provisions were complied with.

A Deal with the Devil

The backlash against Smith & Wesson was led by the NRA, other handgun makers and distributors and smaller, more militant pro-gun organizations. The NRA denounced Smith & Wesson as a foreign-owned business that had “run up the white flag of surrender” to the Clinton Administration.¹⁹³ The largest Smith & Wesson handgun distributor, RSR, stopped selling Smith & Wesson products. Shooting match organizers told Smith & Wesson it was not a welcome sponsor at events, and a law firm that represented Smith & Wesson dropped it as a client. The Gun Owners of America called for a national boycott of Smith & Wesson firearms.

¹⁹³ Fox Butterfield & Raymond Hernandez, “Gun Maker’s Accord on Curbs Brings Pressure from Industry,” *The New York Times*, March 30, 2000, p. A1.

Other manufacturers and competitors piled on. An internal corporate document written by Don Gobel, the chairman of the National Shooting Sports Foundation (NSSF) and CEO of Browning entitled “Gun Manufacturers’ Positions on Key Gun Control Issues” included a section on “Why We Stand United Not to Sign the S&W Agreement.”¹⁹⁴

According to Robert Delfay, executive director of NSSF, a survey of other major gun manufacturers concluded that none would follow Smith & Wesson’s lead. “I talked to the vast majority of them,” Delfay said, “and the unanimous response was, ‘No way.’”¹⁹⁵ Delfay was quoted in the press on the day Smith & Wesson signed the agreement that he was “deeply disturbed by the fact that Smith & Wesson has allowed the Clinton-Gore Administration to manipulate the company in this manner ... [w]e are confident that no other major manufacturers will desert.”¹⁹⁶

The Federal Trade Commission and prosecutors in six states launched investigations into whether there was concerted action by Smith & Wesson’s competitors to “punish” Smith & Wesson.¹⁹⁷ “We are seeing behavior on the part of Smith & Wesson’s competitors that raises the specter of illegal antitrust activity,” said New York Attorney General Eliot Spitzer.

Connecticut Attorney General Richard Blumenthal believed “Smith & Wesson is under absolutely unprecedented pressure, both financial and personal within the gun industry, with threats that are almost violent in nature, and I have heard the fear that it could be put out of business.”¹⁹⁸

Andrew Cuomo, Secretary of Housing and Urban Development, said “It seems like the industry is doing everything it can to make an example out of Smith & Wesson.”¹⁹⁹

The internal industry controversy was so intense that the NSSF commissioned a nationwide telephone survey to test public attitudes about the settlement and other issues relating to the gun industry. The survey found that public awareness of the Smith & Wesson agreement was high and overwhelmingly favorable, with 79% of

¹⁹⁴ Deposition of Paul Pluff taken in the *California Firearm Case* on Aug. 6-7, 2002; Documents produced by U.S. Repeating Arms in the *City of Boston v. Smith & Wesson* (USRAC 652-54).

¹⁹⁵ Jackie Koszczuk, “NRA to Isolate Smith & Wesson,” *The Sun News* (Myrtle Beach, SC), March 23, 2000.

¹⁹⁶ David Ho, “Officials Praise Smith & Wesson,” *Associated Press*, March 17, 2000.

¹⁹⁷ John Christoffersen, “Inquiry Opens Into Gun Firms,” *Sun Sentinel* (Ft. Lauderdale), April 6, 2000, p. 5A.

¹⁹⁸ *Supra* note 193.

¹⁹⁹ *Ibid.*

respondents favoring the agreement and only 15% opposing it.²⁰⁰ All aspects of the agreement received “strong support.” Even among NRA members.

Despite the public support, the industry continued to “stand united” against the agreement.

While Smith & Wesson confirmed that all aspects of the settlement agreement were feasible for it to implement,²⁰¹ many dealers refused to comply and ultimately rejected the agreement.

The Return to the “Family”

Soon after entering into the agreement, the British corporation that owned Smith & Wesson sold it to an Arizona-based firm headed up by a former Smith & Wesson executive Robert Scott. After Scott became Smith & Wesson’s new CEO, he set out to dismantle the agreement.²⁰²

After renouncing the agreement, Smith & Wesson was welcomed back into the firearms industry “family.” According to Scott “the firearms industry is a family. We need to be part of that family. We can’t be separate from that family. We want to fully, 100 percent, participate in that family. We want to be part of family decision-making.”²⁰³

Later that year, NSSF gave Scott its “Man of the Year” award. That honor spoke “volumes about Smith & Wesson’s reclaimed place in the firearms community today.”²⁰⁴

Smith & Wesson stood alone when its CEO Shultz signed the agreement and acknowledged for the first time that the gun industry could make safer guns and take steps to prevent the diversion of guns to the criminal marketplace. Five years later, the rest of the industry continues to assert that it does not know, and cannot control, where its guns end up. The “see no evil” approach of selling guns through middlemen, distributors and dealers, insulates manufacturers from potential liability.²⁰⁵

²⁰⁰ Documents produced by Sturm, Ruger & Co. in the California Firearm Case (SR 20910-69).

²⁰¹ *Supra* note 188.

²⁰² Documents produced by Plaintiffs in the California Firearm Case (PLTF 101686-87); Scott deposition, at 115:17-118:15.

²⁰³ *Ibid.*

²⁰⁴ Documents produced by Plaintiffs in the California Firearm Case (PLTF 101686-87).

²⁰⁵ *Supra* note 136.

Bringing About Change

Over the years, the gun industry has successfully claimed that it isn't liable if its products are used to commit crimes. However, recently, this previously iron clad-defense has begun to develop some chinks.

In three separate individual lawsuits, shooting victims and their relatives have secured cash settlements from several gun sellers and one gun maker. The settlements are the first of their kind and appear to be driven by a concern that the industry is losing ground on claims that the firearms industry has created a "public nuisance."

On September 9, 2004, eight victims of the 2002 Washington, D.C., sniper attacks settled their claim against Bull's Eye Shooter Supply of Tacoma, Washington and Bushmaster Firearms, Inc., of Windham, Maine. Bull's Eye agreed to pay \$2 million; Bushmaster settled for \$550,000. Bull's Eye was the dealer and source of the Bushmaster assault rifle used by snipers John Allen Muhammad and Lee Boyd Malvo. The agreement marked the first time that a U.S. gun maker opted to settle a suit stemming from gun violence and only the third time that a gun seller had reached a similar settlement.²⁰⁶

The D.C. sniper settlement was preceded by two other cases in which gun sellers settled with shooting victims.

In the first, firearms dealer Will Jewelry & Loan of Charleston, W.Va., agreed to pay \$1 million to two Orange County, New Jersey police officers who were seriously wounded by a robber. The Charleston store sold the weapon used in the incident to a "straw buyer," a gun trafficker who in turn illegally resold it. The settlement was approved by a West Virginia state judge on June 23, 2004.²⁰⁷

The plaintiffs, who have since left the police force, are still pursuing their claim against Sturm, Ruger & Company Inc., which made the gun used in the attack. The former officers contend that Sturm, Ruger should have cut off sales to Will Jewelry because, according to federal statistics, it was among the top 1 percent of dealers nationwide in number of guns sold that had been traced back to crimes.

In the second settlement reached by a gun seller in a victim suit, Sauers Trading of Williamsport, Pa., agreed to pay an undisclosed amount to a Philadelphia woman on

²⁰⁶ "GUN DEALER, MANUFACTURER PAY \$2.5 MILLION TO SNIPER VICTIMS TO SETTLE LAWSUIT," Brady Campaign To Prevent Gun Violence, Legal Action Project, news release, September 9, 2004. Retrieved from the Internet at <http://www.bradycampaign.org/press/release.php?release=583> on January 21, 2005.

²⁰⁷ "COURT APPROVES LANDMARK \$1 MILLION SETTLEMENT AGAINST GUN DEALER IN ATTACK ON POLICE OFFICERS," Brady Campaign To Prevent Gun Violence, Legal Action Project, news release, June 23, 2004. Retrieved from the Internet at <http://www.bradycampaign.org/press/release.php?release=566> on January 21, 2005.

August 24, 2004. The plaintiff's 7-year-old son was accidentally killed when a group of children found a handgun that had been dropped under a car by a suspected drug dealer. Sauers Trading had sold the weapon to a straw buyer, who then sold it on the street.²⁰⁸

Given that gun makers and gun sellers have long refused to pay anything in victim suits stemming from criminal acts, what's prompted the recent spate of settlements?

According to lawyers for plaintiffs, it is because the industry has suffered some recent setbacks in the public nuisance suits filed by states, counties, and cities.²⁰⁹

"Even though all but five of the 33 government actions filed since 1998 have been dismissed, they've been costly to defend,"²¹⁰ says Lawrence Keane, Vice President and General Counsel at the National Shooting Sports Foundation (NSSF), an industry trade group that's also been named as a defendant in some of the public nuisance actions.

Industry insiders claim that gun makers have spent as much as \$175 million on legal fees for what they call "frivolous lawsuits." They also claim that the liability risk posed by the suits has led insurers to raise their rates for the industry by 200 to 400 percent.²¹¹

Seeking Immunity

The industry publicly admits it's worried about the remaining public nuisance lawsuits that may go to trial. According to NSSF the suits "are threatening the industry."²¹² These lawsuits include a suit filed by the City of St. Louis, which has been dismissed but is on appeal to the Missouri Supreme Court, and suits filed by Gary, Indiana, New York City, and a group of California cities, which are all likely to proceed to trial.

