



# Smoking Guns

Exposing the Gun Industry's Complicity  
in the Illegal Gun Market

Legal Action Project  
Brady Center to Prevent Gun Violence

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The Brady Center to Prevent Gun Violence is a national non-profit organization working to reduce the tragic toll of gun violence in America through education, research and legal advocacy. Through its Legal Action Project, the Brady Center provides *pro bono* legal assistance to gun violence victims and public entities seeking to establish legal principles that will reduce gun violence. The programs of the Brady Center complement the legislative and grassroots mobilization efforts of its sister organizations, the Brady Campaign to Prevent Gun Violence and the Million Mom March.

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## EXECUTIVE SUMMARY

Lawsuits against gun manufacturers, distributors, and dealers have created unprecedented new opportunities for intensive scrutiny of the gun industry and how it does business. While the industry managed to cloak itself in secrecy for many years, litigation has now forced the industry to produce internal documents and forced dozens of key industry leaders to answer questions about what the industry has known and what it has done. This unprecedented discovery of information exposes a remarkable pattern of irresponsible action by an industry badly in need of reform.

Bills have been proposed in Congress that would give gun manufacturers, distributors, and dealers broad, nationwide immunity from legal responsibility for their actions. These immunity bills would give these businesses special treatment that no other industry enjoys, unfairly take away the rights of gun violence victims, and eliminate vital incentives for the industry to eliminate dangers in the distribution and design of its products.

A vast illegal secondary market makes guns easily available throughout the nation to criminals, juveniles, and others prohibited by law from acquiring them. The evidence uncovered in litigation reveals that the gun industry has known for many years about the means by which large quantities of guns are diverted from distribution channels to the illegal market. Despite their knowledge of the widespread diversion of their products, gun manufacturers have not taken steps to control diversion and instead maintain distribution systems that funnel guns to traffickers and into the illegal market. The industry supplies the illegal market in many ways.

**Corrupt Dealers.** Evidence uncovered in lawsuits reveals that gun manufacturers know corrupt dealers are a key source of supply for gun traffickers, and yet manufacturers continue to supply corrupt dealers even after arrests or indictments have been made. For example, the owner and six employees of RNJ Guns, one of California's largest dealers, were arrested for a host of federal firearms law violations, including encouraging customers to obtain fake identifications with which to purchase guns illegally. Even after its owner went to jail, RNJ managed to stay in business with a Federal Firearms License under the name of his wife. Manufacturers and distributors did not hesitate to keep supplying this dealer. A sales representative for one of the manufacturers, Heckler & Koch, recommended continuing sales to this dealer because it was back to "business as usual."

Manufacturers and distributors have taken the same callous approach to many other episodes of egregious dealer conduct throughout the country, even those connected to high-profile crimes like the sniper shootings that terrorized the Washington, D.C. area in 2002. The assault rifle used by the snipers was one of over two hundred guns that "disappeared" from Bull's Eye Shooter Supply, a gun store in Tacoma, Washington. The store had no record of the gun ever being sold and did not report it stolen until *after* the Bureau of Alcohol, Tobacco & Firearms (ATF, which was recently renamed the Bureau of Alcohol, Tobacco, Firearms & Explosives) recovered the weapon and traced it back to the store. Even after the rifle was linked to the sniper shootings and the press reported on the disappearance of guns from Bull's Eye, the rifle's manufacturer, Bushmaster, declared that it still considered Bull's Eye a "good customer" and was happy to keep

selling guns to the shop. A lawsuit brought against Bushmaster and Bull's Eye by the sniper victims' families is among many cases that would be blocked by immunity legislation being considered in Congress.

**Straw Purchases.** The federal government has warned the gun industry many times that "straw purchases" are another key means by which guns are diverted to the illegal market. In a straw purchase, a person with a clean record buys a gun for a criminal, juvenile, or other person prohibited by law from acquiring it. Dealers trained and motivated to spot these transactions could prevent them in many instances, but the industry has failed to mandate such crime-stopping training. Instead, undercover sting operations conducted prior to the filing of lawsuits in Illinois, Michigan, and Indiana revealed that dealers routinely permit these sales even when their illegal nature is blatantly obvious. Some dealers even suggest and encourage straw purchases to avoid losing a sale. In one case, a sales clerk testified that she got in trouble with the gun store's management because she refused to go along with this practice. Despite repeated warnings, the industry has pretended it was unaware until recently that straw purchasing was a serious problem. Only after facing lawsuits challenging its practices did the industry begin providing some "marketing" assistance to an existing ATF program encouraging dealer education to spot and prevent straw sales. Gun makers, however, refuse to make the program mandatory.

**Large-Volume Sales.** Allowing customers to purchase unlimited quantities of guns is another industry practice feeding guns into the illegal market. For example, in a case underway in Illinois, an illegal trafficker purchased more than sixty "Saturday Night Special" handguns from a dealer, one of which was later sold to and used by a neo-Nazi in a racist murder spree across Illinois and Indiana. Manufacturers and distributors realize that selling large quantities of guns to individual buyers is irresponsible even as they continue to allow dealers to do it. Ugo Beretta, president of the gun manufacturing company that bears his name, is among the executives who have been forced to give testimony in litigation. The deposition revealed that Mr. Beretta, a resident of Italy, thinks it is "common sense" that dealers should not sell unlimited quantities of guns to individual customers and was under the misimpression that his company's management in America makes sure the company does not allow dealers to do this. Mr. Beretta had assumed this was his company's practice because "the logic of the matter requires that this is what should be done." In fact, no manufacturer or distributor makes any effort to limit or place conditions on large-volume sales of its guns by dealers.

**Gun Shows.** The federal government has also warned the industry that gun shows are an important source of guns for criminals because unlicensed individuals often sell large quantities of guns there without criminal background check or record keeping requirements. In addition, there have been many instances in which licensed dealers selling at gun shows have violated firearms laws and regulations. For example, one Colorado dealer illegally sold more than 10,000 guns at these shows without paperwork or background checks. Guns used in the Columbine High School shooting are among the many crime guns sold at gun shows.

**Incomplete Background Checks.** Convicted felons and others prohibited from buying guns also frequently obtain them because dealers sell guns before a Brady Act background check has been completed. Federal law permits a dealer that does not

receive an affirmative or negative response to a background check request within three business days to proceed with the sale. Law enforcement agencies often need more than the three-day period to search the relevant records and they discover that a sale is prohibited only after the dealer has already handed the gun to the purchaser. Wal-Mart Stores recently implemented a voluntary, nationwide policy of refusing to proceed with gun sales until the background check is complete, even if it requires more than three days. Every manufacturer and distributor could implement a policy requiring dealers to do the same, but none has done so.

**Inadequate Security.** Guns also make their way into the illegal market because of thefts made possible by inadequate security precautions of manufacturers, distributors, dealers, and common carriers. For example, Massachusetts gun maker Kahr Arms hired an employee with an extensive criminal record and an addiction to crack cocaine. This employee was able to steal dozens of guns from the factory because the company lacked even the most basic security measures such as security guards and metal detectors. The family of a young man killed with one of the stolen guns is pursuing a lawsuit against Kahr Arms.

**Unsafe Designs.** The dangers in gun distribution are compounded by the industry's failure to equip guns with feasible safety features such as integral locks that would "personalize" guns and prevent their unauthorized use. While manufacturers long denied it was possible to design guns with this kind of technology, lawsuits have changed that and prompted a stream of manufacturers to begin making and selling guns with these vital safety features. This technology, which has been known and available to the industry for many years, would prevent many senseless tragedies. Industry engineers admitted in depositions that these locks could have been included in guns at a cost of only a few dollars per gun.

**Whistle Blower Revelations.** The lawsuits against the gun industry have also generated extraordinary revelations from insiders or "whistle blowers" who have spoken out about what the industry knows and why it has chosen not to cut the flow of guns to the illegal market:

- The witnesses include **Robert Ricker**, a former National Rifle Association (NRA) lawyer and industry trade association leader who has provided a sworn declaration describing in chilling detail how the industry encourages and rewards illegal activity by corrupt dealers, steadfastly refuses to take steps to keep guns out of the wrong hands, and intimidates and silences any dissenting voices within the industry.
- Similar testimony has come from former Smith & Wesson executive **Robert Hass** who confirms that manufacturers and distributors take no action to insure responsible distribution practices.
- The National Association of Stocking Gun Dealers complained for years that manufacturers' and distributors' insistence on selling to anyone with a Federal Firearms License was causing guns to flood into the criminal market and putting legitimate, responsible dealers at a tremendous disadvantage. One of the Association's former officers, **Carole Bridgewater**, has provided a declaration stating that manufacturers and distributors not only tolerate but actively feed the corrupt dealers within the industry.

- **Robert Lockett** is another dealer who has drawn the industry's wrath for criticizing manufacturers' and distributors' refusal to take responsibility for how their products are sold. Lockett wrote a column in 1999 for an industry magazine calling on manufacturers and distributors to "wake up" and implement some strict guidelines and controls for dealers. Although the column was watered down before finally being printed, manufacturers like Glock threatened to pull their advertising. It was the last column from Lockett that the magazine would ever print.

Manufacturers have been hearing this criticism from responsible dealers for many years, but evidence of that came to light only because of litigation. For example, Sturm Ruger distributed a survey to its dealers and received a flood of criticism of its distribution system. Dealers told Sturm Ruger that it could stop the flow of its guns to criminals if it exercised greater control over distribution and weeded out the "basement bandits," gun show sellers, and other dealers "who are selling to drug dealers and convicted felons." Although the survey revealed glaring evidence of rampant violations of Sturm Ruger's distribution policies, the company's founder and chairman, William Ruger Sr., reviewed the results of the survey and ordered his marketing underlings to drop the whole thing and forget what the dealers had said.

The industry's trade associations, such as the National Shooting Sports Foundation (NSSF) and Sporting Arms and Ammunition Manufacturers Institute (SAAMI), have repeatedly silenced other calls for reform of the industry. For example, NSSF official Doug Painter read an ATF report in 1993 that described the serious problem of illegal transactions within the industry's ostensibly "legal" channels of distribution. Painter suggested that the industry respond with a "proactive" strategy of exercising better control over distribution systems. NSSF's chairman Arlen Chaney and NSSF's and SAAMI's executive director Robert Delfay rejected Painter's proposals without even looking at the ATF report that raised Painter's concerns. NSSF and SAAMI repeatedly rejected the ideas of others within the industry calling for action to keep guns out of the criminal market.

One of the nation's largest gun manufacturers, Smith & Wesson, broke ranks with the rest of the industry and sought to resolve many of the lawsuits against it by agreeing to make significant changes in the way it distributes and designs guns. While the industry's own opinion survey showed that Americans overwhelmingly supported the Smith & Wesson agreement, with even a majority of NRA members favoring it, the NRA and other militant gun organizations led a campaign of boycotts and other tactics to punish Smith & Wesson. Prosecutors in several states launched investigations of the other manufacturers' role in the backlash against Smith & Wesson. New ownership and management at Smith & Wesson eventually repudiated the agreement and the industry welcomed Smith & Wesson back into "the family."

**The Industry's Feeble Arguments.** In defense against lawsuits, gun manufacturers insist that keeping guns out of the illegal market is strictly law enforcement's job. Congress, the Department of Justice, and ATF have repeatedly told the industry otherwise. Federal reports and studies have emphasized that firearms regulation is the "shared responsibility" of the government and the industry and that law enforcement would welcome efforts by the industry to "self-police" its distribution. The industry's exclusive reliance on law enforcement is a disingenuous and hypocritical



argument in light of the gun industry's and gun lobby's record of opposing measures that would give ATF the laws and resources it needs to do a better enforcement job.

The gun industry also has access to an extraordinary amount of information about criminal acquisition and use of its products through ATF's tracing of crime guns. ATF has repeatedly but unsuccessfully encouraged gun manufacturers and distributors to make use of tracing data to build safer and sounder distribution systems. Contradicting what ATF has told it, the industry insists that it can learn nothing from the tracing of crime guns. In short, although the industry has been repeatedly told by ATF how retailers supply the illegal market, the manufacturers and distributors go to great lengths to avoid acquiring any information about the role of specific dealers that the manufacturers and distributors are supplying.

The evidence also refutes gun manufacturers' claims that they cannot control what happens to guns after they leave the factories. Gun manufacturers consistently exercise control over their distributors and dealers to protect financial and political interests, but fail to take the same kinds of steps to ensure these distributors and dealers do not engage in illegal or irresponsible sales practices that make them a source of guns for the illegal market. Experts who have examined the gun industry's distribution methods and compared them to other industries' practices have concluded that the gun industry falls far short of the normal standards of care.

Lawsuits against gun manufacturers, distributors, and dealers have brought unprecedented scrutiny to the gun industry and how it sells guns. The evidence uncovered in these cases provides compelling evidence of the industry's knowing complicity in the supply of guns to the illegal market.

## INTRODUCTION

In recent years, gun violence victims and public officials across the country have brought a number of groundbreaking lawsuits seeking to hold gun manufacturers, distributors, and dealers responsible for harm attributable to the unnecessarily dangerous ways in which these companies distribute and design their products. More than thirty major cities and counties and one state (New York) have sued seeking remedies for harm they have suffered as a result of the gun industry's irresponsible conduct. Many other lawsuits have been brought by private individuals injured in shootings, the families or estates of victims killed in shootings, or private associations such as the NAACP and the National Spinal Cord Injury Association.

In much the same way that lawsuits against the tobacco industry have exposed its deception and dangerous conduct, the gun suits have opened a window to the inner workings of the gun industry. The litigation has forced the industry to produce significant amounts of documents, including internal memoranda and other materials never previously disclosed to anyone outside the industry. Key employees of manufacturers, distributors, and dealers have been forced to answer questions about these companies' decisions and actions. Top officials from the industry's trade associations have been required to do the same. Insiders have stepped forward to blow the whistle on the industry and reveal what the industry knew about the dangers of its practices and why it chose to carry on business as usual anyway.

The gun industry has not merely fought these lawsuits in courts. Seeking to avoid legal responsibility without facing judges or juries, the gun industry has turned to legislatures and asked them to give special immunity from liability to those who make and sell guns. Many state legislatures have enacted measures giving some form of protection to the gun industry.<sup>1</sup> Bills to establish even broader, nationwide immunity have been introduced in Congress.<sup>2</sup> The NRA has made the passage of such an immunity law its "top priority."<sup>3</sup> An immunity bill nearly came up for a vote in the U.S. House of Representatives in October 2002, but its supporters pulled it back after the highly publicized series of sniper shootings began in the Washington, D.C. area. When asked why the vote was postponed, the bill's sponsor, Rep. Cliff Stearns, answered with one word: "Perception."<sup>4</sup> According to Greg Crist, a spokesman for House Majority Leader Richard Armey, "with an issue such as that, with the recent shootings, it would be too emotional, too passionate a debate."<sup>5</sup>

Through its Legal Action Project, the Brady Center to Prevent Gun Violence represents over two dozen of the municipalities that have sued the gun industry, as well as numerous victims of gun violence seeking justice against the industry. The NRA's magazine *America's 1st Freedom* recently described the Brady Center as the "mastermind" behind the lawsuits against the gun industry.<sup>6</sup> This Brady Center special report reveals many of the facts that have been uncovered so far in the Center's litigation against the gun industry. In particular, the report draws largely on information discovered through cases brought by a dozen California cities and counties and by the City of Boston.<sup>7</sup>

Although the evidence described in this report is an alarming account of the industry's knowing and continuing supply of guns to the illegal market, it is only part of the story. There is a great deal of other evidence that cannot be included in this report because the industry has hidden it behind court orders meant to prevent public disclosure of confidential "trade secrets." Nevertheless, the information that can be revealed now tells a striking story of a reckless industry in dire need of reform.

## **PART ONE: HOW THE GUN INDUSTRY SUPPLIES THE ILLEGAL MARKET**

A vast quantity of guns are acquired and used illegally every year in the United States. Virtually every one of these crime guns starts off as a legal firearm before making its way into the illegal market. As ATF director Brad Buckles explained, "[u]nlike narcotics or other contraband, the criminals' supply of guns does not begin in clandestine factories or with illegal smuggling."<sup>8</sup> Instead, the guns used in crimes in this country start out in the legal market, identified by a serial number and sold by federally licensed entities. This makes it possible to trace guns in the illegal market back to their sources and makes it vital that the gun industry operate distribution systems with strong safeguards against diversion of guns to the illegal market.

Gun manufacturers instead have established distribution systems in which the incentives favor selling to gun traffickers and others who funnel guns into the vast illegal secondary market. Retail dealers that supply the illegal demand for guns earn the reward of added profit from increased gun sales. Manufacturers and their wholesale distributors increase their profits as well by maintaining the flow of guns to such dealers. The result is a robust illegal market supplying guns to convicted felons, juveniles, and others prohibited by law from acquiring guns. By implementing strong distribution safeguards and sanctioning dealers and distributors who fail to comply with them, manufacturers could reverse the incentives in their distribution systems to favor safe and responsible conduct, but all refuse to do so.

### **How Important Is the Illegal Market to the Gun Industry?**

One of the expert witnesses testifying in lawsuits against the gun industry is Professor James Fox, a nationally acclaimed criminologist at Northeastern University. In a declaration filed in the case brought by California cities and counties, Professor Fox reports that a significant portion of the new handguns produced and sold each year are used to commit crimes. For example, Fox estimates that 9.55% of handguns produced in 1997, and 25.51% of handguns produced in 1991, were used in crimes by the end of the year 2001.<sup>9</sup> That is a conservative estimate, as it does not include the thousands of crimes of illegal gun possession. In addition, studies by Fox and others confirm that new guns, particularly new handguns, are the weapon of choice among juveniles and criminals across the United States and are far more likely than older guns to be used in a crime. The data leave no doubt that manufacturers, distributors, and dealers profit considerably from the sale of new handguns into the criminal market.

The litigation against the gun industry has revealed the avenues of diversion from gun manufacturers' distribution systems to the illegal market.

### **Corrupt Dealers**

ATF reports have indicated that licensed gun dealers sell firearms to gun traffickers on a massive scale.<sup>10</sup> Even a small number of these corrupt dealers can funnel huge numbers of firearms into the underground market.<sup>11</sup>

The serious problem of corrupt dealers supplying the criminal market was highlighted in public Congressional hearings in 1993 when ATF's director testified about how criminals obtain guns through corrupt dealers, noting that one dealer alone diverted 6,000 to 10,000 handguns to the illegal market.<sup>12</sup> In the same hearings, Bill Bridgewater, the head of the National Alliance of Stocking Gun Dealers, confirmed that the main source of crime guns was unscrupulous gun dealers, noting that even Hell's Angels and other gangs obtain Federal Firearms Licenses to supply guns to their comrades.<sup>13</sup>

The industry is well aware of many instances of corrupt conduct by dealers. One of the most egregious examples of the industry's willingness to continue supplying these dealers was discovered in litigation brought by California cities and counties. In 1996, the owner and six employees of one of California's largest gun dealerships, RNJ Guns & Ammo, were arrested for a host of federal firearms law violations. RNJ's employees coached customers on how to circumvent legal requirements, encouraging them to obtain fake identification documents in order to purchase guns. RNJ had semi-automatic Glock pistols and AK-47 rifles illegally converted to full automatic fire and sold them to these customers.

The arrests were not enough to dissuade manufacturers and distributors from continuing to supply RNJ. For example, manufacturer Heckler & Koch initially terminated its authorized dealer agreement with RNJ Guns after receiving word of the arrests, but quickly had a change of heart. Heckler & Koch wrote to RNJ's owner, Romulo Reclusado, and offered to continue selling guns to RNJ on a cash-in-advance basis. Heckler & Koch apologized for not being able to extend credit to RNJ, but noted that the store had bounced several checks in addition to having an "unsettled situation" because of the arrests. Heckler & Koch told Reclusado that it "is not our intention to turn away business."<sup>14</sup>

**“. . . it is not our intention to turn away business.”**

Reclusado pled guilty and went to prison. Even after his conviction, RNJ managed to stay in business with a Federal Firearms License under the name of his wife, Marilou Ferido Reclusado. Heckler & Koch soon reinstated RNJ as an authorized dealer. Recommending the resumption of sales to the dealer on normal terms, Heckler & Koch's sales representative stated that RNJ's owner "was arrested for some firearms violations and the store was temporarily shut down" but that "[w]hen they reopened (within 1-month), business was pretty much as usual."<sup>15</sup> Heckler & Koch was just one of many manufacturers that continued to allow their guns to be sold by RNJ despite the arrests.

