

# Lawyers, Guns, and Money

*The Impact of Tort Restrictions on Firearms Safety and Gun Control*



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The Violence Policy Center is a national non-profit educational foundation that conducts research on violence in America and works to develop violence-reduction policies and proposals. The Center examines the role of firearms in America, conducts research on firearms violence, and explores new ways to decrease firearm-related death and injury.

Public Citizen is a nonpartisan organization that fights for government and corporate accountability, consumer rights in the marketplace, safe products, a healthy environment, fair trade, and clean and safe energy sources through lobbying, research, public outreach, and litigation.

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## Introduction

On March 10, 1995, the United States House of Representatives passed H.R. 956, the "Common Sense Product Liability and Legal Reform Act."<sup>1</sup> The deceptively named bill embodies the product liability restrictions of the Republican "Contract with America." On May 10, 1995, the Senate passed its version of product liability "reform" legislation, S. 565, the erroneously titled "Product Liability Fairness Act."<sup>2</sup> Although the bills differ in details—the House legislation is much broader in scope, applying to all civil actions, not just product liability cases—both are designed to restrict the ability of consumers injured by defective products to receive adequate compensation and to hold accountable negligent and reckless corporations.

By the end of February 1996, no conference committee bill had been issued reconciling the differences in the two pieces of legislation. Additionally, the Clinton Administration has expressed its opposition to specific aspects of the bills.<sup>3</sup> Therefore, the fate of the legislation is unclear. However, the effects that the legislation would have on consumers injured by defective firearms, victims of firearms violence, and innovative gun control measures is all too clear.

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<sup>1</sup> The bill passed by a vote of 265 to 161.

<sup>2</sup> The bill passed by a vote of 61 to 37.

<sup>3</sup> On April 25, 1995, the White House issued a Statement of Administration Policy that specifically opposed "an artificial ceiling on the amount of punitive damages" and the abolition of joint and several liability for non-economic damages. On May 10, 1995, the White House issued a press statement noting, "The Senate approach on punitive damages is an improvement on an absolute cap but still has flaws. Moreover, the Administration has consistently made clear its opposition to the provision that would make it harder for injured consumers to recover their full damages in cases involving more than one defendant."

Despite the fact that firearms kill nearly twice as many Americans as all household consumer products combined, no federal agency has the necessary authority to ensure that guns do not explode or unintentionally discharge when they are dropped or bumped.<sup>4</sup> This is unique. For example, 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 explode, toys don't come apart, coffee makers don't catch fire, and that the myriad of consumer products within its jurisdiction are safe. Yet for firearms and ammunition *the tort system is the only check on safety*.

Although the federal Bureau of Alcohol, Tobacco and Firearms (ATF) licenses manufacturers, dealers, and importers, it has no general safety authority, e.g. the power to set safety standards or institute recalls. ATF's limited jurisdiction over gun manufacturers, importers, and dealers does not include basic health and safety standards. Currently, the civil justice system is the only mechanism available to protect consumers from defect-related death and injury and to ensure that guns that are sold are safe and free from defects in design or manufacture.

The tort system is important in efforts to reduce firearms violence from two perspectives. First, to address the problem of unintentional fatal and non-fatal injuries associated with defectively designed and manufactured firearms and ammunition. Second, to hold accountable sellers and manufacturers who knowingly market and sell their products to such obviously high-risk individuals as criminals and minors. 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 a manufacturer's or

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<sup>4</sup> Nearly 40,000 Americans are killed by firearms annually, with nearly three times that many injured. In contrast, the Consumer Product Safety Commission estimates that in 1994 there were 21,500 deaths associated with the 15,000 household and recreational products within its jurisdiction. The National Center for Health Statistics estimates that by the year 2003 the number of people killed each year by firearms will surpass the number killed by motor vehicles.

dealer's negligence.

Because of firearms' unique exemption from safety regulation, the House and Senate tort restriction bills would have a magnified negative impact on firearms safety and the victims of gun violence. In recent years, some of the greatest gains in efforts to reduce firearm-related death and injury have occurred not through legislation, but litigation. Courts have helped deter the manufacture, sale, and use of unsafe firearms and have issued landmark rulings in cases involving assault weapon manufacturers, gun show promoters, and firearm retailers. Many of these gains could be jeopardized if the proposals contained in the House and Senate bills become law. There would be disastrous effects on the already feeble incentives for firearms and ammunition safety and significant benefits would accrue to the firearms industry.

This study examines the detrimental impact that the tort restriction proposals passed by the House and Senate would have on firearms and ammunition safety and on efforts to reduce firearms violence through the civil justice system. It also documents the role played by the firearms industry and pro-gun interests in lobbying for tort restrictions. This component of the study demonstrates that the supporters of tort restrictions include the manufacturers and sellers of some of the country's most dangerous and deadly products.

The study is divided into three sections. Section One details the involvement of the firearms industry and pro-gun lobbying organizations in efforts on Capitol Hill to enact tort restrictions. Section Two examines specific components of the House and Senate bills and the benefits they would offer firearm manufacturers. Section Three is the study's conclusion. The study also contains seven appendices containing many of the articles and documents referred to in the text.



## Section One

### **The Involvement of the Gun Lobby in Lobbying for Tort Restrictions**

#### The Role of the Industry

Considering the unique health and safety function performed by the civil justice system with respect to firearms and ammunition, it is not surprising that the firearms industry is actively backing limits on civil liability.

The gun industry's involvement in the debate over tort restrictions is not new. Near the close of the 103rd Congress, industry representatives joined other business interests in a failed effort to pass S. 565's predecessor, S. 687.<sup>5</sup> The involvement of the industry in the current battle was affirmed in the May 15, 1995 issue of *Firearms Business*, a firearms industry trade publication. *Firearms Business* promised that "[firearms] industry attorneys had made tort reform a priority on their 1995 legislative wish list."

Sturm, Ruger & Company, Colt, and other major firearm manufacturers have been long-time members of several organizations pushing for liability restrictions, such as the Product Liability Coordinating Committee (PLCC). The American Shooting Sports Council (ASSC), one of the gun industry's leading trade associations, is a member of the American Tort Reform Association (ATRA), a coalition of large corporations and insurance companies working to weaken the civil justice system on both the state and federal levels.

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<sup>5</sup> S. 687 was defeated on June 28, 1994 in the 103rd Congress after two attempts to invoke cloture in the Senate failed.

The American Shooting Sports Council was formed in response to the 1989 federal ban on the importation of foreign-made assault rifles. ASSC Executive Director Richard Feldman was formerly executive director of Product Liability-Sports (PLS), the political arm of the Sporting Goods Manufacturers Association (SGMA). An SGMA pamphlet describes PLS as "dedicated to reforming the tort liability laws which adversely affect the American sports industry." ASSC counts among its members: assault weapon manufacturers Intratec and Calico; Saturday Night Special handgun manufacturers Bryco and Lorcin; and mainstream manufacturers such as Smith and Wesson. According to *Gun Week*,<sup>6</sup> Victor Schwartz—who is affiliated with both the Product Liability Coordinating Committee and the American Tort Reform Association and is probably the most visible lobbyist for tort restrictions—accepted an invitation by the ASSC to address its 1995 annual Congressional lobbying day or "Fly-In" to talk about pending product liability legislation.<sup>7</sup>

Other ATRA members include the Sporting Arms and Ammunition Manufacturers Association (SAAMI), and Sturm, Ruger & Company, manufacturer of the Old Model single action revolver.<sup>8</sup> The Old Model single action has been the subject of hundreds of product liability lawsuits (please see the discussion of the statute of repose on page 31 and Appendix One for more details on the Old Model). Stephen L. Sanetti, Sturm, Ruger and Company's vice president and general counsel serves as a member of the board of directors of the Product

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<sup>6</sup> *Gun Week* is the "first weekly [sic] newspaper serving shooters and collectors" and is published by the Second Amendment Foundation, the 501(c)3 educational arm of the pro-gun lobbying organization the Citizens Committee for the Right to Keep and Bear Arms.

<sup>7</sup> Victor Schwartz's interest in firearm liability issues is longstanding. He testified *pro bono* against a Washington, DC statute that holds manufacturers, dealers, and importers of assault weapons strictly liable for death or injury caused by their products in the District. (Please see page 29 for a discussion of how the pending proposals would affect the Washington D.C. statute).

<sup>8</sup> April 21, 1994 membership list, the most recent list made available to the Violence Policy Center by the American Tort Reform Association.



Liability Advisory Council, Inc. Sanetti serves along with executives from major pharmaceutical, automobile, and other large manufacturers. Sturm, Ruger's intense interest in limiting its liability for product-related injuries—and especially punitive damage awards—is evident from its filings at the Securities and Exchange Commission. Historically, Sturm, Ruger and Company has included the following statement in its Form 10-K filings with the Commission:

In the opinion of management and its counsel, the outcome of this litigation with respect to all matters except for punitive damage awards on certain 'Old Model' single-action revolvers will not have a material adverse effect on the financial statements. However, *with the present state of the law*, [emphasis added] it is not possible to forecast the outcome of this litigation with respect to punitive damages. Claims for punitive damages on 'Old Model' single-action revolvers are material.<sup>9</sup>

Bob Delfay—executive director of both SAAMI and its larger sister organization, the National Shooting Sports Foundation (NSSF)—has identified suits alleging that gun manufacturers should be held strictly liable for injuries caused to innocent parties when manufacturers knowingly design and market their products for criminal use as particularly problematic for the industry. Such cases have already been filed against the manufacturers of the firearms used in the 1993 Long Island Railroad massacre and in the 1993 shooting at the San Francisco law firm of Pettit and Martin.<sup>10</sup>

Moreover, the gun press—members of which derive substantial income from firearms industry advertising—keeps its readers abreast of the latest developments in the battle over tort restrictions and encourages political activism in support of measures to limit the liability of the firearms industry. *Gun Week* provides regular updates on the progress of tort legislation. For example, a *Gun Week* article

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<sup>9</sup> See e.g. Sturm, Ruger and Company, Inc. Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, Form 10-K filed March 29, 1985.

<sup>10</sup> Please see page nine for details on the Pettit Martin lawsuit.

entitled "Are You Speaking With Congress?" urged the pro-gun community to make its concerns heard on Capitol Hill and listed product liability as one of the "issues of special interest to gun owners and those concerned with their firearms rights."<sup>11</sup> Most recently, Robert Hausman,<sup>12</sup> wrote in the January 1996 issue of *Guns and Ammo* magazine that "[t]he main benefit to the firearms industry would be the cap on punitive damages...."

### The Role of the National Rifle Association

Although the National Rifle Association of America (NRA) insists that it represents the interests of firearm consumers and not those of the industry, it has joined with gun manufacturers and industry trade associations in support of legislative measures restricting liability—even though many gun owners are injured by defectively designed firearms each year.

In a July 1995 interview in *Guns and Ammo* magazine, NRA Executive Vice President Wayne LaPierre was asked, "What's the NRA looking at in the area of tort reform concerning firearms liability? This is important because this is obviously restrictive on the part of the manufacturer and these costs are passed on to the consumer."<sup>13</sup> LaPierre responded, "We are part of the coalition that is pursuing legislation.... The industry is certainly carrying the brunt of the issue, but we're lending support."<sup>14</sup>

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<sup>11</sup> Joe Tartaro, "Hindsight," *Gun Week* (April 14, 1995).

<sup>12</sup> Robert Hausman also writes the *Gun Week* column "Industry News."

<sup>13</sup> Empirical data demonstrates that the costs attributable to product liability that are passed on to consumers are actually negligible. According to a 1995 study conducted by the Consumer Federation of America, product liability insurance costs American consumers only 26 cents out of every \$100 purchase.

<sup>14</sup> Please see Appendix Two for the full text of the interview.

According to Senate staff, during consideration of S. 565 this Congress, the NRA sought a Senate sponsor for an amendment that would have established a complete defense in any product liability action where the plaintiff's harm was the result of criminal misuse of the product. The effect of the amendment would have been to shield manufacturers and dealers from liability in a wide variety of cases.<sup>15</sup>

For example, the amendment would have prevented any future cases like the landmark California ruling in *Sposato v. Navegar, Inc.*<sup>16</sup> This case allowed survivors of a shooting victim to sue the firearm's manufacturer, Navegar of Miami, Florida, for injuries caused by its Intratec DC-9 assault pistol. The handgun was used by Gian Luigi Ferri in a 1993 shooting rampage at the San Francisco law firm of Pettit & Martin in which eight people were killed and six were wounded. This historic suit is the first step toward holding assault weapon manufacturers financially accountable for the death and injury caused by their products.

The *Sposato* case seeks to use the tort system to hold a firearm manufacturer accountable when its product is criminally misused and it can be proven that the manufacturer actively marketed its product for criminal use. In dealer literature Navegar bragged that its assault pistols were as "tough as your toughest customers" and that the finish of their guns possessed a "natural lubricity" that offered "excellent resistance to finger prints [sic]." It would also be unlikely that Navegar was unaware that its pistols were routinely at the top of the federal Bureau of Alcohol, Tobacco and Firearms' list of assault weapons traced to

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<sup>15</sup> Please see Appendix Three for text of the amendment.

<sup>16</sup> Case no. 960937, Sup. Ct. Ca., San Fran. (1994).



crime.<sup>17 18</sup>

The NRA amendment would also have protected unscrupulous gun dealers who knowingly sell weapons to criminals through "straw-man" sales."<sup>19 20</sup> In 1991 such a lawsuit was filed against the California gun store Traders after the dealer illegally sold an assault weapon to a man who later used it to kill a motorist. Evidence presented by the plaintiff showed that the killer, Darryl Poole, questioned the sales clerk at Traders about several weapons before deciding on an AK-47 assault rifle. Poole, however, had no identification with him, and the clerk allowed Poole's companion to use his identification to complete the required paperwork—despite the fact that federal law requires a gun dealer to obtain identification from the purchaser.<sup>21</sup> Poole paid for and took possession of the weapon. Poole and

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<sup>17</sup> Firearms tracing information was obtained from the Bureau of Alcohol, Tobacco and Firearms for calendar year 1993. The Intratec TEC-9 was also included in the list of the top 10 firearms traced in 1991, 1992, 1993, and 1994. The Intratec TEC-DC9 was the third most traced assault weapon in 1994.

<sup>18</sup> If successful, lawsuits like *Sposato v. Navegar, Inc.* could be an invaluable tool to help enforce the federal ban on the manufacture and sale of new assault weapons. Such lawsuits would help deter gun manufacturers from exploiting legislative loopholes. Navegar circumvented California's assault weapons ban, which banned specific weapons by name, by merely redesignating its TEC-9 assault pistol the TEC-DC9 (the model used in the Pettit and Martin shooting) to make it technically legal under California's law.

<sup>19</sup> In a "straw-man" sale, a person who is not in a restricted category (the straw man) purchases a weapon for someone who is prohibited by federal, state, or local law from purchasing or possessing a firearm.