New York City's suit is the first to have a trial date: April 4, 2005. In that case the City of New York is seeking an injunction that would force gun makers and sellers to develop safer products and adopt marketing practices designed to close off the flow of guns to criminals and the black market.

²⁰⁸ L. Stuart Ditzen, "Dealer settles suit over gunplay," *Philadelphia Inquirer*, Tuesday, August 24, 2004.

²⁰⁹ Sue Reisinger, "High noon" *Law.Com*, October 29, 2004. Retrieved from the Internet at <http://www.law.com/jsp/article.jsp?id=1098891006017> on January 21, 2005.

²¹⁰ *Ibid.*

²¹¹ *Ibid.*

²¹² *Ibid.* See also, "JUDGES: CASE MAY HAVE SHOWN GUN MAKERS HELP CRIMINALS GET GUNS," Brady Campaign to Prevent Gun Violence, Legal Action Project, news release, November 19, 2004. Retrieved from the Internet at <http://www.bradycampaign.org/press/release.php?release=608> on January 21, 2005. See also, "DC COURT OF APPEALS THROWS OUT RULING THAT DISMISSED CITY'S SUIT AGAINST THE GUN INDUSTRY," Brady Campaign to Prevent Gun Violence, Legal Action Project, news release, October 20, 2004. Retrieved from the Internet at <http://www.bradycampaign.org/press/release.php?release=605> on January 21, 2005.

The gun industry is trying to avert future suits by turning to Congress and state legislatures. The gun lobby has already persuaded 31 states to pass laws granting gun makers some form of immunity from the city suits. Moreover, the NRA continues to push for a federal law that would give the gun industry protection from actions brought by victims of gun violence as well. Although the Protection of Lawful Commerce in Arms Act passed the United States House of Representatives, it was stopped in the United States Senate in March of last year. "Reintroducing the bill is a must in the next session of Congress...It is our number one priority," says Lawrence Keane, the gun industry's top lobbyist.²¹³

²¹³ *Ibid.*

Section Five

Defective Tires and Bad Meat

Imagine if car companies could introduce new cars with no built-in safety protection, if drug companies could sell untested drugs at will, or if there were no requirements for the safety and inspection of meats.

Fortunately, that's not the case.

Virtually every consumer product—from children's toys to refrigerators and cars—is regulated for safety. Congress has given authority to federal agencies to assure that almost every consumer product in America is subject to safety regulation. For example, the Consumer Product Safety Commission (CPSC) regulates the safety of consumer products used in the home, at schools, and in recreation; the United States Department of Agriculture (USDA) has authority over meat and poultry; and the National Highway Traffic and Safety Administration (NHTSA) sets safety standards for cars.

The history of consumer product regulation teaches that a significant number of deaths, injuries, and illnesses can be prevented as a result of properly implemented and rigorously enforced health and safety standards. Below are some examples of how federal regulation works to protect Americans every day.

Defective Tires

More than 30 years ago, the United States made prevention of deaths from motor vehicle injuries a national priority by establishing the National Highway Traffic and Safety Administration (NHTSA). NHTSA is one of ten agencies within the U.S. Department of Transportation, and it regulates the automobile industry in three areas: 1) safety, 2) damageability, and 3) fuel economy. NHTSA has far reaching authority to set minimum safety standards that must be met by every manufacturer selling cars and related products such as child safety seats, motorcycle helmets, and tires in the United States. The agency also administers a grant program for the states to conduct various traffic safety education programs, covering such topics as anti-drunk driving, safety belt use, speed control, motorcycle safety, and emergency medical services programs.

To protect the public from automobile safety defects, NHTSA conducts its own field tests and also provides a toll-free [Auto Safety Hotline](https://www.nhtsa.gov/1-888-DASH-2-DOT) (1-888-DASH-2-DOT) for consumers to report safety defects. NHTSA has legislative authority for fining automobile companies that fail to conform to safety regulations, but it generally relies on voluntary recalls. A recall may be requested when a motor vehicle or item of motor-vehicle equipment (including tires) does not comply with Federal Motor Vehicle Safety Standards²¹⁴ or when there is a safety-related defect.²¹⁵

²¹⁴ Federal Motor Vehicle Safety Standards set minimum performance requirements for those parts of the vehicle that most affect its safe operation (brakes, tires, lighting) or that protect drivers and passengers from death or serious injury in the event of a crash (airbags, safety belts, child restraints, energy

Generally, a safety-related defect poses a risk to motor vehicle safety and may exist in a group of vehicles of the same design or manufacture, or items of equipment of the same type and manufacture. Examples include: stuck or broken accelerator controls; wheels that crack or break; and windshield wiper assemblies that fail to operate or malfunction. According to NHTSA, since 1966 more than 299 million cars, trucks, buses, recreational vehicles, motorcycles, and mopeds, as well as 43 million tires and 84 million pieces of motor vehicle equipment, including child safety seats, have been recalled to correct safety defects.²¹⁶

If a safety defect is discovered, the manufacturer must notify NHTSA, as well as vehicle or equipment owners, dealers, and distributors.²¹⁷ The law gives the manufacturer three options for correcting the defect—repair, replacement, or refund. In the case of equipment, including tires and child safety seats, the manufacturer can either repair or replace. The manufacturer is required to remedy the problem at no charge to the vehicle owner. In addition, manufacturers of these products as well as other equipment are required to notify the public of recalls through various methods (i.e. advertisements, point of purchase posters, etc.) to ensure that as many owners as possible are aware of the recalls. NHTSA is responsible for monitoring the manufacturer's corrective action for adequacy and for compliance with statutory requirements.²¹⁸

The Firestone Recall

In 2000, American consumers witnessed one of the largest consumer product recalls in the automobile industry when Firestone recalled its 15-inch ATX and ATX II tires and the Wilderness AT tires produced at its plant in Decatur, Illinois. The tires were increasingly losing tread and causing the vehicles they were supporting to rollover resulting in an increase in automobile-related deaths and injuries.

Beginning in 1996, Firestone began receiving large numbers of claims relating to its ATX 15-inch tire, most involving alleged tread separation—where the tread and one steel belt separates from the tire—a condition considered to be major tire failure. The Ford Motor Co. was also beginning to receive similar complaints internationally, leading

absorbing steering columns, motorcycle helmets) and are applicable to all vehicles and equipment manufactured or imported for sale in the United States certified for use on public roads and highways.

²¹⁵ From "Motor Vehicle Defects and Recall Campaigns: The importance of citizen participation in ensuring that our motor vehicles are as safe as possible," National Highway Traffic Safety Administration brochure, DOT HS 808 795, revised July 2003.

²¹⁶ *Ibid.*

²¹⁷ Names of vehicle owners are obtained from state motor vehicle offices. Manufacturers of motor vehicle equipment, particularly tires and child safety seats, maintain lists of owners who have registered their products with the manufacturer.

²¹⁸ *Supra* note 215.

them to replace Firestone tires on nearly 50,000 vehicles overseas in 1999.²¹⁹ However, Ford failed to notify NHTSA of this action. In March 2000, NHTSA opened an initial investigation into this tire problem in the United States based on 25 complaints received in 1999 and 2000.²²⁰

In May 2000, the NHTSA issued a letter to Ford and Firestone requesting information about the high incidence of tire failure on Ford Explorer vehicles.²²¹ A Ford analysis of the data on tire failure revealed that the tread was peeling off the 15-inch ATX and ATX II models and Wilderness AT tires at very high rates.²²² This tire failure increased the incidence of vehicle rollovers, resulting in more injury and death. Most of the deaths were occurring in accidents involving the Ford Explorer, which tends to rollover when one of the tires blows out. Experts believe there are between 100 and as many as 250 deaths and more than 3,000 injuries associated with the defective tires.²²³

On August 9, 2000, both Ford and Firestone issued a recall of more than 14.4 million tires. At the time of the August 9th recall announcement, Firestone estimated that 6.5 million of these tires were still in service.²²⁴ On August 15, Firestone announced a reimbursement policy to replace the faulty tires. The policy covered tires purchased between January 1, 2000 and August 8, 2000 from a company-owned Firestone Tire and Service Center or authorized retailer. Customers with a recalled tire were notified by mail and given instructions on how to go about replacing the defective tires free of charge. Replacements included other Bridgestone/Firestone tires or competitors' equivalents if necessary to expedite the exchange and minimize inconvenience to customers. Both the policy and information on how to receive a reimbursement form were posted on Bridgestone/Firestone's websites and printed in paid advertisements in the August 16th edition of 41 major newspapers nationwide.²²⁵

²¹⁹ Cindy Skrzycki, "Agency Orders More Tire Data From Insurer; Firestone-Related Claims to 1991 Wanted," *Washington Post*, September 16, 2000.

²²⁰ House Report 106-954 - TRANSPORTATION RECALL ENHANCEMENT, ACCOUNTABILITY, AND DOCUMENTATION (TREAD) ACT.

²²¹ Department of Transportation (US), "FMVSS No. 139, Proposed New Pneumatic Tires For Light Vehicles," *Office of Regulatory Analysis and Evaluation Plans and Policy*, October 2001. Retrieved from the Internet at <http://www.nhtsa.dot.gov/cars/rules/rulings/UpgradeTire/Econ/TireUpgradel.html> on January 21, 2005.