Many other dealers have been caught violating gun laws and regulations. The suit brought by California cities and counties cited several examples from that state:

- B & E Guns of Cypress, California, sold guns for years despite repeatedly violating federal laws, transferring more than 9,000 guns without keeping records, supplying guns to felons, juveniles, foreign nationals, and a suspected trafficker. Police have seized over 200 guns sold by B & E and used in murders and other crimes. B & E continued to sell guns even after its owner, Robert Komor, had his license revoked and was sentenced to prison, because his wife managed to obtain a new license from ATF.<sup>16</sup>
- The operators of Verde Firearms of West Covina, California, created false records to hide transfers of more than one hundred firearms, at least nine of which were later linked to crimes in the Los Angeles area, including two homicides. Verde also illegally sold machine guns and pistols, as well as silencers, to a convicted juvenile felon who was purchasing on behalf of a violent criminal gang. One of the machine guns was later re-sold to an undercover agent and killed a law enforcement officer when it misfired during testing. Verde employees operating at a gun show sold guns illegally converted to full automatic fire. Verde's owner was convicted of firearms charges and sentenced to 51 months in prison.<sup>17</sup>
- Over a four-month period in 1995, Slims Gun Shop in Riverside, California, sold 253 handguns and rifles to four Los Angeles County residents in straw purchases. Within 20 months of the purchases from Slims, 37 of the guns had been recovered in crimes, including at least four homicides.<sup>18</sup>
- Shooters Emporium, a dealer in Escondido, California, falsified its sales records to hide the fact that it was funneling dozens of assault rifles to drug traffickers in Mexico.<sup>19</sup>
- Sean Twomey used a falsified Federal Firearms License to purchase more than a thousand guns. He obliterated their serial numbers to prevent them from being traced and sold them illegally in the San Francisco area. Nearly 50 of these guns were recovered in connection with crimes, including drug dealing, robbery, drive-by shootings, and at least three homicides. Although Twomey's federal license was obviously falsified and he had no California dealer's license, major wholesale distributors such as Southern Ohio Guns delivered everything he requested to his apartment, no questions asked. After he was convicted, Twomey told reporters "It was very easy. . . . They could care less how many guns I ordered."<sup>20</sup> No one at Southern Ohio ever questioned why hundreds of guns were being shipped to Twomey's apartment. Asked why she did not ask what Twomey did with all the guns he bought, Southern Ohio's sales person who dealt with Twomey said, "It really is none of my business."<sup>21</sup>

**“It was very easy. . . . They could care less how many guns I ordered.”**

Those are just a few examples of egregious conduct by dealers in one state. Similar episodes have occurred many times across the country.

The industry's response is always the same. Manufacturers and distributors insist on maintaining their policies of selling guns to anyone with a Federal Firearms License, no matter how clear the danger in doing so. Even after dealers have been arrested or indicted for violating firearms laws and regulations, manufacturers will continue to supply them. For example, an executive from Browning Arms, Charles Guevremont, admitted that his company will continue to sell guns to any dealer, even if it has overwhelming proof that the dealer is egregiously irresponsible, as long as the dealer still has its Federal Firearms License.<sup>23</sup>

Likewise, Robert Steger, the president of RSR, one of the nation's largest wholesale distributors, testified that his company would continue to distribute firearms to anyone with a Federal Firearm License, even if it became aware that the person was knowingly selling guns to criminals.<sup>24</sup>

Some manufacturers go so far as to deny knowing that corrupt dealers even exist, despite the many highly publicized cases and the many times that ATF has warned the industry about such dealers. For example, Taurus president Robert Morrison continues to insist that every gun dealer "is doing the best he can to uphold the law to the best of his ability" and that he would "stick up for every dealer out there" until he found a bad one.<sup>25</sup> Morrison also claims never to have even heard of the term "gun trafficking," as does Smith & Wesson's president Robert Scott.<sup>26</sup> These manufacturers would rather pretend that problems do not exist, no matter how implausible their denials become, than take steps to identify high-risk dealers or to limit or terminate sales to them.

### **Arming the Snipers**

A series of sniper shootings terrorized the Washington, D.C. area in the fall of 2002. The Bushmaster .223 caliber military-style assault rifle used in the shootings "disappeared" from Bull's Eye Shooter Supply, a gun store in Tacoma, Washington, and ended up in the hands of the sniper suspects, John Allen Muhammad and Lee Boyd Malvo. That rifle was just one of at least 238 guns that "disappeared" from Bull's Eye over the past three years. The store has no record of any sale of the rifle and no explanation for what happened to it. It reported the rifle as stolen shortly *after* ATF recovered the weapon, traced it back to the store, and began investigating how it got into the hands of Muhammad and Malvo. Neither of the sniper suspects could have legally purchased the rifle.

The rifle's manufacturer, Bushmaster, sold it and many other guns to Bull's Eye even though past ATF audits had revealed dozens of firearms missing from the store's inventory. Even after the Bushmaster rifle was linked to the sniper shootings and ATF's investigation of the missing guns became headline news, Bushmaster vice president Allen Faraday declared that his company still considered Bull's Eye a "good customer" and would be happy to keep selling to it.<sup>22</sup>

Represented by lawyers from the Brady Center to Prevent Gun Violence, victims of the sniper shootings have brought suit against Bull's Eye, Bushmaster, and the sniper suspects.

## Straw Purchases

“Straw purchases” are a key means by which guns are diverted to the criminal market. The term refers to a transaction in which a person with a clean record buys a gun for someone else who is a convicted felon, a juvenile, or otherwise prohibited from legally acquiring a gun. Dealers trained and motivated to spot suspicious sales could prevent straw purchases in many instances.

Rather than trying to prevent straw purchases, many dealers are ready and willing to sell guns even when the illegal nature of the transaction is blatantly apparent. For example, police in the Chicago area conducted an undercover sting operation prior to that city’s filing of a lawsuit against the gun industry. Pairs of undercover officers went to gun stores to make straw purchases, with one officer expressly stating that he was a convicted felon or juvenile and asking if the other person could fill out the legal paperwork so that he could obtain a gun despite the laws prohibiting him from doing so. In almost every instance, the dealers were willing to supply guns to a person they believed to be an unlawful

### An Example from the Chicago Sting Operation . . .

B&H Sports, a dealer in Oak Lawn, Illinois:

- Permitted an undercover officer to purchase guns for another person who stated that he could not legally buy them for himself because he had recently been “locked up” in jail in another state. The sales clerk watched as the prohibited purchaser picked out the gun he wanted, handed the money to his friend to pay, and walked out of the store with the guns.
- Sold guns to an undercover officer who said that he “hung out on the street” for a living, listed his occupation as “sales” on the purchase forms, and told the sales clerk that he needed a new gun because he recently had to ditch his 9mm pistol while running from the police. The officer added that he knew who had “ratted” to the police, that he had to “settle up with him,” and that he would need “ammo” for that. The sales clerk assured the officer that the store had plenty of ammunition to sell him.
- Sold guns to another undercover officer who said that he needed something for his “spot” (a street term for a drug sale location), that he needed a size that females can hide easily, that police had gotten one of his shotguns the previous night in a high-crime housing project, and that he needed the new guns immediately because he had “business to tend to” that night. The sales clerk offered to put a laser sight on a shotgun for this officer, but warned him that shotguns fire high so he should aim low at anyone he wanted to hit.
- Sold guns to an undercover officer who indicated that he intended to use them to kill another person with whom he had previously shopped at the dealer’s store. The officer told the sales clerk that the person owed him money and was likely on the run. The officer said that he had to deal with his former friend before he left town and that he needed to “get a Tec for his ass” right away. The sales clerk recommended a Tec-9 assault pistol that could fire 100 rounds per load, telling the officer “You made a good choice; this will take care of business.”
- Backdated purchase forms so that undercover officers who stated they needed guns right away could take possession of them immediately rather than waiting three days as required by state law.
- Made all of these sales even though the undercover officers’ addresses indicated that they lived in Chicago where it is illegal for them to possess these guns.
- Warned an undercover officer to say that the guns were stored at a relative’s house outside the city, if ATF or the Chicago police ever came around asking questions. The sales clerk promised that he would say that the undercover officer was a firearm collector, if ATF or the police ever asked.<sup>27</sup>

buyer.

Videotape of the Chicago undercover sting aired on CBS's "60 Minutes" program. At that time, officials of the City of Detroit and Wayne County, Michigan, were also preparing a lawsuit. They decided to conduct a sting operation similar to Chicago's to find out if dealers in their area would be brazen enough to sell to straw purchasers in the wake of the substantial publicity given to the Chicago sting. In each instance, the undercover officers made clear to the seller that a buyer with a clean record was filling out the paperwork to enable a criminal or juvenile to obtain the weapon. Nine

**"This is called a straw purchase. . . .  
It's highly illegal."**

out of ten dealers were eager to make the sale. The clerk at one store, a Sports Authority in Dearborn, informed the officers that "This is called a straw

purchase" and twice repeated that "It's *highly* illegal." The clerk then proceeded to sell them the gun they wanted.

Other Detroit-area transactions were just as alarming. While selling a gun to a straw purchaser buying on behalf of a juvenile, a dealer at a gun show said:

I could get in a lot of trouble for this. . . . You want to tell me you're buying the gun and you want to lie on the sheet and all that? I don't care. . . . This question right here says "Are you buying this gun for yourself?" Now all three of us know you're not, know what I'm saying?

Another dealer completed the straw sale transaction while he sarcastically mimicked the cries of parents grieving the loss of a child to gun violence.

You go down there in front of the city/county building, you'll see a bunch of people around there picketing because they're saying that there are too many guns in the streets, too many of our kids are being taken by guns. . . . I'm saying if you go down there, you see them people down there walking around bitchin' and runnin' their mouth, boo-hooing and "Oh I'm so sorry I lost my son, and he was going to be this or the next Einstein or something, and he got killed and I just don't know what I'm going to do . . . ."

Even after videotape of the Detroit-area sting aired on NBC's "Dateline," dealers around the country still failed to get the message and a third sting in Gary, Indiana, produced the same outcome. Time after time, dealers did not hesitate to sell guns to someone making an obvious straw purchase on behalf of a criminal or juvenile.

Carter's Country, one of the largest gun dealers in Texas, repeatedly directed its employees to encourage straw purchases in order to avoid losing sales. In a lawsuit filed by Brady Center lawyers, Carter's Country employee Dana King testified that customers sometimes volunteered the fact that they had felony records and "we were directed on several occasions, find out if they've got somebody with them or can get somebody to come do the legal work to buy the gun, which to me is a straw purchase, illegal."<sup>28</sup> King raised the issue with the store's management several times and was told "Well, you don't



worry about that.” When King declined to make a straw sale despite encouragement to do so, the store managers became angry with her for turning away a \$900 sale.

The manufacturers and distributors do not care what they see dealers doing in these sting operations. For example, the Center for Investigative Reporting used a hidden camera to record straw sales made by employees of California gun dealer Traders Sports. Traders Sports did not change any of its sales practices after seeing that tape, no employee was disciplined or terminated as a result of those sales, and no manufacturer or distributor stopped selling to Traders Sports or took any action to find out what was going on there.<sup>29</sup> Only one manufacturer, Smith & Wesson, cut off sales to the dealers caught selling to straw purchasers in Chicago’s undercover sting operation.

The industry has had a hard time just keeping its story straight when it comes to straw purchases. Many key executives and trade association officials have claimed that the industry did not learn about the problem of straw purchasing until very recently, while others admit the problem of straw purchases has been common knowledge in the industry for many years.<sup>30</sup> An abundance of evidence contradicts the industry’s claim that straw purchases are a problem only recently discovered.

Witnesses at congressional hearings testified about the problem of straw purchases as early as 1975.<sup>31</sup> Minutes of a meeting of an industry trade association from 1989 indicate the industry’s awareness that straw purchases were a top priority for ATF.<sup>32</sup> Likewise, ATF newsletters distributed to Federal Firearm License holders throughout the country at that time also warned the industry about straw purchases.<sup>33</sup> In public Congressional hearings in

1993, ATF director Stephen Higgins testified how criminals obtained guns through straw

#### **New Jersey Police Officers Pursue Case Against Businesses That Supplied Guns to Criminal**

Detective David Lemongello and Officer Kenneth McGuire served on the police force of Orange County, New Jersey. In January 2001, a convicted felon, Shuntez Everett, shot them while they were conducting undercover surveillance of a gas station that had been robbed repeatedly. The gun, a Ruger 9 mm pistol, was one of a dozen firearms that a pawnshop in Charleston, West Virginia, sold to a straw purchaser. Tammi Lea Songer, who had a clean record, filled out the paperwork to buy the guns for James Gray, a gun trafficker who could not buy the guns himself because of his felony record. Gray selected the guns and gave Songer the money to pay for them. The pawnshop was sufficiently concerned about the purchases that it notified ATF, but it only did so *after* completing the sales, pocketing the cash, and allowing the traffickers to walk away with the guns including the weapon that would be used to shoot Detective Lemongello and Officer McGuire six months later.

The pawnshop had no policies or sales practices in place to prevent the supply of a gun to a straw purchaser, even in a situation where the circumstances were blatantly suspicious and the sales personnel realized something was wrong. Sturm Ruger did not even require its dealers to employ the “Don’t Lie for the Other Guy” protocol that its own trade association, NSSF, recommends. That policy requires dealers not to complete sales where they have doubts about whether they are straw purchases. Had Sturm Ruger simply required that the “Don’t Lie” rules be followed, this sale would not have been completed.

Detective Lemongello and Officer McGuire suffered serious debilitating injuries in the shooting. They have brought an action in a West Virginia court against Sturm Ruger, the pawnshop, Songer, Gray, and Everett’s estate.

purchases.<sup>34</sup> ATF held a meeting in December 1995 with executives of gun manufacturers and representatives of gun industry trade associations where ATF stressed that addressing the straw purchase problem should be a “major emphasis.”<sup>35</sup>

The evidence leaves no doubt that manufacturers and distributors have known about the rampant problem of straw purchases for a long time. One manufacturer, Sturm, Ruger & Co., even had an employee making straw purchases for prohibited purchasers in his motorcycle club.<sup>36</sup> There can be no doubt that manufacturers are well aware of the problem.

The industry simply chose to ignore the danger until the growing threat of legal responsibility from lawsuits finally forced it to take some action. One of the industry’s trade associations, NSSF, began providing assistance to an ATF program that sought to train dealers to spot suspected straw purchases and refuse to make the sales. The program became known as “Don’t Lie for the Other Guy,” but it was merely a new name for an old program that ATF started many years before NSSF became involved. As Beretta’s general counsel Jeffrey Reh explained, NSSF’s contribution to the program was to add “a bit of, maybe you can call it, marketing flare to it; with posters and display materials.”<sup>37</sup>

The “Don’t Lie” program reflects a clear recognition by the gun industry that, if dealers are responsible, they can prevent criminal acquisition of guns through straw purchases. Despite that, the program is strictly voluntary. Every manufacturer and distributor could make dealer participation mandatory, but none has done so. Beretta’s national sales manager Donald Campbell testified he had never even heard of the “Don’t Lie” program.<sup>38</sup> Not a single manufacturer or distributor provides any training of its own to dealers on how to spot and stop straw purchases.

### **Large-Volume Sales**

Large-volume sales of guns are another method by which guns are diverted from manufacturers’ distribution systems to the criminal market. ATF and other federal government reports have indicated that large-volume purchases, made on a single occasion or on multiple occasions over time, are a favored tactic of illegal gun traffickers, who buy and then illegally re-sell large quantities of guns.<sup>39</sup> Statistical evidence shows that the rate at which guns move into the illegal market is much higher for large-volume purchases than for single handgun purchases.<sup>40</sup> As far back as 1975, ATF’s director warned the industry that large-volume sales are a strong indicator of illegal trafficking activity.<sup>41</sup> Despite these warnings, no manufacturer or distributor places any restriction on the number of guns that a dealer can sell to a customer or requires a dealer making high-volume sales to take any extra precautions.

Manufacturers and distributors instead point out that a provision of federal law requires a dealer to send a form to law enforcement agencies when it makes a “multiple sale,” defined by law as the sale of two or more handguns to a single individual within five business days.<sup>42</sup> This requirement applies only to handguns and not to sales of rifles or shotguns. It is only a reporting or notification requirement, and the purchaser has long since left the store with the guns in hand by the time law enforcement agencies receive the report.

A congressional report in 1976, supported by the U.S. Departments of Justice and Treasury, concluded that the “multiple sale” reporting requirement was not enough to prevent large-volume sales from being a major source of illegal gun supply. Finding that “it has become evident that this illicit firearms trafficking has been facilitated by the absence of Federal controls upon the multiple sale of handguns,” the report proposed that limits be placed on the number of guns sold to a customer.<sup>43</sup> While a few states have enacted such limits, most states have no restrictions.

In addition, the reporting requirement can be circumvented if a dealer is willing to sell a large number of guns to a trafficker, but arranges the transactions so that the customer never receives more than one handgun every five business days. For example, an Illinois case brought by the Brady Center demonstrates how a corrupt dealer can structure sales to avoid issuance of a multiple sale notice to law enforcement. An illegal trafficker named Donald Fiessinger approached a gun dealer, Old Prairie Trading Post, about purchasing large quantities of guns.<sup>44</sup> To avoid the multiple sale reporting requirement, Old Prairie and Fiessinger arranged a deal under which Fiessinger could order dozens of weapons at a time, pay for them all at once, and then return to the store every five days, over and over again, in order to accept delivery of just a single gun at a time and avoid the issuance of a multiple sale notice to law enforcement. Old Prairie ultimately sold approximately 65 guns to the trafficker in this manner, one of which was later illegally sold to and used by a neo-Nazi in a racist murder spree across Illinois and Indiana.

After hearing about the circumstances that led up to that tragedy, a Kansas dealer decided to institute a special policy and take extra precautions before selling multiple guns to a customer. While not required to do so by any distributor or manufacturer, the dealer began keeping a computerized record of the number of guns sold to each customer within the past 12 months, checking that record every time a customer buys a gun, and asking questions if the customer makes multiple purchases.<sup>45</sup> The dealer testified that he has told many others in the gun industry about the need to do something about dangerous large-volume sales, but has received no response.<sup>46</sup> (For more about this dealer, Robert Lockett, see Part Two below.)

Manufacturers acknowledge that selling unlimited quantities of guns is irresponsible even as they continue to allow dealers to do it. For example, Beretta’s president, Ugo Beretta, conceded in sworn testimony that manufacturers should not supply dealers who engage in suspect large-volume sales.<sup>47</sup> Mr. Beretta, who resides in Italy, was under the impression that his company makes certain that it only sells through

**“The logic of the matter requires that this is what should be done.”**

dealers that follow these “common sense” practices. He took for granted that his company does so, without asking its U.S. managers,

because “the logic of the matter requires that this is what should be done.”<sup>48</sup> Contrary to Mr. Beretta’s common-sense assumptions, his company in fact allows its dealers in America to sell customers unlimited quantities of guns, asking no questions and taking no precautions beyond the bare minimum required by law.

Likewise, Bruce Jennings, the owner of wholesale distributor B.L. Jennings, testified that his company would be concerned about a dealer that sold ten Bryco pistols to a customer at one time because “that would appear to be somebody who’s being an illegal dealer.”<sup>49</sup> Despite that, B.L. Jennings does nothing to prohibit or even discourage large-volume sales by the dealers it supplies, such as the dealer mentioned above, Old Prairie Trading Post, which sold dozens of B.L. Jennings’ guns to an illegal trafficker.

The gun industry’s own expert witness testified that ATF would have no problem with a manufacturer requiring each dealer to report periodically the number of multiple sales the dealer made.<sup>50</sup> Despite being well aware of the danger, manufacturers and distributors make no efforts to place limits or conditions on large-volume sales or to ensure that dealers take reasonable precautions when making such sales.