<sup>20</sup> The NRA has opposed attempts to hold gun dealers civilly accountable for illegal sales. For example, in the 103rd Congress the organization strongly opposed an amendment to S. 687 proposed by Senators Frank Lautenberg (D-NJ) and Paul Simon (D-IL). The amendment would have established *per se* (automatic) liability for any gun dealer who knowingly sold a gun in violation of federal law. The NRA distributed a letter in the Senate opposing the amendment, asserting, "The Lautenberg/Simon Amendment threatens to undermine the Product Liability Fairness Act, which is a solid bill...."

<sup>21</sup> Traders has a well documented history of selling guns that turn up in crimes. In a 1992 ATF inspection of Traders' records, the agency identified almost 300 gun sales that were suspected to have involved violations of federal law. For more information, please see Aura Bond, "Merchant of Menace: The Story of a California Gun Dealer," *Muckraker: The Journal of the Center for Investigative Reporting* (Winter 1994).

his companion left the store with the assault weapon, 100 rounds of ammunition, and three black ski masks. A month later, Poole used the assault rifle to fatally shoot Larry Ellingsen in the back of the head as Mr. Ellingsen was driving home with his wife from the couple's 29th wedding anniversary celebration. Mr. Ellingson's widow recovered \$400,000 in an out-of-court settlement after filing a lawsuit alleging that Traders had knowingly facilitated an illegal "straw-man" sale. Because Poole committed a criminal act, the NRA's proposed amendment would most likely absolve dealers like Traders of any responsibility for facilitating illegal sales.

Although this amendment was never offered, the NRA's active efforts to find a sponsor for it stands as clear evidence that contrary to its rhetoric, the NRA holds the financial interests of the firearms industry—not the safety of gun owners—paramount. The NRA's position on tort reform is inconsistent with the interests of gun owners who have been, or may be, injured by defectively designed or manufactured firearms and ammunition.<sup>22</sup> Many of the victims whose rights would be undermined by the bills passed by the House and Senate are hunters or shooters who have been injured or killed when their guns discharged accidentally because of a dangerous defect.<sup>23</sup>

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<sup>22</sup> In addition to firearms and ammunition, product liability litigation has helped to make other firearm-related products safer. For example, many hunters utilize tree stands—elevated platforms perched in trees—to stalk deer. According to *Deer and Deer Hunting* magazine's *Tree Stand Safety Special* issue, "[W]e can say the early pioneers in portable tree stands don't measure up to today's standards. Time and again the older 1970s-vintage models were cited for slips and structural failures. We don't think it was just coincidence. We believe today's major tree stand manufacturers are producing the best, most reliable stands ever. If nothing else, a fear of lawsuits and rising insurance costs spurred major improvements in the engineering and production of tree stands. Companies that didn't adapt were driven from the marketplace. And while almost all of today's manufacturers were named at least once by a victim [in the magazine's survey of tree stand-related injuries], they collectively didn't receive nearly as many black marks as companies that saw their heyday in the 1970s and early 1980s." The magazine estimated that three percent of the approximately 9.47 million hunters who use tree stands eventually suffer a serious injury.

<sup>23</sup> Please see *infra* for specific cases. The dangers posed to consumers by tort restriction legislation are illustrated by the vehement opposition of every major consumer organization in the United States, including: Consumers Union, publisher of *Consumer Reports* magazine; Consumer

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Federation of America; Citizen Action; and Public Citizen. Please see Appendix Four for a more complete list of organizations opposing tort restriction legislation.



## Section Two

### **Specific Benefits Tort Restrictions Would Offer the Firearms Industry**

Because the manufacture of firearms and ammunition is virtually unregulated, the civil justice system provides an essential safety check on the firearms industry. As a result, the firearms industry would benefit greatly from limitations on the tort system.

This section details some of the specific ways in which the product liability provisions passed by the House and Senate would weaken consumer protection from unreasonably dangerous firearms, reduce compensation for injured gun owners and victims of firearms violence, hinder efforts to keep guns out of the hands of kids and criminals, and provide significant economic benefits to the firearms industry at the expense of our nation's health and safety.

#### **Punitive Damages**

The bills would radically alter the law regarding punitive damages. Punitive damages are intended to punish and deter outrageous corporate conduct. Punitive damages also help to dissuade manufacturers from making a conscious choice to market a product despite knowledge of an unacceptable risk. They also encourage adequate testing and safety evaluation of a product.

Large punitive damage verdicts often receive attention from the press and the public. However, the facts demonstrate that large verdicts are rendered infrequently and are often reduced in the post-trial process. The most authoritative study on punitive damages ever conducted, which analyzed damages in state and federal courts from 1965 to 1990, found that only 355 had been made in product

liability cases. The study identified only 24 verdicts that included punitive damages in the category of "recreational products," the category encompassing firearms.<sup>24</sup>

Under the proposed changes in tort law, the deterrent and punishment functions of punitive damages would be weakened in several crucial ways:

### ***Heightened Standard of Proof***

The bills would raise substantially the standard of proof for punitive damages. Victims of dangerous firearms would have to show by "clear and convincing evidence" that the harm suffered was the result of conduct that was carried out with a "conscious, flagrant indifference" to the safety of others. Currently, many states allow punitive damages to be awarded under a less prohibitive, but still strict, standard. A heightened standard could allow culpable gun manufacturers to go unpunished. For example, in the 1994 case *Collins v. Remington*,<sup>25</sup> a Texas jury awarded the plaintiff \$15 million in punitive damages under the lower standard of "gross negligence" in a case involving a Remington Model 700 rifle that discharged without the trigger being pulled. The plaintiff uncovered company documents which revealed that Remington was aware that the rifle could fire without the trigger being pulled—but chose not to market a safer design it had developed. Documents also showed that Remington refused to recall the gun even though its own internal product safety committee determined that many pre-1975 Model 700s could fire without the trigger being pulled.<sup>26</sup>

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<sup>24</sup> Rustad, Michael, *Demystifying Punitive Damages in Product Liability Cases: A Survey of a Quarter Century of Trial Verdicts*, The Roscoe Pound Foundation (1991).

<sup>25</sup> *Collins v. Remington Arms, Inc.*, (Tex., Maverick County 293 D. Jud. Dist. Ct. No. 91-11-10856-CV, June 15, 1994). For more information please see Appendix Five, "Remington Faces a Misfiring Squad," *Business Week* (May 23, 1994).

<sup>26</sup> The case was settled post-verdict for an amount that cannot be disclosed due to a secrecy order.

Likewise, in *Johnson v. Colt*, a federal appeals court upheld a punitive damage of \$1,250,000 where a .22 Colt single action revolver accidentally discharged.<sup>27</sup> The plaintiff 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. The case was decided under Kansas law, which allows punitive damages if it is proven that a defendant has acted "maliciously," was "grossly negligent," or was "recklessly indifferent to the rights of others." The court found no evidence that the defendant was "malicious,"<sup>28</sup> but did find "abundant evidence from which the jury could have concluded that [the defendant] acted with reckless indifference in not implementing more effective safety devices in light of the known risk of drop-fire." The court cited expert testimony on both sides regarding a general awareness in the industry of the hazards of drop-fires and of the fact that the handguns were likely to be dropped during normal use. Furthermore, patent application evidence dating back to 1850 was presented which illustrated the attempts of gun manufacturers, including Colt, to remedy the drop-fire hazard. The court went on to note that "the jury could have viewed the steps [Colt] took to alleviate this deadly risk as trifling at best."<sup>29</sup>

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<sup>27</sup> 797 F. 2d 1530 (10th Cir. 1986).

<sup>28</sup> The standard "maliciously" is the closest under Kansas' law to the standard mandated by the bills passed by the House and Senate in that it requires intent.

<sup>29</sup> According to the opinion, "[Colt]'s only attempt to lessen the risk was the single statement in the gun's instructions that 'the safest way to carry your [gun] is with five cartridges in the chamber and the hammer on the sixth chamber.' While [Colt] terms this statement a 'warning,' it is evident that the statement neither describes the risk involved nor warns of the possible consequences. Moreover, the same instructions also advise the consumer to 'load each chamber' and that the gun will not fire unless the hammer is manually cocked. Coupled with these equivocal instructions was the gun's image as a 'six-shooter,' which implies that all six chambers may be loaded safely. From this evidence the jury properly could have found that, not only had [Colt] not adequately warned of the risk of drop-fire, but it had acted indifferently in the face of a known and deadly risk. Likewise, [Colt's] justification for not taking more effective steps—that installing a positive safety device would detract from the gun's image as a throwback to the Old West—could have been viewed by the jury as putting marketing concerns ahead of safety concerns."



Both the House and Senate bills, however, mandate a finding of "clear and convincing evidence" of "conscious, flagrant indifference" of safety. Courts would not be allowed to award punitive damages on the basis of a finding of recklessness, even in cases like *Collins v. Remington* and *Johnson v. Colt* where there is ample evidence of corporate wrongdoing.

### *Cap on Punitive Damages*

The Senate bill contains an overall cap on punitive damages of two times compensatory damages or \$250,000, whichever is greater.<sup>30</sup> In an attempt to assuage concerns about the harshness of an absolute cap on punitive damages, the Senate included an "additur" provision that allows judges to increase punitive damages to amounts greater than the cap. However, such judicial "additur" provisions have been held to be unconstitutional for use in the federal courts by the United States Supreme Court.<sup>31</sup> In addition, some state courts have held that "additur" violates their state constitutions.<sup>32</sup>

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<sup>30</sup> In a statement on the Senate floor opposing the overall cap on punitive damages in S. 565, Senator Bill Bradley (D-NJ) noted the effect the cap would have on manufacturers of firearms and ammunition (as well as tobacco and alcohol). Senator Bradley stated that "firearms and ammunition are virtually the only unregulated consumer products in America. As such, the tort system is the only check on the safety of consumers. I am not willing, Mr. President, to place a cap on punitive damages when the result will be that such action will lessen the liability of the manufacturers who profit from these destructive products." *Congressional Record*, 141 Cong. Rec. S. 6405 (daily ed. May 10, 1995).

<sup>31</sup> In *Dimick v. Scheidt*, 293 U.S. 474 (1935), the Supreme Court held that the power to increase a damage award—known as an "additur"—was a violation of the right to trial by jury. The Court ruled that the amount of damages must be determined by juries—not judges—in the federal courts, subject to the right of courts to set aside jury verdicts that are clearly excessive.

<sup>32</sup> The Supreme Court of Alabama declared the use of "additur" unconstitutional under the Alabama Constitution because it concluded that Alabama courts must defer to the jury's choice of punishment if the amount of the punishment is not excessive. *Bozeman v. Busby*, 639 So.2d 501 (Ala. 1994).

By tying the amount of punitive damages to compensation, the cap would prevent culpable manufacturers from being adequately punished simply because the plaintiff suffered relatively little economic and non-economic harm. This rule also ignores the well-established principle that the purpose of punitive damages is punishment and deterrence, not compensation, and therefore the amount of such an award should be determined by more than just consideration of the nature and extent of the plaintiff's loss.<sup>33</sup>

Requiring courts to determine the amount of permissible punitive damages based on a multiple of compensatory damages ignores recent Supreme Court decisions in this area. In 1993, the Court upheld, in *TXO Production Corp. v. Alliance Resources*, a punitive damage award of \$10 million in a case in which the actual (or compensatory) damages were only \$19,000.<sup>34</sup> According to the Court, "[B]oth State Supreme Courts and this Court have eschewed an approach that concentrates entirely on the relationship between actual and punitive damages. It is appropriate to consider the magnitude of the...possible harm to other victims that might have resulted if similar future behavior were not deterred." As an example of this reasoning, the Court offered an incident in which "a man fires a gun into a crowd. By sheer chance, no one is injured and the only damage is to a \$10 pair of glasses. A jury reasonably could find only \$10 in compensatory damages, but thousands of dollars in punitive damages to teach a duty of care." This example is not far removed from the facts in the following case, *Lewy v. Remington Arms*.<sup>35</sup>

Mike Lewy was unloading his Remington Model 700 rifle in his basement apartment. The design of the rifle required the safety to be moved to the fire

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<sup>33</sup> See e.g. *Loitz v. Remington Arms*, 563 N.E.2d 397 (Ill. 1990).

<sup>34</sup> *TXO Production Corp. v. Alliance Resources*, 113 S. Ct. 2711, 125 L. Ed. 366, 380 (1993).

<sup>35</sup> *Lewy v. Remington Arms*, 836 F.2d 1104 (8th Cir. 1988).

position in order to lift the bolt handle to eject a chambered cartridge. As Mr. Lewy pointed the rifle at the ceiling and placed the safety in the fire position to unload it, the gun discharged. 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 upper left leg and required hospitalization for more than a month. Mrs. Lewy was awarded \$20,000 in compensatory damages.

The defendant was also assessed \$400,000 in punitive damages because the jury found that Remington had acted with "complete indifference to or conscious disregard for the safety of others."<sup>36</sup> Remington appealed, and the U.S. Court of Appeals for the Eighth Circuit held that "there was sufficient evidence from which the jury could find that Remington knew the M700 [Model 700] was dangerous." The court cited complaints from customers and gunsmiths dating back to the early 1970s that the Model 700 would fire upon release of the safety.

The opinion included a sampling of customer complaints regarding the Model 700. Representative of the adamant nature of the complaints was one that stated, "Please be advised that the subject rifle has a very dangerous defect. The rifle will discharge when the safety switch is moved from the safety position to the fire position, and it will discharge when the bolt is moved to clear cartridges from the chamber and clip."

The court also referenced internal Remington documents showing that customer complaints were received more than two years before Mr. Lewy's rifle was produced. In addition, the court noted that although Remington had convened a Product Safety Subcommittee to evaluate complaints about the Model 700, it had responded to every customer complaint with a form letter stating that the company

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<sup>36</sup> *Lewy*, 836 F.2d 1104, 1106 (8th Cir. 1988).



was unable to duplicate the problem and that the consumer must have inadvertently pulled the trigger. The Product Safety Subcommittee determined that approximately 20,000 of the two million Model 700s in the hands of consumers may have contained a defect. A recall was not pursued because of the relatively small number of rifles that may have been defective. In light of this evidence, the court concluded that it was reasonable to believe that "rather than suffer the expense of a recall, Remington would rather take their chances that the 20,000 potentially dangerous M700 [Model 700] rifles held by the public will not cause an accident."

The court then found that it would be reasonable for a jury to conclude from the evidence that "Remington was merely 'gearing up' for a second round of litigation similar to the litigation involving the M600 [a similar Remington rifle that contained a defect] which resulted in the ultimate recall of the M600."

The facts of *Lewy* demonstrate the unfairness of tying the amount of punitive damages to the amount of compensatory damages (and further limiting punitive awards by excluding from the calculation amounts awarded for non-economic damages). Under the bills passed by the House and Senate, Remington's punitive damages would have been cut almost in half to \$250,000.

The House and Senate bills would also have capped the punitive damage award in the previously discussed *Collins* case, where a rifle discharged without the trigger being pulled. The jury's \$15 million verdict would have been cut by more than half to \$4 million—despite the mountain of evidence documenting Remington's willingness to place the safety of gun owners, users, and bystanders at tremendous risk.