²²² Earle Eldridge and Sara Nathan, "Data point to Firestone tires made at Illinois factory Ford analysis shows high rate of warranty claims from Decatur plant," *USA Today*, August 14, 2000.

²²³ Retrieved from the Internet at <http://www.firestone-tire-recall.com/> on January 21, 2005.

²²⁴ Senate Rpt. 106-423 - MOTOR VEHICLE AND MOTOR VEHICLE EQUIPMENT DEFECT NOTIFICATION IMPROVEMENT ACT.

²²⁵ "Bridgestone/Firestone Announces Reimbursement Policy; Firestone Tire and Service Centers, Authorized Retailers Will Purchase Competitors' Tires When Necessary," *Financial News*, August 15, 2000.

Congress responded to the Firestone debacle by passing The Transportation Recall, Enhancement, Accountability and Documentation Act (TREAD) in October of that year.²²⁶ TREAD requires persons who sell or lease tires that they know to be defective, or that do not comply with existing safety standards, to report the sale or lease to the Secretary of Transportation. The law required NHTSA to issue revised and updated tire performance standards by June 2002. NHTSA also is required to issue a rule for improved tire labeling to assist consumers in identifying tires subject to recalls as well as to take measures to ensure that the public is aware of the importance of tire load limits and maintaining proper levels of tire inflation. Finally, TREAD required NHTSA to issue a rule requiring in-vehicle warning systems that alert the driver when a tire is significantly under inflated.

During the TREAD debate, Senator John McCain (R-AZ), primary sponsor of the Senate version of the bill stated, "When manufacturers fail to tell the truth or purposely neglect to report safety data, and people lose their lives, severe penalties must result."²²⁷

In addition to TREAD, several other legislative proposals were introduced in the wake of the Firestone recall, most focusing on improving NHTSA. However, there were also bills, such as S. 3014 introduced by Senator Arlen Specter (R-PA), which focused on the industry and its responsibility to the consumer. S. 3014 sought to penalize the knowing and reckless introduction of a defective product into interstate commerce. According to Senator Specter, the bill was designed to "put the officials on notice that they cannot recklessly disregard human life for profits."²²⁸ Upon the bill's introduction, Senator Specter further stated,

In the brief time available this afternoon, I have summarized a series of cases which are only representative--where products have been put in interstate commerce, where there was knowledge on the part of individuals who put those products on the market that they would subject the individuals to risk of serious bodily injury or death, and, when death resulted, they were held liable, with the courts concluding that malice was established by the reckless disregard of the life of another.²²⁹

²²⁶ P.L. 106-414.

²²⁷ Congressional Record, September 15, 2000, pp. S8636.

²²⁸ Congressional Record, September 7, 2000, p 8189.

²²⁹ *Ibid.* Despite Senator Specter's strong support of industry responsibility and consumer protection in response to the Firestone case, his position has not remained consistent with respect to the firearms industry. In 2003, Senator Specter cosponsored legislation, S. 469, giving the gun industry broad legal immunity for civil lawsuits. After several gun violence prevention measures were added to the bill, including a measure to extend the ban on military-style assault weapons, the measure failed.

Bad Meat

The CDC estimates that as many as 5,000 deaths and 76 million illnesses result annually from the consumption of meat and poultry products contaminated with pathogenic bacteria.²³⁰ The United States Department of Agriculture's Food Safety and Inspection Service (FSIS) monitors meat and poultry plants for compliance with sanitation procedures that are implemented to prevent contamination with harmful bacteria. These procedures are referred to as HACCP or Hazard Analysis and Critical Control Points. USDA adopted this system in 1998, which requires meat and poultry plants to identify potential hazards in their processing system and set up preventative measures to address those hazards. Plants must also establish corrective actions to be taken if contamination occurs and proper verification and recordkeeping procedures to ensure that the HACCP system is working.

HACCP was a giant step forward in improving food safety in meat and poultry plants. Previously, contaminated meat could only be identified through the "poke and sniff" method. HACCP brought scientific principles into food safety inspection and attempted to prevent contamination *before* it occurred. The HACCP system placed much of the responsibility on the individual plant to identify and prevent hazards from contaminating food. The government's role is to monitor a plant's compliance with its HACCP system, through verification of records and a sampling program for pathogens.²³¹

Part of the HACCP system requires plants that produce ground beef to perform microbial testing for *E.coli* O157:H7, a particularly virulent pathogen. FSIS also established performance standards for poultry plants to limit the pathogen *Salmonella*. FSIS then performs follow-up testing to ensure that the plants are meeting those standards.²³² However, food safety advocates insist that FSIS should institute performance standards and mandate microbial testing for all pathogens.²³³

²³⁰ Paul S. Mead, et. al., "Food Related Illness and Death in the United States," Emerging Infectious Diseases, Vol.5, No. 5, September-October 1999. Retrieved from the Internet at <http://www.cdc.gov/ncidod/EID/vol5no5/pdf/mead.pdf> on January 21, 2005.

²³¹ Department of Agriculture (US), "Key Facts: USDA's New Food Safety System Targets Foodborne Pathogens," HACCP Final Rule, Food Safety and Inspection Service, January 1998. Retrieved from the Internet at <http://www.fsis.usda.gov/OA/background/keyfight.htm> on January 21, 2005. See also, Department of Agriculture (US), "Key Facts: Microbial Testing Programs – FSIS Testing for Salmonella and Plant Testing for *E. coli*," HACCP Final Rule, Food Safety and Inspection Service, July 1996. Retrieved from the Internet at <http://www.fsis.usda.gov/OA/background/keymicro.htm> on January 21, 2005.

²³² *Ibid.*

²³³ CFA's Carol Tucker Foreman on NAS Meat Safety Report: "NAS Tells Congress to Give USDA Authority to Set, Implement, and Enforce Food Safety Performance Standards," Consumer Federation of America, news release, April 24, 2003. Retrieved from the Internet at <http://www.consumerfed.org/042403tucker.html> on January 21, 2005. See also, Center for Science in the Public Interest, Petition Regulatory Action to Require Microbial Testing By Industry for *Listeria monocytogenes* in Ready-To-Eat Meat and Poultry Products, January 13, 2000. Retrieved from the Internet at <http://www.cspinet.org/foodsafety/listeria.html> on January 21, 2005.

These regulatory programs by FSIS to reduce the amount of pathogens in the nation's food supply have been somewhat effective.²³⁴ Since 1996, the incidence of infection caused by some pathogens (*Yersinia* and *Campylobacter*) has declined remarkably. In April 2004, the CDC reported substantial one-year declines in the incidence of infection caused by several pathogens, including *E.coli* O157:H7 and *Salmonella*.²³⁵ While any reduction in foodborne illness should be applauded, it's important to note that a sustained decline in these pathogens over several years is often difficult to achieve. CDC also reported that other pathogens showed no substantive changes, and in the case of *Listeria monocytogenes*, incidences actually increased. FSIS' continued efforts to ensure food safety are essential in order to continue to drive down the rate of foodborne illness in the United States.²³⁶

USDA also oversees the National School Lunch Program, a federally assisted meal program operating in more than 99,800 public and private childcare institutions. It provides nutritionally balanced, low-cost or free lunches to more than 26 million children each school day.²³⁷

USDA also successfully regulates the safety of the food in the School Lunch Program. Currently, USDA has set zero tolerance standards for *Salmonella* and *E.coli* O157:H7 in school lunch meat, meaning any level of these pathogens in the meat constitutes adulteration and cannot be part of the program.²³⁸ The safe delivery of this program is essential to the well-being of children who couldn't otherwise afford a nutritional lunch during the day.

Unfortunately, contaminated meat can still find its way into the School Lunch Program. In 2002, Wampler Foods, a subsidiary of Pilgrim's Pride Corporation, was forced to recall nearly 28 million pounds of chicken and turkey products that had been potentially contaminated with *Listeria monocytogenes*, a particularly lethal pathogen.²³⁹ Some of

²³⁴ "Preliminary FoodNet Data on the Incidence of Infection with Pathogens Transmitted Commonly Through Food – Selected Sites, United States, 2003," *MMWR Morbidity and Mortality Weekly Report*, April 30, 2004, 53(16);338-343. Retrieved from the Internet at <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5316a2.htm> on January 21, 2005.

²³⁵ *Ibid.*

²³⁶ *Ibid.*

²³⁷ Department of Agriculture (US), "National School Lunch Program," Fact Sheet, December 2004. Retrieved from the Internet at <http://www.fns.usda.gov/cnd/Lunch/AboutLunch/NSLPPFactSheet.pdf> on January 21, 2005.

²³⁸ Office of Senator Richard Durbin (D-IL), "DURBIN PROTEST OF PROPOSED END TO SALMONELLA TESTING HEDED BY BUSH ADMINISTRATION," news release, April 5, 2001. Retrieved from the Internet at <http://www.senate.gov/~durbin/PressReleases/010405b.htm> on January 21, 2005.

the implicated product sold by Pilgrim's Pride had been distributed through the School Lunch Program. As a result of this massive recall, USDA was compelled to reexamine its *Listeria* testing protocol.²⁴⁰

Setting a Good Example

When a product is found defective or dangerous, effective communication with the public is essential. The wording and distribution of recall notices is the most important factor in making sure the public is aware of the problem. Depending on the federal agency, product manufacturers may be required to follow certain guidelines for the notices. Such guidelines may include: the name and contact information of the product manufacturer, a picture and description of the product, the specific hazard, the number of injuries or deaths caused by the product hazard, and instructions for remedying the problem.