## **Gun Shows**

ATF and the Department of Justice have also advised the gun industry that gun shows are an important source of guns for criminals.<sup>51</sup> Individuals who do not have Federal Firearms Licenses are generally not required to conduct a background check before selling a firearm. In many instances, these individuals sell large quantities of firearms at gun shows, without doing background checks, under the pretense that they are not engaged in the business of dealing guns but are only selling guns from their private collections. The potential for buying guns without background checks makes gun shows an important source of guns for criminals, as numerous ATF and other federal government reports have indicated.<sup>52</sup> For example, Chris Larsen, the president of distributor B.L. Jennings, has attended gun shows and seen sellers that he believes “are, in fact, illegitimate dealers that are selling products without background checks and that concerns him.”<sup>53</sup>

In addition, there have been many instances in which licensed dealers selling at gun shows have violated firearms laws and regulations.<sup>54</sup> Licensed dealers sometimes illegally operate at gun shows as though they are unlicensed individuals. By posing as unlicensed sellers, they avoid the legal limits that apply to sales by licensed dealers, such as background check requirements.<sup>55</sup> For example, Colorado Springs gun dealer Mike Meienberg hated the Brady Law and feared its criminal background check requirements would ruin his business. Meienberg was the second largest dealer in the state. Every Friday, he packed up his entire store inventory and transported it to various gun shows. He feared that potential customers there would prefer to buy from unlicensed dealers to avoid background checks and record keeping. Meienberg stopped doing background checks on sales at gun shows and falsified his sales records to cover that up.<sup>56</sup>

Likewise, licensed dealer Jim Gowda traveled from gun show to gun show across the western United States for 20 years, selling thousands of guns without paperwork or background checks. Law enforcement officers investigating the case estimated that Gowda sold 10,000 guns in that manner and called this the largest gun trafficking case in history. Hundreds of guns sold by Gowda were used in crimes and traced by ATF.<sup>57</sup>

The gun industry is aware of the problem of illegal sales at gun shows and the fact that ATF does not have sufficient resources to maintain an adequate presence at gun shows.<sup>58</sup> A few manufacturers have prohibited dealers from selling at gun shows,

establishing that it is possible for manufacturers to take this action. For example, Heckler & Koch refuses to sell directly to any dealer who sells at gun shows. Nevertheless, it continues to allow its wholesale distributors to sell Heckler & Koch guns to such dealers.<sup>59</sup>

Sturm Ruger's attempt to adopt a stronger policy concerning gun shows demonstrates the pressure that manufacturers receive from others in the industry to ignore distribution problems rather than address them. In 1999, Sturm Ruger adopted a policy prohibiting its distributors from selling to any dealers not selling "exclusively" from their retail stores. A dealer selling exclusively from its retail store cannot sell at gun shows. Sturm Ruger stated that its new policy against dealers selling at gun shows "will help ensure compliance with laws."<sup>60</sup>

After the *Denver Post* reported this change and applauded it in an editorial,<sup>61</sup> Sturm Ruger began to waffle about what it had done. At an industry trade show held the weekend after the editorial appeared, Sturm Ruger received harsh criticism for its change in policy.<sup>62</sup> Sturm Ruger responded by issuing a "clarification" that repudiated the new policy and claimed it was not meant to affect dealers selling at gun shows. Sturm Ruger stated that it had no problem with dealers selling Sturm Ruger firearms at gun shows, although it would prefer the sale be completed at the dealer's store rather than in the "hurried, public atmosphere of a gun show, where boxes, instruction manuals, locks, lock boxes, etc. are more likely to be misplaced or forgotten, and where proper demonstrations and instructions are less likely to be complete."<sup>63</sup>

Sturm Ruger's insistence that its new policy was not meant to affect gun shows is implausible and contrary to the plain language of the policy. Sturm Ruger has no explanation as to how it could have adopted that policy without realizing the literal plain language prohibited distribution to dealers selling at gun shows. As Sturm Ruger's own distribution manager Robert Thompson said about the interpretation of the policy that Sturm Ruger later tried to offer, "you can't actually read that from the language."<sup>64</sup> The *Denver Post* concluded that Sturm Ruger "seemed poised to be the first to set a responsible example when it comes to gun-show sales" but that "the company floated the idea and then pulled back because of criticism."<sup>65</sup>

While aware of the serious risks, most manufacturers and distributors place no limits on sale of their products at gun shows and have never attempted to determine anything about the extent to which or the manner in which their guns are sold at gun shows.

### **Incomplete Background Checks**

The gun industry frequently argues that it is not responsible for diverting guns to the illegal market since gun purchasers undergo background checks. However, the industry subverts the effectiveness of that system by routinely allowing guns to be sold before the background check has been completed. Under the Brady Act, a dealer that does not receive either an affirmative or negative response to a background check request within three business days can proceed with the sale.<sup>66</sup> Many records that should be checked are not computerized or readily available and complete, preventing law enforcement agencies in thousands of cases from providing an affirmative or negative

response to a background check request within three business days. In many instances, felons and other prohibited purchasers have been able to obtain guns via this “delayed denial” problem. In fact, the FBI has found that the longer the background check requires, the greater the odds that the buyer will turn out to be a prohibited purchaser. For example, background checks that take longer than two hours are twenty times more likely to involve prohibited purchasers.<sup>67</sup>

Dealers could refuse to proceed with gun sales in situations where there is no affirmative or negative response to the background check request within three business days and instead wait until there is a definitive response. For example, Wal-Mart recently implemented a nationwide policy to that effect, announcing that its stores would not make any sales until background checks are completed. Wal-Mart voluntarily chose “to take this extra step towards keeping guns out of the hands of individuals who possibly ought not to have them.”<sup>68</sup>

Every manufacturer and distributor could implement a policy requiring dealers to wait until background checks are completed. Even an expert witness hired by the manufacturers agreed that it would be beneficial if all gun dealers had such a policy.<sup>69</sup> Rather than taking this simple step to keep guns out of the wrong hands, the industry promised to take a weaker action and then failed even to do that. In November 1999, NSSF drafted several versions of a letter it told ATF it intended to send out to dealers encouraging them – but not requiring them – to delay transferring a firearm for two or three days if specifically requested to do so by law enforcement.<sup>70</sup> After one of its dealer members insisted that the policy be “strictly voluntary,” NSSF never actually got around to sending any version of the letters it drafted.<sup>71</sup>

### **Inadequate Security**

Theft from manufacturers, distributors, dealers, and common carriers is another method by which guns are diverted to the criminal market. The gun industry has long known that criminals obtain many guns from thefts. For example, a congressional report warned the industry 25 years ago that “thefts from licensees contribute substantially to the illegal firearms population” and discussed the problem of thefts of guns from common carriers.<sup>72</sup> Several more recent ATF reports have discussed the problem of thefts from gun dealers and common carriers as a means by which gun traffickers obtain guns.<sup>73</sup> One ATF report stated that stolen guns make up “about a quarter of the trafficking investigations.”<sup>74</sup> In addition, some dealers falsely report trafficked guns as “stolen.”<sup>75</sup>

A small percentage of dealers account for most thefts, indicating that the industry could greatly reduce the danger by focusing on the dealers with grossly inadequate security measures. For example, in 1996, only 1.3% of dealers experienced a theft, and only 0.27% of dealers had multiple thefts.<sup>76</sup> Even a single store’s inadequate security can result in a large quantity of guns moving into the hands of criminals. A dealer in California, for example, lost over 500 firearms in one theft.<sup>77</sup>

ATF has issued a report suggesting ways to improve security and prevent thefts.<sup>78</sup> ATF's recommendations are advisory only and not mandatory requirements that distributors, dealers, or common carriers must follow. Each manufacturer could make

**The Case Against Kahr Arms**

Kahr Arms operates a gun factory in Massachusetts that lacked even the most basic security measures to prevent gun theft, such as metal detectors and security guards. Kahr Arms also lacked adequate inventory controls to detect when guns were stolen and failed to conduct background checks of employees.

Mark Cronin, whom Kahr Arms hired despite his extensive criminal record and addiction to crack cocaine, was able to steal dozens of guns from the factory. Some were stolen even before they had been stamped with a serial number, making them particularly valuable to criminals because they cannot be traced.

In December 1999, Danny Guzman was an innocent bystander in front of a nightclub in Worcester, Massachusetts, when he was shot and killed with one of the handguns stolen from the Kahr Arms factory. A four-year-old child later found the gun, loaded, in the yard of an apartment building near where Danny was killed.

With the help of the Brady Center, Danny's mother and daughters have brought suit in Massachusetts against Kahr Arms, Cronin, and the man who shot Danny.

improved security mandatory for the distributors and dealers in its distribution network and the carriers it uses. In addition, each manufacturer could require distributors and dealers to report all thefts they experience, keeping the manufacturer informed about the weak security points in its distribution network. One of the manufacturers'

own experts testified that ATF would have no problem with a manufacturer requiring each dealer to report periodically the number of guns stolen from the dealer.<sup>79</sup>

No manufacturer or distributor has taken any of these simple, reasonable steps to ensure proper security precautions exist within its distribution system. One company came up with a proposed set of guidelines on safe shipping and handling of guns and submitted it to an industry trade association in 1996, but the document is "still being reviewed" by that association today and has not been distributed.<sup>80</sup>

## Unsafe Designs

The danger created by the manufacturers' distribution systems has been compounded by their failure to equip guns with feasible safety features to prevent misuse.

Each manufacturer could reduce the availability of its guns for the underground market by equipping them with integral locks or other technology that would "personalize" them and prevent their unauthorized use, but for decades refused to consider such safety improvements. After all, automobile manufacturers do not sell cars without locks on the doors, and ignition systems cannot be activated without a key.

"If we can send a motorized computer to Mars, then certainly we can advance our technology to be more childproof."

Ron Stewart, former CEO of Colt's Manufacturing

The gun industry's attitude toward design safety began to change after cities and counties began suing them. For example, the *Arizona Republic* reported that, in contrast to prior years, *safety* was the overriding theme at the annual SHOT Show, the industry's biggest trade show, in January 2000. According to that report, "at display after display, this year's main message was safety."<sup>81</sup>

While gun manufacturers long denied that it was possible to equip guns with this kind of technology, they have now refuted their own arguments. A stream of manufacturers including Beretta, Heckler & Koch, Kimber, Remington, Sako, Smith & Wesson, Springfield Armory, and Steyr have begun for the first time to sell guns with internal locks. Taurus has made plans to include its integral locking system, first introduced on some models in 1997, on all of its guns.<sup>83</sup> Other manufacturers, such as Mossberg and SIG Arms, have displayed prototypes of guns with integral locks at trade shows.<sup>84</sup> Since being sued, other manufacturers such as Sturm Ruger and Glock have started projects to add integral locks to the design of guns.<sup>85</sup> Glock touted one such model on its magazine cover as "Super Safe."<sup>86</sup>

#### **What Do Experts Say About... Safer Gun Designs?**

The experts testifying about gun design in lawsuits against the gun industry include Carter Lord, a Colorado engineer and gunsmith with over 30 years of experience in manufacturing and analyzing the designs of firearms. Lord's testimony confirms that it is mechanically and technically feasible to incorporate an integrated locking mechanism in firearms made by Beretta, Colt, Glock, Smith & Wesson, Sturm Ruger, Taurus, and other manufacturers. The technology necessary for these safety locks "has been extant and well known for many years" and would increase production costs a mere \$2 to \$10 per gun.<sup>82</sup>

For years, manufacturers put little effort into developing safer designs, even as they made rapid progress in making their products more powerful, lighter, smaller, and more easily concealable. The threat of litigation finally compelled these manufacturers to take steps that they could and should have taken long ago to

make their products safer. All the technology and knowledge necessary to design integral locks for guns existed many years before these companies finally began designing such locks. The manufacturers' ability to add this safety feature to their products does not depend on any recent technological or scientific discoveries.<sup>87</sup>

These safety features are economically as well as technologically feasible. For example, Beretta's president estimates that the additional cost of the integral lock added to Beretta guns is \$10 initially, and that the cost is likely to decrease as the guns with the integral locks are produced in volume.<sup>88</sup>



Some manufacturers have insisted that integral locks are unnecessary because they already provide trigger locks, padlocks, cable locks, lockable boxes, and other types of locking devices with guns.

### **The Tragic Death of Nafis Jefferson**

On April 19, 1999, seven-year-old Nafis Jefferson and his friends were playing along the sidewalk and street in their South Philadelphia neighborhood when one of the children found a revolver under an abandoned parked car. Another child picked up the gun, pointed it at Nafis, and pulled the trigger, shooting Nafis in the head. Nafis died later that night at the hospital.

Integral locks or other simple safety features that would stop children from firing guns could prevent this sort of tragedy. In addition to its unsafe design, this gun was sold by an irresponsible gun dealer. It was one of ten guns that the dealer sold to a drug-addicted gun trafficker.

Aided by Brady Center attorneys, Nafis's mother has brought suit in a Pennsylvania court against the manufacturer, distributor, dealer, and trafficker who sold the revolver.

Those devices, however, are external items, not components of the firearm. They can be lost, discarded, or separated from the firearm. Integral or "built-in" locks would be more likely to be activated and therefore more effective in preventing unauthorized use of guns.<sup>89</sup> It is difficult to imagine an auto maker arguing it has no responsibility to put locks on car doors because padlocks are available at the local hardware store.

In addition, many of the devices distributed with

guns by manufacturers and NSSF have turned out to be faulty. For example, Sturm Ruger has distributed cable locks that can be opened without the key and padlocks that can be opened using keys other than those that came with the locks.<sup>90</sup> Smith & Wesson's Director of Total Quality Management determined that external trigger and cable locks could be disabled with bolt cutters or a hacksaw, but that integral locks could not be defeated without also destroying the firearm.<sup>91</sup>

In addition to integral locks, manufacturers are able to develop technology providing even more sophisticated personalization of guns through biometrics, magnetism, or electronics.<sup>92</sup>

The progress made toward safer designs has come despite the industry trade associations' active discouragement of the development of personalized gun technology. For example, SAAMI created a task force with the specific purpose of opposing the idea of personalized handguns and issued position papers attacking the very concept of personalization technology.<sup>93</sup> Despite the fact that it has been almost ten years since this position paper was created and technology has vastly improved, SAAMI still takes the same position.<sup>94</sup> SAAMI has never developed any standards relating to integral locks or other personalized safety technology. When SAAMI's Director of Technical Affairs, Kenneth Green, was asked why a standard for personalized gun technology was never developed, he testified that, "I am not aware of any reason why it wasn't. It just hasn't come up."<sup>95</sup>

## **PART TWO: INSIDERS EXPOSE GUN INDUSTRY MISCONDUCT**

Perhaps the most compelling evidence against the gun industry has come from within the industry's own ranks. Defying the intense pressure that keeps so many others quiet, these insiders or "whistle blowers" have admitted that the industry is well aware of how its distribution systems ensure a steady supply of large volumes of guns to the illegal market. Their testimony provides a revealing look inside the veil of secrecy surrounding the industry.

### **Robert Ricker – Former NRA Lawyer, Gun Lobbyist, and Trade Association Director**

Robert Ricker has provided the most explosive testimony about the gun industry. In February 2003, Ricker submitted a declaration in support of the lawsuits filed by twelve California cities and counties.<sup>96</sup> As one of the gun industry's mouthpieces admitted in an interview with *Gun Week* magazine, Ricker's declaration is a "devastating affidavit" and there is "no question" that it significantly improves the chances of cities' lawsuits against the gun industry.<sup>97</sup> The full text of the declaration can be found on the website of the Brady Center's Legal Action Project, at [www.gunlawsuits.org](http://www.gunlawsuits.org).

Ricker is a true industry insider, having spent nearly 20 years of his life representing the interests of gun owners, manufacturers, distributors, and dealers.<sup>98</sup> Ricker began work as a lawyer for the NRA in 1981.<sup>99</sup> After several years representing the NRA in its political and legislative efforts in Washington, D.C., Ricker headed west and continued to work on behalf of gun organizations including the NRA and its official California state affiliate organization, Gun Owners of California, the Citizens Committee for the Right to Keep and Bear Arms, and the National Alliance of Stocking Gun Dealers.<sup>100</sup> Among other work, Ricker wrote the first state statute giving special legal immunity to the gun industry. That law exempted gun manufacturers from certain kinds of product liability actions until the California legislature repealed it in 2002.<sup>101</sup>

After years of working on gun issues in California, Ricker returned to Washington to become Director of Government Affairs and later Executive Director of the American Shooting Sports Council (ASSC), the largest and most influential trade association lobbying on behalf of the gun industry.<sup>102</sup> ASSC's membership included virtually all the major gun manufacturers and distributors. Throughout the 1990s, Ricker participated in countless meetings and discussions with industry members.<sup>103</sup>

In his declaration, Ricker admitted what so many others in the industry try to deny. According to Ricker, the industry has long known that massive quantities of guns are diverted to the illegal black market through avenues such as "straw sales, large-volume sales to gun traffickers and various other channels by corrupt dealers or distributors who go to great lengths to avoid detection by law enforcement authorities."<sup>104</sup> The current distribution system "encourages and rewards illegal activity by a few corrupt dealers and distributors," while putting lawful and conscientious dealers at an economic disadvantage.<sup>105</sup>

Despite its awareness of these dangers, the industry has steadfastly refused to take steps to cut off the flow of guns to crime. "Leaders in the industry have long known that

greater industry action to prevent illegal transactions is possible and would curb the supply of firearms to the illegal market,” Ricker stated, but “until faced with a serious threat of civil liability for past conduct, leaders in the industry have consistently resisted taking constructive voluntary action to prevent firearms from ending up in the illegal gun market and have sought to silence others within the industry who have advocated reform.”<sup>106</sup>

For example, Ricker explained that the industry was well aware of the problem of straw purchases, including the fact that many straw purchases and other questionable sales could be stopped by dealers who are adequately schooled in preventing illegal activity and have the will to do so. Despite knowing that, the industry chose to adopt a “see-no-evil, hear-no-evil, speak-no-evil” approach and to pretend the problem did not exist rather than “requiring dealers to be proactive and properly trained in an effort to stop questionable sales.”<sup>107</sup> According to Ricker, that approach was typical of industry attitudes that encouraged “a culture of evasion of firearms laws and regulations.”<sup>108</sup>

Likewise, Ricker revealed that the industry has long known that gun traffickers often acquire firearms through multiple or large-volume purchases from dealers. Despite being aware of the inherently suspicious nature of that sales activity, “it has long been industry policy not to question or monitor such sales.”<sup>109</sup> After Virginia passed a “one handgun per month” law to curb trafficking from Virginia gun stores, Ricker and another ASSC official proposed that the industry consider implementing a system for better monitoring of multiple purchases in order to prevent illegal trafficking. The industry has yet to take any voluntary action to address the issue.

While working at ASSC, Ricker pushed for a broad “self-examination” of industry practices and policies in light of government reports indicating dramatic increases in criminal use of guns. ASSC’s board sponsored a series of high-level “Planning Meetings” at which industry leaders extensively discussed the issue, but chose to take action only against those within the industry who criticized the industry’s intransigence.<sup>110</sup>

The industry conducted other key meetings behind closed doors during the annual SHOT Show, the industry’s largest trade show. These meetings became known as the “lawyers’ meetings” because the participants were in-house counsel and outside attorneys representing major manufacturers and distributors. They met to discuss various legal, legislative, and policy issues facing the industry, including whether the industry should voluntarily take action to better control the distribution of guns.<sup>111</sup> While Ricker and ASSC’s then-executive director Richard Feldman advocated a proactive approach and new efforts to curb criminal acquisition and use of guns, other gun industry lawyers consistently opposed that idea and insisted that any voluntary action by the industry would be seen as an admission of responsibility for the problem.

Several of the manufacturers’ lawyers eventually decided that even having the meetings was too dangerous. Sturm Ruger’s lawyer Jim Dorr “put out the word” that industry lawyers should not attend, effectively putting an end to the meetings.<sup>112</sup> The same lawyers who opposed industry action at the meetings, such as Jim Dorr and Taurus’s counsel Tim Bumann, continue to represent the manufacturers today.