The importance of maintaining the punishment and deterrent functions of punitive damages with regard to firearm recalls is heightened by the fact that no

federal agency has authority to issue a recall for a defective firearm. If the Model 700 was not a rifle, but a toaster or a teddy bear, the Consumer Product Safety Commission could have issued a recall. If the Model 700 had been an automobile, the National Highway Traffic Safety Administration could have intervened to recall the defective units. Yet, in the case of firearms and ammunition, no federal entity can intervene to force a manufacturer to recall defective products from the marketplace. The civil justice system is the only mechanism available to put pressure on a manufacturer to protect the public safety when a company, like Remington, chooses to place profit ahead of safety.

***The Small Business Cap and How it Would Protect  
Saturday Night Special Manufacturers***

One of the main provisions of the Senate bill would place a special cap on punitive damages for small businesses. The bill would limit the amount of punitive damages that could be awarded against corporations with less than 25 employees without consideration of the entity's sales, assets, or profits. Punitive damages assessed against such companies would be limited to the lesser of two times compensatory damages or \$250,000—in other words, an absolute cap of \$250,000.

For this study, in the spring of 1995 the Violence Policy Center conducted an informal telephone survey to determine which gun manufacturers had employment levels that might allow them to benefit from the "small business" cap. The survey revealed that some of the top handgun manufacturers in the United States might be protected by the limitations on damages intended to protect "small businesses."<sup>37</sup>

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<sup>37</sup> Some companies are included where the number of employees fluctuates or is slightly above the cap. It is not unreasonable to assume that some of these companies would lay off workers to take advantage of the 25-employee threshold. During the survey, one of the manufacturers volunteered that

The following six manufacturers make the majority of cheap, concealable, low-quality handguns commonly known as "Saturday Night Specials" produced in the United States.<sup>38</sup> Many of the handguns made by these domestic companies could not be imported into the United States because they fail to meet the minimum design and safety standards required of imports by the Bureau of Alcohol, Tobacco and Firearms (ATF). However, since these standards do not apply to domestically manufactured handguns, once again, the tort system provides the only regulation of these domestic manufacturers.

Five of the six companies belong to a group of California handgun manufacturers known as the "Ring of Fire."<sup>39</sup> Furthermore, two models of handguns manufactured by these companies represent two of the top three firearms traced to crime by ATF in 1994.<sup>40 41</sup> The six companies<sup>42</sup> are:

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it always kept its work force small enough to avoid Occupational Safety and Health Administration (OSHA) regulations. It would also not be unreasonable to assume that companies would establish different corporate entities each with less than 25 employees to come under the cap.

<sup>38</sup> See e.g. Alix Freedman, "Fire Power: Behind the Cheap Guns Flooding the Country is a California Family," *The Wall Street Journal* (Feb. 28, 1992).

<sup>39</sup> The term "Ring of Fire" comes from the 1994 study *Ring of Fire: The Handgun Makers of Southern California* by Garen Wintemute, MD, MPH of the Violence Prevention Research Program at the University of California, Davis. Wintemute explains, "Americans are familiar with the use of the term 'Ring of Fire' to describe the chain of volcanoes that rings the Pacific Ocean. We have borrowed the term here to describe the chain of handgun manufacturers that rings the Los Angeles metropolitan area."

<sup>40</sup> *1994 Firearms Enforcement Investigative Report*, Bureau of Alcohol, Tobacco and Firearms, (September 1995), p. 77. For a copy of the ATF chart listing the top 10 firearms traced for 1994 please see Appendix Six.

<sup>41</sup> This information could be relevant in product liability suits alleging that firearm manufacturers knowingly market their products to criminals. A California court recently ruled that such a lawsuit filed by the survivors of the assault pistol shooting at the San Francisco law firm of Pettit and Martin may proceed to trial.

<sup>42</sup> In addition, although the manufacture and sale of new assault weapons was banned under federal law in 1994, weapons that existed on the date the ban went into effect are legal to own and transfer. This leaves a significant number of assault weapons that may yet cause death and injury. Consequently, manufacturers of assault weapons, like handgun manufacturers, may benefit from the



*American Derringer Corp.*, Waco, Texas. American Derringer reported 10 employees or less. It manufactured 8,571<sup>43</sup> handguns in 1992, the last year for which figures are available.

*Bryco Arms, Inc.*, Costa Mesa, California. The number of people employed by Bryco was reported to fluctuate between 20 and 30. It manufactured 251,633 handguns in 1993. Bryco was the third top producer of handguns in 1993.

*Davis Industries*, Chino, California. Davis reported 20 to 22 employees. It manufactured 178,271 handguns in 1993. Product liability cases are pending against the company for injuries related to accidental discharge and exploding barrels. Davis was the fifth largest producer of handguns in 1993 according to production data.

*Lorcin Engineering Co., Inc.*, Mira Loma, California. Lorcin was engaged in lay-offs at the time of the survey and reported 26 employees. It manufactured 341,243 handguns in 1993, making it *the number one pistol manufacturer in the nation*. Product liability lawsuits are pending against Lorcin for accidental discharge and point-of-sale negligence.

*Phoenix Arms*, Ontario, California. Phoenix reported between 20 and 30 employees. It manufactured 99,621 handguns in 1993. Phoenix was the seventh top producer of handguns in 1993.

*Sundance Industries*, Valencia, California. Sundance reported five employees. It manufactured 22,118 handguns in 1993.

The companies listed previously represent a small sampling of gun manufacturers that may benefit from the small business cap on punitive damages contained in the Senate-passed liability bill. According to the 1992 U.S. Census of Manufacturers, there were 184 small arms manufacturers in the United States and *only 60* had 20 or more employees. In other words, 67 percent of small arms

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special cap on punitive damages for small businesses. For example, Feather Industries, Inc., of Boulder, Colorado has 12 employees and manufactured 2,079 firearms in 1992, the last year for which figures are available.

<sup>43</sup> All production figures taken from most recent Bureau of Alcohol, Tobacco and Firearms production reports available at time of writing.



manufacturers stand to benefit from the special treatment afforded small businesses under the cap on punitive damages.

### Joint and Several Liability

Both bills would abolish joint liability for so-called non-economic damages (e.g. pain and suffering, loss of a child), holding a defendant responsible only for its comparative share of the loss. Under current law, the victim is fully compensated by making the guilty defendants pay.

The doctrine of joint and several liability is one of the most misunderstood concepts in the area of tort law. Proponents of anti-consumer changes in the law routinely claim that the doctrine results in a defendant being forced to pay for more damages than he caused or for which he is responsible. Another common contention is that it forces defendants who are "10 percent liable to pay 100 percent of the damage award." Yet both arguments ignore the fact that if the defendants do not pay, the victim does.

Arguments to limit the application of joint and several liability often reflect a fundamental misunderstanding of how the doctrine operates. In order for a defendant to be found liable, the conduct must be a necessary or "but for" cause of the injury. In other words, "but for" the negligent actions of any one of the defendants, the plaintiff would not have been injured. In addition, in some cases, a defendant's wrongful behavior may be independently sufficient to cause the plaintiff's injury. In all product liability cases, a defendant is not held liable unless the defendant "caused" the injury. The rule of joint and several liability allocates responsibility for payment of damages among defendants *who have already been found to be responsible for a victim's injuries*. It does not affect the "liability" of any defendant. Under the rule, those parties found liable for injuries are made to

apportion the percentage of fault among themselves rather than placing this burden on the victims. If one or more of the defendants cannot pay their share of damages, the other defendants make up for the inequity in order to ensure that the victim receives full compensation.<sup>44</sup>

Limitations on joint and several liability could be particularly devastating for victims of gun violence in cases in which a manufacturer or dealer as well as the shooter are held liable. Often the shooter is incarcerated or has very limited economic resources. Only the manufacturer or dealer can make any meaningful contribution toward compensating the victim.

This point is illustrated by a recent landmark Ohio decision, *Pavrides v. Niles Gun Show*.<sup>45</sup> The case involved two teenagers who went to a gun show sponsored by Niles Gun Show, Inc. The gun show's security was so lax that the two boys were able to walk away with three handguns, several knives, and a set of brass knuckles. The boys then stole a car and proceeded to drive across lawns and crush curbside garbage cans. Two neighbors chased the boys. The teenagers fired at the men and one, Gregg Pavlides, was shot in the chest. Mr. Pavlides was paralyzed from the waist down. He sued the teenagers and the gun show for negligence as well as wilful and wanton misconduct. In response to a motion by

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<sup>44</sup> The confusion surrounding joint and several liability is eloquently explained by Richard W. Wright: "[A]ssuming that the defendants were equally negligent, the opponents of joint and several liability would assert that to hold either defendant [i.e. the one whose actions were a 'but for' cause of the injury or the one whose actions were independently sufficient to cause the injury] liable for more than half of the injury would result in 'holding a 50 percent negligent defendant liable for 100 percent of the injury for the damages,' [this] reflects a fundamental confusion between each defendant's *individual full responsibility* for the damages that she tortiously caused and the *comparative responsibility percentages* that are obtained by comparing the defendants' individual full responsibility for the injury. Neither defendant in either of these situations was merely '50 percent negligent' or '50 percent responsible.' Such statements make as much sense as saying that someone is '50 percent pregnant.'" Wright, *The Logic and Fairness of Joint and Several Liability*, 23 Mem. St. U. L. Rev. 45, 55-56 (1992).

<sup>45</sup> *Pavrides v. Niles Gun Show, Inc.*, 637 N.E. 2d 404 (Ohio App. 1994).

the defendants that the case be dismissed in favor of the defendant, the plaintiffs submitted an affidavit from another gun show promotor, Bill Goodman, the proprietor of International Gun-A-Rama, Inc. In his affidavit, Mr. Goodman stated:

Based upon my experience and expertise, I am of the opinion that the availability of any type of firearm and ammunition in the possession of a minor creates a potential danger, and it is clearly foreseeable that a weapon in the hands of a minor will result in injury. Based upon the fact that a 13-year-old boy was able to purchase .38 caliber [sic] hollow point ammunition and that three [sic] minors were permitted into the defendant Niles Gun Show and able to easily steal firearms creates a foreseeable danger that said minors would use these firearms to cause injury.

An Ohio jury found the youths and the gun show jointly and severally liable and awarded \$750,000 in compensatory and \$10,000 in punitive damages, although Mr. Pavlides was found 50 percent at fault for giving chase. Under Ohio law and the doctrine of joint and several liability, Niles Gun Show will be liable for the entire amount because the law allows full recovery to plaintiffs in cases, like *Niles Gun Show*, in which the jury finds that punitive damages are warranted. Under the House and Senate bills Niles Gun Show could not be held responsible for all non-economic damages and Mr. Pavlides would not be compensated since the teen defendants were incarcerated and had no assets.

The doctrine of joint and several liability was extremely important in the *Niles* case since two of the defendants were incarcerated. One of the defendants was tried as an adult and convicted of two counts of attempted murder. The other was convicted of complicity and sentenced to a juvenile detention center. Neither defendant had any assets.

In addition to highlighting the importance of maintaining joint and several liability, this case illustrates the valuable function that civil litigation can play in regulating gun shows. On any given weekend, countless gun shows are held across America. Because the Bureau of Alcohol, Tobacco and Firearms simply



does not have the resources to adequately police these shows, they have become a significant source of weapons for drug dealers and other street criminals. For example, gun dealer Richard Yarmy was arrested in June 1995 on a fugitive warrant in Virginia stemming from charges in New York. New York authorities charged that Mr. Yarmy had used his Federal Firearms License to illegally sell guns that he knew were being resold to Manhattan street criminals. According to the New York County District Attorney, Mr. Yarmy had become "one of the highest volume dealers" at gun shows along the East Coast.<sup>46</sup>

Even many gun dealers acknowledge the problems that exist at gun shows. In the 1992 Violence Policy Center study *More Gun Dealers Than Gas Stations*, Bill Bridgewater, a North Carolina stocking dealer and head of the National Association of Stocking Gun Dealers, complained that violations by out-of-state gun dealers selling at gun shows occur all the time:

If you can't see them, you're blind. When you go to a [North Carolina] gun show and you see every state licensee around you for 250 to 300 miles and you chat with various folk standing behind their table of handguns...[from Ohio, Florida, Virginia], does that give you a clue? There are a lot of [illegal sales being committed] under the color of an FFL [Federal Firearms License holder] traveling state to state every weekend and attending firearm shows and selling firearms unlawfully in those states. The principal reason they do is that at every gun show in this nation no one pays any attention to the law.

Cases like *Niles Gun Show* can help ensure that gun show promoters take care to provide adequate security and establish precautions to exclude dealers who are making illegal sales.

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<sup>46</sup> "Local Gun Dealer is Held," *The Franklin News-Post*, Rocky Mount, Virginia (June 23, 1995).



## Product Seller Liability

One of the least discussed and potentially most dangerous provisions in the House and Senate bills are those limiting the liability of product sellers, distributors, and importers. The product seller provisions of both bills would drastically change the law applying to firearm dealers, wholesalers, and importers.

### *Defective Sales*

Historically, vendors who knowingly sell firearms to dangerous buyers can be held liable for any consequences caused by the sale. Under the product seller sections of the pending bills however, gun dealers might only be liable for selling a bad product—not for making a bad sale. Application of the bills would *not* be limited to traditional "product liability" suits that allege some product defect. The definition of "product liability action" is set forth as "a civil action brought on *any theory for harm caused by a product.*" [italics added] This language makes it clear that the legislation would apply to cases brought by victims injured by firearms as a result of the negligent or unlawful sale of that firearm—e.g., where a gun dealer knowingly sells a firearm to a minor, felon, or mental incompetent. The bills would, to slightly different degrees, limit the liability of sellers to instances in which the seller failed to exercise reasonable care with respect to the product. This means that in many instances gun dealers would escape liability for selling firearms and ammunition to obviously dangerous individuals such as felons or mental incompetents. If enacted, this provision would turn longstanding legal tradition on its head.

For gun dealers, a bad sale can have deadly consequences. For example, in 1992, in the case of *Farley v. Guns Unlimited*, a Virginia jury ordered Guns Unlimited to pay \$105,000 to the survivors of a teacher slain by a student armed

with an assault pistol.<sup>47</sup> The 15-year-old student, Nicholas Elliot, had obtained a MAC-11 assault pistol from Guns Unlimited by using his 37-year-old cousin as a "straw purchaser" ("straw purchases" occur when a prohibited buyer, such as a minor or a convicted felon, uses a legal buyer as a go-between). It is illegal under federal law for gun dealers to sell firearms to minors. Trial testimony convinced the jury that the store clerk had reason to believe the 15-year-old was the real buyer but sold the weapon anyway. Elliot had gone into the store with his cousin, picked out the MAC-11, and engaged the clerk in a lengthy discussion about the handgun's features. Elliot then handed his cousin \$280 and told the clerk that he wanted the MAC-11. Elliot left the store with the gun in hand. He later used it to shoot Karen Farley at the Atlantic Shores Christian School.

On this issue, the Senate bill is slightly less restrictive than the House bill since the Senate bill specifically excludes the theory of "negligent entrustment"—a theory often used in cases like *Farley v. Guns Unlimited*. The House bill has no such exclusion.