It is particularly important for manufacturers to use the word "recall" in messages to consumers. The word "recall" should be used to let consumers know that 1) the product may be defective and 2) the problem is serious enough to warrant return and/or repair of the product. In addition, recalls should be widely distributed by the federal agency and manufacturer to press, health professionals, and any other entity tied to the product, such as retail stores or dealerships.

The CPSC recall of Burger King's Pokemon balls below serves as a good example because it illustrates what was done to communicate the news of the recall. Timing is vital because despite the best efforts of manufacturers to reach consumers, it's sometimes too late to prevent harm. Unfortunately, in this instance, at least one child died after the first recall notice went out.

²³⁹ Anita Manning, "Listeria fear prompts largest US meat recall," *USA Today*, October 13, 2002. Retrieved from the Internet at http://www.usatoday.com/news/nation/2002-10-13-wampler-recall_x.htm on January 21, 2005.

²⁴⁰ Oliver Pritchard, "Inspector: Filth and vermin reported, ignored," *Philadelphia Inquirer*, May 18, 2003. Retrieved from the Internet at <http://www.philly.com/mld/inquirer/5884854.htm?1c> on January 21, 2005.

NEWS from CPSC

U.S. Consumer Product Safety Commission

Office of Information and Public Affairs

Washington, DC 20207

FOR IMMEDIATE RELEASE

January 27, 2000

Release # 00-058

Company Phone Number: (xxx) xxx-xxxx

CPSC Consumer Hotline: (800) 638-2772

CPSC Media Contact: Xxx, (xxx) xxx-xxxx

Burger King Contact: Xxx Xxx or Xxx Xxx, (xxx) xxx-xxxx

In Wake of Second Death, CPSC and Burger King Again Urge Consumers to Destroy and Discard Pokemon Balls

WASHINGTON, D.C. - The U.S. Consumer Product Safety Commission (CPSC) and Burger King Corp. are again urging consumers to immediately destroy and discard Pokemon balls distributed with Burger King kids meals in November and December 1999. On January 25, 2000, a 4-month-old boy in Indianapolis, Ind., reportedly suffocated when one-half of a Pokemon ball that was in his crib became stuck on his face.

Burger King Corp., in cooperation with CPSC, issued a voluntary recall of more than 25 million Pokemon balls on December 27, 1999. The balls pose a suffocation hazard to children under three years of age.

In December, a 13-month old girl reportedly suffocated when one-half of a Pokemon ball covered her nose and mouth. Also in December, an 18-month old girl nearly suffocated when a ball-half got stuck over her face. On the second attempt, the girl's father was able to pull the ball-half from her face.

Pokemon balls are plastic, ball-shaped containers between 2.75 and 3 inches in diameter. They pull apart to reveal one of 57 different Pokemon toys inside. The balls were distributed in a variety of colors including red and white, and hot pink. Packaging described them as safety tested and recommended for all ages of children.

Burger King restaurants nationwide distributed the Pokemon balls inside Burger King big kids meals and regular kids meals from early November through December 1999.

Consumers should immediately take the balls away from children under the age of three. They should discard the ball or return both halves of the ball and the clip to a Burger King restaurant for a free order of small fries. Children can continue to use the Pokemon toy that came inside the ball.

As part of the voluntary recall effort, more than 8,100 Burger King restaurants posted recall notices in both English and Spanish. When the recall was first announced, Burger King placed an ad in USA Today, and CPSC broadcast a video news release so local television stations could use video tape showing the danger. CPSC Chairman Ann Brown also announced the recall on the Today Show reaching millions of viewers.

In addition, Burger King worked with the CPSC to send recall notices to 56,000 pediatricians' offices, 10,000 emergency room directors and 25,000 emergency health care clinics across the country. Notices were posted on the CPSC and Burger King web sites, and on web sites frequented by Pokemon fans and parents. Recall notices will be posted on tray liners, carry-out bags and french fry bags as well.

Burger King also will purchase national cable and network television advertisements to alert consumers to the recall. Burger King's Consumer Relations phone number is XXX-XXX-XXXX, which operates Monday through Friday, 9:00 a.m. to 6:00 p.m. east coast time.

Consumers can also view a video clip about this recall (Transcript [was available]). It is about 6 megabytes long and the download time depends upon the speed of your Internet connection.



[Send the link for this page to a friend!](#) The U.S. Consumer Product Safety Commission is charged with protecting the public from unreasonable risks of serious injury or death from more than 15,000 types of consumer products under the agency's jurisdiction. Deaths, injuries and property damage from consumer product incidents cost the nation more than \$700 billion annually. The CPSC is committed to protecting consumers and families from products that pose a fire, electrical, chemical, or mechanical hazard or can injure children. The CPSC's work to ensure the safety of consumer products - such as toys, cribs, power tools, cigarette lighters, and household chemicals - contributed significantly to the 30 percent decline in the rate of deaths and injuries associated with consumer products over the past 30 years.

To report a dangerous product or a product-related injury, call CPSC's hotline at (800) 638-2772 or CPSC's teletypewriter at (800) 638-8270, or visit CPSC's web site at www.cpsc.gov/talk.html. To join a CPSC email subscription list, please go to www.cpsc.gov/cpsclist.asp. Consumers can obtain this release and recall information at CPSC's Web site at www.cpsc.gov.

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The federal regulatory process is by no means ideal. Federal regulatory agencies fall prey to politics, appropriations battles, and de-regulatory efforts almost constantly—threatening their efforts to protect the public health. However, federal health and safety regulation has saved millions of lives and prevented an untold number of injuries.

Given the fact that more than 18,000 Americans are unintentionally killed or injured by firearms every year,²⁴¹ it is time to consider a regulatory framework for guns.

²⁴¹ Data on fatal and nonfatal injuries from WISQARS, <http://www.cdc.gov/ncipc/wisqars/default.htm>

Conclusion

Since the passage of the Consumer Products Safety Act in 1972, the gun lobby has fought to avoid federal health and safety regulation for the products it promotes. As a result, gun manufacturers routinely do not include simple safety devices that could prevent some unintentional shootings. In addition, some manufacturers have apparently known about unsafe design features in their products for years, yet when injury or death occurs they try and shift the blame to the consumer to avoid liability.

Ideally, firearm manufacturers should be subject to the same health and safety standards that currently apply to manufacturers of other consumer products. Comprehensive safety regulation would ensure that all manufacturers include a comprehensive safety system in every firearm that adequately indicates the presence of a cartridge in the chamber, the state of readiness to fire, and, in magazine-fed firearms, a device that disables the firearm when the magazine is removed.

Effective firearms regulation must include rigorous enforcement authority. At the federal level, the most capable agency to implement oversight would be the U.S. Department of Justice. At the state level, current approaches include giving such authority to state attorneys general, state Justice Departments, or independent boards.

Product liability litigation is currently the only mechanism available to hold gun manufacturers accountable when a defect in a gun's design or manufacture results in death or injury. Confidentiality agreements, common in product liability settlements, have kept critical information about the safety record of gun manufacturers from the public and are a prime example of how the gun industry actively conceals information about injuries and fatalities connected with its products. Such agreements should be eliminated. Additionally, all incidents of unintentional firearm injuries should be evaluated to determine whether the manufacturer contributed to the injury.

In the 109th Congress, the gun lobby will once again try to limit civil liability for injuries and deaths caused by industry negligence. If successful, it will further erode consumer recourse and advance the gun industry's campaign to retain its unique exemption from responsibility.

Ultimately, this dangerous dynamic can and must change. How many more firearm injuries and deaths it will take to spur this change remains to be seen.

Introduction to Appendices

The following three appendices are broken out by type of firearm (handgun, rifle, and shotgun); alphabetically by maker and within that chronologically by known public advisory. There is no established central clearinghouse for firearm recalls and warnings. These are gathered from numerous sources, the bulk of them found at www.FirearmsID.com, which derives its material from the *Journal of the American Federation of Firearms and Toolmark Examiners* (AFTE). AFTE advisories contain much more technical and product detail than were presented in the appendixes below and were published to warn its professional membership about potentially hazardous products that may come into a firearms examiner's laboratory. Some gun enthusiast sites also carry similar advisories. All citations for recalls and warnings of the firearms listed are attributed to www.FirearmsID.com.

In many instances, the original wording of the recalls did not fully express the potential for injuries as actually suffered by victims of the defects. This lack of candor in recall notices is ubiquitous among firearm manufacturers and is discussed in Section Three. A close reading of the following appendixes shows that some gun makers have long histories of very similar product recalls.

Some recalls or warnings are more than twenty years old. However, given the long useful life of firearms, any of these products may still be in use and on sale. The same hazardous conditions may still be encountered.

In many cases, manufacturers may still provide customer service on older recalls and the owner or prospective buyer of any of these products should check immediately with applicable makers' service departments. At that time, a request should also be made for information about any other later product recalls or warnings.

Warnings, recall information and manufacturer contacts provided in these appendixes are as current as possible up to press time.

Appendix One Handguns

1) AMERICAN FIREARMS MFG. CO.

MODEL STAINLESS STEEL O/U DERRINGER, .38 SPECIAL PISTOL

Warning: During a laboratory examination of one of this model, cartridges in both chambers fired simultaneously.