Despite the lawyers' resistance, ASSC continued to push the industry to take voluntary steps to reduce gun violence. For example, ASSC succeeded in organizing a joint effort by major gun manufacturers to provide child safety locks with each new handgun sold. The White House arranged for representatives of the participating manufacturers to appear with President Clinton at a Rose Garden ceremony in October 1997 for the announcement of the manufacturers' commitment to provide safety locks. Their participation infuriated key leaders of the NRA, NSSF, and SAAMI. On the morning of the announcement, NRA lobbyist James Jay Baker told Ricker that Feldman "has deliberately done this to me and I am going to do everything in my power in the next three to four hours to undo what you have done."<sup>113</sup>

The NRA was unable to stop the Rose Garden event. In its aftermath, the debate within the industry became increasingly strident, with advocates of voluntary reform such as ASSC's Ricker and Feldman pitted against SAAMI and NSSF leaders closely allied with the NRA. In particular, Robert Delfay, head of SAAMI and NSSF, emerged as a major opponent of reform and began working closely with the NRA to prevent anything like the safety lock initiative from happening again.<sup>114</sup>

The intimidation effort began with Ricker and Feldman being called to appear before a special SAAMI committee convened to investigate events leading up to the Rose Garden ceremony. NSSF's Delfay, NRA's Baker, and representatives of manufacturers like Sturm Ruger's CEO Gerald Bersett angrily denounced Ricker and Feldman when they appeared before the committee.<sup>115</sup>

Relations between ASSC and the industry's hard-liners grew even worse in 1998 when Ricker and Feldman made an effort to meet with Philadelphia's mayor Ed Rendell and other mayors threatening lawsuits against the gun industry. Behind the scenes, NSSF and NRA began putting pressure on influential members of ASSC's board to terminate Feldman as ASSC executive director. In early 1999, NSSF and NRA succeeded in forcing Feldman to resign. Meanwhile, the industry formed a new organization, the Hunting and Shooting Sports Heritage Foundation, intended to unite the industry under the hard-liners' control and to build a "war chest" to fight the municipal lawsuits.<sup>116</sup>

Ricker replaced Feldman as ASSC's executive director, but his tenure was short because he continued to resist the demands of NSSF's Robert Delfay and his NRA allies. In May 1999, Ricker attended a White House summit called to address ways to prevent future tragedies like the shooting massacre at Columbine High School in Colorado that occurred the previous month.<sup>117</sup> The White House did not invite NRA officials to the conference, and Delfay refused to attend because the NRA pressured him to boycott it. Although Ricker made special arrangements for NRA board member and former Congressman Bill Brewster to be invited, NRA leaders remained angry with Ricker for attending.

After the summit meeting, NSSF and NRA intensified their effort to silence Ricker and destroy ASSC. Delfay sent a memo to every member of the U.S. Senate declaring that the gun industry stood united behind the NRA and that there should be no confusion about who speaks for the gun industry. Meanwhile, Delfay began circulating private memos to industry executives telling them that they faced a "serious and urgent problem" because of the rift between the trade associations and that they had to solve it

by “Reigning [sic] in Ricker.”<sup>118</sup> “Someone in a position of authority at ASSC needs to direct Mr. Ricker to become silent,” Delfay ominously warned.<sup>119</sup>

Delfay soon succeeded in orchestrating the end of ASSC. Major manufacturers and distributors closely aligned with the NRA began resigning from ASSC. The ASSC board finally agreed to eliminate the organization by merging it into NSSF under Delfay’s leadership. Ricker resigned. “Both Mr. Feldman and I were silenced as voices for reform within the industry,” Ricker stated, “and the NRA was firmly in charge of the industry’s legislative and policymaking arm.”<sup>120</sup>

### **Robert Hass – Former Smith & Wesson Executive**

A top official from within the manufacturers’ ranks has spoken out as well. Robert Hass worked for Smith & Wesson for 11 years as Senior Vice-President of Marketing and Sales. He has provided a sworn statement acknowledging that Smith & Wesson and the industry as a whole are aware “that the black market in firearms is not simply the result of stolen guns but is due to the seepage of guns into the illicit market from multiple thousands of unsupervised federal firearms licensees.”<sup>121</sup> According to Hass:

In spite of their knowledge, however, the industry’s position has consistently been to take no independent action to insure responsible distribution practices . . . .

[None] of the principal U.S. firearms manufacturers and wholesale distributors . . . to my knowledge, take additional steps, beyond determining the possession of a federal firearms license, to investigate, screen or supervise the wholesale distributors and retail outlets that sell their products to insure that their products are distributed responsibly.<sup>122</sup>

In a subsequent deposition, Hass stated that others in the gun industry “[s]hould have, could have, would have” known that manufacturers sold through high-risk dealers and that the industry could be more active in “analyzing the tracing of its guns” and “pinpointing those dealers who are involved in a significantly higher percentage of traces than the average.”<sup>123</sup>

### **Carole & Bill Bridgewater – Former Officers of Gun Dealers Association**

Carole Bridgewater is another industry insider who has provided compelling evidence about the industry’s awareness of the dangerous flaws in its distribution systems. She served as secretary and treasurer of the National Alliance of Stocking Gun Dealers (NASGD) for 12 years, starting shortly after its creation in 1984, while her husband Bill Bridgewater served as NASGD’s executive director until his death in 1996. Together, they owned and operated a gun store in North Carolina, selling virtually all major brands of firearms.<sup>124</sup>

NASGD quickly grew to become a large and influential organization within the gun industry. Its membership included more than 8,000 retail gun dealers, as well as many of the leading wholesale distributors and manufacturers like Colt, Glock, Heckler

& Koch, Smith & Wesson, Sturm Ruger, and Taurus. NASGD's board of directors included representatives from the manufacturers, such as Tom Ruger from Sturm, Ruger & Co., as well as leaders of other gun industry associations such as NSSF's chairman Arlen Chaney.<sup>125</sup>

Like Ricker, Carole Bridgewater acknowledged that the gun industry has known for a long time that there are serious problems in the way it distributes its products. According to Bridgewater, manufacturers and distributors are eager to sell guns to any dealer with a Federal Firearms License, despite knowing that the majority of these "dealers" are "not real, legitimate, responsible businesses."<sup>126</sup> While many licensees ignore the laws and regulations that govern gun sales, manufacturers and distributors "not only tolerate these dealers but also actively feed them."<sup>127</sup>

Bridgewater exposed the fallacy of gun manufacturers' and distributors' argument that they have no responsibility for what happens to guns because they sell them only to dealers issued Federal Firearms Licenses by ATF. As Bridgewater explained:

The gun industry knows that obtaining a Federal Firearms License is easy to do and that the possession of that license does not mean someone is a qualified, legitimate, responsible dealer. It is well known in the industry that ATF has issued Federal Firearms Licenses to felons, even some who used their prison address to obtain the license while still incarcerated. It is well known in the industry that people have obtained Federal Firearms Licenses in their dogs' names.<sup>128</sup>

Bridgewater acknowledged that the manufacturers' and distributors' "willingness to sell guns to anyone with a Federal Firearms License feeds the black market for guns" and that situation "makes it extremely difficult for legitimate dealers who obey the rules to compete and survive."<sup>129</sup>

For years, NASGD repeatedly and forcefully warned the industry about these problems. One of Bridgewater's responsibilities at NASGD was publication of its monthly magazine *The Alliance Voice*, which NASGD distributed to its members and thousands of other dealers, distributors, and manufacturers throughout the industry.<sup>130</sup> Editorials and articles in *The Alliance Voice* frequently expressed concerns about the industry's distribution methods. For example, a column by Bill Bridgewater observed that the minimal requirements for obtaining a Federal Firearms License created "one of the most efficient black markets in firearms in history."<sup>131</sup> The column went on to say that:

The licensee may simply ignore all state and local laws and requirements, and most do exactly that. There is no state in the land that licenses firearms dealers that is regulating more than a very small portion of those that BATF has placed in the "business." Do not delude yourself that these other "dealers" who are intentionally disregarding the state and local laws are not selling firearms. The reason that they don't want state and local folks to know they are in the business is because they are selling in the black market.<sup>132</sup>

The column also described “gun-show cowboy” dealers who purchase large quantities of firearms from distributors who support the gun show trade and then re-sell them at gun shows on a “cash and carry” basis by pretending to be an unlicensed seller not subject to the background check requirements and other legal rules that apply to licensed dealers. The column reported that purchasers at gun shows “include the entire spectrum of the criminal element,” including felons, gangs, underage youth, buyers for underage youth, and multi-state gun runners, and that “[t]here are very few in this country who want a firearm for illicit purposes who do not know that they can get anything they want at the gunshows.”<sup>133</sup>

Likewise, a column by Carole Bridgewater warned the industry that “[w]hether we like it or not, whether we will admit it or not, the fact is that children and felons are being sold guns by licensed firearm dealers.”<sup>134</sup> Bridgewater observed that “[w]e as an industry have failed to ‘police’ ourselves in the past” and “[w]e must do so now.”<sup>135</sup>

ASSC’s director Richard Feldman said the same thing in an interview published in the *Alliance Voice*:

[T]here are problems within this industry that will not be fixed by moving more product. Some of the problems are of our own making and some have been exacerbated by our lack of resolve to take control of our own industry and enforce some standards of our own. . . . [W]e should be working to re-direct the attack against us by doing something about the flow of firearms to children and criminals. After all, we’re the ones who make them, distribute them and sell them. Somewhere within this industry we ought to be able to figure out how, why and who those kids are getting guns from and do something about it – with or without the government.<sup>136</sup>

NASGD also frequently received and published letters from gun dealers critical of the industry’s reckless distribution practices. The dominant theme of these letters was “that if we don’t clean up our own act, someone else will do it for us.”<sup>137</sup> For example, a letter from an Indiana dealer published in *The Alliance Voice* described the industry as “a big, non-professional mess” as a result of the manufacturers’ and distributors’ willingness to sell guns through anyone with a Federal Firearms License.<sup>138</sup>

NASGD found that many of its members expressed similar concerns when it invited them to submit comments on proposed legislation (eventually enacted as part of the Brady Act) increasing the fees for Federal Firearms Licensees. More than 3,500 members responded. NASGD reviewed the responses and published a summary of them in *The Alliance Voice*. NASGD members overwhelmingly supported the fee increases because they believed that the vast majority of dealers with Federal Firearms Licenses “use the license to deliberately sidestep state and local laws.” The dealers also criticized legal restrictions that severely limit ATF’s ability to oversee licensed dealers, including a restriction on unannounced inspections that “simply allows those who hold the law in utter contempt adequate time to cover up illicit activities.”<sup>139</sup>

Acting through NASGD, responsible dealers supported proposals to improve the safety of the industry’s distribution and to reduce the supply of guns to criminals by dealers who act illegally or irresponsibly. For example, Bridgewater stunned the NRA

and its allies in the industry by meeting with then-Secretary of the Treasury Lloyd Bentsen in April 1994. At that meeting, NASGD joined the Collectors and Arms Dealers Association and five major national law enforcement organizations in issuing a joint statement in support of new legislation to reform the Federal Firearms Licensing system. The statement acknowledged that there is a serious problem of violent crime in the United States and that “[t]his problem is driven in part by the size, scope and availability of the illegal firearms market, which supplies criminals and juveniles with deadly weapons.”<sup>140</sup> The statement further recognized that “within the firearms industry are elements who divert the flow of firearms from the legitimate trade into the more lucrative firearms black market.”<sup>141</sup> Rejecting the gun manufacturers’ constant refrain that ATF has exclusive responsibility for the safety of gun distribution, the NASGD statement admitted that ATF’s “ability to ensure compliance with firearms laws is hampered by insufficient resources and inadequate statutory authority.”<sup>142</sup>

Bill Bridgewater soon learned what happens to those in the gun industry who speak candidly about the industry’s problems. In addition to heading NASGD, Bridgewater served on ASSC’s board. At one of ASSC’s planning meetings, Bridgewater made an impassioned plea for action by the manufacturers and distributors to deal with the problem of corrupt dealers and distributors. Bridgewater warned that it is not good enough for manufacturers and distributors to simply sell to anyone with a Federal Firearms License and ignore opportunities to work with dealers and regulators to stop illegal sales.<sup>143</sup>

Bridgewater’s board seat came up for re-election at ASSC’s next annual meeting. Several manufacturers, unhappy with Bridgewater’s outspoken views, put heavy pressure on ASSC to dump Bridgewater from the board. Richard Feldman, ASSC’s executive director at that time, gave Ricker the task of breaking the news to Bridgewater that his views were “too controversial,” that they angered key industry and NRA leaders, and that his continued presence on the board threatened ASSC’s survival. Bridgewater agreed to voluntarily give up his seat on ASSC’s board for the good of the organization.<sup>144</sup> Bridgewater’s fate sent a clear message that the industry will not tolerate dissent from its party line. Michael Saporito, the chairman of ASSC’s board, astutely predicted that it would not be long before the same manufacturers who demanded Bridgewater’s ouster would “get” Feldman as well.<sup>145</sup>

### **Robert Lockett – Kansas Gun Dealer and Gun Industry Magazine Columnist**

Robert Lockett is another dealer who has spoken out publicly about the industry’s refusal to take responsibility for its contribution to the underground market. The owner and operator of the Second Amendment Gun Shop in Overland Park, Kansas, Lockett was named Dealer of the Year in 1994 by the National Alliance of Stocking Gun Dealers. In a column he wrote for *Shooting Sports Retailer* magazine in 1999, Lockett called on manufacturers and distributors to “wake-up” and control their distribution systems, including requiring that dealers “adhere to some strict guidelines.” Lockett wrote that:

I’ve been told INNUMERABLE times by various manufacturers that they “have no control” over their channel of distribution. . . . IF YOU DO NOT KNOW WHERE AND HOW YOUR PRODUCTS ARE



ULTIMATELY BEING SOLD – YOU SHOULD HAVE KNOWN OR ANTICIPATED THAT THEY WOULD BE ILLEGALLY SOLD AND SUBSEQUENTLY MISUSED. Let’s just get down and dirty. We manufacture, distribute, and retail items of deadly force.<sup>146</sup>

The column sparked controversy even before it was published, as a draft copy circulated within the top ranks of the industry and the *Wall Street Journal* ran a story on Lockett and the forthcoming column.<sup>147</sup> When the column finally appeared in *Shooting Sports Retailer*, significant edits had been made to what Lockett submitted to the magazine. For example, the column now addressed “Mr. Firearms Businessman” rather than “Mr. Manufacturer,” an effort to shift blame from the manufacturers.<sup>148</sup> Lockett does not know who convinced *Shooting Sports Retailer* to water down the column with these edits before printing it.<sup>149</sup>

Like others before him, Lockett found out that the gun industry does not respond kindly to criticism from within its own ranks. After this column appeared, several distributors retaliated against Lockett by refusing to continue selling to him.<sup>150</sup> The publisher of *Shooting Sports Retailer* told Lockett that Glock pulled its advertising from the magazine as a result of the column.<sup>151</sup> Lockett wrote several more installments of his column for *Shooting Sports Retailer*, but the magazine never printed them and would not give him a reason for discontinuing the column.<sup>152</sup>

In response to a subpoena, Lockett reluctantly appeared to have his deposition taken for the California municipal lawsuit. He admitted that the industry essentially does nothing to oversee distribution. “Once you receive a Federal Firearms License from the Federal Government,” Lockett stated, “the industry has generally said, okay, that’s good enough for us, you are good to go.”<sup>153</sup> Most distributors that sell guns to Lockett have never asked for anything from him other than his Federal Firearms License.

Lockett also stated that the industry knows or should know its reliance on law enforcement is a weak excuse not to exercise responsibility for its own distribution. To obtain a Federal Firearms License, a dealer is not required to pass examinations or otherwise demonstrate any understanding of gun laws and regulations, and instead “all I have to do is send in my \$200 and a fingerprint card to the ATF, and I’m in business.”<sup>154</sup>

Lockett has adopted special policies at his store “to make sure that we’re doing on a consistent and uniform basis everything that we feel we should be doing before we release a weapon to a particular individual,” such as:

- keeping a computerized record of the number of guns sold to each customer within the past 12 months, checking that record when the customer buys a gun, and asking questions if the customer is purchasing multiple guns;
- requiring the sales person to give the customer a demonstration concerning safe functioning and handling of the firearm;
- requiring the customer to demonstrate the ability to safely load, unload, and handle the firearm;
- giving the customer written materials about safe firearm handling and reading that material to or with the customer in the store before the sale is made;

- requiring each customer to think about and to explain how the gun will be stored, who will have access to the gun, and whether children will be present near the gun, and advising the customer about means of preventing unauthorized use of the gun;
- if the gun is sold with a safety lock of some kind, requiring the sales person to demonstrate proper application of the lock to the gun and requiring the customer to demonstrate the ability to properly engage and remove the lock; and
- requiring the sales person and customer to complete a form verifying that every one of these policies has been followed for each sale.<sup>155</sup>

No manufacturer or distributor has ever required Lockett to do any of those things or even encouraged them.<sup>156</sup>

Lockett stated that he has personally witnessed so many federal felonies committed at gun shows, by both licensed and unlicensed dealers, that he stopped going to them. He has seen licensed dealers at gun shows selling guns on a “cash and carry” basis without any paperwork. He has seen stacks of completed ATF “purchaser record” forms in dumpsters after gun shows because dealers throw them away so there will be no record of the sales they made. He has seen dealers selling parts for fully automatic weapons and military weaponry such as landmines. Lockett stopped going to gun shows because “[y]ou are who you associate with, and when I see things that are so blatant and looked at and winked at and grinned at and smiled at, as blatantly as they are at gun shows, I don’t choose to deal with those people.”<sup>157</sup>

Lockett has discussed the problem of widespread illegal activity by dealers with many people in the gun industry over the years and their primary reaction has been “helplessness as to what could be done about it.”<sup>158</sup> In all those conversations, Lockett cannot recall anyone in the industry denying that these practices occur.

### **Dealers’ Responses to Gun Manufacturer Surveys**

Manufacturers have also heard about the dangerous problems in their distribution systems from dealers’ responses to surveys. For example, Sturm, Ruger & Co. distributed a survey to its dealers asking what it could do to increase each dealer’s sales.<sup>159</sup> Many of the dealers’ responses were brutally honest and highly critical of Sturm Ruger’s distribution practices, and their answers refute Sturm Ruger’s and its fellow manufacturers’ feeble arguments that they cannot exercise control over their distribution networks. In the survey responses, dealer after dealer implored Sturm Ruger to exercise greater control over its distribution system. Dealers asked Sturm Ruger to sell directly to dealers rather than indirectly through wholesale intermediaries<sup>160</sup> and to establish “authorized dealer” or “key dealer” programs that would require dealers to meet strict requirements and operate legitimate, responsible businesses.<sup>161</sup>

Many dealers specifically asked Sturm Ruger to exercise greater control over its distribution by cutting off sales to non-storefront dealers, such as “basement bandit” dealers selling out of their homes or at gun shows. For example, dealers stated that:

- Sturm Ruger should “work with the industry to eliminate the ‘kitchen table’ sub-culture that does not follow the same rules and legal requirements that the stocking store-front dealer does.”
- Sturm Ruger should implement a policy to “Sell Ruger product through stocking gun dealers only. This would reduce unqualified people from selling firearms.”
- Sturm Ruger should “[w]ork with all levels of politicians to limit the number of issued [Federal Firearms Licenses]. Store front only. Help make basement bandits and gun shows illegal. As you know, these are the sources of illegal guns on the street.”
- Sturm Ruger “should stop selling to basement dealers. These are the ones who give gun dealing a bad name. Give true gun shops a break on price so we can compete against the basement people who are selling to drug dealers and convicted felons. Ruger should be limited to the store front dealers only.”
- Sturm Ruger should “require your distributors to get more than just an FFL to send them your product.”<sup>162</sup>

A letter from one dealer, enclosed with the survey response, told Sturm Ruger that “Frankly, after talking with your marketing staff at the SHOT Show and on the phone, no one seems to care how your product is marketed. . . . Now is the time for you to decide if you want the legitimate storefront dealer to survive; by supporting a clean distribution system that supports your company.”<sup>163</sup> Other dealers sent Sturm Ruger the same message, saying that the company should “[i]ninstall discipline in your messy distribution system” and “[h]elp clean up the industry,” because “cleaning up the industry is what is sorely needed.”<sup>164</sup> One dealer advised Sturm Ruger that the gun industry’s pricing decisions favored handgun sales over sporting rifles and shotguns and that this “fosters violence and I’m forced to cater to that and I hate violence.”<sup>165</sup> Another told Sturm Ruger that it preferred to sell “used guns” because “the black market seems to be able to obtain desirable new firearms at a lower cost more easily than stocking established businesses.”<sup>166</sup>

Sturm Ruger’s marketing manager Syl Wiley read all of the responses to the survey and made a presentation to the founder and chairman of the company, William Ruger Sr., about what the dealers had said.<sup>167</sup> Mr. Ruger’s response was that the company should drop “the whole thing” and not pursue any part of it further. Mr. Ruger would not give the company’s marketing manager any explanation for the decision. Wiley was simply ordered “not to pursue any kind of action after I had had my discussion with Ruger on this.”<sup>168</sup>

As a result, Sturm Ruger made no changes in any of its distribution practices and did not investigate any of the problems with the distribution system that the dealers described in their responses to the survey.<sup>169</sup> In particular, Sturm Ruger had a policy at that time prohibiting its distributors from selling to dealers without permanent, established places of business. In reading the survey responses, Wiley saw that many of the dealers complained about “basement bandit” dealers selling Sturm Ruger guns out of their homes or at gun shows and knew that this indicated that distributors were frequently violating Sturm Ruger’s distribution policies by supplying these dealers. Despite the

glaring evidence of these violations of company policy, Wiley did nothing and did not tell anyone else at the company about it because “when [William Ruger Sr.] tells you to do something, I do it, and it did not go any further.”<sup>170</sup>

### **Trade Associations’ Internal Memoranda**

The industry’s trade associations have been particularly rich sources of evidence about the industry’s refusal to act responsibly to keep guns out of the illegal market and criminals’ hands. As described above, Robert Ricker, Richard Feldman, and Bill Bridgewater are among those who have attempted unsuccessfully to utilize the trade associations to bring about significant reforms that would curb criminal diversion of the industry’s products. There have been many other occasions on which someone within the industry has suggested that the trade associations lead the industry in taking steps to stem the flow of guns to criminals. Over and over, NSSF and SAAMI were the graveyards for proposals to reform the industry.