The Senate language, however, may be inadequate to protect victims seeking recovery on the related theory of negligence *per se*—in which the defendant is automatically liable because a plaintiff demonstrates that the defendant violated a criminal law. The fact that the Senate specifically excluded the theory of negligent entrustment could be interpreted by courts as an indication that other theories were intended to be affected by the bill. This could have the effect of negating a growing body of case law recognizing violations of the federal Gun Control Act of 1968 as sufficient to prove negligence *per se* under state law.

For example, a Florida appeals court recently ruled in a case against a Wal-Mart department store that negligence *per se* could apply to a vendor who sold a

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<sup>47</sup> *Farley v. Guns Unlimited*, No. CL89-2047, (Cir. Ct. for the City of Virginia Beach, 1992).

box of ammunition to two young men without requesting identification or proof of age.<sup>48</sup> It is illegal under federal law to sell ammunition to underage buyers. Four hours later, the two robbed an auto parts store and murdered the clerk. The clerk's widow sued the seller for wrongful death alleging that the sale was in violation of a federal statute.

### *Strict Seller Liability*

The bills virtually absolve product sellers from strict liability—liability assessed without regard for fault. This rule would eviscerate the District of Columbia's landmark "Assault Weapon Manufacturing Strict Liability Act."<sup>49</sup> This 1990 statute established automatic liability for manufacturers, importers, and dealers of assault weapons when their products cause bodily injury or death in the District of Columbia. The statute was enacted because, according to the City Council:

Assault weapons, and the manufacture and distribution of assault weapons are abnormally and unreasonably dangerous, and pose risks to the citizens and visitors to the District which far outweigh any benefits that assault weapons may bring. The manufacture and distribution of assault weapons are among the proximate causes of the rising number of homicides in the District, exposing the citizens and visitors to the District to a high degree of risk of serious harm. As between the manufacturer or dealer of an assault weapon on the one hand and the innocent victim of the discharge of an assault weapon on the other hand, the manufacturer or dealer is more at fault than the victim.<sup>50</sup>

The portion of the District's law that applies to dealers and importers would be preempted by the bill. Moreover, other states or localities would be prohibited from passing measures similar to the District's aimed at holding gun dealers

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<sup>48</sup> *Coker v. Wal-Mart Stores, Inc.*, 642 So. 2d 774 (Fla. App. 1 Dist. 1994).

<sup>49</sup> Dist. of Columbia Code §§ 6-2391-2393 (1990).

<sup>50</sup> Dist. of Columbia Code § 6-2391 (1990).



responsible for injuries caused by the sale of assault weapons or other specific category of firearm.

Measures like the District's statute can contribute to effective enforcement of state and federal assault weapon bans. Although assault weapons were recently banned by federal law, hundreds of thousands remain in circulation and manufacturers are allowed to continue to sell weapons stockpiled before the ban took effect.

The limitations on seller liability would also adversely impact more traditional product liability lawsuits. For example, in *DiFrancesco v. Excam, Inc.* a Pennsylvania court held the manufacturer, distributor, and seller of a defectively designed and manufactured handgun responsible under a theory of strict liability for severe injuries caused to the user of the gun. The handgun, a TA38S derringer pistol, was manufactured by Excam and distributed to Joffe's Gun Shop by RSR Wholesale Guns.<sup>51</sup>

The plaintiff in the case was working in his son's bar and carrying the gun in the pocket of his vest. He bent over the ice machine and the hammer of the gun struck a box and the gun discharged. The bullet penetrated his abdomen and exited his posterior right flank. Even the weapon's instruction manual acknowledged that the pistol could discharge if it were dropped or bumped. Two expert witnesses in the trial testified that the pistol's capacity to discharge if the hammer is inadvertently bumped constituted a design defect. Yet the gun was intended to be carried in a pocket rather than a holster, virtually guaranteeing that it would be bumped.

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<sup>51</sup> *DiFrancesco v. Excam, Inc.*, 642 A. 2d 529 (Pa. Super. 1994). RSR Wholesale Guns' senior vice president and legal counsel, Mike Saporito, is also the current chairman of the board of the American Shooting Sports Council, a member of the American Tort Reform Association. Saporito also heads Mike's Militia, an organization of gun dealers.



The court upheld the \$125,000 verdict against the three defendants stating, "The evidence in the instant case supports the jury's findings that the TA38S derringer pistol designed and manufactured by Excam was defective in both its design and manufacture."

Under the new product seller rules contained in the bills, neither Joffee's Gun Shop nor RSR Wholesale Guns could have been held strictly liable despite the obvious and dangerous defects present in the Excam derringer.

### Statute of Repose

The House-passed legislation contains a "statute of repose" which bars product liability suits for products more than 15 years old.<sup>52</sup> This provision would be particularly harmful in the case of firearms which are designed to, and in fact do, have a useful life far in excess of 15 years. To arbitrarily cut off the liability of gun manufacturers would leave firearm owners unprotected against latent manufacturing or design defects that may not become manifest for decades.

Under current law, in some states consumers can recover for injuries caused by an older firearm when the victim can prove that the injuries were caused by a defect in the design or manufacture of the gun that was present when the firearm was purchased. The best example of the fairness of allowing consumers to recover for injuries caused by old guns is Sturm, Ruger & Company's Old Model single action revolver.<sup>53</sup> More than 600 people, including children, have been killed or injured by accidental discharges from Old Models. The revolvers were

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<sup>52</sup> The Senate bill's statute of repose applies only to "durable goods" defined as a good used in a trade or business or held for income production.

<sup>53</sup> "Wild West Legacy: Ruger Gun Often Fires if Dropped, But Firm Sees No Need for Recall," *Wall Street Journal*, (June 24, 1993). Please see Appendix One for a full copy of the article.

manufactured from 1953 until 1972, after which the design of the gun was modified to include a transfer bar safety.<sup>54</sup> However, by the time the gun was redesigned, 1.5 million revolvers were in the hands of consumers. Nevertheless, it was 10 years before Sturm, Ruger took any action to remedy the hazard presented by the Old Models. In 1982 the company offered to retrofit Old Models with a transfer bar safety, but by the beginning of 1993, only 130,573 had been retrofitted. The company still distributes flyers telling owners of Old Model revolvers, "Ruger wants to give you, and install FREE, a unique new improvement." In its 1994 catalog, Ruger touted a "FREE Single-Action Revolver Safety Offer." The offer says that the safety conversion "can help prevent accidental discharges caused by a drop or blow to the hammer if the user has failed to take the basic safety precaution of keeping the hammer down on an empty chamber. That's very important!" Despite Ruger's knowledge of the defect in the design of the Old Model,<sup>55</sup> the company still refuses to issue a recall of the guns.

Meanwhile, gun owners and bystanders continue to be killed and injured by these revolvers. For example, in 1990 Andrew Baxter, a minor, was shot in the abdomen when his father's Old Model accidentally discharged. The gun was manufactured and purchased in 1968, more than 20 years prior to the accident.

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<sup>54</sup> The frailties of the design of the Old Model are acknowledged even in the gun press. In a review of Ruger's new "Vaquero" revolver in the October 1993 edition of *Handguns*, the Vaquero's firing mechanism is described as being identical to that currently used in Ruger's updated "Blackhawk" (as the Old Model single action is commonly known) which incorporates a transfer bar safety device. The article explains, "With the original...Blackhawks made before 1973, the firing pin can come into contact with the cartridge primer if the hammer receives a sharp blow. Should this revolver accidentally be dropped, there is a strong possibility that it will land on its hammer, causing the gun to discharge."

<sup>55</sup> In 1979, the Supreme Court of Alaska upheld an award of punitive damages in a case in which a .41 Old Model single action revolver that the plaintiff was loading slipped out of his hands. When he tried to catch the gun it fired, causing serious injury to his leg. The court's opinion stated that "[the] manufacturer knew that its product was defectively designed and that injuries and deaths had resulted from the design defect, but continued to market the product in reckless disregard of the public's safety...." *Sturm, Ruger & Co., Inc. v. Day*, 594 P. 2d 38, 47 (1979).

The Supreme Court of Connecticut ruled that a product liability suit against Sturm, Ruger for the injuries suffered by Andrew Baxter was not time barred.<sup>56</sup> Sturm, Ruger had argued that since the gun was purchased in Oregon which has an eight year statute of repose, the case should be dismissed. The court ruled that the law of Connecticut, where the lawsuit was filed and Sturm, Ruger is headquartered, should prevail. Because Connecticut law allows plaintiffs to sue when they are injured by older products, the Baxter suit will go forward.

As recently as January 1996, an Old Model killed Richard Jaramillo, of Santa Fe, New Mexico, when it fell to the ground and discharged. The same handgun had killed Jaramillo's cousin, Bernie Trujillo, three years earlier. The revolver discharged when it was struck against the tailgate of a truck. The bullet struck and killed Trujillo, who was standing five feet away.<sup>57</sup> If the 15-year statute of repose becomes law, families like Mr. Jaramillo's would be barred from filing a lawsuit against Sturm, Ruger since the gun was manufactured before 1974.

The example of the Old Model clearly illustrates the unfairness inherent in an arbitrary time bar on the filing of a product liability lawsuit. The "statute of repose" established by the House bill fails to take into account the useful life of a product. Under the 15-year time limit established by the House bill, Sturm, Ruger would be immune from any future lawsuits by consumers injured by an Old Model.

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<sup>56</sup> *Baxter v. Sturm, Ruger & Company, Inc.*, 644 A.2d 1297 (Sup. Ct. 1994).

<sup>57</sup> "Gun Accidentally Killed Two Members of Family," *Santa Fe New Mexican* (February 6, 1996). Please see Appendix Seven for a copy of the article.



## Section Three

### Conclusion

The firearms industry manufactures one of the most dangerous and deadly consumer products on the market today and yet remains exempt from the health and safety standards applied to virtually all other industries that manufacture and sell consumer products. The changes in our nation's civil justice system that have been passed by Congress would demolish any incentives for gun manufacturers and sellers to make defect-free products and ensure that the weapons end up in the hands of legal buyers. These anti-consumer proposals are supported by the National Rifle Association and such firearms industry trade associations as the American Shooting Sports Council—despite the likelihood that implementation of these proposals will increase the number of gun owners, hunters, and bystanders injured each year by unintentional discharges. Specifically, the proposed changes would—

Severely reduce the incentives for manufacturers to take steps to ensure that guns and ammunition are free from defects in design or manufacture by severely diminishing the amount of punitive damages that may be awarded against corporations which recklessly or wilfully cause injury.

Significantly reduce the liability of gun dealers by eliminating strict liability for product sellers.

Institute an absolute cap of \$250,000 on punitive damages against manufacturers with fewer than 25 full-time employees. This provision would protect several of the top pistol manufacturers in the country.

Completely eliminate liability of manufacturers for guns that are more than 15 years old. This would cut off the liability for many dangerous, defective firearms including the Sturm, Ruger Old Model single-action revolver, a revolver manufactured between 1953 and 1972 that has killed or injured hundreds of victims and continues to cause injury.



The courts have played an increasingly important role in efforts to reduce firearm-related death and injury. Much of this progress, however, will come to a screeching halt if the bills passed by the House and Senate become law. The firearms industry already enjoys a special exemption from regulation. Common sense dictates that the civil justice system's regulatory and compensatory functions must remain potent.

## APPENDIX ONE

*Wild West Legacy: Ruger Gun Often Fires If Dropped,  
But Firm Sees No Reason For Recall*

and

Sturm, Ruger & Company, Inc. "Old Model Safety Offer"

## Wild West Legacy

### Ruger Gun Often Fires If Dropped, but Firm Sees No Need for Recall

### Company Settles Hundreds Of Lawsuits, Maintaining The Revolvers Are Safe 40 Years of Injuries, Deaths

By ERIK LARSON

Staff Reporter of THE WALL STREET JOURNAL

Early on July 23, 1991, Omer Gouner Jr., 45 years old, of Metairie, La., wheeled his bicycle into a back room at the convenience store where he worked. An instant later, he was on the ground with an immense hole in his leg, feeling "fantastic pain."

On April 19, 1959, Gene Lee of Louisville, Ky., leaned down to gather some worms from under a log he had just kicked over. He was 15 at the time. He remembers the blast and seeing blood on his shirt, followed by an odd sense of disorientation. "I started coughing up a lot of blood," he says. "That scared me pretty good."

A decade earlier, on July 27, 1977, Paula Kaye of Tucson, Ariz., was just about to climb into a pickup truck when she heard something clunk to the ground. She was 24 years old. "My family and friends were told not to have any hope," she says.

Although the three incidents span nearly 15 years, they share a common element: Each occurred when a revolver made by Sturm, Ruger & Co. of Southport, Conn., fell to the ground and fired of its own accord. These were not isolated accidents. The three victims joined more than 600 other men, women and children wounded in accidental firings reported to the company and linked to the same line of guns. Over 40 died; scores were severely wounded. The resulting lawsuits — hundreds of them — have dogged Ruger for decades; they charge that the guns are prone to fire when bumped or dropped, and that Ruger knew of the hazards before it manufactured the first one in 1953. Ruger stopped making the guns in 1972, but the lawsuits and accidents continued.

#### Secret Settlements

In the early 1950s, Ruger faced as many as 60 such lawsuits at a time. It has settled most, often through pretrial agreements that require the plaintiffs to keep the amounts secret. One recent settlement, disclosed in a court action, was for \$3.5 million.

Yet Ruger never recalled the guns, at least not in any fashion resembling recalls orchestrated by the Consumer Product Safety Commission, which requires that companies candidly report the threat of death or injury posed by an alleged defect. Ruger disclosed only bare details of the guns' accident record in its routine shareholder communications, reserving a fuller, more graphic account for its formal filings to the Securities and Exchange Commission. It never told customers of the many injuries associated with its guns — even in 1952, when it offered to modify the weapons at no charge. It advertised the fix as "a unique new improvement."

Ruger officials referred all calls from this newspaper to James P. Dorr, a Chicago attorney who has been leading Ruger's product-liability defense since 1950. The company never recalled the guns, known collectively as Old Model single-action revolvers, because there is nothing wrong with them, Mr. Dorr says. "A recall involves calling back a product which is defective."



William B. Ruger

The Old Model single-action revolver is not defective. It's safe to use when it's handled properly." The instruction books that accompanied the guns outlined such safe-handling practices, he says. He also contends the accident rate associated with the Old Model line doesn't support defect claims. "... I don't mean to sound callous in talking about rates, but if you look at it objectively the accident rate with this gun has not been bad."

Although William B. Ruger, the company's 76-year-old founder and chief executive officer, would not agree to be interviewed, in a letter to this newspaper, dated June 8, 1993, he wrote: "The simple facts are that literally millions of users have fired billions of cartridges through these revolvers in the forty years since their introduction, and only a very tiny fraction of far less than 1 percent of them have ever experienced any problems. ... To suggest that the revolver that is the very symbol of the American West is defective and should be recalled is a ludicrous notion."