Source:

AFTE Journal, October 1973; Volume 5, Number 5:36

2) ARMINIUS (also sold as: Liberty 21, Burgo, Hy-Score and Titan Tiger)

MODEL HW3 .32 SMITH & WESSON, REVOLVER

Warning: May fire if dropped or jarred.

Source:

AFTE Journal, October 1993; Volume 25, Number 4:286-291

3) RECALL: ASTRA MODEL CUB/M2000, 6.35MM/.25 PISTOL (see also Colt "Junior")

Warning: May fire if dropped or jarred.

Source:

American Rifleman, December 1984 page 26

American Rifleman, September 1985 page 18

California Department of Justice Firearms Safety Note 86-8

4) BAUER .25 PISTOL

Warning: May discharge when dropped or jarred.

Source:

AFTE Journal, January 1982; Volume 14, Number 1:62

5) BERSA MODEL 86 .380 SEMIAUTOMATIC PISTOL

Warning: During laboratory test firing a Bersa 86 slide separated from the frame.

Source:

Connecticut State Police Laboratory, October 22, 2002

6) BROWNING MODEL BUCK MARK, .22 PISTOL BOX

RECALL: Placing a loaded pistol in one of these boxes may result in an inadvertent discharge. Browning has offered a replacement program.

Source:

Guns & Ammo, July 1997; page 36

Handguns, July 1997; page 20

Shooting Times, August 1997; page 57

7) FN/BROWNING MODEL HI-POWER 9MM LUGER PISTOL

Warning: May fire as the slide finishes closing without pulling the trigger.

Source:

AFTE Journal, October 1996; Volume 28, Number 4:233-240

8) BRYCO ARMS MODEL 38 .380 SEMI-AUTOMATIC PISTOL

Warning: May fire when dropped or jarred.

Source:

AFTE Journal, Winter 2001; Volume 33, Number 1:48-49

9) BRYCO ARMS MODEL 59 9MM LUGER SEMIAUTOMATIC PISTOL

Warning: Known to be subject to misfeeding and jamming. The primer of a cartridge may come in contact with internal parts. If this occurs, an unintentional discharge may result without the trigger being pulled

Source:

AFTE Journal, Summer 1999; Volume 31, Number 3:379-381

10) BRYCO ARMS MODEL JENNINGS NINE 9MM LUGER SEMIAUTOMATIC PISTOL

Warning: Subject to accidental discharge when the trigger is pulled and the magazine release button is depressed simultaneously. When this occurs the pistol will fire even though the magazine has been removed from the pistol.

Source:

AFTE Journal, Summer 1999; Volume 31, Number 3:379-381

11) BRYCO ARMS MODEL JENNINGS NINE 9MM LUGER SEMIAUTOMATIC PISTOL

Warning: May fire without pressure on the trigger. This can occur upon release of the thumb safety and spontaneously fire in a full-auto mode on an inconsistent basis. When loaded with the manual thumb safety in the "safe" position, if the trigger of the firearm has had pressure applied to it, it can discharge when the thumb safety is moved to the "fire" position. Manually loading the Bryco/Jennings Nine may be very dangerous since it could discharge during this procedure.

Source:

AFTE Journal, Spring 2001; Volume 33, Number 2:145-147

Illinois State Police Laboratory, Springfield - Notice, December 7, 2000

12) CALICO MODEL M-100P .22 LONG RIFLE SEMI-AUTOMATIC PISTOL

Warning: These pistols will consistently slam fire when live cartridges are manually loaded directly into the chamber and the bolt is allowed to go forward under its own spring tension. At no time during this process does the trigger need to be pulled for discharge. These slam fires occur with the safety in the ON or OFF positions.

Source:

AFTE Journal, Summer 1998; Volume 30, Number 3:527-530

13) CALICO INDUSTRIES MODEL M-950 9MM LUGER SEMI-AUTOMATIC PISTOL

Warning: May fire without pressure on the trigger during cocking the bolt and chambering a cartridge.

Source:

AFTE Journal, Volume 29 Number 3, Summer, 1997:316

14) COBRAY/JERSEY ARMS WORKS MODEL AVENGER COMMANDO, .45 PISTOL

Warning: May fire without pressure on the trigger. When the safety is on and the bolt is opened vigorously, a parts misalignment can occur which leaves the pistol subject to immediate discharge if dropped or jarred.

Source:

AFTE Journal, January 1990; Volume 22, Number 1:43-46

15) RECALL: COLT MODEL JUNIOR COLT .25 PISTOL (see also Spanish Astra "Cub")

Warning: May fire if dropped or jarred. Some pistols were marked "Junior Colt/Cal. 25," others "Made in Spain for Colt," and still others "Colt Automatic/Cal. 25."

Source:

Law Enforcement Technology, December 1984; page 29

16) RECALL: COLT .380 PISTOL

Warning: May fire without pressure on the trigger. This recall applies to all Colt 380 autos in the "Government" series. Colt has previously offered to send owners replacement parts.

Source:

Law Enforcement Technology, Jan/Feb 1988; page 7

Law Enforcement Technology, Mar/Apr 1988; page 72

Guns & Ammo, April 1988; page 24

Outdoor Life, June 1988; page 96
American Rifleman, March 1988; page 12
California Department of Justice Firearms Safety Note 88-2

17) RECALL: COLT MODEL ALL AMERICAN 9MM LUGER PISTOL

Warning: May fire if dropped or jarred. Colt has offered to modify the firing mechanism of these pistols free of charge.

Source:
Law Enforcement Technology, April 1995; page 67
Guns, May 1995; page 69

18) COLT MODEL COMMANDER .45 PISTOL

Warning: May fire when dropped or jarred with the hammer in half-cock position.

Source:
AFTE Journal, July 1977; Volume 9, Number 2:179-180

19) C.O.P. MODEL "COP" .357 MAGNUM 4-BARRELED PISTOL

Warning: May fire multiple chambers when dropped or jarred.

Source:
AFTE Journal, January 1982; Volume 14, Number 1:44-47
AFTE Journal, October 1983; Volume 15, Number 4:18

20) RECALL: CZECH MODEL 52 7.62MM TOKAREV PISTOL

Some CZ52 pistols (Cal. 7.62 Tokarev) distributed by Century International Arm may have a defective hammer drop safety. Using this safety may fire the pistol without pressure on the trigger.

Source:
Shotgun News, Unknown Issue
AFTE Firearm Recalls Website

21) DAVIS INDUSTRIES DERRINGERS Model DM-22

Warning: May fire without pressure on the trigger, if the pistol is dropped or jarred, even with manual safety applied.

Source:
AFTE Journal, July 1990, Volume 22, Number 3:310-314

22) ERMA/EXCAM MODEL RX22, .22 PISTOL

Warning: May slam fire with the safety in the on position, while feeding a cartridge into that chamber.

Source:
AFTE Journal, April 1985; Volume 17, Number 2:56-57

23) GLOCK MODEL 19, 9MM LUGER PISTOL

Warning: This pistol may fire with the action open. When the pistol is jammed in a double feed situation, the slide can come in contact with the primer of the jammed cartridge and cause unintentional discharge.

Source:
AFTE Journal, July 1993; Volume 25, Number 3:206-208

24) GLOCK, MODEL 17 & 19, 9MM LUGER CONVERSION TO FULLY-AUTOMATIC FIRING

Warning: It has been determined that gang members in California and Florida have been converting Glock pistols to have FULLY-AUTOMATIC firing capability. In some regions of California, police are treating any Glock they encounter as a machine gun until proven otherwise. It would be wise to assume that gangs in other localities have also made this conversion. The conversion from standard to fully-automatic is fast and simple, requiring no technical expertise.

Source:
Arizona Department of Public Safety Officer Safety Bulletin, February 1999
Rocky Mountain Information Network Bulletin, April 1999
Virginia Criminal Intelligence Center, The Validator, May 1999

Reported in the AFTE Training Seminar of 2000

25) H.J.S. INDUSTRIES MODEL FRONTIER FOUR, .22 LR DERRINGER

Warning: This four-barreled derringer may fire a cartridge that is not under the firing pin, if the hammer is snapped on an empty chamber.

Source:

AFTE Journal, January 1996; Volume 28, Number 1:55-56

26) INTERDYNAMIC OF AMERICA, MODEL KG-99, 9MM LUGER PISTOL

Warning: May fire during manual extraction of a live cartridge from the chamber.

Source:

AFTE Journal, July 1984; Volume 16, Number 3:24

AFTE Journal, April 1985; Volume 17, Number 2:88

California Department of Justice Firearms Safety Note 86-4

Department of Treasury, BATF Notice; December 28, 1984

27) INTRATEC, MODEL TEC-22 SCORPION, .22 PISTOL

RECALL: May unexpectedly fire as a fully-automatic pistol.

Source:

Guns & Ammo, October 1990; page 144

28) INTRATEC MODEL TEC-9, 9MM LUGER PISTOL

RECALL: May fire during manual extraction of a live cartridge from the chamber.

Source:

Department of Treasury, BATF Notice; December 28, 1984

29) INTRATEC MODEL TEC-9, 9MM LUGER PISTOL

Warning: Subject to firing without pulling the trigger and/or in fully-automatic mode. This condition was found to occur when a test gun showed a that portion of its plastic frame was broken off.