For example, NSSF official Doug Painter read an ATF report in 1993 that “raise[d] a very serious question about the potential for illegal firearms transactions through ostensibly ‘legal’ FFL channels.”<sup>171</sup> Painter wrote that ATF’s study “confirms what is patently obvious,” particularly that ATF “cannot come close to inspecting or overseeing the activities” of all licensed dealers.<sup>172</sup> In a random sampling of dealers nationwide, an astonishing 34 percent had committed at least one federal firearms violation detected by ATF, and 40 percent of those required to obtain state or local firearms licenses failed to do so. Painter also noted that the study found that ATF investigated only 9 percent of applicants for dealer licenses.

Painter thought about what the industry should do in response and suggested a “proactive industry strategy” to address the serious “potential for illegal firearms transactions through ostensibly ‘legal’ FFL channels.”<sup>173</sup> He proposed that the industry act “as an important step in better regulating the distribution of its products and as a means to minimizing the possibility of illegal transactions through unscrupulous FFL holders.”<sup>174</sup>

Without even looking at the ATF report, NSSF’s and SAAMI’s executive director Robert Delfay rejected Painter’s proposals, telling him to take his memo and “file for future reference,” because NSSF’s chairman Arlen Chaney was “not keen on doing anything right now.”<sup>175</sup> Painter got the message and never looked at another ATF study again. Having learned his lesson not to rock the boat by suggesting reforms, Painter eventually rose through the trade association ranks to become NSSF’s executive director.

During the time the industry was internally debating the problems of corrupt dealers, a series of trade association documents prepared between 1994 and 1995 called for implementing a “Responsible Firearms Retailer Code of Practice” that asked dealers to pledge to “go beyond” federal and state regulations to impose additional “standards of responsible firearms and ammunition retailing.”<sup>176</sup> This dealer “Code” was drafted and circulated, but was then dropped.<sup>177</sup>

At about the same time, the industry also considered having SAAMI develop a “Safety Committee” to implement a “major” safety campaign, conduct research on the

relative effectiveness of safety programs, review and assess technical and other product developments, and serve as a clearinghouse for industry safety information and developments. These proposals were also dumped.<sup>178</sup>

Evidence from the trade associations also reveals the gun industry's recognition of the need for retailers to educate gun purchasers. In January 1995, a vice president for gun manufacturer Remington proposed that SAAMI and NSSF start a program in which retailers would encourage safe gun use, storage, and care. This proposal went nowhere.<sup>179</sup>

SAAMI acknowledged the problem of straw purchases in a public relations brochure entitled "A Responsible Approach to Public Firearms Ownership and Use" that indicated SAAMI members would pledge to sell only to legitimate retail firearms dealers because "we feel such action would result in fewer of our products ending up in the hands of unethical dealers."<sup>180</sup> No manufacturer or distributor implemented this proposal. A few years later, SAAMI issued a nearly identical brochure, but deleted the mention of this idea.<sup>181</sup>

Likewise, NSSF recognized the problem of "very poor inventory management" by retail dealers and discussed with ATF "NSSF playing a role in urging retailers to do regular inventories."<sup>182</sup> NSSF did not follow through on its commitment to urge retailers to do regular inventories, and instead it ultimately sent a letter to ATF opposing tightened ATF regulation of dealer inventories.<sup>183</sup> Two years later, ten innocent people in the Washington, D.C. area were fatally shot with a rifle that had mysteriously "disappeared" from the inventory of a Tacoma, Washington gun shop.

In 1997, Ricker, Feldman, and others at ASSC warned the industry about the danger in manufacturers' and distributors' standard practice of selling guns to anyone with a Federal Firearms License, without screening or standards. ASSC proposed that the gun industry create a "certified dealer" program. The idea was to create videotapes, computer programs, and other materials to train dealers to better understand and apply firearms laws, including recognizing the warning signs of straw purchases and other suspicious sales. Those who completed the program would be certified, and manufacturers and distributors would be encouraged to sell guns only through such certified dealers. ASSC approached NSSF for funding for the idea, since NSSF had far greater financial resources because of its sponsorship of the lucrative annual SHOT Show. NSSF listened to a presentation about the proposal, but rejected the program on the ground that the cost (\$721,000) would be too high.<sup>184</sup>

While unwilling to spend that money to improve the safety of gun distribution, just a few years later NSSF would choose to spend about \$3 million dollars on a television advertising campaign implying that it was unpatriotic for mayors to sue gun makers. The ads depicted these mayors tearing up an American flag.<sup>185</sup>

### **PART THREE: THE SMITH & WESSON STORY**

The ability of gun manufacturers to modify their distribution practices in an effort to prevent criminal acquisition and use of guns was made clear in March 2000 when

Smith & Wesson, one of the nation's largest gun makers, entered into a settlement agreement with the United States Department of Housing and Urban Development and other governmental plaintiffs.<sup>186</sup>

### **Smith & Wesson Chooses Safer Distribution and Designs**

A wave of shootings at schools across the country made Smith & Wesson's CEO Ed Shultz realize the industry had to make changes. "I always said, 'All we have to do is train kids and make sure those guns are locked up,'" Shultz explained. Then came the Jonesboro school shooting, involving a rifle stolen from a locked case. "When Arkansas happened, I changed. I said, 'OK, we have to find another solution.'"<sup>187</sup>

Smith & Wesson began making tentative steps toward exercising greater control over its distribution system. The company implemented a "Code of Ethics" placing some restrictions on those participating in its stocking dealer program and informed these dealers that it might terminate sales to those who did not agree to refrain from making sales to "straw purchasers" or to anyone that the dealer had reason to believe made a false or misleading statement.<sup>188</sup> Smith & Wesson later terminated several dealers from its stocking dealer program for breaching the Code's terms. Smith & Wesson also developed a detailed sales training syllabus, but only for sales associates of Smith & Wesson-owned retail outlets.<sup>189</sup>

After cities and counties began bringing lawsuits, initial discussions of a possible settlement broke down because NSSF leaders refused to speak to representatives from the Clinton administration interested in joining the talks.<sup>190</sup> Ed Shultz decided that Smith & Wesson would keep talking about possibilities for resolving the litigation and reducing firearms misuse. Shultz eventually decided that the company should agree to many of the changes that the cities and counties sought. Smith & Wesson had always done the bare minimum that the law required – no more, no less. Shultz explained that the decision to start doing more "came because I couldn't answer the question, 'Was I doing everything I knew how to do to prevent accidents?'" When he asked himself, "Would I put locks on our guns if it might save one child? The answer was yes."<sup>191</sup>

In its settlement agreement, Smith & Wesson committed itself to significant reforms of its distribution and design practices. Among other things, the company agreed to sell its guns only through authorized dealers who met certain terms and conditions far exceeding minimum legal requirements. Under the agreement, an authorized Smith & Wesson dealer was required to:

- have its employees attend annual training and pass a comprehensive exam on how to recognize suspect sales and promote safe handling and storage;
- sell guns only to persons who have passed a certified firearms safety course or exam;
- implement specific security procedures to prevent gun thefts; and
- maintain an electronic record of crime gun traces and report them to the manufacturer each month.

In addition, an authorized dealer had to refrain from:

- selling any gun until the background check had been completed, even if the check took longer than the three-day period the dealer is required by law to wait;
- selling more than a single gun at one time to a customer, unless the customer waited 14 days after the transfer of the first gun to receive the remainder of the guns purchased;
- selling at gun shows unless every seller at the show, including unlicensed individuals as well as licensed dealers, conducts background checks on every sale; and
- selling weapons attractive to criminals, such as those with large capacity magazines or semi-automatic assault weapons, even if they are legal.

The agreement required Smith & Wesson to monitor its dealers to determine if they were complying and to stop supplying any dealer selling an excessive number of crime guns. It also required Smith & Wesson to make significant changes in the design of its products, including introducing integral locks and other safety features. “A decision to enter this agreement, we realized, would not be popular with everyone,” Shultz said, “but we believe . . . it is the right thing to do.”<sup>192</sup>

### **Industry Backlash Against Smith & Wesson**

Smith & Wesson stood alone in agreeing to these reforms because no other manufacturer would follow its lead. The backlash against Smith & Wesson, led by the NRA and other militant gun organizations, was severe. The NRA denounced Smith & Wesson as a foreign-owned business that had “run up the white flag of surrender” to the Clinton administration.<sup>193</sup> Major distributors like RSR stopped distributing Smith & Wesson guns, shooting match organizers told Smith & Wesson it was not welcome at their events, and the Chicago law firm that represented Smith & Wesson (and still represents Sturm Ruger and other manufacturers) dropped it as a client.

The other manufacturers circled their wagons. Discovery in the *City of Boston* case uncovered an internal memorandum written by Don Gobel, the chair of NSSF’s board and an executive of Browning and U.S. Repeating Arms, entitled “Gun Manufacturers’ Positions on Key Gun Control Issues.” The document included a section on “Why We Stand United Not to Sign the S&W Agreement.”<sup>194</sup> Robert Delfay, executive director of NSSF and SAAMI, canvassed the manufacturers and declared that none of them would follow Smith & Wesson’s lead. “I talked to the vast majority of them,” Delfay said, “and the unanimous response was, ‘No way.’”<sup>195</sup> Delfay told the press, on the day Smith & Wesson signed, that he was “deeply disturbed by the fact that Smith & Wesson has allowed the Clinton-Gore Administration to manipulate the company in this manner,” but added that “We are confident that no other major manufacturers will desert.”<sup>196</sup>

The Federal Trade Commission and prosecutors in at least six states launched investigations into whether there was concerted action by Smith & Wesson’s competitors to refrain from implementing similar reforms or to punish Smith & Wesson for doing so.<sup>197</sup> “We are seeing behavior on the part of Smith & Wesson’s competitors that raises the specter of illegal antitrust activity,” said New York’s attorney general Eliot Spitzer.

“This is serious stuff.”<sup>198</sup> Connecticut’s attorney general Richard Blumenthal agreed that “Smith & Wesson is under absolutely unprecedented pressure, both financial and personal within the gun industry, with threats that are almost violent in nature, and I have heard the fear that it could be put out of business.”<sup>199</sup> Andrew Cuomo, Secretary of Housing and Urban Development, said “It seems like the industry is doing everything it can to make an example out of Smith & Wesson.”<sup>200</sup>

Shortly after the announcement of the Smith & Wesson settlement, NSSF commissioned a nationwide telephone survey to find out about public attitudes concerning the settlement and other issues relating to the gun industry.<sup>201</sup> The survey found that awareness of the Smith & Wesson settlement was high and overwhelmingly favorable, with 79% of respondents favoring the settlement and only 15% opposing it. All subgroups of the survey respondents approved of the agreement, *even a majority of NRA members*. All aspects of the agreement received “strong support.” Despite the results, the industry continued to “stand united” against the agreement.

While Smith & Wesson confirmed that all aspects of the settlement agreement were feasible for it and its distributors and dealers to implement,<sup>202</sup> many dealers refused to comply for political reasons. They rejected the agreement because they regarded it as a concession to the Clinton administration or to gun control proponents. As Smith & Wesson’s Vice President for Sales and Marketing Chris Killoy described it, dealers also concocted a variety of ill-informed legal theories for rejecting the agreement’s terms. For example, these “gun counter Fourth Amendment scholars,” as he called them, objected to signing a code of responsible conduct under penalty of perjury because they interpreted that as meaning that they would be committing perjury if they made a typographical error in their records. As Killoy put it, the company was “not dealing with necessarily all the best legal minds out there at the gun dealer level.”<sup>203</sup>

### **Smith & Wesson’s Celebrated Return to the “Family”**

Soon after entering into the settlement agreement, the conglomerate that owned Smith & Wesson sold it to a company headed up by former Smith & Wesson executive Robert Scott. After he became Smith & Wesson’s new president, Scott set out to scuttle the settlement agreement.<sup>204</sup> After renouncing the agreement, Smith & Wesson was welcomed back into the firearm industry “family.” As Scott later explained, “The firearms industry is a family. We need to be part of that family. We can’t be separate from that family. We want to fully, 100 percent, participate in that family. We want to be part of family decision-making.”<sup>205</sup> NSSF gave Scott its “Man of the Year” award, an honor that Scott perceived as “speak[ing] volumes about Smith & Wesson’s reclaimed place in the firearms community today.”<sup>206</sup>

The Smith & Wesson settlement agreement outlines a program for distribution relationships that would have served as an excellent model for any manufacturer genuinely interested in fulfilling its responsibility to help prevent diversion of its guns to the criminal market. ATF officials have confirmed that the settlement agreement would have complemented and reinforced law enforcement efforts. Indeed, the Secretary of the Treasury, who had authority over ATF at that time, was a party to the agreement.



The industry and the NRA continue to come down hard on any sign of conciliation. Most recently, Glock's top U.S. official Paul Jannuzzo stepped down amid controversy over his support for greater use of computerized ballistic identification systems that can match bullets and shell casings to the guns that fired them.<sup>207</sup> The NRA opposes these systems even though law enforcement officials say they can provide invaluable assistance in solving crimes like the sniper shootings that terrorized the Washington, D.C. area in the fall of 2002. Jannuzzo characterized his departure as a "retirement" even though he is only 46 years old. This "retirement" came just days after Jannuzzo appeared in a "60 Minutes" story about ballistic identification systems and said, "I think the people who right now are saying that there's no use for it, that it can't be used, that it's an intrusion upon our freedoms have arbitrarily drawn a line too soon."<sup>208</sup> Jannuzzo earlier made similar comments about trying to find ways to improve industry practices: "Don't reflexively say no, and don't draw a line in the sand just for the sake of drawing a line in the sand."<sup>209</sup> Those moderate remarks drew criticism from many within NRA and gun industry circles. "Jannuzzo went crazy," explained the company's founder, Gaston Glock.<sup>210</sup>

## **PART FOUR: THE GUN INDUSTRY AND LAW ENFORCEMENT**

While gun manufacturers insist that the safety of their distribution systems is exclusively the responsibility of ATF and other law enforcement agencies, law enforcement officials say otherwise. As former ATF director Stephen Higgins puts it, the system of firearms regulation in this country is one of "shared responsibility."<sup>211</sup> Government controls alone are insufficient to prevent firearms from being supplied to dangerous persons in the underground gun market without responsible behavior by gun manufacturers, distributors, and dealers. If the defendant manufacturers were to take steps to better oversee their distribution systems, ATF would welcome it.<sup>212</sup>

### **The Gun Industry Rebuffs Government Requests to Sell Responsibly**

Congress, ATF, and the Department of Justice repeatedly have issued reports and studies over the years documenting the methods of diversion from retail dealers. More than a quarter of a century ago, the House of Representatives conducted extensive hearings and issued a detailed report discussing the weaknesses of federal firearms regulations.<sup>213</sup> The report emphasized that ATF does not have enough resources to supervise all those who have Federal Firearms Licenses, and that effective law enforcement depends on the cooperation of manufacturers, distributors, and dealers. The report acknowledged that unfortunately there are many licensees who act irresponsibly or illegally and become major sources of criminally-used firearms.

In its *Operation Snapshot* report, released in 1993, ATF explained that these problems had only become worse.<sup>214</sup> That report indicated that only 9 percent of dealers had been subject to an investigation when they applied for a license, and only 10 percent of dealers had been the subject of a compliance inspection after receiving their licenses. Of the dealers that ATF managed to inspect, 34 percent had violated firearms laws and

regulations. A follow-up to *Operation Snapshot*, published in 1998, reported similar violation rates.<sup>215</sup>

In recent years, reports by federal law enforcement agencies have repeatedly confirmed that gun manufacturers can and should take steps to oversee their distribution systems to prevent the diversion of firearms into the underground market. For example, ATF's most recent strategic plan states that the agency's "[e]nforcement efforts would benefit if the firearms industry takes affirmative steps to track weapons and encourage proper operation of Federal Firearms Licensees to ensure compliance with all applicable laws."<sup>216</sup>

Likewise, the United States Department of Justice has called on gun manufacturers to "self-police" their distribution systems, stating that:

The firearms industry can make a significant contribution to public safety by adopting measures to police its own distribution chain. In many industries, such as the fertilizer and explosives industries, manufacturers impose extensive controls on their dealers and distributors. Gun manufacturers and importers could substantially reduce the illegal supply of guns by taking similar steps to control the chain of distribution for firearms. To properly control the distribution of firearms, gun manufacturers and importers should:

- [i] identify and refuse to supply dealers and distributors that have a pattern of selling guns to criminals and straw purchasers;
- [ii] develop a continual training program for dealers and distributors covering compliance with firearms laws, identifying straw purchase scenarios and securing inventory; and
- [iii] develop a code of conduct for dealers and distributors, requiring them to implement inventory, store security, policy and record keeping measures to keep guns out of the wrong hands, including policies to postpone all gun transfers until NICS [National Instant Criminal Background Check System] checks are completed.<sup>217</sup>

Gun manufacturers are well aware of these reports, but continue to disregard their recommendations.

### **The Gun Industry Ignores Crime Gun Tracing Data**

ATF tracing also gives the industry access to extraordinary information about the diversion of guns to criminals, which it could use to clean up its distribution networks. ATF traces crime guns at the request of federal, state, and local law enforcement agencies. The vast majority of the records that ATF utilizes to trace guns are in the hands of the gun industry, not ATF or any other government agency. ATF therefore must provide information to and receive information from manufacturers, distributors, and dealers in order to trace guns.

ATF generally begins a trace by contacting the manufacturer and providing it the serial number of the gun being traced. The manufacturer looks in its records to determine the distributor or dealer to which it sold the gun, and then gives ATF the distributor's or dealer's name, the date of sale, and other information about the transaction. ATF then contacts that distributor or dealer to find out what it did with the gun. By that process, ATF works its way down through the chain of sale of the gun until it obtains information about the final retail sale of the gun.