Guns, of course, are inherently dangerous products, and accidents can occur with any gun. But plaintiffs allege that the rate of accidents associated with Old Model revolvers is inordinately high. Indeed, as of September 1981, the latest date for which this newspaper found court disclosure of accident rates for all Ruger guns, the company's 1.5 million Old Model revolvers accounted for 190 accidental-discharge reports; its 4.4 million other guns sold up to that point accounted for only 43. In a 1990 deposition, Mr. Ruger agreed that the accident claims associated with the Old Model guns were higher than for the company's other revolvers. Asked if the

rate was "vastly higher," he replied, "Yes."

The 40-year saga of the Ruger Old Model is little known beyond the ranks of victims and their attorneys; and, in most respects, the company enjoys robust health, despite a political environment increasingly hostile to guns. Its stock, listed on the New York Stock Exchange, has traded this year at a five-year high. Its balance sheet remains free of debt; last year its net income advanced 87% to \$22.2 million. On May 14, the company told the SEC in a registration statement that Mr. Ruger intended to sell up to 2 million shares or almost half of his current 33% stake in the company, estimating the sale would bring him as much as \$47 million. The stock closed yesterday at \$23.50. (The sale has not yet begun.) Mr. Ruger is widely considered by gun owners and the gun press to be a design and marketing genius.

Attorneys and firearms experts familiar with the quiet controversy over the Old Model say it has remained Ruger's secret largely because firearms have always been exempt from product-safety regulation, and thus no agency was empowered to investigate accident reports. The federal Bureau of Alcohol, Tobacco and Firearms has no authority over firearm defects and design. The Consumer Product Safety Commission has none either. It can order the recall of toy guns — just not the real thing.

"It's not the defect that's the skeleton in the closet," says Edward J. Helden, a former official of the commission and now a product-safety consultant who has testified against the company. "It's the way it's been handled by Ruger."

But Ruger's behavior, others caution, can only be evaluated in the context of America's gun culture, which reveres the guns of the American frontier. The Old Model revolvers were deliberate variations of the Colt 1873 Peacemaker, the classic cowboy six-shooter sometimes dubbed "the gun that won the West." In depositions and court testimony, Mr. Ruger said he chose not to correct the most problematic aspects of the old-fashioned design in order to preserve its authentic look. An appellate court in Kentucky chided that such a rationale could also be used to justify the reintroduction of "a hydrogen-filled zeppelin exactly like the Hindenburg."

Yet many fans of Ruger's revolvers remain loyal to the company even after experiencing their own accidental firings, some of which resulted in horrendous injuries. Several still-satisfied customers reported two accidents involving their Old Model guns; one reported three.

"We are very forgiving with firearms manufacturers, whereas we might be far less forgiving of General Motors for hanging gas tanks outside the frames of their pickups," says Harold Smith, an attorney in Coeur d'Alene, Idaho, who represented a plaintiff in an Old Model case in 1984. "We will forgive Bill Ruger because Bill Ruger was building something traditionally American. He was copying Sam Colt's design."



model revolvers, however, were now in the hands of shooters. The first accident recorded by Ruger occurred in 1956. The first negative jury verdict—for \$15,000—was reached in 1964. In 1976, an Alaska court slammed the company with a \$2.9 million punitive-damages award. The state supreme court eventually reduced it to \$500,000 but upheld the verdict, citing trial evidence that "indicated that top officials at Ruger knew that the safety and loading notches of their single-action revolver presented a danger of accidental discharge. ..."

For Ruger, suddenly the stakes had gotten a lot higher. In 1979 it began setting aside money to pay for settlements and judgments, an accrual fund that as of last year totaled \$16 million. Far from recalling the guns, the company dug in and intensified its resistance. In 1980 it hired a Chicago law firm, Wildman, Harrold, Allen & Dixon, which represents many domestic gun manufacturers, to coordinate its defense across the country. The firm deployed Mr. Dorr, a partner, to the task.

Ruger's defense became a full-time endeavor for Mr. Dorr.

In 1981, in an SEC filing, the company disclosed it was the target of 60 suits, virtually all associated with its Old Model single-action revolvers. A March 1990 filing captured the broad sweep of Ruger's troubles. The "Form 8" disclosure, filed by Ruger as an amendment to its 1988 annual 10K report, contained 66 pages of one-paragraph descriptions of lawsuits and list after list of settlements connected to Old Model litigation dating back to 1982.

Mr. Dorr contends the volume of suits and settlements presents a misleading picture. "If you're going back to the 1970s, this was something that virtually any industry or company you wanted to look at found developing on them," he says. Ruger settles most cases, he says, because that is often the most cost-effective resolution. Where cases have gone all the way to a final court decision, he adds, Ruger has won most. But only 17 cases have gone that far, of which Ruger won 12, some after appealing lower court verdicts against the company. Many of the lawsuits, Mr. Dorr contends, were brought by a small band of opportunistic attorneys who made a career of pursuing Ruger.

Indeed, Old Model litigation became a minor industry. Attorneys and expert witnesses on both sides handled dozens of Old Model cases each. Stanton Berg, a Minneapolis firearms examiner, says plaintiffs hired him in 98 cases. The total, he says, is evidence not of a personal vendetta but of the high rate of Old Model accidents. "I have never had a Smith & Wesson drop case," he says.

Smith & Wesson Corp. made single-action revolvers in the late 19th century; the guns were equipped with a "rebounding hammer" that automatically kept the hammer off the firing pin. The company made double-action revolvers with sophisticated safety devices from the early 1900s onward. George Colclough, a Smith & Wesson vice president, says the company doesn't keep a tally of accidental firings involving its guns. "We don't have any statistics," he says, "because it doesn't happen."

Mr. Dorr counters that Smith & Wesson's early single-action revolvers could also be fired from a blow to the hammer, and that its double-action guns simply can't be compared to Ruger's Old Model revolvers. "You're talking about an entirely different mechanism ... you're trying to compare apples and oranges."

In 1982, Ruger came as close as it ever would to recalling its Old Model guns. It offered to retrofit them with a device similar to the one installed in its New Model guns, at no charge. Even though the retrofit eliminated the dropping hazard, Ruger insisted the program was by no means a recall. A recall, William Ruger said in a 1985 deposition, "really is ostensibly to correct a defect and we weren't doing that." Rather, he said, he saw it as a means of "establishing an immense bond of goodwill" with Ruger's customers. In fact, he said in a 1983 deposition, he had originally planned to sell the retrofit as an after-market accessory.

The offer excluded 200,000 compact Old Model guns, called Bearcats, which were too small to accommodate the modification. (Ruger included the Bearcats in 1993.) Ruger promised to return the original parts to gun owners once the retrofit had been accomplished. In big, bold print, its ads for the program said, "Ruger wants to give you, and install FREE, a unique new improvement." In far smaller print—roughly the size of the type on this page—Ruger assured owners the conversion would not affect the appearance of the gun, and noted the change would "help prevent accidental discharges caused by a blow to the hammer if the user has failed to take the basic safety precaution of keeping an empty chamber under the hammer."

Meanwhile, Ruger's 1982 10K report to the SEC disclosed that it faced 50 pending lawsuits, almost all involving Old Model revolvers, and had settled 20 other Old Model claims for \$2.6 million, equivalent to 23% of its net income for the year. The settlements included \$500,000 paid to the husband of Mary McKenna, a customer at a Milwaukee service station shot dead when a Ruger in a briefcase fell from a rear counter, discharged and fired a bullet into her heart through her back.

"The whole ambience of the ad was not that it was a safety thing," says Mr. Heiden, the safety consultant, "but to make an improvement to an already wonderful gun." Mr. Ruger himself said in a deposition that people reading the ad would perceive an "incidental" safety benefit, but "wouldn't have the impression that there was a safety problem."

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Ruger's retrofit offer nonetheless brought thousands of responses, including many letters

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reporting serious accidents the company hadn't

known about. One woman, in a letter disclosed

in a deposition, described "the accidents and heartaches" her husband's Old Model revolver had caused her family. "On November 20th, 1981," she wrote, "my 12-year-old son was showing it to two friends when it was dropped on the coffee table and discharged, killing my only child. On April 12th, 1982, it was again dropped by my husband and discharged, wounding him in the upper right leg. ..."

The woman, identified in court records only as Mrs. Harrell, called the retrofit offer "small compensation considering the fact that it was made unsafe and has cost the life of my son and wounded my husband."



## Ruger's Old Model guns have fallen from dash-

boards, shelves, night tables, even a wall display, according to Ruger's records and victims' depositions; they have struck floors, rocks and,

In one instance, a toilet seat. They discharged on contact, firing bullets into bystanders, hunters, children and wives. The accidents "all have the same quality, this kind of shocking, unexpected suddenness—this disastrous effect in a seemingly innocent scene," says William Bliss, president of Human Factors Inc., Oregon, Wis., hired by plaintiffs' attorneys in 15 cases to evaluate the instruction books that accompanied the guns. "It would be like all of a sudden being attacked by a kitchen knife."

Ms. Kaye, now 39, got shot just before a trip to a convenience store. The driver knocked his Old Model Ruger off the passenger seat as he cleared a place for her to sit. There was a bright flash. Remarkably, she felt little pain, even though a .357 Magnum Old Model revolver had discharged a bullet upward into her vagina, destroying her uterus, macerating a dozen feet of intestine and severely damaging a crucial transabdominal vein. She walked a few steps, then stretched out on the ground.

She managed to stay calm until someone mentioned the caliber. "Then I got scared," she recalls. "Because I'd been raised with guns. I knew the power of a .357." During emergency surgery, she lost vital signs three times. Ruger paid her \$500,000 in a pretrial settlement. (Ruger stopped disclosing settlement amounts to the SEC in 1984. As a general rule, the SEC doesn't require such disclosure.)

On Nov. 11, 1983, Carlton Norrell, on a week-long hunting trip in Colorado, began changing a tire when a close friend, William Kerr, accidentally dropped his .41 Magnum Old Model revolver, according to Mr. Kerr's deposition. The bullet struck Mr. Norrell in the temple and bored in a straight line across the front of his skull.

"Where are my glasses?" Mr. Norrell asked, after he slumped against his friend's leg.

"I don't know where your glasses are, but you won't need them," Mr. Kerr replied. "This bullet has just blown both your eyes out."

Mr. Norrell died eight days later. Ruger settled his case for an undisclosed amount in 1986.

An airport baggage handler died when he moved a duffel bag containing a loaded Ruger and got shot in the head. One young man was killed on the first day of his honeymoon, at a remote cabin in Alaska. Ten people named Smith got shot. Two hunters were wounded when the antlers of the animals they had just killed bumped against their holstered Rugers.

"These accidents are going to keep on happening," says Mike Thomas, a Lubbock, Texas, attorney who represented the victim of an August 1990 accident. "It's just the nature of the beast. There are a lot of guns out there."

More than 1.5 million Old Model revolvers remain in the hands of consumers. Nearly 1.4 million have never been returned for modification. If the guns were cars the debate over their safety would have ended long ago. Cars wear out. The useful life of a gun, however, can extend for a hundred years—as Winchester Ammunition Co. acknowledged in 1990 when it recalled its Model 100 rifles made from 1960 to 1973 to fix a defective firing pin. (Ruger sold 84% of its Old Model guns during the same period.) The fact that the rifles had been out of production for 17 years didn't matter, says Art Ambrosi, Winchester's recall coordinator. "We know that the lifespan of guns is relatively long, and we still believed a lot of these guns would be in consumers' hands."

The company ordered the recall after learning of a single, nonfatal injury.

Ruger produced its first Old Model revolvers in 1953. Initially selling them for as little as \$57.50 each, to capitalize on the nation's then-surge interest in the Wild West. In 1952 alone Hollywood released 40 feature-length westerns. The first TV westerns, such as "Hopalong Cassidy," "Roy Rogers" and "The Lone Ranger," had by then become hugely popular, and dozens more would soon appear. Ruger offered a close copy of the gun the heroes and villains carried, but at an affordable price and with certain updates, such as stronger internal springs and better sights. The guns came in three basic models—the Single-Six, Blackhawk and Bearcat. Ruger advertised the Blackhawk as "a fully perfected firearm."

But guns embodying this "single-action" design were anything but perfect. "If you drop one and it doesn't go off, you're lucky," says Robert J. Barnes, a former firearms enforcement officer with the Bureau of Alcohol, Tobacco and Firearms. "People buy these guns based on their TV educa-

tion. When you design or put a reproduction of a Colt on the market, if it falls into the hands of an inexperienced shooter—and I would say that that weapon in particular appeals to the inexperienced shooter—then you have a problem."

The hazards were well known even in the late 19th century, so much so that in 1894, Iver Johnson, a firearms manufacturer, dumped the single-action design altogether and introduced a revolver specifically built to avert unplanned firings—and sold eight times as many guns as Colt sold of its Peacemaker. Iver Johnson's ads declared: "A revolver that can be discharged in any other way than by pulling the trigger is a mechanical absurdity as well as a constant danger."

With a single-action revolver, the shooter must first cock the gun by pulling back the hammer with his thumb, unlike in a modern double-action revolver where one pull of the trigger both cocks the gun and fires it. As the hammer of a Ruger single-action revolver travels backward, notches in its base make a distinctive ratchet sound familiar to any fan of westerns. Ruger called the first notch the "safety notch," the second the "loading notch." The last is the full-cock position.

Contemporary common wisdom holds that an uncocked gun is a safe gun. Carrying an Old Model Ruger fully loaded and uncocked, however, can be deadly. The hammer rests against one end of the firing pin; the other end of the pin touches the igniter, or "primer," on a live cartridge. In this condition, Mr. Ruger testified, even a "negligible" blow to the hammer will fire the gun. In a deposition he likened carrying the gun this way to "carrying a hand grenade."

The safety notch provides little added protection. Even with the hammer firmly engaged in the safety notch, Ruger's Old Model revolvers can still be fired by a hard pull on the trigger, or by dropping the gun on its hammer. The latter was a well-known characteristic, Mr. Ruger said in a 1982 deposition: "... there was the understanding from 1873 forward that a sufficient drop would cause the hammer to defeat the ... safety notch."

Yet Ruger never conducted preproduction tests to see how resistant to failure the notch actually was, according to Mr. Ruger's depositions. Moreover, the company kept the safety gap between the hammer and firing pin as small as possible—roughly the width of a paperclip—to preserve its frontier appeal. "That's just what was wanted ... from an appearance point of view," Mr. Ruger said in a deposition. To have the hammer positioned farther back, he said, would have been "objectionable."



He expected customers to know they should load a single-action revolver with only five bullets, and keep the empty sixth chamber under the hammer. In his recent letter, he wrote: "Of course the [Old Model revolvers] are safe to use. All that is required is that modicum of knowledge on the part of the user not to carry the hammer resting down on a loaded cartridge. Any shooter should know this, and as you know we've specifically warned against this practice in our instruction manuals since 1953."

But as the guns changed hands, the instruction booklets often got lost. Moreover, survivors say the

principle of carrying five is far from obvious. On Sept. 23, 1953, Nick Koozmin looked down to see spurts of arterial blood as thick as his thumb bursting from the remains of his knee. He concedes he was carrying his .357 Magnum Old Model Ruger fully loaded, but asks, "Who would think that on a six-shooter you would only use five bullets?" Gene Lee, the Kentucky boy shot while gathering worms, survived a wound to his heart when the Old Model Ruger he had borrowed from his uncle fell from its holster. "It's got six chambers, it takes six bullets," he says. "It still shouldn't go off when it hits the ground. No gun should."