Questions and comments should be directed to Mike Giusto At CAL DOJ Criminalistics Institute in Sacramento (916) 227-3575 or Michele Merrit CAL DOJ Lab in Riverside (909) 361-5000.

Source:

American Gunsmith, 1994

30) JENNINGS FIREARMS MODEL J-22, .22 LONG RIFLE PISTOL

Warning: May fire when dropped or jarred.

Source:

AFTE Journal, Winter, 2001; Volume 33, Number 1:48-49

**31) LLAMA MODEL XI-B, 9MM LUGER PISTOLS;
MODEL IX-A, .45 PISTOLS**

RECALL: May fire when dropped or jarred.

Source:

AFTE Journal, April 1992; Volume 24, Number 2:197

American Rifleman, April 1992; page ?

Guns & Ammo, May 1992; page 72

Guns & Ammo, June 1992; page 27

Handgunning, May/June 1992; page ?

32) LLAMA MODEL XI, 9MM LUGER PISTOL

RECALL: May fire before breech action parts are in safe engagement.

Source:

AFTE Journal, April 1985; Volume 17, Number 2:80

33) LIBERTY MODEL 21, .22 REVOLVER

Warning: May fire multiple chambers when dropped or jarred.

Source:

AFTE Journal, July 1972; Volume 4, Number 3:24

34) LORCIN MODEL L380, .380 PISTOL

Warning: May fire when dropped or jarred.

Source:

AFTE Journal Winter 2001; Volume 33, Number 1:48-49

35) PHOENIX ARMS MODEL RAVEN, .25 PISTOL

Warning: May fire when the safety lever is moved to "Off."

Source:

AFTE Journal, Spring 1998; Volume 30, Number 2:352-353

36) REMINGTON MODEL XP-100, PISTOL

RECALL: May fire while handling bolt or moving safety to "off", without pressure on the trigger.

Remington has offered a replacement parts program.

Source:

Company Notice October 25, 1978

Virginia Ledger-Star October 26, 1978

AFTE Journal, January 1979; Volume 11, Number 1:19

American Firearms Industry, January 1989; page 30

California Department Of Justice Firearms Safety Note 89-1

37) RG INDUSTRIES MODEL RG26, .25 PISTOL

Warning: May fire when a loaded magazine is moved a slight distance in the magazine well, even though there is no pressure on the trigger.

Source:

AFTE Journal, 1973; Volume 5, Number 1:25-26

38) RUGER MODEL STANDARD & MARK I, .22 LONG RIFLE PISTOL

Warning: May fire by striking the front of the trigger guard or dropping the pistol on its muzzle.

Source:

AFTE Journal, April 1980; Volume 12, Number 2:16

39) RUGER MODEL MARK II, .22 LONG RIFLE PISTOL

RECALL: Certain models may fire simply by moving the safety to the "F" position. Ruger has offered a repair program.

Source:

Shooting Times, September 1985; page 96

Guns, October 1985; page 18

American Rifleman, August 1985; page 2

California Department of Justice Firearms Safety Note 86-7

40) RUGER Old Model (pre-1973) SINGLE-SIX, BLACKHAWK, & BEARCAT, REVOLVERS

RECALL: May fire if dropped or jarred. Ruger has offered a parts replacement program.

Source:

Company Notice 1980 & 1982

American Rifleman, November 1980; page 9

American Rifleman, February 1982; page 65

Handgun, February 1999; page 37

41) RUGER MODEL POLICE SERVICE-SIX, .38 SPECIAL REVOLVER

Warning: May fire when the cylinder is opened and then closed with a round under the hammer. The transfer bar is defeated by pressing other controls without touching the trigger.

Source:

AFTE Journal, October 1983; Volume 15, Number 4:56-59

42) RUGER MODEL P-85, 9MM LUGER CALIBER, PISTOLS

RECALL: May fire when the decocking lever is functioned. Ruger has offered a repair program.

Source:

Guns, March 1991; page 72

Guns, December 1991; page 65

American Rifleman, December 1990; page 17

AFTE Journal, January 1991; Volume 23, Number 1:507

43) SIGARMS MODEL P220, P225, P226, P228, P229 & P230 PISTOLS

Warning: May fire when the hammer is decocked manually instead of using the decocking lever.

Source:

Handguns, July 1993; page 61

Law Enforcement Technology, August 1993; page 20

44) SMITH & WESSON MODEL 39, 9MM LUGER PISTOL

Warning: May fire when unloading a pistol manually if there is an obstruction of the ejection port.

Source:

AFTE Journal, July 1980; Volume 12, Number 3:48-50

45) SMITH & WESSON MODEL 659, 9MM LUGER CALIBER PISTOL

Warning: May fire when unloading a pistol manually if there is an obstruction of the ejection port.

When semiautomatic pistols are manually unloaded:

Source:

AFTE Journal, January 1994; Volume 26, Number 1:18-20

46) SMITH & WESSON MODEL 439, 459, 469, 539, 559, 639, 659 & 669, 9MM PISTOLS

RECALL: Certain pistols may fire when dropped or jarred with the hammer in half-cock position. Smith & Wesson has offered a repair program.

Source:

AFTE Journal, July 1986; Volume 18, Number 3:68

AFTE Journal, January 1987; Volume 19, Number 1:36

American Rifleman, July 1986; page 12

Shooting Times, August 1986; page 23

California Department of Justice Firearms Safety Note 86-2

47) TANFOGLIO GIUSEPPE/FIREARMS IMPORT AND EXPORT (F.I.E.) CORP. MODEL TITAN, .25 PISTOL

Warning: May fire when dropped or jarred.

Source:

Orange County Register, March 1999

Jackson v. F.I.E. Corp., et al, U.S. District Ct., Eastern District of LA, New Orleans, LA, # 95-2389 S (12/17/98)

48) TAURUS, MODEL 74, .32 SMITH & WESSON REVOLVER MODEL 80, 82, 84 & 86, .38 SPECIAL REVOLVER, MODEL 94 & 96, .22 LONG RIFLE REVOLVER

Warning: May fire when dropped.

Source:

Shooting Industry, June 1977; page ?

AFTE Journal, April, 1978; Volume 10, Number 2:33-38

49) VEKTOR MODEL CP1, 9MM PISTOL

Warning: May fire when dropped or jarred. The South African manufacturer has offered no repair program.

Source:

American Firearms, November/December 2000; Volume 28, Number 11:12
American Handgunner, January//February 2001; Volume 29, Number 1:114
American Rifleman, October 2000; page 25
Shooting Industry, September 2000; page 26
Company Notice June 24, 2002

50) WALTHER MODEL PP, .32 AUTO PISTOL - FULL AUTO

Warning: Subject to unintentional and uncontrollable full automatic fire if certain internal parts are removed.

Carl Walther GmbH Sportwaffen

Karlstrasse 33,
D-89073 Ulm, Germany

Source:

AFTE Journal, January 1996; Volume 28, Number 1:48-54

51) WALTHER MODEL P-38, 9MM LUGER PISTOLS

Warning: May be converted to FULLY-AUTOMATIC FIRE

Source:

California Department of Justice Safety Note 86-1
Bureau of Alcohol, Tobacco & Firearms, National Broadcast September 1985
Florida Department of Law Enforcement Bulletin, February 1986
New York State Police Academy Training Bulletin, Number 86-1, May 1986

Appendix Two Rifles

1) SPRINGFIELD ARMORY BERETTA MODEL BM-59s, RIFLES and GARAND MODEL M1As / M1A4s, M1

RECALL: a certain quantity of these rifles could contain safeties that can be disengaged by application of force to the trigger. The guns will not fire when the safety is overridden in this manner, but they will fire when the trigger is released and pulled again under normal pressure.

Write to or call Springfield Armory requesting special mailing label, shipping container, and return instructions.

Springfield Armory, Inc.

RE-1 420 West Main Street

Geneseo, IL 61254

1-800-223-5708. Illinois residents call collect: (309) 944-5631.

M1A Bolts

Some M1A bolts manufactured by Springfield Armory, Inc. might not function reliably. If you have a Springfield Armory M1A bolt with any of the following markings, contact Springfield Armory, Inc. for replacement.

Source:

Guns & Ammo, December 1987; page 91

Guns & Ammo, March 1988; page 14

Shooting Times, January 1988; page 67

California Department of Justice Firearms Safety Note 88-1

2) BLASER MODEL R93, RIFLES

RECALL: Blaser R93 rifles sold in the US. An accidental discharge from the off safe position may occur. Once the firing pin has been cocked (into the off-safe position), the rifle may discharge. SIGARMS Inc., Blaser's US representative, located in Exeter, New Hampshire, advises no use of an R93 rifle until it has been inspected. A recall hotline number was provided in 2002: 1-877-442-7671 (8 a.m. - 5 p.m. EST).

Source:

SIGARMS, Inc. Website, August 5, 2002

SIGARMS, Inc. Consumer Subscription E Mail Newsletter, Volume C2, Number 3:9

American Hunter, October 2002, page 20

American Rifleman, November 2002; page 89

Shooting Sports Retailer, September/October 2002, page 59

3) BLASER MODEL ULTIMATE, BOLT ACTION RIFLE - ALL CALIBERS

MODEL SR 830, BOLT ACTION RIFLES - ALL CALIBERS

MODEL SR 850, BOLT ACTION RIFLES - ALL CALIBERS

MODEL CAMEX BLASER, BOLT ACTION RIFLES - ALL CALIBERS

RECALL: The Blaser bolt action rifle - models ULTIMATE, SR 830, SR 850 and CAMEX BLASER were the subject of a 1990 recall due to firing pins breaking. These rifles may have the potential for unintentional discharge while the bolt is closing.