Each trace, unless the serial number has been obliterated, informs the manufacturer precisely which of its guns was recovered in crime. Each manufacturer knows the distributor or dealer to which it sold the gun. The manufacturers are not dependent on ATF for this information; it is contained within the manufacturers' own records. Moreover, each manufacturer could expand upon this information by requiring dealers as well as distributors to periodically report trace requests they receive to the manufacturer. That information would permit the manufacturer to identify the dealers within its distribution system responsible for the most traces and enable the manufacturer to more closely monitor, and eventually limit, sales to such dealers, thereby substantially reducing the number of the manufacturer's guns supplied to the underground market. No other type of business receives such detailed and continual notice about criminal acquisition and use of its products.

ATF has traced well over 1.5 million crime guns since 1988, and for the past several years it has been tracing them at a rate of over 200,000 per year, thus providing an immense body of information to the gun industry to clean up its distribution problems.<sup>218</sup> While the number of guns being traced is large, there is an even larger volume of crime guns that are not traced. A high percentage of crime guns are never recovered by law enforcement, and therefore traced guns are only the tip of the iceberg when it comes to the crime problem created by the illegal gun market.<sup>219</sup>

Every gun that is traced is part of a criminal investigation and is referred to by ATF as a "crime gun." ATF reports define "crime gun" as "any firearm that is illegally possessed, used in a crime, or suspected to have been used in a crime," noting that an abandoned firearm may be categorized as a crime gun "if it is suspected it was used in a crime or illegally possessed."<sup>220</sup> ATF frequently sends bulletins that inform the industry that traced guns are crime guns. ATF employees who visit major manufacturers and distributors reiterate this fact.<sup>221</sup> Moreover, the ATF Disposition Request Form used by ATF to trace guns expressly informs manufacturers, distributors, and dealers that the trace information "is needed to assist in a criminal investigation." Despite this, the industry pretends that traced guns are not really associated with crime.

One of the key values of crime gun traces is that they can be analyzed to show patterns and find indicators connecting dealers with crime gun diversion. For example, ATF reports have identified a number of indicators that a dealer is supplying traffickers:

- multiple crime guns traced to the dealer;
- short "time to crime" for crime guns traced to the dealer;
- incomplete trace results because the dealer does not respond to requests or cannot account for disposition of firearms;

- frequent losses or thefts from the dealer;
- frequent multiple sales of handguns made by the dealer; and
- recovery of firearms with obliterated serial numbers.<sup>222</sup>

The reports establish that an analysis of crime gun traces, using such indicators, can

**What Do Experts Say About . . . Crime Gun Tracing?**

The experts testifying in litigation against the gun industry include former ATF officials Gerald Nunziato and Joseph Vince.

From October 1991 until the end of 1998, Nunziato was in charge of ATF's National Tracing Center, the group that actually conducts traces, and was one of the key people involved in the creation of ATF's database of information about traces. As an expert witness, Nunziato has examined trace data using the same the kind of analyses that he conducted while working at ATF and that gun manufacturers and distributors could use to determine which dealers in their distribution networks are sources of guns for the illegal market. For example, in the case brought by California cities and counties, Nunziato studied the data and concluded that each of the manufacturers and distributors sued in that case sold crime guns through high-risk dealers associated with significant indicators of gun trafficking or diversion of guns into the underground market. According to Nunziato, had these companies cared to gather and analyze this data as ATF and the Department of Justice have asked them to do, they could have utilized it to oversee their distribution systems and establish a simple standard: "If you want to be a seller of our handguns, you cannot be linked to significant indicators of gun trafficking or diversion."<sup>223</sup>

During his thirty years at ATF, Joseph Vince served as Chief of the Firearms Enforcement Division and created and managed ATF's Crime Gun Analysis Branch. By analyzing data on crime gun traces, Vince concluded that the guns sold by each manufacturer, distributor, and dealer sued in California have contributed significantly to the crime gun problem in California communities. Vince further found that each of the defendant manufacturers and distributors engaged in the high-risk practice of selling to dealers associated with significant indicators of trafficking or diversion activity.<sup>224</sup>

identify dealers engaged in sales to gun traffickers or whose poor business practices have facilitated the diversion of guns into the underground market.<sup>225</sup>

Numerous reports have also shown that a significant volume of the diversions of guns to crime are concentrated in a small percentage of licensed dealers. For example, just 1.2% of retail dealers accounted for 57% of crime guns traced to dealers in 1998.<sup>226</sup> In any given year, the vast majority of Federal Firearm License holders (over 85%) have no gun traces associated with them.<sup>227</sup>

Manufacturers have long known that the number of traces associated with a dealer can be an important indicator of illegal gun trafficking. For example, in his declaration, Robert Ricker described a meeting in 1996 attended by representatives from ASSC, SAAMI, NRA, and other industry groups.<sup>228</sup> A senior administrator from ATF's firearms division spoke to the group, explaining how ATF used tracing data to target suspected traffickers. He stated that even a small number of traces may indicate a significant problem since the vast majority of dealers have no traces.

Federal law enforcement agencies have repeatedly advised manufacturers and distributors to utilize crime gun tracing information to assist them in overseeing their

distribution networks and that ATF is ready and willing to provide tracing data to manufacturers and distributors for that purpose.<sup>229</sup> When he was head of ATF's National Tracing Center, Gerald Nunziato offered to provide complete trace data to manufacturers, including the names of all distributors and dealers that sold any of the manufacturer's traced guns.<sup>230</sup> In February 2000, Treasury Secretary Lawrence H. Summers also publicly announced that ATF would provide tracing data to manufacturers to use "to police the distribution of the firearms they sell."<sup>231</sup> In reports issued annually, ATF has expressly told the gun industry that one of the primary purposes of data about traces is to "inform federal licensed firearms dealers of crime gun patterns, allowing them to build sounder and safer businesses."<sup>232</sup> The Department of Justice also called on the firearms industry to use ATF trace data to police their distribution chains.<sup>233</sup>

ATF has communicated the same message in correspondence with specific manufacturers. For example, Forrest Webb, the ATF Special Agent in Charge at the National Tracing Center Division, informed Taurus that it should use tracing data to determine whether "there is an unusually high number of Taurus firearms being traced to certain Federal firearms licensees" and suggested that in such an instance Taurus "look at their business practices more carefully."<sup>234</sup> Despite ATF's specific encouragement to utilize the trace data to identify problems with dealers, Taurus has not done so.<sup>235</sup>

Likewise, Sturm Ruger's general counsel Stephen Sanetti wrote a letter to ATF in response to a February 2000 newspaper article quoting ATF's director as saying that ATF will provide each manufacturer a list of the company's guns traced to crime and the names of the dealers that sold them. Sanetti stated that Sturm Ruger did not want such information and would instead rely exclusively on ATF to deal with any problems in Sturm Ruger's distribution system indicated by the trace data.<sup>236</sup> The special agent in charge of ATF's National Tracing Center Division responded with a letter stating that "in an effort to make information available to the industry for use in self-regulating," ATF has elected to provide manufacturers data about their firearms traced during the past year and that Sturm Ruger could have the information upon request.<sup>237</sup> Sturm Ruger still did not request the information.

Despite ATF's and the Department of Justice's repeated requests, the industry pretends that traces tell it nothing about criminal use of guns and has not attempted to use information generated by tracing to reduce the risk of guns being diverted to crime. For example, Glock has never analyzed trace reports or even considered doing so because, in its opinion, "[t]here would be no reason to."<sup>238</sup> Smith & Wesson's current president, Robert Scott, has not analyzed Smith & Wesson's trace requests because he believes that "we have no way of knowing whether it's a request for an antique gun that someone was given or whether it was a crime gun or it was a gun found in the middle of an abandoned house."<sup>239</sup> Most manufacturers have not even undertaken the simple step of counting how many trace requests they have received for particular distributors or dealers with which they do business.

A few members of the industry have made minimal attempts to examine trace information for the purpose of trying to prove that the data is useless to them. For example, Phoenix Arms' president David Brazeau stated that he will "thumb through" the trace requests that come in during a month, but he has never found any pattern or "anything that makes any kind of sense that somebody did wrong something wrong [sic],

you know, that I could have some impact on.” Phoenix Arms makes no effort to find out what retail dealer sold any of the traced guns.<sup>240</sup>

Likewise, Beretta examined traces of 100 of its firearms in 1996 as a means of generating information for its defense in litigation. Beretta’s general counsel Jeffrey Reh conducted the analysis. He chose 100 traces as his sample size because it is a round number that makes percentages easy to calculate. He felt that was a sufficiently large sample because it is greater than 27 and “[b]ased on my recollection of statistics, that you need sample sizes of a certain quantity to get a valid sense of something and I seem to recall more than 27 was always an important number.”<sup>241</sup> Reh did not subject the results to any test of statistical significance and instead performed “a cursory inspection of the results to reach the conclusions.”<sup>242</sup> Beretta has not done any more extensive analysis because it insists it is a “meaningless exercise.”<sup>243</sup> Beretta later purchased a computer disk from ATF containing a copy of the ATF trace database, but could not figure out how to work it and gave up.<sup>244</sup>

The half-hearted efforts by Beretta’s lawyer to look at the trace data stand in sharp contrast to admissions by Beretta executives. Robert Bonaventure stated that, as an executive vice-president and general manager at Beretta, he would have been interested in knowing if Beretta was receiving large numbers of trace requests for a particular dealer. It would have concerned him and made him wonder why there were so many requests for one particular location.<sup>245</sup> Beretta’s president, Ugo Beretta, also thought that the number of traces of Beretta guns sold by each dealer would be “interesting data” and that it would be “common sense” to obtain and use that information.<sup>246</sup> Mr. Beretta, who lives in Italy, was under the mistaken impression that his American employees and officers had taken all the necessary steps to obtain and use that information.

Trying to excuse their failure even to look at this vital data, many industry officials claim to have been told by ATF that they should not attempt to identify irresponsible dealers within their distribution systems.<sup>247</sup> They cling to that excuse despite being unable to identify specifically where, when, or by whom these statements supposedly were made, despite admitting that they cannot locate anywhere it appears in writing in any of the many publications and materials issued by ATF, and despite the fact that ATF’s published reports and other statements repeatedly say the opposite and urge the industry to make use of the data to make their distribution systems safer.

### **The Gun Industry and Gun Lobby Oppose Stronger Enforcement**

While insisting that law enforcement has the exclusive responsibility for keeping guns out of the wrong hands, the industry and its allies at the NRA have worked to tie the hands of ATF and prevent strong enforcement efforts.

As early as 1976, ATF began warning that its limited resources were strained “to the breaking point.”<sup>248</sup> ATF was able to investigate or inspect only a tiny fraction of dealers obtaining or renewing Federal Firearms Licenses. That remains true today. ATF has told the gun industry it faces a “critical shortage of agents and inspectors.”<sup>249</sup> ATF uses selective criteria to identify the dealers most in need of inspections, but estimated in one report that it would need to triple its number of inspectors just to implement a

program in which the dealers most in need of scrutiny would be inspected on a three-year cycle.<sup>250</sup>

Rather than calling for Congress to increase ATF's resources, the gun lobby threw its support behind the McClure-Volkmer Act, which was enacted in 1986 to the great dismay of ATF and police throughout the nation. This law rolled back critical provisions of the Gun Control Act of 1968. It narrowed the category of gun sellers who must obtain a Federal Firearms License, making it easier for unlicensed individuals to sell large quantities of firearms at gun shows and other venues under the pretense that their sales are only a "hobby." The enactment also opened the door for licensed gun dealers to start doing business at gun shows, spurring increases in the number and size of these events.

The McClure-Volkmer Act also reduced ATF's ability to conduct inspections of dealers, limiting ATF to a single unannounced inspection of any dealer in any 12-month period. At the same time, the Act raised the burden of proof for federal prosecutors trying to obtain convictions for violations of federal gun laws.

ATF's effectiveness is also undercut by the fact that it has no power to impose any sanction on a dealer short of criminal prosecution and license revocation. For example, ATF cannot impose a monetary fine or suspend a license. License revocation is a very lengthy and difficult process requiring a showing that the dealer "willfully" violated federal regulations. Revocation, when it occurs, is subject to a full *de novo* review by courts.<sup>251</sup> According to former ATF director Stephen Higgins, "If gun makers refused to continue supplying suspect dealers with new guns, it could provide a more effective sanction than the remote threats of license revocation or prosecution that ATF wields."<sup>252</sup>

Indeed, while the industry publicly insists that it is exclusively ATF's responsibility to ensure the safety of gun distribution, it privately complains when ATF attempts to do so effectively. For example, a report to SAAMI's executive committee in October 1994 proposed that SAAMI compile a record of "overzealous ATF efforts."<sup>253</sup> At a SAAMI meeting in May 2000, members complained about ATF subjecting dealers to "audits of unprecedented intensity" and that "[a]ll infractions are being listed, regardless of severity."<sup>254</sup> The industry has worked for many years, through its trade associations and in conjunction with the NRA, to restrict the power of ATF to oversee and regulate gun distribution, including proposing legislative restrictions on ATF's inspection and other capabilities "such that the opportunities for BATF to abuse its authority under the [Gun Control] Act would be significantly reduced."<sup>255</sup>

Based on his experience as ATF director, Stephen Higgins concluded that the industry's exclusive focus on ATF enforcement is a way for the industry to ignore and distract attention from its own failings. He also found it to be a remarkably disingenuous argument by an industry that at the same time had a history of opposing attempts by ATF to get the law and resources necessary to do a better enforcement job.<sup>256</sup>

## **PART FIVE: THE GUN MANUFACTURERS' CONTROL OVER DISTRIBUTION OF THEIR PRODUCTS**

In response to the lawsuits against them, gun manufacturers endlessly insist that they cannot control what happens to guns after they leave the factory. The manufacturers' own conduct demonstrates that is not true. Gun manufacturers consistently exercise control over distributors and dealers when their financial interests are at stake, demonstrating that they have the ability to do so, even though they refuse to exercise the same control when action is needed to protect public safety by preventing criminal acquisition of guns.

### **Manufacturers Decide How to Distribute Their Products**

Many gun manufacturers utilize multi-tiered distribution systems. No law requires the additional layers of middlemen distributors and dealers that these manufacturers have placed between themselves and the public. Some manufacturers, such as Beretta, Heckler & Koch, SIG Arms and Smith & Wesson sell some guns directly to dealers. Some manufacturers, including Beretta and Smith & Wesson, have established a few retail operations selling directly to the public.<sup>257</sup> Other manufacturers maintain dealer licenses in order to sell directly to their own employees or other individuals with close ties to the company.<sup>258</sup> Every manufacturer is legally authorized to sell at retail using its federal manufacturer's license.

Whether or not they sell directly to dealers or through wholesale intermediaries, manufacturers maintain close relationships with dealers, interacting directly with them, providing information and services to them, and collecting and maintaining information about them. Manufacturers communicate with the dealers selling their products regarding new product releases or technical issues. They also deal directly with dealers by administering special sales incentive programs, such as programs in which the dealer can receive a free firearm or other item from the manufacturer if the dealer purchases a specified volume or set of guns.

For example, Sturm Ruger sells only through wholesale distributors and not directly to dealers, and yet maintains such a close and direct relationship with dealers that it can send its sales representatives into gun dealers' stores to check their records and find out how many Sturm Ruger guns they sold compared to their sales of Smith & Wesson and Taurus guns.<sup>259</sup>

Manufacturers choose the distributors and dealers to which they sell guns and have the power to decide not to sell guns to a distributor or dealer that does not meet the manufacturer's requirements or abide by its terms and conditions. An internal memorandum circulated at Colt acknowledged that a manufacturer could easily impose any terms and conditions on dealers, even if it did not sell directly to them, by establishing an authorized dealer network and requiring the manufacturers' wholesale distributors to sell only to the authorized dealers. As the memo concluded, "This sounds almost too simple, what am I missing[?]"<sup>260</sup>



## **Manufacturers Use Control Over Distribution Systems to Promote Their Financial and Political Interests**

Each manufacturer has the ability to screen and investigate distributors and dealers before permitting sales of guns to them. Manufacturers screen and investigate distributors and dealers in order to learn about their creditworthiness and financial viability, but not when it comes to the safety or danger in the way they sell guns. After commencing sales, manufacturers continue to monitor the activities of distributors and dealers when it comes to credit strength and other financial matters.

Each manufacturer also has the ability to use written agreements to set terms and conditions for every distributor and dealer in its distribution system. Manufacturers often enter into distribution agreements with distributors and dealers to impose a range of terms and conditions that protect their financial interests, such as requirements that distributors and dealers:

- maintain minimum inventory levels;
- observe specified price terms;
- obey rules about where they advertise the products;
- allow the manufacturer to inspect sales premises, inventory, and records at any time;
- submit an accurate inventory of the products whenever requested by the manufacturer; and
- submit financial statements each year so that the manufacturer can make credit determinations.<sup>261</sup>

Manufacturers have exercised their authority under these agreements to review distributors' and dealers' financial records and inventories for purposes of assessing the distributor's or dealers' financial strength and setting production levels.<sup>262</sup> Manufacturers also reserve the right to terminate immediately any distributor or dealer to which they sell guns, and they have exercised those termination rights when they determine it is in their financial interests to do so.

The actions that the gun companies take to protect their financial interests contrast sharply with their refusal to take similar actions to cut the flow of guns to criminals. For example, the manufacturers insist they cannot prevent their distributors from selling to certain dealers, but gun maker H & R 1871, Inc. forbids its distributors from selling to "mass merchandisers" such as Wal-Mart or K-Mart.<sup>263</sup> For many years, Sturm Ruger even had a policy prohibiting its distributors from selling Smith & Wesson firearms "since they are the largest handgun producer and this market dominance prevents effective competition."<sup>264</sup>

A striking example of what the manufacturers can do is found in correspondence between Beretta and one of its major distributors. Beretta's standard distributor agreement includes a provision requiring the distributor to actively discourage retail dealers from selling Beretta guns to anyone outside the United States. Beretta includes that term in an effort to protect its foreign sales representatives. Beretta regards any such sales that "our distributors know or should have known are occurring" as violations of the

agreement. In a letter to a distributor, Beretta listed factors that would indicate the distributor should have known or suspected a dealer was making unauthorized international sales, such as “the size of the order, past history of the particular dealer, the

### **What Do Experts Say About... Other Industries?**

The experts testifying in suits against the gun industry include former ATF director Stephen Higgins and Professor Gregory Gundlach. Both have found that the gun industry’s approach differs sharply from other industries that have taken responsible actions to reduce harms associated with their products.

Higgins had extensive experience with the firearm and alcohol industries during his time as ATF director. He found the gun industry unique in its acceptance of industry members who caused the most problems, and its indifference to the poor public perception of the industry. The alcohol industry generally supported initiatives to make licensing requirements more stringent and did not oppose sanctions for those who violated the law. The gun industry, on the other hand, is not troubled by lax licensing requirements and often reacts critically when ATF seeks to punish misconduct by licensees.<sup>266</sup>

Gundlach is a professor of business at the Mendoza College of Business Administration at the University of Notre Dame, and a senior research fellow for the American Antitrust Institute, who has extensively studied how various industries distribute products. Gundlach cites specific examples of how makers of cigarettes, alcohol, chemical products, pyrotechnic products, and all-terrain vehicles have taken steps to limit the risks of their products being diverted to prohibited persons or otherwise being used in harmful ways. According to Professor Gundlach, the gun industry falls far short of the accepted norms and standards of care followed by other industries.<sup>267</sup>

size and nature of the order relative to normal buying practices of the dealer, et cetera.” According to Beretta’s national sales manager Donald Campbell, this was done in order to “control the distribution process,” to force distributors to keep an eye on the dealers’ activities, and to prevent distributors from just looking the other way in circumstances suggesting a dealer was making international sales.<sup>265</sup>

That is exactly the sort of vigilance that Beretta should be requiring distributors to exercise when it comes to spotting dealers that they should know are supplying the illegal market within the United States. Instead, Beretta’s approach is to bury its head in the sand.