Ruger settled both cases.

As accident reports received by the company accumulated, "carry five" became a kind of mantra in Ruger's defense strategy. From 1981 through 1983, Ruger broadcast public-service TV ads on how to handle single-action guns of any

kind, warning gun owners always to keep one chamber empty. In magazine advertisements, including one titled "The Empty Chamber," Ruger shifted the blame for accidents to consumers, while at the same time never disclosing the swelling accident rate or even using the words "injury" and "death." One ad declared: "Now, with the growth of consumerism, people who should know better are acting as though guns, like electric toasters, are meant to be foolproof. There is no such thing as a foolproof gun."

At times, however, the company itself seemed of two minds on the "carry five" principle. Instruction books that accompanied Old Model guns produced before 1972 said that under "normal" circumstances the gun could be carried safely even if fully loaded, provided the safety notch was engaged, but that many people "prefer" to load only five rounds. In 1972, this "special note" became a "safety note," which said: "Load only five chambers, placing the empty chamber in alignment with the firing pin. ..." But Ruger's service manager, the late Robert Dearden, testified in a 1975 Kentucky trial, "If I was in the field I would carry it with six rounds in it, I personally."

Mr. Ruger said in a 1955 deposition that he knew some people would carry the gun with six bullets. In a 1953 deposition he also said he knew some customers would now and then drop their guns. He himself, he added, had dropped guns "some time or another." In a 1990 deposition, he denied dropping a gun, but conceded that on two occasions he had fired guns by accident.

The company made at least three attempts at making the Old Model guns less prone to accidental discharge, all the while denying that anything needed correcting. Mr. Ruger testified

in 1974 that while designing the first Old Model revolver he considered installing an "inertia" firing pin, used in other guns to keep the pin off the cartridge until the trigger was pulled. After a few hours of experimentation, he decided the idea wouldn't work.

In 1965 he assigned a recently hired firearms designer, Henry Into, to develop a safety device but within three months took him off the project and assigned him to begin work on a new "double-action" revolver. Mr. Into's ideas for the safety didn't seem promising, Mr. Ruger said in a 1952 deposition. At the same time, he said, "there was a tremendous pressure on us from the sales side" to develop a double-action gun, "so it was a natural deployment of talent to let him go to that."

Ruger's double-action revolver, introduced in 1971, contained a safety mechanism designed to avert accidental firings. The company continued making and selling its Old Model guns.

A different kind of pressure soon forced the company's attention back to the kind of device Mr.

Into had hoped to develop for the single-action guns. Federal regulations based on the Gun Control Act of 1968 and administered by the Treasury Department stated that foreign-made handguns could be imported only after passing a "drop test" to determine whether they would fire if dropped.

Ruger worried that the same standard would soon be applied to domestic guns and conducted its own tests in 1969, according to Mr. Dearden, the former service manager. "We knew before we started the test," he said in a deposition, "that no single-action gun would be able to stand that type of punishment."

The gun fired on the second try, he said.

Mr. Ruger assigned designer Larry Larson to find a way to pass the test. "We were not trying to put a safety on the gun," Mr. Larson insisted in a deposition. "This was not the object at all." Rather, he said, "... we were trying to foresee

some possible legislation dealing with dropping of a revolver and having it discharge from a given height." Adding another safety, he argued, "would defeat the whole esthetics" of the gun's design.

Congress never extended the drop test to domestic guns. Nonetheless, Mr. Larson did indeed design an effective safety mechanism, one strikingly similar to that introduced more than 75 years before by Iver Johnson. Ruger halted Old Model production at the end of 1972, and in January 1973 introduced a line of "New Model" single-action revolvers which incorporated the mechanism but otherwise retained the Wild West look.

Later that year one of the company's own expert witnesses, Robert Hillberg of Cheshire, Conn., cited the New Model revolvers as "proof" that hazards associated with the old guns "should have never existed in the first place." Ruger had asked Mr. Hillberg to analyze the Old Model guns from a plaintiff's perspective. His review of the Old Model line was scathing. He wrote: "This archaic design at best can be described as an accident waiting to happen."



Accident victims and their attorneys say Ruger needs to do more to get its guns back for repair, perhaps even offer cash bounties or an exchange of New Model guns for Old. (Ruger has acknowledged defects in three other weapons and recalled them.) Ruger's critics say the company should declare a formal, emphatic recall along the lines of the 1990 Winchester ad campaign, which warned, "DO NOT SHOOT YOUR WINCHESTER MODEL 100 RIFLE OR CARBINE." The ad advised owners to remove the firing pin. "Failure to do so will expose the shooter and bystander to possible risk of physical injury or death."

"You have to give people the gory details if you want to get them to respond," says Marc Schoem, director of the Consumer Product Safety Commission's division of corrective actions. Ruger's retrofit ads made no mention of the hundreds of casualties in the company's accident log.

The General Accounting Office had a more fundamental proposal: In a 1991 report on accidental gunshot deaths, it recommended that Congress bring real guns under the purview of the product-safety commission. The commission's founding legislation, passed in 1972, excluded firearms to avoid a potentially crippling battle with the gun lobby, its authors recall.

Under current product-safety law, any company subject to the commission's authority must report a possible defect when it experiences three settlements involving a given product in a two-year period, beginning with 1991-92.

In 1991 alone Ruger settled 10 Old Model cases.

The cost of these settlements, as well as of legal fees and costs associated with other product-liability claims, totaled \$4 million in 1991. In 1990, Ruger's product-liability settlements and defense costs totaled \$6.3 million; in 1992, \$3.5 million. Mr. Dorr declines to break out the costs attributed to Old Model cases alone. Ruger paid the money from its accrual fund.

So far, Ruger's retrofit campaign has resulted in the conversion of 130,573 revolvers, according to an in-house memo dated Jan. 8, 1993. Ruger's critics see the response as evidence the retrofit campaign failed to convey the dangers associated with Old Model revolvers. Ruger, in a motion filed in a now-pending Philadelphia suit, called the response "overwhelming." In his letter, William Ruger described the retrofit program and the company's gun-safety advertising as the "most extensive ever in the firearms industry." He wrote: "All of this has had the net effect that accidents are steadily decreasing dramatically, and our single-action litigation is at a 17-year low."

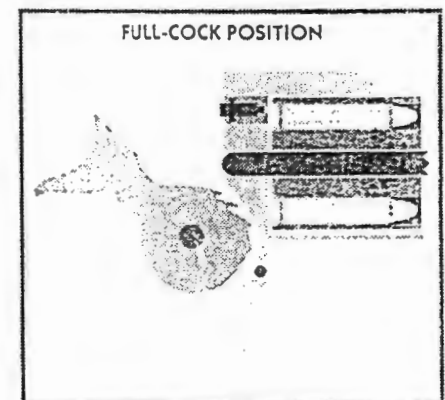
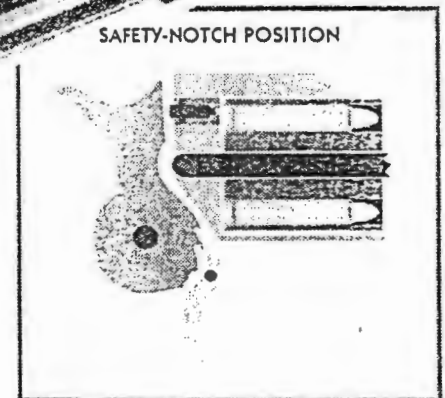
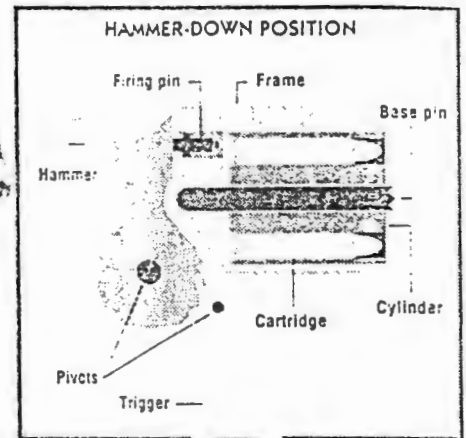
The accident rate and number of lawsuits have indeed fallen, yet the guns continue taking a toll.

The guns are passed down through families. They are advertised and solicited in gun publications, and are bought, sold and traded at the country's innumerable weekend gun shows. If anything, they have increased in value. In letters requesting the retrofit, loyal Old Model owners described their own mishaps as footnotes to an otherwise satisfying experience.

"PS," wrote Phillip Haberman of Sacramento, Calif., "I have one of your *fine* guns, that did go off. It [the bullet] went through my leg, stomach and arm." Bill Miller of High Point, N.C., described how his Old Model Ruger "fell between my feet on the ground, discharged, shot off my right [testicle], and left an eight inch gash in my leg. ... Aside from the problem I encountered, I still feel that you manufacture top notch quality products."

C.L. Kinney of Benton City, Wash., wrote that he still owned the .357 Magnum Blackhawk that had accidentally discharged and killed his older brother 15 years before. He explained his reason for wanting the retrofit:

"I wish to give it to my daughter."



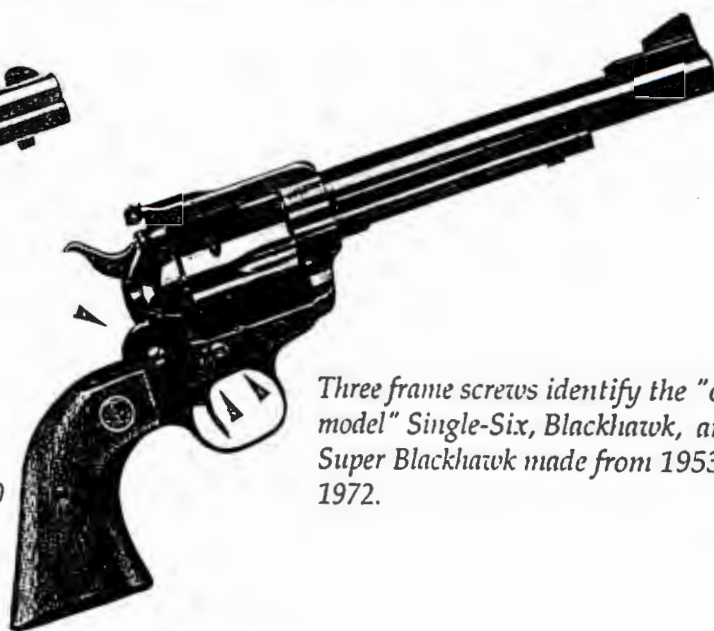
Ruger's Old Model revolver (bottom) was a deliberate variation of the Colt 1873 Peacemaker (top), the classic cowboy six-shooter sometimes dubbed "the gun that won the West." Some victims of accidents involving the Old Model claim it is prone to fire when carried either with the hammer down on a live cartridge, top right, or even with the hammer in the safety-notch position. Full cock is the normal firing position.



# FREE Single-Action Revolver Safety Offer



*Serial numbers below 93-00000 identify old Bearcat and Super Bearcat models.*



*Three frame screws identify the "old model" Single-Six, Blackhawk, and Super Blackhawk made from 1953 to 1972.*

## Do you own an "Old Model" (pre-1973) Ruger Single-Six, Blackhawk, Super Blackhawk, or Bearcat revolver like these?

The patented Ruger Conversion Kit is an entirely new operating system for these revolvers. It can help prevent accidental discharges caused by a drop or blow to the hammer if the user has failed to take the basic safety precaution of keeping the hammer down on an empty chamber. That's very important!

This mechanism can be factory installed without any

further alteration. The frame and other major parts will not be affected by this Conversion. The value of the gun will not be impaired, and we will return your original parts for collector's purposes.

To receive a free factory safety Conversion, write to us at Sturm, Ruger and Company, Inc., Lacey Place, Dept. KC, Southport, CT 06490. We will provide you with a shipping container and instructions. You only pay initial shipping to our factory. We cover all other charges including return shipping costs. Please write to us without delay if you have one of these guns, and tell your friends about the availability of this kit. Remember that the safest way to carry any older single-action revolver, regardless of manufacturer, is with the hammer down on an empty chamber.

If your revolver has the words "New Model" on the frame, this offer is not applicable. A Conversion Kit is also available for Bearcats and Super Bearcats with serial numbers below 93-00000. Please write us for details.



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FREE INSTRUCTION MANUALS WHICH CONTAIN APPROPRIATE WARNINGS AND ADVICE; FOR THE USE OF ALL MODELS OF RUGER FIREARMS ARE AVAILABLE FROM THE FACTORY ON REQUEST. PLEASE SPECIFY MODEL.



## APPENDIX TWO

National Rifle Association Executive Vice President  
Wayne LaPierre Interview in *Guns and Ammo*

# Tough Questions, Tough Answers

National Rifle Association  
Executive Vice President Wayne LaPierre  
Fields Some Important Questions  
About the Future of Firearms in America.

## G&A Staff Report

**G** &A: What is the NRA's stance on the repeal of the firearm provisions of the Crime Bill? I understand that originally we were going to go ahead with it. Now we seem to be holding off. Is that the case and, if so, why?

**LaPierre:** No, we're not holding off. We want total and complete repeal of what they passed last year and we've made that very clear to Congress, both the House and the Senate. What is happening is that they're breaking up the Crime Bill into five or six pieces. Total repeal is going to move as the last piece of the Crime Bill, which will probably be about the time this issue is being read. With everyone's support and letters and phone calls across the country to their congressmen, I expect it to pass the House and then we'll go over to the Senate and be fighting there. We have made it clear that we intend to settle for nothing less than total and complete repeal of both the gun provision and the magazine provision. That's about as clear as I can be.

**G&A:** Back in 1992 the NRA knew it would be under siege by the anti-gun forces and it undertook a membership drive. Where does membership stand now?

**LaPierre:** Ever since 1991, when I became the executive vice president, I've been trying to get the NRA back to its strength, which is people all over the country in cities and towns. Our strength is not in Washington, D.C., it's not in some building, it's in individual



people throughout the country that have those same beliefs in freedom that our Founding Fathers had 200 years ago. To me, the future of this issue is people, people, people—or, in political language—the grass roots of this organization. Everything we're doing with the NRA is to get it out there in cities and towns across the country so people can see, feel, touch and be a part of this organization. And that's whether it's a political meeting, a rally, a demonstration, a child-safety program, a hunter tour, a competition, a recreational shoot or a junior training program. We want the NRA in every city and town across this country.

We've grown in the past two years from 2.2 to 3.5 million members. It's the largest growth of any organization in the United States over that time period. You never hear that in the national

press. Four, five and six years ago when the NRA was losing 500,000 members, it was front-page news all over the country, and yet the media haven't touched the fact of this huge membership growth. I believe that we can bring this organization to six and seven million people. There are 15 million people right now in this country, according to every survey, that tell every pollster that they're an NRA member. Now what that means is that in their own mind they're a member even though they may not have paid their dues in two or three years. There are 24 million people that tell all these pollsters that they're NRA affiliated, so we have tremendous room to grow.