Source:

AFTE Journal, January 1991; Volume 23, Number 1:507

Guns & Ammo, July 1990; page 32-32

4) BROWNING A-BOLT RIFLES, .22 MAGNUM RIMFIRE

RECALL: Some A-Bolt rifles may fire when the bolt is being closed. Browning advises no use of this model until the problem is corrected. A 1990 number for the 22 Magnum Recall Department was: 1-800-727-4312.

Source:

Shooting Times, September 1990; page 88
AFTE Journal, July 1990; Volume 22, Number 3:329
Guns & Ammo, August 1990

5) BROWNING MODEL A-BOLT II STAINLESS, 300 REMINGTON ULTRA MAGNUM RIFLES

RECALL: "No attempt should be made to load or shoot a recalled Browning rifle." Browning states that an unspecified potential safety problem exists in this particular model of the A-Bolt rifle. Browning warns all owners to return the entire rifle as soon as possible to Browning:

Browning 1 (800) 727-4312
Attn: Dept. A-Bolt II
One Browning Place
Arnold, Missouri 63010
Source:
Company Notice September, 2001

6) BROWNING MODEL BLR, LONG ACTION, LEVER-ACTION RIFLES

RECALL: Browning has identified a potential safety hazard on its BLR Long Action, and recalled all of these rifles for repair in 1991. A number given was: service facility at (800) 727-4312.

Source:
Shooting Industry, July 1991; page 1
Shooting Times, August 1991; page 8
Shooting Times, October 1991; page 106
AFTE Journal, July 1991; Volume 23, Number 3:802
American Rifleman, July 1991; page?

7) CHINESE, IMPORTED BY NAVY ARMS MODEL SKS, SEMIAUTOMATIC RIFLES,

WARNING: (Navy Arms stated in 1993) "We hereby provide written notice to you that some Chinese SKS semiautomatic rifles may pose a serious risk of bodily injury or death."

"Some of these rifles may have a manufacturing defect of the engaging surfaces in the trigger-hammer-sear assembly, which can cause intermittent failure of the sear to hold the hammer in a cocked position. This condition can result in the unexpected firing as a round is chambered, without pulling the trigger, or if the weapon is jarred or dropped. This condition may also result in sudden and unexpected automatic fire and loss of control of the firing weapon."

"Navy Arms Company strongly recommends that owners of Chinese SKS rifles have their weapons inspected for this defect by a competent and qualified gunsmith before using the weapon."

"If you own a Chinese SKS semiautomatic rifle from Navy Arms Company and believe your weapon needs a new sear, mail your sear with the serial number of your SKS to us at the address below, and include a self-addressed envelope. We will send you a free replacement sear."

When firing any semiautomatic weapon for the first time, always follow these safety procedures:

Navy Arms Company, Inc.
689 Bergen Boulevard
Ridgefield, NJ 07657

Source:
American Rifleman, March 1993; page 14

8) COLT MODEL CLR3064SRBL, .30-06 SPRINGFIELD CALIBER, LIGHT RIFLES

WARNING: In some of these rifles, the firing pin may fail to cock, and thus rest on the primer of a chambered cartridge making an accidental drop and discharge possible. Colt is requesting all gun dealers return this model immediately. Informational number given was: (800) 962-2658

Source:
American Firearms, November/December 2000; Volume 28, Number 11:12
American Handgunner, January/February 2001; page 114
Colt Website, September 1, 2000

9) CONNECTICUT VALLEY ARMS In-Line Muzzle loading Rifles

RECALL: Barrels of some of these make and model rifles may fail when fired. The recall is for barrel replacement of the affected rifles. Contracts given in 2003 were:

Connecticut Valley Arms
5988 Peachtree Corners E.
Norcross, GA 30091
(800) 482-3470 8:30 AM to 4:30 PM EST
or (770) 449-4687

Source:

Connecticut Valley Arms Recall Notice, August 1997
Shooting Industry, November 1997; page 10
Connecticut Valley Arms Recall Notice, August 2002
North American Hunter, August 2002, page 100
North American Hunter, April/May 2003

10) FAL 308/7.62MM CALIBER ALUMINUM RIFLE RECEIVERS MANUFACTURED BY WILLIAMS ARMS CO.

WARNING: On October 2, 2001 testing of the FAL "Williams Alumalite" receivers was terminated when a proof firing caused receivers to blow-up into multiple fragments after less than 200 shots of a scheduled 1,000 shot test.

These receivers were experimental NOT production parts.

For additional information contact:

DSA, Inc.
P.O. Box 370
Barrington, Il 60011
P: 847.277.7258
F: 847.277.7259
dsarms@earthlink.net

Source: 45A

Company Notice October 2001
www.dsarms.com/safety_warning.cfm

11) HOWA MACHINERY LTD., Added 5/27/02 MODEL 1500, 1550, 1700LS SERIES RIFLES distributed by SMITH & WESSON, O.F. MOSSBERG & SONS and INTERARMS

RECALL: For a safety upgrade on certain rifles manufactured between 1970 and 1993. A hazardous condition exists in which these rifles can be accidentally discharged without the bolt being fully engaged, 1991 informational contacts given were: www.regcen.com/howa or 1 (800) 456-5131

Source:

Guns, June 1991; page 66
American Rifleman, May 1991; page 21

12) GALIL/IMI .308 WINCHESTER CALIBER RIFLE

RECALL: A hazardous condition exists in which certain models of this rifle may unexpectedly and unintentionally discharge when the bolt closes on a loaded chamber. This can occur without pressure on the trigger. An improved bolt assembly was offered as an exchange item in this recall.

Magnum Research, Inc.
7110 University Avenue NE
Minneapolis, MN 55432
(612) 574-1868

Source:

AFTE Journal, October 1985; Volume 17, Number 4:3
AFTE Journal, July 1985; Volume 17, Number 3:62

13) SPRINGFIELD MODELS 187 AND 187TS; STEVENS MODELS 80, 88 AND 887; GOLDEN WEST MODEL 781DL; HIAWATHA MODEL 587; REVELATION MODELS 135 AND 160; SEARS MODEL 2200; WESTPOINT MODEL 487T

RECALL: The .22 caliber semiautomatic rifles listed above may fire while on "SAFE". The recall was for inspection and correction of this condition. Info given in 1982 was:

Stevens Rifle Inspection Program
Springdale Road
Westfield, MA 01085
(413) 562-7764

Source:

AFTE Journal, January 1982; Volume 14, Number 1:6
California Department of Justice Firearms Safety Note 86-6

PLEASE NOTE:

The current owner of the Savage-Stevens brands is: Savage Arms & Marketing, 118 Mountain Road, Suffield CT 06078. They state: "We regret we are unable to provide service for firearms made prior to November 1, 1995."

14) KASSNAR/CONCORDE/SQUIRES BINGHAM MODEL M-16, M-20, & M-16R, 22 LONG RIFLE CALIBER, RIFLES

RECALL: Some of these rifles may have been assembled incorrectly, which could cause the gun to function improperly.

Kassnar Imports, Inc.
Dept. SB
P.O. Box 6097
Harrisburg, PA 17112

Source:

Guns & Ammo, July 1985; page 25

PLEASE NOTE: Information indicates that KASSNAR IMPORTS, INC. ceased operations April, 1989

15) STEYR-MANNLICHER BOLT-ACTION, RIFLES

RECALL: Some Steyr-Mannlicher centerfire bolt-action rifles with double set triggers were assembled with trigger housings (not trigger guards) which may crack or corrode. Steyer states "Cracking, corrosion, or any other failure of the trigger housing could result in unintended firing of the rifle." A 1996 informational number given was: 1-888-467-8397.

Source:

Guns, November 1996; page 74

16) MAGTECH Company MODEL 7022, 22 LONG RIFLE CALIBER, SEMIAUTOMATIC RIFLES

WARNING: A number of these rifles have exhibited failure of the recoil buffers. These rifles may jam, preventing the cycling of the action and firing.

MAGTECH
837 Boston Post Road #12
Madison, CT 06443
(203) 245-8983

Source:

Company Notice, September 1998

**17) REMINGTON MODEL 700,CENTER FIRE RIFLES MFG BEFORE 1982
MODEL 600, 660, 721, 722 40-X RIFLES MFG BEFORE MARCH 1982
MODEL XP-100 TARGET PISTOL MFG BEFORE FEBRUARY 1975**

RECALL: Remington Arms Company, Inc. is offering a safety modification program for certain bolt-action centerfire firearms manufactured prior to 1982.

These firearms have a feature known as a bolt-lock that requires the safety to be placed in the "off" position in order to unload the gun. This may result in a hazardous condition during handling.

A program was offered to eliminate the bolt-lock feature.

Contacts given are: (877) 387-6691 and the website at www.remington.com.

Remington
870 Remington Drive
Madison, North Carolina 27025-0700
Source:
North American Hunter, August 2002; page 103

18) REMINGTON MODEL 600, 660, MOHAWK 600, RIFLES

RECALL: The safety selector and trigger can be manipulated in such a way that subsequently moving the selector to the fire position may result in accidental discharge. Remington firearms involved are Model 600, 660, and Mohawk 600 rifles manufactured prior to February 1975. Information contacts given:

Remington Arms Company, Inc.