For example, Robert Bonaventure, who served as a member of Beretta’s board of directors for twenty years, could not recall even a single time when the board discussed criminal acquisition and use of Beretta products, ways to prevent criminals from obtaining Beretta guns, or ways to make Beretta’s distribution of its products safer.<sup>268</sup> Beretta’s former national sales manager Donald Campbell admitted that he never thought trying to prevent illegal acquisition of Beretta guns was part of his responsibility, he never tried to think about ways to prevent it from happening, and he knew of no new measures that Beretta instituted during his entire time there to try to prevent it from happening.<sup>269</sup>

Once again, the limited progress that the industry has made toward exercising control over distribution in the interests of public safety has come about because of the threat of legal liability from civil lawsuits. For example, Heckler & Koch did not even bother preparing written agreements with its dealers for several years, “just to save the time on the administrative and the paperwork.”<sup>270</sup> Shortly after cities and counties began

to sue, Heckler & Koch began requiring each of its authorized dealers to sign a written agreement that included terms obligating the dealer to:

- be familiar and comply with all state, local, and ATF regulations;
- not finalize a firearm sale unless all applications and forms are completed and approved;
- not sell if the dealer reasonably believes that the purchaser is buying the firearm for another person or “straw purchaser”; and
- instruct its sales staff on the technology of firearms, including safety features and techniques.<sup>271</sup>

Glock, SIG Arms, and Taurus are among the other manufacturers spurred by litigation to finally begin imposing some minimal requirements for safe distribution on distributors or dealers.

Manufacturers also have the ability to monitor and supervise distributors and dealers through the activities of sales representatives. Manufacturers consider their sales representatives to be their “eyes and ears in the field” when it comes to commercial matters such as sales activities of dealers, distributors, and competitors. Manufacturers employ these sales representatives to visit, call, and provide services to distributors and dealers who sell their guns, even dealers who obtain the manufacturers’ guns through wholesale intermediaries rather than directly from the manufacturer. While manufacturers train their new sales representatives, they do not provide or require them to obtain any training about firearm laws and regulations, risks of illegal or unsafe sales practices, or how those who sell firearms can reduce risks of guns being diverted to criminal use and illegal trafficking. Likewise, manufacturers conduct periodic sales meetings and other programs to inform their sales representatives about new products, but there is no discussion or information about the risks of firearms sales during these programs.

Through these sales representatives, manufacturers provide training to distributors and dealers about products and sales promotion, including through visits of sales representatives to distributors’ and dealers’ premises. The information and training provided to dealers does not cover the vitally important subject of how to reduce criminal access to and use of guns. For example, Smith & Wesson had a promotional program called “Operation Sell More Guns” (a.k.a. “The Great Handgun War”) where its employees (called “Road Warriors”) went into gun dealer’s stores to promote Smith & Wesson products. None of these employees was trained in how to spot straw purchasers or to take any action with regard to large volume sales except to note that large volume sales of Smith & Wesson guns would “sell more guns.” Smith & Wesson also conducts full day training sessions for some of its dealers, but does not include any training on spotting or preventing straw purchases because Smith & Wesson feels that there would not be time in the “full-day event” for such training. Smith & Wesson has also produced training videos that it provides to its stocking dealers that discuss Smith & Wesson products, but has not produced or distributed videos discussing issues such as straw purchasing.<sup>272</sup>

While the industry has consistently refused to use their teams of sales representatives to oversee dealers and help curb illegal and dangerous sales practices, the industry has been ready and willing to use those same representatives to promote the industry's political interests. For example, Ricker directed a project in which manufacturers' sales representatives worked through retail dealers and gun shows to register gun buyers as California voters. Funded by several manufacturers and the publisher of *Guns & Ammo* magazine, the campaign registered over 25,000 gun owners.<sup>273</sup>

Likewise, distributor RSR used its dealer network to help defeat a proposed Colorado ban on certain semi-automatic weapons and high-capacity magazines. RSR used its established lines of communication with Colorado dealers to flood key state legislative committees with phone calls and faxes opposing the measure.<sup>274</sup> That success inspired RSR's president Michael Saporito to form "Mike's Militia," a dealers' action network coordinating opposition to legislative initiatives throughout the nation.

Gun manufacturers exercise extensive control over their distribution networks when they want to do so. They can and will use that control to cut the supply of guns to the illegal market if compelled to do so by the threat of legal responsibility. As Smith & Wesson's former president Ed Schultz admitted, "You can't just say, 'I made it, I shipped it, it's out of my hands.' That doesn't fly with a reasonable public."<sup>275</sup>

## CONCLUSION

Lawsuits against gun manufacturers, distributors, and dealers continue to work their way forward in courts throughout the nation. The litigation has already accomplished the important step of bringing scrutiny to the inner workings of the gun industry. Vital documents previously kept secret have been revealed. Witnesses have broken the wall of intimidation and silence by speaking out and telling the truth about how the industry does business.

Even Robert Delfay, the hard liner in charge of NSSF and SAAMI until his recent retirement, told representatives of the Major Cities Police Chiefs Association that, "while the crime problem is largely created by criminals and not by guns, guns are involved, and it is the responsibility of the manufacturers, distributors and retailers of firearms to attempt to keep them out of the hand of criminals."<sup>276</sup> Sadly, the industry's actions speak louder than Mr. Delfay's empty words. Those actions reflect the gun industry's knowing complicity in the supply of deadly firearms to a highly profitable illegal market.

## NOTES

<sup>1</sup> See, e.g., ALA. CODE § 11-80-11 (2002); GA. CODE ANN. § 16-11-184 (2002); LA. REV. STAT. ANN. §§ 1799, 2800.60 (2002); MAINE REV. STAT. ANN. tit. 30-A, § 2005 (2002); MICH. COMP. LAWS § 28.435(9) (2002); NEV. REV. STAT. 12.107 (2002); OHIO REV. CODE ANN. § 6120 (2002); 18 PA. CONS. STAT. § 6120 (2002); TEX. CIV. PRAC. & REM. CODE ANN. § 128.001 (2002).

<sup>2</sup> See Protection of Lawful Commerce in Arms Act, H.R. 1036, 108th Cong. (2003); Firearms Heritage Protection Act of 2003, H.R. 357, S. 659, 108th Cong. (2003).

<sup>3</sup> *Lawsuit Preemption Remains Top Priority*, NRA-ILA Grassroots Alert, Jan. 24, 2003.

<sup>4</sup> Karin Fischer, *House Tables Gun Measure Amid D.C.-Area Shooting Spree*, CHARLESTON GAZETTE, Oct. 16, 2002, at 1A.

<sup>5</sup> Lori Montgomery & Juliet Eilperin, *Attacks Mute Debate on Gun Control in Congress, Md.*, WASHINGTON POST, Oct. 10, 2002, at A23.

<sup>6</sup> Dave Kopel, *Gunned Down*, AMERICA'S 1ST FREEDOM, Jan. 2003, at 38.

<sup>7</sup> The case brought by California cities and counties, Judicial Council Coordination Proceeding No. 4095 (Cal. Super. Ct.), is referred to throughout these notes as the *California Firearm Case*. The case brought by the City of Boston, No. SUCV 1999-02590-C (Mass. Super. Ct.), is referred to as *City of Boston v. Smith & Wesson*. Much of the evidence in this report was discovered in both of these cases. For simplicity's sake, that evidence is cited in this report as coming from the *California Firearm Case*.

<sup>8</sup> ATF, *Following the Gun: Enforcing Federal Laws Against Firearms Traffickers* (2000) ("Following the Gun"), at iii.

<sup>9</sup> Declaration of James Alan Fox filed in the *California Firearm Case* ¶¶ 5-12.

<sup>10</sup> *Federal Firearms Licensing: Hearing before the Subcommittee on Crime and Criminal Justice, House Judiciary Committee*, 103d Cong. (1993) ("1993 Hearings"); ATF, *Operation Snapshot* (1993); ATF, *1994 Firearms Enforcement Investigative Report* (1995) ("1994 Enforcement Report"); *Following the Gun*.

<sup>11</sup> *Following the Gun*, at x, 12.

<sup>12</sup> Declaration of Stephen Higgins filed in the *California Firearm Case* ("Higgins declaration") ¶ 15; *1993 Hearings*, at 19-20.

<sup>13</sup> *1993 Hearings*, at 86-100.

<sup>14</sup> Documents produced by Heckler & Koch in the *California Firearm Case* (HK CA 2068, HK CA 2069, HK CA 2073; SFC 24413-18); Documents produced by Plaintiffs in the *California Firearm Case* (SFC 4421-50, SFC 24464-77, SFC 24487-500).

<sup>15</sup> Documents produced by Heckler & Koch in the *California Firearm Case* (HK CA 2047, HK CA 2093-96, HK CA 2099).

<sup>16</sup> Documents produced by Plaintiffs in the *California Firearm Case* (PLTF 101290-97).

<sup>17</sup> Documents produced by Plaintiffs in the *California Firearm Case* (PLTF 101290-97; SFC 24640-41, SFC 24684-87, SFC 24727-34, SFC 24827-36; SFC 24843-77).

<sup>18</sup> Documents produced by Plaintiffs in the *California Firearm Case* (PLTF 101290-97).

<sup>19</sup> Marisa Taylor, *U.S. Accuses 3 Gun Dealers of Falsifying Rifle Sales Data*, SAN DIEGO UNION-TRIBUNE, Apr. 4, 2000.

<sup>20</sup> Laura Parker, *'It was easy': Confessions of a Gun Trafficker*, USA TODAY, Oct. 28, 1999, at 1A; Seth Rosenfeld, *East Bay Gun Ring Biggest in Nation*, S.F. EXAMINER, May 29, 1999, at A1; *Hayward Man*

*Admits Illegal Gun Trafficking*, S.F. EXAMINER, Oct. 6, 1999, at A6; Peter Slevin, *Gun Dealer Verification Loophole Shut*, WASHINGTON POST, Sept. 24, 2000, at A9; Deposition of Richard Herdtnr taken in the *California Firearm Case* on Jan. 18, 2002, at 37:18-39:12; Affidavit of Paula L. Vallerga filed in the *California Firearm Case* ¶¶ 1, 2, 4-9, 13-16, 31 (SFC 2334-42); Indictment in the case of *United States v. Twomey*, Case No. CR 99-40128CW (N.D. Cal.) (SFC 23123-37).

<sup>21</sup> Deposition of LaToya Lige taken in the *California Firearm Case* on Sept. 5, 2002, at 107:23-108:5.

<sup>22</sup> Mark Shanahan, *Lawsuit Targets Windham Manufacturer of Snipers' Weapon*, PORTLAND PRESS HERALD, Jan. 17, 2003, at 1A.

<sup>23</sup> Deposition of Charles Guevremont taken in the *California Firearm Case* on Oct. 22, 2001, at 191:4-194:24.

<sup>24</sup> Deposition of Robert Steger taken in the *California Firearm Case* on July 30, 2002, at 207:1-208:5.

<sup>25</sup> Deposition of Robert Morrison taken in the *City of Boston v. Smith & Wesson* case on Aug. 21, 2001 (“Morrison deposition”), at 127:2-16.

<sup>26</sup> Morrison deposition, at 138:25-139:12, 141:10-21, 145:11-18; Deposition of Robert Scott taken in the *California Firearm Case* on Aug. 6, 2002 (“Scott deposition”), at 7:4-5, 31:19-32:6

<sup>27</sup> Second Amended Complaint filed on March 27, 2000, in *City of Chicago v. Beretta U.S.A. Corp.*, No. 98 CH 015596 (Ill. Cir. Ct.).

<sup>28</sup> Deposition of Dana King taken in *Parmer v. Carter's Country*, No. 97-48432 (Tex. Dist. Ct.), on July 14, 1998, at 55.

<sup>29</sup> Deposition of Jayme Williams taken in the *California Firearm Case* on June 11, 2002, at 81:6-14, 92:1-25, 110:3-10.

<sup>30</sup> Compare Deposition of Robert Delfay taken in the *California Firearm Case* on June 18-19, 2002 (“Delfay deposition”), at 124:21-126:13; Deposition of Christopher Dolnack taken in the *California Firearm Case* on Dec. 18, 2001, at 39:17-42:8; Deposition of Douglas Painter taken in the *California Firearm Case* on Nov. 5, 2001 (“Painter deposition”) at 156:13-158:8; Deposition of Stephen Sanetti taken in the *California Firearm Case* on Sept. 11, 2001 (“Sanetti 9/11/01 deposition”), at 112:15-113:10; Scott deposition, at 33:7-17, 57:17-58:3, 61:12-17, with Morrison deposition, at 177:1-8.

<sup>31</sup> *Firearms Legislation: Hearings before the Subcommittee on Crime, House Judiciary Committee, 94th Cong. (1975)* (“1975 Hearings”).

<sup>32</sup> Document produced by ASSC in the *California Firearm Case* (ASSC 180).

<sup>33</sup> ATF Newsletter for Federal Firearms Licensees, 1992 Vol. 1; ATF Newsletter for Federal Firearms Licensees, 1989 Vol. 2.

<sup>34</sup> *1993 Hearings*, at 19.

<sup>35</sup> Scott deposition, at 58:4-61:17; Documents produced by Smith & Wesson in the *California Firearm Case* (SW 16595-601).

<sup>36</sup> Sanetti 9/11/01 deposition, at 93:13-94:8; Documents produced by Sturm, Ruger & Co. in the *California Firearm Case* (SR 19394-95).

<sup>37</sup> Deposition of Jeffrey Reh taken in the *California Firearm Case* on Nov. 7-8, 2001 (“Reh deposition”), at 401:1-12.

<sup>38</sup> Deposition of Donald H. Campbell taken in the *California Firearm Case* on Jan. 15, 2002 (“Campbell deposition”), at 151:3-7.

<sup>39</sup> H.R. Rep. No. 94-1103, at 54, 64-65, 73 (1976); *1993 Hearings*, at 3-4, 19-20; ATF, *Youth Crime Gun Interdiction Initiative, Crime Gun Trace Reports 1999 National Report*, at 40 (2000) (“1999 National Report”).

- <sup>40</sup> Declaration of Joseph Vince Jr. filed in the *California Firearm Case* (“Vince declaration”) ¶¶ 18, 28; Declaration of Franklin Zimring filed in the *California Firearm Case* ¶ 8.
- <sup>41</sup> *1975 Hearings*, at 389.
- <sup>42</sup> 18 U.S.C. § 923(g)(3)(A).
- <sup>43</sup> H.R. Rep. No. 94-1103, at 73 (1976).
- <sup>44</sup> Plea Agreement and Stipulation of Facts dated Jan. 8, 2001, in *United States v. Robert C. Hayes*, Criminal No. 00-10088 (C.D. Ill.).
- <sup>45</sup> Deposition of Robert Lockett taken in the *California Firearm Case* on Aug. 9, 2002 (“Lockett deposition”), at 48:9-51:12.
- <sup>46</sup> Lockett deposition, at 31:4-32:24.
- <sup>47</sup> Deposition of Ugo Gusalli Beretta taken in the *California Firearm Case* on Jan. 25, 2002 (“Ugo Beretta deposition”), at 31:10-37:7.
- <sup>48</sup> Ugo Beretta deposition, at 37:9-39:4, 54:19-55:2, 56:14-58:3.
- <sup>49</sup> Deposition of Bruce Jennings taken in the *City of Boston v. Smith & Wesson* case on Sept. 24, 2001 (“Bruce Jennings 9/24/01 deposition”), at 121:15-122:13.
- <sup>50</sup> Deposition of Forest B. Webb taken in the *California Firearm Case* on Nov. 21, 2002 (“Webb deposition”), at 580:12-20.
- <sup>51</sup> ATF & Department of Justice, *Gun Shows: Brady Checks and Crime Gun Traces* (1999) (“*Gun Shows*”).
- <sup>52</sup> Higgins declaration ¶ 20; *Gun Shows*, at 6-9; *1993 Hearings*, at 8-10.
- <sup>53</sup> Bruce Jennings 9/24/01 deposition, at 119:22-121:7.
- <sup>54</sup> *Gun Shows*, at 6-9.
- <sup>55</sup> Declaration of Carole Bridgewater filed in the *California Firearm Case* (“Bridgewater declaration”) ¶ 10; Documents produced by Plaintiffs in the *California Firearm Case* (PLTF 102252).
- <sup>56</sup> Carla Crowder, *Assistant Testifies Against Gun Seller*, ROCKY MOUNTAIN NEWS, Apr. 5, 2000, at 7A.
- <sup>57</sup> David Olinger, *Firearms Charges Reveal a Mystery*, DENVER POST, June 5, 2000.
- <sup>58</sup> Documents produced by Beretta in the *California Firearm Case* (BUSA 73280-82).
- <sup>59</sup> Deposition of John T. Meyer taken in the *California Firearm Case* on Jan. 9, 2002 (“Meyer deposition”), at 98:13-103:8, 107:6-11, 126:8-20.
- <sup>60</sup> Documents produced by Sturm, Ruger & Co. in the *California Firearm Case* (SR 4021).
- <sup>61</sup> David Olinger, *Top Firm Quitting Gun Shows – Ruger Wants to Confine Firearm Sales to Stores*, DENVER POST, Jan. 15, 2000, at A1; Editorial, *Sturm, Ruger Takes Lead*, DENVER POST, Jan. 20, 2000, at B6; Jason Blevins, *Guns on Sale Despite Ruger Rule – Dealers Skeptical of Company’s Decision to Quit Shows*, DENVER POST, Jan. 23, 2000, at B1.
- <sup>62</sup> Editorial, *Ruger Waffles*, DENVER POST, Feb. 6, 2000, at H4.
- <sup>63</sup> Deposition of Stephen Sanetti taken in the *California Firearm Case* on Sept. 12, 2001 (“Sanetti 9/12/01 deposition”), at 49:12-16; Documents produced by Sturm, Ruger & Co. in the *California Firearm Case* (SR 4235-36, SR 19923-25); David Olinger, *Company Rephrases Policy on Ruger Sales*, DENVER POST, Feb. 1, 2000, at A3.
- <sup>64</sup> Deposition of Robert J. Thompson taken in the *California Firearm Case* on July 17, 2002 (“Thompson deposition”), at 80:18-22.

- <sup>65</sup> Editorial, *Ruger Waffles*, DENVER POST, Feb. 6, 2000, at H4.
- <sup>66</sup> 18 U.S.C. § 922(t)(1)(B)(ii).
- <sup>67</sup> Americans for Gun Safety Foundation, *Broken Records: How America's Faulty Background Check System Allows Criminals to Get Guns* (2002).
- <sup>68</sup> Deposition of Raymon Crow taken in the *California Firearm Case* on Aug. 8, 2002, at 10:4-2, 11:19-21, 15:9-15; Eric Lichtblau, *Wal-Mart Tightens Gun Policy Business*, L.A. TIMES, July 3, 2002, at A1.
- <sup>69</sup> Webb deposition, at 509:7-18.
- <sup>70</sup> Documents produced by NSSF in the *California Firearm Case* (NSSF 13043, NSSF 13694-96, NSSF 13698-99).
- <sup>71</sup> Document produced by NSSF in the *California Firearm Case* (NSSF 8021).
- <sup>72</sup> H.R. Rep. No. 94-1103, at 25-26, 29-30 (1976).
- <sup>73</sup> *1994 Enforcement Report*, at 20, 26; ATF, *Safety and Security Information for Federal Firearms Licensees* (1998) (“*Safety and Security*”); ATF Newsletter for Federal Firearms Licensees, 1996 Vol. 1.
- <sup>74</sup> *Following the Gun*, at 41.
- <sup>75</sup> Julius Wachtel, *Sources of Crime Guns in Los Angeles, California*, 21 POLICING: AN INTERNATIONAL JOURNAL OF POLICE STRATEGIES & MANAGEMENT 220, 232 (1998).
- <sup>76</sup> Letter from John R. Freeman, Analyst, Crime Gun Analysis Branch, ATF, to Matt Newton, Aug. 17, 1998 (reporting number of thefts and multiple thefts from Federal Firearms License holders); Gen. Acct’g Office, *Federal Firearms Licensees: Various Factors Have Contributed to the Decline in the Number of Dealers* (1996) (reporting number of Federal Firearms License holders).
- <sup>77</sup> Document produced by Heckler & Koch in the *California Firearm Case* (HK CA 401).
- <sup>78</sup> *Safety and Security*, at 8-13.
- <sup>79</sup> Webb deposition, at 583:2-17.
- <sup>80</sup> Deposition of George Hood taken in the *California Firearm Case* on Aug. 7, 2002 (“Hood deposition”), at 34:5-20, 35:23-36:19.
- <sup>81</sup> William Hermann, *Safety Reigns at Yearly Las Vegas Gun Show*, ARIZONA REPUBLIC, Jan. 19, 2000.
- <sup>82</sup> Declaration of Carter Lord filed in the *California Firearm Case* (“Lord declaration”) ¶¶ 5, 7.
- <sup>83</sup> Morrison deposition, at 275:4-6; Document produced by Taurus in the *California Firearm Case* (TI 02234).
- <sup>84</sup> Reh deposition, at 455:16-456:22.
- <sup>85</sup> Deposition of Paul Jannuzzo taken in the *California Firearm Case* on July 24, 2002 (“Jannuzzo 7/24/02 deposition”), at 771:22-772:19; Sanetti 9/12/01 deposition, at 182:10-183:13.
- <sup>86</sup> GLOCK AUTOPISTOLS (2002).
- <sup>87</sup> Lord declaration ¶¶ 5, 8; Deposition of Seth Bredbury taken in the *California Firearm Case* on Nov. 12, 2002, at 139:22-141:4, 145:17-21; Deposition of Kevin Foley taken in the *California Firearm Case* on June 27, 2002 (“Foley deposition”), at 63:14-19, 67:23-68:12.
- <sup>88</sup> Ugo Beretta deposition, at 136:11-137:21.
- <sup>89</sup> Declaration of Stephen Teret filed in the *California Firearm Case* ¶ 15.
- <sup>90</sup> Deposition of Ronald Borgio taken in the *California Firearm Case* on June 28, 2002 (“Borgio deposition”), at 45:2-46:2; Deposition of David Clark Johnson taken in the *California Firearm Case* on



Aug. 15, 2002, at 148:17-149:4, 149:13-19; Sanetti 9/12/01 deposition, at 235:12-236:4, 240:3-242:19; Documents produced by Sturm, Ruger & Co. in the *California Firearm Case* (SR 13659-60).