We have tremendous support from the American public. People listen to the media too much and somehow they've gotten the impression that the NRA has a bad name. Thirty-two percent of the people don't like the NRA; the rest of them are neutral or favorable. That's a much better approval rating than Congress has. It certainly is much better than the President has. I believe we're in sync with the American public. Seventy million people have guns. Half of the American households have a gun in them. Sixteen to 20 million people buy hunting licenses. If we organize and fight the way we're capable of fighting, we shouldn't lose this issue. We ought to win, and that's what we intend to do.

**G&A:** Are there any plans to reduce membership cost in order to expand membership numbers?

**LaPierre:** We're looking for ways to



concerned about is banning guns and they want to use this so-called "kids and guns" issue as a hook to ban guns. When, in fact, if you look at those statistics that the media reports as "kids and guns," you're really not talking about accidents involving children. (Certainly that's a horrible thing when it happens and we can't rest until there are no more such accidents.) What you're really talking about in that statistic that the media reports are violent juveniles that

**"All federal studies show that criminals don't buy their guns in stores; they buy them on the black market..."**

are 13, 14, 15, 16 and 17 years old that are already prohibited from owning guns, that are committing up to 50 violent acts with and without guns and are never taken off the street because the juvenile justice system has collapsed.

We have laws on the books to deal with every type of juvenile illegal activity and yet nobody is ever prosecuted and nobody is ever put in jail. That's why the NRA has been in the forefront of calling for a complete and total overhaul of the juvenile justice system as well as a complete and total overhaul of the adult criminal justice system. If Billy the Kid were alive today, they'd call him a youthful offender and they'd release him when he was 18 into some community and purge his record.

**G&A:** What is the NRA's position on instant background checks as an alternative to the waiting program? Is it in place anywhere?

**LaPierre:** It's in place in a number of states. But keep in mind that I really don't think it's going to have an impact on any of the crime rates in the states that are doing it. All federal studies show that criminals don't buy their guns in gun stores; they buy them on the black market or steal them. They don't walk into a gun store and fill out the paperwork. So what you really have—even in the states in which it's enacted—is kind of a feel-good measure. If you're going to do the check, the way to do it is like Virginia does it, where it doesn't keep a record of it. It does it right while you're in the gun store and it simply runs the name of the purchaser against a record of

felons. If there's a hit, it denies the sale, and if it doesn't get a hit the sale is immediately approved. In the states that have passed the Virginia-type bill, the system appears to involve the least amount of infringement and protects the right of the individual that may need a gun immediately for personal protection.

**G&A:** I understand your book tour was a great success.

**LaPierre:** Yes, we ended up going to 90 cities over a four-month period and I listened to probably 500 people a day, including probably 15 to 20 police officers. I'd always ask them, "What needs to be done about crime?" Not one of them said ban guns. They all said they support the right of Americans to own guns. That's not the problem. Then they'd all say the exact same thing in different ways, which boiled down to, "I risk my life to pick up somebody but they're back on the street before I can finish the paperwork." The problem is we don't keep any of them in jail. Until we realize that we have a generation of politicians that have let the criminal justice system collapse and start to address that in a meaningful way, we're not going to make any progress on the war on crime.

Certainly, these gun bans are just pretend; they're nonsense. You might as well make the wish blowing out the candles over a birthday cake because they will have no impact at all on the real world. It's a way of looking like you're doing something and it promises something for nothing for the politicians but it delivers nothing. No one is any safer in the end. I think the American public is starting to catch on to this fraud.

**G&A:** What's the NRA looking at in the area of tort reform concerning firearms liability? This is important because this is obviously restrictive on the part of the manufacturer and these costs are passed on to the consumer.

**LaPierre:** We are part of the coalition that is pursuing legislation. What you're actually suing for is a defective product as opposed to these other ridiculous suits that you're seeing all over the country that have simply run up the costs. They're really being brought up against manufacturers with the intent of banning guns. It's a backdoor way to ban guns, and we're actively working in

the coalition. The industry is certainly carrying the brunt of the issue, but we're lending support. If they could keep people from making guns, they could ultimately eliminate the freedom and that's what they want to do.

**G&A:** In the same vein, let's talk about environmental restrictions on the ban of use of lead bullets. There have been some rifle-range closures because of potential pollution. What are you doing about that?

**LaPierre:** We have just been up on the Hill meeting with senators and we're going to take a very active role in shutting down the bureaucrats that are trying to ban the use of lead bullets and shut down ranges based on no real scientific evidence, just their own personal opinion. The NRA has said that it will support scientific studies to get the best data available on this but it is going to oppose any type of effort to regulate or legislate based on some government bureaucrat's opinion without scientific evidence. Right now the scientific evidence doesn't exist.

**G&A:** There's a lot of anti-gun legislation on the state level and obviously

**"...rather than just play defense, we're going on the offense in states, whether it's right-to-carry legislation...[or] legislation that strengthens the constitutional protections of gun ownership."**

this is serving as a model for federal legislation. What's the NRA doing on the state level to combat this?

**LaPierre:** We're more active than we've ever been in every single state across the country in fighting additional gun bans and additional gun-control proposals. But more than that, rather than just play defense, we're going on the offense in states, whether it's right-to-carry legislation, legislation to get away from all of these local gun bans they've been pushing or advocating additional legislation on ranges and legislation that strengthens the constitutional protections of gun ownership.



## **APPENDIX THREE**

H.R. 956

"Common Sense Product Liability and Legal Reform Act" Amendment

AMENDMENT NO. \_\_\_\_\_

Calendar No. \_\_\_\_\_

Purpose: To provide a defense for the criminal misuse of  
a product.

IN THE SENATE OF THE UNITED STATES—104th Cong., 1st Sess.

**H.R. 956**

To establish legal standards and procedures for product  
liability litigation, and for other purposes.

Referred to the Committee on \_\_\_\_\_  
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by

Viz:

1 Strike section 105 and insert the following new sec-  
2 tion:

3 SEC. 105. DEFENSES INVOLVING INTOXICATING ALCOHOL,  
4 DRUGS, OR THE CRIMINAL MISUSE OF A  
5 PRODUCT.

6 (a) DEFENSES INVOLVING INTOXICATING ALCOHOL  
7 OR DRUGS.—Notwithstanding any other provision of law,  
8 a defendant in a product liability action that is subject  
9 to this title shall have a complete defense in the action  
10 if the defendant proves that—

1           (1) the claimant was under the influence of in-  
2       toxicating alcohol or any drug that may not lawfully  
3       be sold over-the-counter without a prescription, and  
4       that was not prescribed by a physician for use by  
5       the claimant; and

6           (2) the claimant, as a result of the influence of  
7       the alcohol or drug, was more than 50 percent re-  
8       sponsible for the accident or event which resulted in  
9       the harm to the claimant.

10       (b) DEFENSES INVOLVING CRIMINAL MISUSE.—Not-  
11       withstanding any other provision of law, a defendant in  
12       a product liability action that is subject to this title shall  
13       have a complete defense in the action if the defendant  
14       proves that the harm to the claimant was sustained as  
15       a result of the misuse of the product at issue in a criminal  
16       manner—

17           (1) by the claimant; or

18           (2) by a third party.

19       (c) CONSTRUCTION.—For the purposes of this sec-  
20       tion—

21           (1) the determination of whether a claimant  
22       was intoxicated or was under the influence of intoxi-  
23       cating alcohol or any drug shall be made pursuant  
24       to applicable State law; and



- 1 (2) the determination of whether a claimant or
- 2 third party misused a product in a criminal manner
- 3 shall be made pursuant to applicable Federal or
- 4 State law.

## **APPENDIX FOUR**

### **List of Organizations that Oppose Tort Restriction Legislation**

## WHO OPPOSES PRODUCT LIABILITY "REFORM"?

Action on Smoking and Health	Consumers League of New Jersey
AIDS Action Council	Consumers Union
Alabama Citizen Action	Democratic Processes Center
Alaska Public Interest Research Group	DES Action of New Jersey
Alliance Against Intoxicated Motorists	DES Action USA
Alliance for Justice	DES Sons
American Association of Suicidology	Empire State Consumer Association
American Bar Association	Essex West Hudson Labor Council
American Coalition for Abuse Awareness	Families Advocating Injury Reduction (FAIR)
American Council on Consumer Awareness	Fair Housing Council of San Gabriel Valley
American Public Health Association	Federation of Organizations for Professional Women
Americans for Democratic Action	
Americans for Nonsmokers' Rights	Florida Consumer Action Network
Arab American Anti-Discrimination Committee	Florida Public Interest Research Group
Arizona Citizen Action	Fund for Feminist Majority
Arizona Consumers Council	Georgia Citizen Action
Association of Trial Lawyers of America	Georgia Consumer Center
California Citizen Action	Gray Panthers
California Public Interest Research Group	Handgun Control, Inc.
Center for Public Interest Law at University of San Diego	Harlem Consumer Education Council
Center for Public Interest Research	Help Us Regain the Children (HURT)
Center for Public Representation, Inc.	Hollywood Women's Political Committee
Center for Women Policy Studies	Idaho Citizens Action Network
Children NOW	Idaho Consumer Affairs, Inc.
Citizen Action	Illinois Council Against Handgun Violence
Citizen Action of Maryland	Illinois Public Action
Citizen Action of New York	Illinois Public Interest Research Group
Citizen Advocacy Center	Institute for Injury Reduction
Citizens Action Coalition of Indiana	International Association of Machinists and Aerospace Workers
Citizens Clearinghouse for Hazardous Waste	International Ladies Garment Workers Union
Clean Water Action	International Longshoremen's and Warehousemen's Union
Coalition for Consumer Rights	Iowa Citizen Action Network
Coalition of Labor Union Women	Judge David L. Bazelon Center for Mental Health Law
Coalition to Stop Gun Violence	Kentucky Citizen Action
Colorado Public Interest Research Group	Lambda Legal Defense and Education Fund
Command Trust Network	Latino Civil Rights Task Force
Connecticut Citizen Action Group	Local 195, International Federation of Professional and Technical Engineers
Connecticut Public Interest Research Group	Louisiana Citizen Action
Consumer Action	Maine Peoples Alliance
Consumer Federation of America	Maryland Public Interest Research Group
Consumer Federation of California	Massachusetts Citizen Action
Consumer Protection Association	
Consumers for Civil Justice	



Massachusetts Consumer Association  
 Massachusetts Public Interest Research  
     Group  
 Michigan Citizen Action  
 Michigan Consumer Federation  
 Minnesota COACT  
 Minnesotans for Safe Foods  
 Missouri Citizen Action  
 Missouri Public Interest Research Group  
 Montana Public Interest Research Group  
 Mothers Against Sexual Abuse  
 Motor Voters  
 National Asbestos Victims Legal Action  
     Organizing Committee  
 National Association of School Psychologists  
 National Black Women's Health Project  
 National Breast Implant Coalition  
 National Council of Senior Citizens  
 National Coalition Against Sexual Assault  
 National Coalition Against the Misuse of  
     Pesticides  
 National Conference of State Legislatures  
 National Consumers League  
 National Council of Jewish Women  
 National Fair Housing Alliance  
 National Farmers Union  
 National Gay and Lesbian Task Force  
 National Head Injury Foundation  
 National Hispanic Council on Aging  
 National Minority AIDS Council  
 National Organization on Disability  
 National Rainbow Coalition  
 National Women's Health Network  
 Native American Rights Fund  
 Nebraska Citizen Action  
 Network for Environmental & Economic  
     Responsibility, United Cornucopia  
     Network of NJ  
 New Hampshire Citizen Action  
 New Jersey Citizen Action  
 New Jersey Environmental Federation  
 New Jersey Public Interest Research Group  
 New Mexico Citizen Action  
 New York Consumer Assembly  
 Niagara Consumer Association  
 North Carolina Consumers Council  
 Nuclear Information and Resource Service  
 Ohio Citizen Action

Ohio Consumer League  
 Ohio Public Interest Research Group  
 Oregon Consumer League  
 Oregon Fair Share  
 People's Medical Society  
 Pennsylvania Citizen Action  
 Pennsylvania Citizens Consumer Council  
 Pennsylvania Institute for Community  
     Services  
 Pennsylvania Public Interest Research Group  
 Prevention First  
 Public Citizen  
 Public Citizen's Texas Office  
 Public Interest Research Group in Michigan  
 Public Voice for Food and Health Policy  
 Purple Ribbon Project  
 Ralph Nader  
 Safety Attorneys Federation  
 Southern Christian Leadership Conference  
 Tennessee Citizen Action  
 Texas Alliance for Human Needs  
 Texas Citizen Action  
 The California Crime Victims Legal Clinic  
 Third Generation Network  
 Trauma Foundation  
 Truth About Abuse/SOFIE  
 Uniformed Firefighters Association of  
     Greater New York  
 United Auto Workers  
 United States Public Interest Research Group  
 United Steelworkers of America  
 Vermont Public Interest Research Group  
 Violence Policy Center  
 Virginia Citizen Action  
 Virginia Citizens Consumer Council  
 Voices for  
 Virginia NOW  
 Voices for Victims, Inc.  
 Washington Citizen Action  
 Washington Public Interest Research Group  
 West Virginia Citizen Action  
 White Lung Association of New Jersey  
 Wisconsin Citizen Action  
 Wisconsin Public Interest Research Group  
 Women Against Gun Violence  
 Women's Institute for Freedom of the Press  
 Women's Legal Defense Fund  
 Young Women's Christian Association  
 Youth ALIVE

## APPENDIX FIVE

*Remington Faces a Misfiring Squad*



## REMINGTON FACES A MISFIRING SQUAD

Accidents with the Model 700 rifle are laying it open to heavy damages



On Dec. 29, 1989, Glenn W. Collins was ready for a day of deer and wild-boar hunting in Eagle Pass, Tex. But while he was unloading his rifle after running into bad weather, it accidentally discharged, wounding him in the foot. That afternoon, the 53-year-old Amoco Corp. drilling supervisor had to have his foot amputated.

Collins claimed that the gun, Remington Arms Co.'s Model 700 bolt-action rifle, had gone off without his ever touching the trigger. And on May 7, he persuaded a Texas jury it had: After a six-week trial, Remington was ordered to pay Collins \$17 million—\$15 million of it in punitive damages. "I think what the jury was telling Remington and all gun manufacturers is that if you have a defective or unsafe product, you'd better do something about it," says Collins.

The Wilmington (Del.) gunmaker hasn't decided whether to appeal the verdict. But company spokesman William Wohl says Remington flatly denies that the Model 700—one of the top-selling hunting rifles in the U.S.—is faulty in any way. "We have believed in the past and continue to believe today that the Model 700 is one of the finest bolt-action rifles manufactured," says Wohl. "We see the product as a safe and reliable sporting firearm."

**STORMY OUTLOOK.** Remington maintains that the accidents stem from users' mistakes, not from product defects—a defense it used in the Collins' case. "When a gun goes off, the first thing people say is: 'It's not my fault,'" argues Kenneth Soucy, who is in charge of research and development at Remington. "Usually, we find that people have been messing around with the fire control. They get in there and screw things up."