Bridgeport, CT 06602

800-241-8444

Source:

AFTE Journal, January 1979; Volume 11, Number 1:19

Shooting Times, January 1993; page 9

19) REMINGTON MODEL 700, 17 REMINGTON CALIBER RIFLE

RECALL: The Remington Arms Company recalled these models, stating that some Model 700 bolt-action barrels could develop cracks and splits during firing. A free barrel replacement offer was made.

Source:

AFTE Journal, April 1990; Volume 22, Number 2:227

Shooting Times, March 1990; page 47

American Firearms Industry, February 1990; page 19

American Rifleman, January 1990

American Rifleman, February 1990; page 10

California Department of Justice Firearms Safety Note 90-1

PLEASE NOTE: It is advised to visit the Remington website to obtain current customer service information.

20) REMINGTON MODEL 700, SEVEN, 40-XB, 40-XC & SPORTSMAN 78

RECALL: Remington Arms stated that some of these rifles may have an improperly manufactured part in the trigger assembly mechanism. The defective part could break and cause the rifle to fire accidentally. A trigger replacement program was offered. An informational number given was: 1-800-634-2459.

Source:

Guns & Ammo, June 1988; page 89

Rifle, July-August 1988; Volume 22, Number 4, page ?

California Department of Justice Firearms Safety Note 88-3

PLEASE NOTE: It is advised to visit the Remington website to obtain current customer service information on any model of Remington.

21) SAVAGE MODEL 170C .30-30 WINCHESTER CALIBER RIFLE

WARNING: The firing pin nose may extend out of the breech bolt because its spring is not functioning properly. This situation can cause the firing pin to come in contact with a loaded round during feeding and chambering, and may result in an unintentional discharge.

Savage Arms

100 Springdale Road,

Westfield, MA 01085

(413) 562-7001

Source:

AFTE Journal, October 1983; Volume 15, Number 4:5

PLEASE NOTE:

The current owner of the Savage-Stevens brands is: Savage Arms & Marketing, 118 Mountain Road, Suffield CT 06078. They state: "We regret we are unable to provide service for firearms made prior to November 1, 1995."

22) STEVENS/SAVAGE MODEL 110E SERIES K,.243 WINCHESTER, .270 WINCHESTER, .30-06 SPRINGFIELD CALIBER, RIFLES

WARNING: Some of these rifles will fire when dropped. This may occur when jarred either on the muzzle, or with their barrel in a horizontal position, when the safety is "off".

Savage Arms
100 Springdale Road
Westfield, MA 01085
(413) 562-7001

Source:

AFTE Journal, January 1994; Volume 26, Number 1:2-3

PLEASE NOTE:

The current owner of the Savage-Stevens brands is: Savage Arms & Marketing, 118 Mountain Road, Suffield CT 06078. They state: "We regret we are unable to provide service for firearms made prior to November 1, 1995."

23) SAVAGE MODEL 110E, .30-06 SPRINGFIELD CALIBER, RIFLE

WARNING: Some of these rifles may fire when struck on top of the receiver bridge, or grip area of the buttstock from underneath, with the safety "off". Advisory states that this will occur regardless of whether the rifle is in a horizontal, vertical or upside down position.

Savage Arms
100 Springdale Road
Westfield, MA 01085
(413) 568-7001

Source:

AFTE Journal, January 1994; Volume 26, Number 1:2-3

PLEASE NOTE:

The current owner of the Savage-Stevens brands is: Savage Arms & Marketing, 118 Mountain Road, Suffield CT 06078. They state: "We regret we are unable to provide service for firearms made prior to November 1, 1995."

24) THOMPSON CENTER MODEL RENEGADE RIFLES

WARNING: These rifles have the potential for an accidental discharge if the hammer is not in the safety notch position. If the hammer is partially cocked, but released before reaching full cock, it may bypass the safety notch and fire the rifle.

Source:

AFTE Journal, April 1983; Volume 15, Number 2:15-16

25) WEATHERBY INC. MODEL VANGUARD BOLT ACTION, RIFLES

RECALL: A hazardous condition exists in which these rifles may be accidentally discharged without the bolt being fully engaged. A safety upgrade of the bolt has been offered.

Weatherby
3100 El Camino Real
Atascadero, California 93422
(800) 227-2018 Ext. 109

Source:

Company Notice May 25, 2001

Shooting Sports Industry, July/August 2001; Volume 19 Number 4:83

American Rifleman, September 2001; page 94

SHOT Business, July/August 2002; page 9

26) WINCHESTER/U.S. REPEATING ARMS COMPANY MODEL 70 BOLT ACTION RIFLES in

Calibers: 270 Winchester, .30-06 Springfield, 7mm Remington Magnum, .300 Winchester Magnum

RECALL: These rifles may have a potential safety problem in the front sling swivel stud. There is a possibility that the swivel stud can pull loose, causing the rifle to fall from the shoulder, which is a dangerous condition.

Source:

Company Notice, January 2000

27) WINCHESTER MODEL 490, .22 CALIBER SEMIAUTOMATIC RIFLES

RECALL: The company has stated that these rifles" are the subject of unintentional discharge problems."
Redesigned parts are available by contacting Winchester.

Winchester Firearms (801) 876-3440

U.S. Repeating Arms Company, Inc.

275 Winchester Avenue,

Morgan, UT 84050

Source:

AFTE Journal, March 1976; Volume 8, Number 1:28

28) WINCHESTER MODEL 100 SEMIAUTOMATIC RIFLES

WARNING: An accidental discharge may occur before the action is locked. This means that the cartridge may fire before being chambered, and the discharge may be unintentional and occur without finger pressure on the trigger.

Current information contacts at Winchester are: <http://www.winchesterguns.com> , also (800)333-3288 or (80)-876-2711.

Previous information:

Winchester Firearms Notice

Attn: Product Service Department

P.O. Box 10

Cottage Hills, Il 62018

(800) 852-5734

Source:

AFTE Journal, October 1990; Volume 22, Number 4:452

Appendix Three Shotguns

1) BROWNING MODEL A-500, SHOTGUN

RECALL: Browning has advised of a parts breakage in the trigger assembly on the A-500. According to Browning: "Do Not Load Your A-500 Until A New Trigger Assembly Is Installed"

Source:

American Rifleman, August 1988; page 80

California Department of Justice Firearms Safety Note 88-4

2) BROWNING MODEL BELGIUM OVER and UNDER, SHOTGUNS

RECALL: Some Belgian-made, single trigger, over and under shotguns and over and under Express Rifles. It is sometimes possible for these specific guns to accidentally discharge upon opening the gun.

Source:

Guns & Ammo, March 1987; page 22

California Department of Justice Firearms Safety Note 87-1

3) FRANCHI, Model SPAS 12, SAS 12 and LAW SHOTGUNS

RECALL: May fire when taken "Off Safe"

Source:

AFTE Journal, July 1990; Volume 22, Number 1:87

AFTE Journal, July 1991; Volume 23, Number 3:801

Guns & Ammo, October 1989; page 22

Guns & Ammo, December 1989; page 94

American Rifleman, October 1989. page ?

American Rifleman, July 1991; page 4

California Department of Justice Firearms Safety Note 89-3

4) HIGH STANDARD/J.C. HIGGINS, Model 10, 12 Ga. Bolt- Action Shotguns and SEARS Shotguns Model Numbers: 583.13, 583.14, 583.15, 583.16, 583.17, 583.18, 583.19, 583.20, 583.21 and 583.22

RECALL and re-purchase: May be subject to a bolt failure. When this occurs the bolt will dislodge from the action, striking the shooter causing serious injury.

Source:

American Rifleman, April 1998; page 24

5) MOSSBERG and NEW HAVEN Model 500 SERIES SHOTGUNS

ADVISORY: May Fire With The Safety In The On Position

Source:

Amble, Albert M., Gunsmith, Stoughton, WI.

Reported in AFTE Recalls site

6) MOSSBERG Model 695, 12 Ga. BOLT-ACTION SHOTGUNS

RECALL: May discharge when closing the bolt during the loading of a live cartridge into the chamber. These firearms should not be loaded or used due to the possibility of accidental discharge.

Source:

American Firearms, November/December 2000; Volume 28, Number 11:12

Guns & Weapons for Law Enforcement, February 2001; Volume 13, Number 2:60

Guns & Weapons for Law Enforcement, April 2001; Volume 13, Number 3:25

O.F. Mossberg & Sons, Inc. Website, October 2000

7) REMINGTON ARMS, MODEL 1911 SHOTGUNS

Warning: May have the potential for unintentional discharge. When certain parts are removed or missing, the shotgun could unintentionally discharge when the action is operated.

Source:

AFTE Journal, 1973; Volume 5, Number 3:21

8) SMITH & WESSON Model 916-T SHOTGUNS

RECALL: Smith & Wesson has recalled all barrels for this 12-ga. interchangeable barrel takedown model shotgun because of defect and potential hazard. Barrels may rupture when fired.

Source:

American Rifleman, September 1979; page 74

American Rifleman, February 1979; page 85

Crime Control Digest, November 20, 1978; page 6

9) WINCHESTER Model 1001, SHOTGUNS

RECALL: Barrels may burst on firing.

Guns & Ammo, January 1995; page 76

Shooting Times, January 1995; page 8

Shooting Industry, November 1994