Remington has done pretty well with that argument, winning 8 out of 12 jury trials since 1981. In a further 18 known suits settled since 1981, Remington has negotiated modest payouts—some as little as \$5,000, say plaintiff lawyers. But the Collins case is the first time a jury saw internal Remington documents allegedly showing that the company had developed a safer design yet chose not to market it. "The documents established that Remington has had a design for at least a dozen years that eliminates the heart of the problem," says Richard C. Miller, a lawyer in Springfield, Mo., who represents Collins and 17 other plaintiffs in past and present suits against Remington involving its Model 700. "This implies that they knew something was wrong with the existing fire-control system."

Now, with the new documents and



with 11 pending suits similarly alleging inadvertent firings of the Model 700, Remington's legal troubles could worsen. Plaintiff lawyers say more cases will be filed against Remington later this year, and pressure is mounting from consumers and Congress for more controls on firearms. Critics hope these actions, taken together, will compel Remington to consider modifying its rifle free of charge or recalling it if it can't conclusively demonstrate its safety.

That's a tall order for the nation's largest seller of shotguns and rifles. Four deaths have been linked to alleged malfunctions of the Model 700, in addition to dozens of injuries, court records show. Furthermore, some 1,400 written customer complaints have been lodged with the company over the past 16 years concerning the Model 700—many of which assert the rifle went off without the trigger being pulled. Remington still insists shooter errors are the problem. "If you're following the rules of

at an average cost of \$500. That accounts for an estimated \$58 million of the company's \$370 million in annual revenues. Today, nearly 3 million such rifles in 21 different calibers are in consumers' hands.

In addition to the NBAR evidence, internal corporate documents first disclosed in the Collins case show Remington may have known as early as 1975 that its rifle could accidentally discharge. That's when the company first began investigating customer and retailer complaints about malfunctions, according to Remington records. In a Dec. 8, 1987, letter, Nina Dula of Lenoir, N.C., complained that a rifle in the front seat of a Jeep discharged when a neighbor kicked a tire. She didn't report the accident to the company until the rifle fired inadvertently a second time. "In both instances, the trigger was never touched," wrote Dula.

Remington investigated Dula's complaint and determined the rifle functioned properly. The company wrote to Dula on Jan. 8, 1988: "The only manner in which

Eighteen months later, Fred Martin, a Remington field-service specialist, urged officials to make changes in newly manufactured rifles. His estimated cost: 32¢ a gun. "I feel we should not pass up this opportunity to improve our fire control," Martin wrote in a 1981 internal memo that was first used as evidence against Remington in the Collins case.

**TRIGGER COMPLACENT.** Remington did make one modification in 1982: The company eliminated the bolt lock, which had required the shooter to take the safety off to load and unload the rifle. But Remington says the change wasn't for safety's sake. "The removal of the bolt lock in 1982 was due to customer preference. This was not at all related to a safety issue," says Soucy. Still, the adjustment decreased reports of accidents.

Remington did not address what some experts say is the gun's most serious defect: an unreliable trigger connector. They say this causes the rifle to fire when the safety is released or when the

bolt is opened or closed. "No other manufacturer utilizes a resiliently mounted trigger connector of this type," says Tom Butters, a gun expert in Houston who has testified against Remington. "Other trigger designs are much less likely to be involved in a malfunction."

Remington disputes Butters' assessment and says its trigger design is entirely safe and one of the most attractive features of the Model 700. "The Model 700 is one of the real pillars of this de-

sign," says Soucy. "The trigger is light in pull. You can check with most gun writers and find that this feature makes the gun one of the most desirable."

Firearms are one of the few consumer products for which regulators do not have authority to set design and safety standards—even though guns cause more accidental deaths than any other consumer product. Firearms accounted for 1,416 such fatalities in 1990, according to the National Safety Council, a nonprofit group in Itasca, Ill. By contrast, deaths from all other sports equipment or recreational activities totaled 1,220, according to the Consumer Product Safety Commission.

Gun manufacturers and the National Rifle Assn. are opposed to current efforts toward tighter regulation. But consumer activists hope the public's growing concern over guns will compel lawmakers to adopt stricter standards. For now, consumers' only recourse is a legal one—and it looks like they plan to use it.

By Loren Berger in Washington

## THE STORY OF A GUN

**1962** Remington begins selling Model 700 rifle.

**1975** Remington begins investigating retailer and customer complaints about accidental shootings.

SEE BUSINESS WEEK

**1979** Remington internal panel finds that 1% of the rifles can be "tricked" into firing. But the company decides against a recall.

**1981** Remington gun specialist urges company to "improve" the Model 700's fire control.

**1985** Remington pays \$1.6 million to a New York man whose knees were shattered in a Model 700 accident.

**1988** Remington ordered to pay \$750,000 to Alaskan man accidentally shot in the foot.

**1989** Plaintiffs uncover evidence allegedly showing that Remington had developed a safer gun but never manufactured it.

**1994** Texas jury awards \$17 million to man disabled by an allegedly defective Model 700.

safe gun handling... people won't get hurt," says Remington's Wohl.

In 1989, however, Miller discovered a program started in 1981 whose purpose, he says, was to design a safer bolt action rifle, thus contradicting Remington's repeated court statements that the Model 700 is flawless. The company argued that records pertaining to this new bolt-action rifle (NBAR) program were proprietary and unrelated to the Model 700. But more than 20 judges have ruled otherwise, forcing Remington to give up the documents. "The NBAR program had as its goal improvement of the defective fire control on the Model 700," wrote Texas Supreme Court Justice Lloyd Doggett in December, 1992. "[The documents] provide evidence of great significance... as to Remington's knowledge of defects and of its ability to implement safer alternative designs."

The company has good reason to defend its popular product: More than 100,000 Model 700 rifles are sold annually,

the rifle could be made to fire with the safety off and the trigger pulled." In 52 other responses to customer complaints BUSINESS WEEK reviewed, Remington either said it "cannot duplicate customer complaint" or concluded the owner unknowingly pulled the trigger.

In a 1979 internal memo, however, Remington's product-safety subcommittee stated that, based on tests of returned rifles, 1% of the 2 million pre-1975 Model 700s could be "tricked" into firing. The panel considered a recall but concluded the discharges were "more associated with abnormal use or misuse of the product rather than indication of a defective product," according to the memo. Instead, the subcommittee recommended issuing a statement to customers on proper gun handling. "The recall would have to gather 2 million guns just to find 20,000 that are susceptible to this condition," wrote the panel, noting "a large percentage of competitor's models can be tricked."

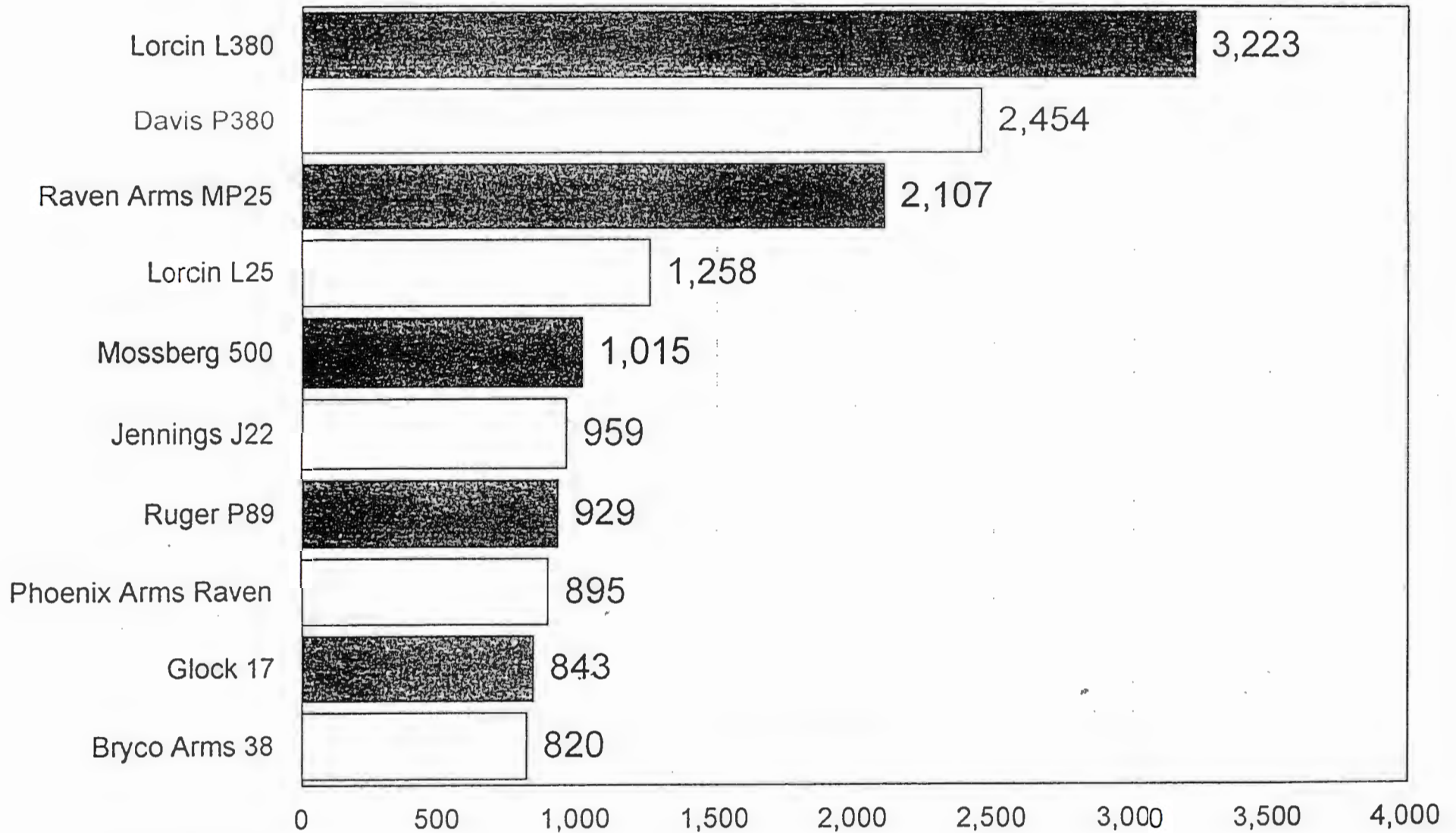
## **APPENDIX SIX**

ATF Top 10 Firearms Traced for 1994



# Top Ten Firearms Traced

Calendar Year 1994



Source: Bureau of Alcohol, Tobacco and Firearms



## APPENDIX SEVEN

*Gun Accidentally Killed Two Members of Family*

TUESDAY  
FEB 6 1996

BURELLE'S

47  
xbwd.20  
b

# Gun accidentally killed two members of family

► Letter from daughter asked Jaramillo to 'be careful with that gun'

8507

By BETSY MODEL  
For the New Mexican

TAOS — Had Richard Jaramillo had the opportunity to check his mailbox Jan. 24, he would have found a letter from his 16-year-old daughter, Lisa, which closed with the

words, "Please be careful with that gun. Take care of yourself."

Richard Jaramillo never read the letter. He died from a single gunshot wound to the abdomen after "that gun" — his .357-caliber Magnum Blackhawk hand gun — fell from his hands, hit the ground and discharged.

Jaramillo, night manager at the Taos Motel in Ranchos de Taos, was



Richard Jaramillo

getting off work Jan. 24 and carrying the holstered gun when he dropped it and was shot in the abdomen. He was rushed to Holy Cross Hospital where he died the following day. The New Mexico Office of Medical Investigation ruled his death an accident.

Tragically, Jaramillo was the second member of his family to die from that same gun.

In May 1993, Jaramillo's cousin, Bernie Trujillo, also was killed following an accidental shooting. Trujillo, also from Taos, was killed when the same gun was slammed down on a truck tailgate by his stepfather,

► Please see GUN, Page A-2

## GUN

Continued from Page A-1

Rudy Maestes. Trujillo, who was standing 5 feet away from the truck, was struck and killed.

Richard Jaramillo had purchased the gun from Maestes for \$205. The receipt for the purchase was still in his wallet the day he died.

The gun had been a source of contention between Jaramillo, his wife, Lynn, and their three children for some time.

"The gun had already gone off a couple of times in the last few months," said Chrystine Jaramillo, 17-year-old daughter of Richard Jaramillo. "Once, my dad set the gun down on his desk at work and blew out a plate glass window. Another time, he shot a hole in the floor. He used to laugh about it."

Richard Jaramillo and his wife, Lynn, had been separated for two years when the accident occurred.

"We were in the process of reconciling. One of the biggest conditions of our getting back together was his getting rid of that gun," Lynn Jaramillo said Friday. "We had never had a gun in the house the whole 16 years we were together. I refused to have one now."

Other members of Jaramillo's family expressed shock over his death — but not the accident.

"I've lost two nephews from the same gun," said David Martinez, a business owner in Taos

and uncle to Richard Jaramillo and Bernie Trujillo. "I don't understand how this could have happened again."

Jaramillo's sister, Lorraine Martinez, remembers how upset Jaramillo was when he heard about his cousin being shot.

"I'm not sure how Rick could have bought that gun — that same gun — knowing it had killed Bernie," she said.

A number of family members were under the impression that the gun had been recalled by the manufacturer for being defective. According to a spokeswoman for Sturm, Ruger & Co., Inc., the manufacturer of the .357-caliber Magnum Blackhawk, the gun was part of a voluntary retrofit program, not a recall.

"This is an older gun, manufactured sometime between 1952 and 1973," said Phyllis Garber, director of product relations for Sturm, Ruger and Co. "Being an older gun, it doesn't have some of the newer safety features that new technology has given us, but it can be used safely as is. There's no need to recall it since it's safe as long as it's handled correctly by the owner."

Garber, who compared the gun's design to that of the Colt Peacemaker favored by Western outlaws, said maintaining an empty chamber under the hammer, a common and accepted safety practice for this type of

gun, could have prevented both accidents.

Ruger has offered a retrofit on this particular model since 1982. The retrofit, performed at the manufacturer's expense, continues to be offered to gun owners regardless of whether they are the original owner. According to Garber, the retrofit has been publicized heavily since 1982 in consumer magazines, at gun shows, through gun shops and on television and radio shows, including ESPN.

"We continue to convert 300 to 400 guns per month now, in 1996, and we started this program in 1982. What we have here is a new generation of used-gun users. It's their responsibility to handle a gun safely. If they don't have a gun manual for their model, they can order one from us or from a local dealer, free of charge."

When told about the incidents involving Trujillo and Richard Jaramillo, Garber said she didn't understand how the gun could have discharged so easily if handled and carried properly. "If the safety notch was engaged, simply dropping the gun wouldn't discharge it — at least not without damaging the gun tremendously."

Richard Jaramillo's widow has asked the Taos sheriff's department to keep the gun in their possession for the time being.

"My first thought was to

destroy the gun piece by piece. My three children have lost their father. Florence (Maestes) has lost her son. I can't believe this gun wasn't confiscated or destroyed the first time," she said.