<sup>91</sup> Borgio deposition, at 47:13-49:18.

<sup>92</sup> *Id.*

<sup>93</sup> Documents produced by NSSF in the *California Firearm Case* (NSSF 8047-48).

<sup>94</sup> Documents produced by SAAMI in the *California Firearm Case* (SAAMI 1442-45).

<sup>95</sup> Deposition of Kenneth Green taken in the *California Firearm Case* on Dec. 7, 2001, at 96:18-97:6, 123:1-11.

<sup>96</sup> Declaration of Robert A. Ricker filed in the *California Firearm Cases* (“Ricker declaration”).

<sup>97</sup> David Workman, *Ricker Deposition “Without Foundation,” Gun Week*, Feb. 20, 2003, at 1.

<sup>98</sup> Ricker declaration ¶ 1.

<sup>99</sup> Ricker declaration ¶ 2.

<sup>100</sup> Ricker declaration ¶¶ 3-5.

<sup>101</sup> Cal. Civ. Code § 1714.4; Ricker declaration ¶ 3.

<sup>102</sup> Ricker declaration ¶ 5.

<sup>103</sup> Ricker declaration ¶ 6.

<sup>104</sup> Ricker declaration ¶ 8.

<sup>105</sup> Ricker declaration ¶ 11.

<sup>106</sup> Ricker declaration ¶ 8.

<sup>107</sup> Ricker declaration ¶ 9.

<sup>108</sup> *Id.*

<sup>109</sup> Ricker declaration ¶ 10.

<sup>110</sup> Ricker declaration ¶¶ 11-12.

<sup>111</sup> Ricker declaration ¶ 16.

<sup>112</sup> *Id.*

<sup>113</sup> Ricker declaration ¶ 18.

<sup>114</sup> Ricker declaration ¶ 19.

<sup>115</sup> *Id.*

<sup>116</sup> Ricker declaration ¶ 20.

<sup>117</sup> Ricker declaration ¶ 21.

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> Ricker declaration ¶ 21; Paul M. Barrett, *Gun Industry Seeks to Shut a Conciliatory Trade Group*, WALL ST. J., June 7, 1999.

<sup>121</sup> Affidavit of Robert Hass filed in *Hamilton v. Accu-Tek*, No. 95 CV0049 (E.D.N.Y.) ¶ 20.

<sup>122</sup> *Id.*

- <sup>123</sup> Deposition of Robert Hass taken in *City of Boston v. Smith & Wesson*, at 36:14-37:24, 39:15-40:7.
- <sup>124</sup> Bridgewater declaration ¶ 1.
- <sup>125</sup> Bridgewater declaration ¶ 2.
- <sup>126</sup> Bridgewater declaration ¶ 5.
- <sup>127</sup> *Id.*
- <sup>128</sup> *Id.*
- <sup>129</sup> *Id.*
- <sup>130</sup> Bridgewater declaration ¶ 4.
- <sup>131</sup> *The Alliance Voice*, July 1993, at 29-30; Bridgewater declaration ¶ 10.
- <sup>132</sup> *The Alliance Voice*, July 1993, at 29-30; Bridgewater declaration ¶ 10.
- <sup>133</sup> *The Alliance Voice*, July 1993, at 29-30; Bridgewater declaration ¶ 10.
- <sup>134</sup> *The Alliance Voice*, Dec. 1993, at 5; Bridgewater declaration ¶ 12.
- <sup>135</sup> *The Alliance Voice*, Dec. 1993, at 5; Bridgewater declaration ¶ 12.
- <sup>136</sup> Document produced by Plaintiffs in the *California Firearm Case* (PLTF 102098).
- <sup>137</sup> *The Alliance Voice*, Sept. 1993, at 5; Bridgewater declaration ¶ 11.
- <sup>138</sup> *The Alliance Voice*, Feb. 1993, at 25; Bridgewater declaration ¶ 8.
- <sup>139</sup> *The Alliance Voice*, June 1993, at 16-17; Bridgewater declaration ¶ 9.
- <sup>140</sup> *The Alliance Voice*, Apr. 1994, at 9; Bridgewater declaration ¶ 6.
- <sup>141</sup> *The Alliance Voice*, Apr. 1994, at 9; Bridgewater declaration ¶ 6.
- <sup>142</sup> *The Alliance Voice*, Apr. 1994, at 9; Bridgewater declaration ¶ 6.
- <sup>143</sup> Ricker declaration ¶ 11.
- <sup>144</sup> Ricker declaration ¶ 12.
- <sup>145</sup> *Id.*
- <sup>146</sup> Deposition of Robert Lockett taken in the *California Firearm Case* on Aug. 9, 2002 (“Lockett deposition”), at 16:19-17:5; Documents produced by Plaintiffs in the *California Firearm Case* (PLTF 100007-10, PLTF 101388-89; PLTF 102468).
- <sup>147</sup> Bob Lockett, *The Implications of New York City*, initial draft; Paul M. Barrett, *Loaded Words: A Dealer Breaks Rank, Blaming Gun Makers*, WALL ST. J., June 22, 1999, at A1.
- <sup>148</sup> Bob Lockett, *The Implications of New York City*, SHOOTING SPORTS RETAILER, July/Aug. 1999, at 18.
- <sup>149</sup> Lockett deposition, at 11:6-12, 18:12-19:10.
- <sup>150</sup> Lockett deposition, at 37:13-23.
- <sup>151</sup> Lockett deposition, at 39:5-19.
- <sup>152</sup> Lockett deposition, at 41:21-42:12.
- <sup>153</sup> Lockett deposition, at 23:2-6, 25:11-21.
- <sup>154</sup> Lockett deposition, at 23:8-12, 65:8-66:2.
- <sup>155</sup> Lockett deposition, at 43:3-45:10, 48:9-49:22, 54:7-57:3.

- <sup>156</sup> Lockett deposition, at 57:4-14.
- <sup>157</sup> Lockett deposition, at 12:8-15:7, 94:10-21.
- <sup>158</sup> Lockett deposition, at 17:12-18:11.
- <sup>159</sup> Sanetti 9/12/01 deposition, at 78:24-81:21.
- <sup>160</sup> Documents produced by Sturm, Ruger & Co. in the *California Firearm Case* (SR 10892, SR 10903, SR 10934, SR 10962, SR 11006, SR 11272, SR 11291, SR 11324, SR 11352, SR 11476, SR 11479, SR 11548, SR 11577, SR 11809, SR 11817, SR 11846, SR 11907, SR 12041, SR 12248, SR 12263, SR 12465, SR 12616, SR 12666, SR 12699, SR 12710).
- <sup>161</sup> Documents produced by Sturm, Ruger & Co. in the *California Firearm Case* (SR 11160, SR 11181, SR 11201, SR 11587, SR 11654, SR 12551, SR 12715).
- <sup>162</sup> Documents produced by Sturm, Ruger & Co. in the *California Firearm Case* (SR 11521, SR 11974, SR 12587, SR 11145, SR 11760).
- <sup>163</sup> Document produced by Sturm, Ruger & Co. in the *California Firearm Case* (SR 11251).
- <sup>164</sup> Documents produced by Sturm, Ruger & Co. in the *California Firearm Case* (SR 12201, SR 12416, SR 12626).
- <sup>165</sup> Document produced by Sturm, Ruger & Co. in the *California Firearm Case* (SR 11076).
- <sup>166</sup> Document produced by Sturm, Ruger & Co. in the *California Firearm Case* (SR 10982).
- <sup>167</sup> Deposition of Sylvan C. Wiley taken in the *California Firearm Case* on Aug. 7, 2002 (“Wiley deposition”), at 26:19-27:1.
- <sup>168</sup> Wiley deposition, at 27:2-9, 28:8-12.
- <sup>169</sup> Wiley deposition, at 29:7-14.
- <sup>170</sup> Wiley deposition, at 30:16-31:25.
- <sup>171</sup> Documents produced by NSSF in the *California Firearm Case* (NSSF 13898-900).
- <sup>172</sup> *Id.*
- <sup>173</sup> *Id.*
- <sup>174</sup> *Id.*
- <sup>175</sup> Delfay deposition, at 45:20-55:11; Painter deposition, at 138:4-153:13; Documents produced by NSSF in the *California Firearm Case* (NSSF 13898-900).
- <sup>176</sup> Documents produced by NSSF in the *California Firearm Case* (NSSF 14143-44); Documents produced by Smith & Wesson in the *California Firearm Case* (SW 15780-81).
- <sup>177</sup> Delfay deposition, at 96:6-102:17; Documents produced by Plaintiff in *City of Boston v. Smith & Wesson* (BOS 104177, BOS 104179-81); Documents produced by SAAMI in the *California Firearm Case* (SAAMI 3346-47).
- <sup>178</sup> Declaration of Gregory Gundlach filed in the *California Firearm Case* (“Gundlach declaration”) ¶ 48; Painter deposition, at 60:8-69:12; Documents produced by NSSF in the *California Firearm Case* (NSSF 10, NSSF 9221-24); Documents produced by SAAMI in the *California Firearm Case* (SAAMI 523-619, SAAMI 746-47, SAAMI 5736-40, SAAMI 11066).
- <sup>179</sup> Documents produced by SAAMI in the *California Firearm Case* (SAAMI 746-47).
- <sup>180</sup> Documents produced by Smith & Wesson in the *California Firearm Case* (SW 15636-41).
- <sup>181</sup> Documents produced by Sturm, Ruger & Co. in the *California Firearm Case* (SR 1036-42).

- <sup>182</sup> Documents produced by NSSF in the *California Firearm Case* (NSSF 13694-96).
- <sup>183</sup> Delfay deposition, at 162:4-162:12, 172:24-173:14; Documents produced by NSSF in the *California Firearm Case* (NSSF 13856-57, NSSF 13694-96); Documents produced by SAAMI in the *California Firearm Case* (SAAMI 3399-403).
- <sup>184</sup> Ricker declaration ¶ 17.
- <sup>185</sup> Delfay deposition, at 260:21-261:8.
- <sup>186</sup> Settlement Agreement entered on March 17, 2000.
- <sup>187</sup> Matt Bai, *A Gunmaker's Agony*, NEWSWEEK, May 22, 2000, at 32.
- <sup>188</sup> Deposition of Christopher Killoy taken in the *California Firearm Case* on June 25-26, 2002 (“Killoy deposition”), at 425:14-426:2; Documents produced by Smith & Wesson in the *California Firearm Case* (SW 6485-86, SW 19603-04); David B. Ottaway and Barbara Vobejda, *Gun Manufacturer Requires Dealers to Sign Code of Ethics*, WASHINGTON POST, Oct. 22, 1999, at A11.
- <sup>189</sup> Killoy deposition, at 387:3-390:6; Documents produced by Smith & Wesson in the *California Firearm Case* (SW 45617-38, SW 14929, SW 14933-41).
- <sup>190</sup> Kerby Smith, *Smith & Wesson Speaks Out*, GUNS & AMMO, Aug. 2000, at 44.
- <sup>191</sup> Jeffrey L. Seglin, *When Good Ethics Aren't Good Business*, N.Y. Times, Mar. 18, 2001, at B4.
- <sup>192</sup> Craig Gordon, *Gun Giant Agrees to Regulations; Government Will Drop Lawsuits in Exchange*, NEWSDAY, Mar. 18, 2000, at A5.
- <sup>193</sup> Fox Butterfield & Raymond Hernandez, *Gun Maker's Accord on Curbs Brings Pressure from Industry Pressure*, N.Y. TIMES, Mar. 30, 2000, at A1.
- <sup>194</sup> Deposition of Paul Pluff taken in the *California Firearm Case* on Aug. 6-7, 2002 (“Pluff deposition”), at 79:22-80:4; Documents produced by U.S. Repeating Arms in the *City of Boston v. Smith & Wesson* (USRAC 652-54).
- <sup>195</sup> Jackie Koszczuk, *NRA to Isolate Smith & Wesson*, THE SUN NEWS (Myrtle Beach, SC), Mar. 23, 2000.
- <sup>196</sup> David Ho, *Officials Praise Smith & Wesson*, ASSOCIATED PRESS, Mar. 17, 2000.
- <sup>197</sup> John Christoffersen, *Inquiry Opens Into Gun Firms*, SUN-SENTINEL (Ft. Lauderdale), Apr. 6, 2000, at 5A.
- <sup>198</sup> Fox Butterfield & Raymond Hernandez, *Gun Maker's Accord on Curbs Brings Pressure from Industry*, N.Y. TIMES, Mar. 30, 2000, at A1.
- <sup>199</sup> *Id.*
- <sup>200</sup> *Id.*
- <sup>201</sup> Documents produced by Sturm, Ruger & Co. in the *California Firearm Case* (SR 20910-69).
- <sup>202</sup> Killoy deposition, at 448:9-489:14; Pluff deposition, at 20:13-18, 22:9-29:2, 31:4-32:1, 36:14-37:4, 38:12-52:10, 55:8-57:15, 117:13-17.
- <sup>203</sup> Killoy deposition, at 448:9-489:14; Pluff deposition, at 20:13-18, 22:9-29:2, 31:4-32:1, 36:14-37:4, 38:12-52:10, 55:8-57:15, 117:13-17.
- <sup>204</sup> William Freebairn, *No Longer Under the Gun*, UNION NEWS & SUNDAY REPUBLICAN (Springfield, MA), May 12, 2002.
- <sup>205</sup> Documents produced by Plaintiffs in the *California Firearm Case* (PLTF 101686-87); Scott deposition, at 115:17-118:15.
- <sup>206</sup> Documents produced by Plaintiffs in the *California Firearm Case* (PLTF 101686-87).

- <sup>207</sup> Vanessa O’Connell, *Top Official at Glock’s Unit in U.S. Steps Down*, WALL ST. J., Feb. 21, 2003, at B6.
- <sup>208</sup> CBS News Transcripts, *60 Minutes*, Feb. 9, 2003.
- <sup>209</sup> Vanessa O’Connell, *Top Official at Glock’s Unit in U.S. Steps Down*, WALL ST. J., Feb. 21, 2003, at B6.
- <sup>210</sup> Dyan Machan, *Top Gun: Inside the Secret and Violent World of Gaston Glock, Maker of the Most Popular Firearm in U.S. Law Enforcement*, FORBES, Mar. 31, 2003, at 64.
- <sup>211</sup> Higgins declaration ¶¶ 8-11.
- <sup>212</sup> Higgins declaration ¶¶ 8-11, 21-26; Vince declaration ¶¶ 18, 81.
- <sup>213</sup> H.R. Rep. No. 94-1103 (1976).
- <sup>214</sup> ATF, *Operation Snapshot* (1993).
- <sup>215</sup> ATF, *Operation Snapshot: An Analysis of the Retail Regulated Firearms Industry* (1998).
- <sup>216</sup> ATF, *2000-2005 Strategic Plan*, at 11 (2000).
- <sup>217</sup> Department of Justice, *Gun Violence Reduction: National Integrated Firearms Violence Reduction Strategy*, at 34 (2001) (“DOJ Report”).
- <sup>218</sup> Declaration of Gerald Nunziato filed in the *California Firearm Case* (“Nunziato declaration”) ¶¶ 23-24; Vince declaration ¶¶ 21, 24.
- <sup>219</sup> Nunziato declaration ¶ 25; Vince declaration ¶¶ 24, 35.
- <sup>220</sup> ATF, *Youth Crime Gun Interdiction Initiative, Crime Gun Trace Reports (2000), National Report*, at A-3 (2002) (“National Report”).
- <sup>221</sup> Nunziato declaration ¶¶ 15-19.
- <sup>222</sup> ATF, *Commerce in Firearms in the United States* (2000) (“Commerce in Firearms”).
- <sup>223</sup> Nunziato declaration ¶ 56.
- <sup>224</sup> Vince declaration ¶¶ 34-73.
- <sup>225</sup> Vince declaration ¶ 18; Glenn Pierce, et al., *The Identification of Patterns in Firearms Trafficking: Implications for Focused Enforcement Strategies* (Northeastern University 1995) (“Northeastern report”).
- <sup>226</sup> *Northeastern report; Commerce in Firearms*, at 2
- <sup>227</sup> *Northeastern report*, at 11 & Table 5; *Commerce in Firearms*, at A-23.
- <sup>228</sup> Ricker declaration ¶ 14.
- <sup>229</sup> ATF, *2000 National Report*, at 1; ATF, *Youth Crime Gun Interdiction Initiative, Crime Gun Trace Reports (1999), National Report*, at 1 (2000) (“1999 National Report”).
- <sup>230</sup> Nunziato declaration ¶ 19; Ricker declaration ¶ 14.
- <sup>231</sup> Treasury/ATF Press Release, *Firearms Report, Gun Trafficking Actions*, Feb. 4, 2000.
- <sup>232</sup> *2000 National Report*, at 1; *1999 National Report*, at 1.
- <sup>233</sup> Nunziato declaration ¶ 19; *DOJ Report*, at 6-7 (executive summary), 34.
- <sup>234</sup> Documents produced by Plaintiffs in the *California Firearm Case* (PLTF 101149-53); Nunziato declaration ¶¶ 19-21.
- <sup>235</sup> Morrison deposition, at 218:19-219:16; Documents produced by Plaintiffs in the *California Firearm Case* (PLTF 101181-83).
- <sup>236</sup> Documents produced by Sturm, Ruger & Co. in the *California Firearm Case* (SR 20680-81).

- <sup>237</sup> Document produced by Sturm, Ruger & Co. in the *California Firearm Case* (SR 21972).
- <sup>238</sup> Deposition of Paul Jannuzzo taken in the *City of Boston v. Smith & Wesson* case on Jan. 10, 2002 (“Jannuzzo 1/10/02 deposition”), at 131:9-132:2.
- <sup>239</sup> Scott deposition, at 41:11-17; Hood deposition, at 15:8-17, 53:10-55:2.
- <sup>240</sup> Deposition of David Eugene Brazeau taken in the *California Firearm Case* on Oct. 29, 2001 (“Brazeau deposition”), at 84:23-86:13.
- <sup>241</sup> Reh deposition, at 242:5-243:10.
- <sup>242</sup> *Id.*
- <sup>243</sup> Reh deposition, at 240:19-241:19.
- <sup>244</sup> Reh deposition, at 245:9-249:21.
- <sup>245</sup> Deposition of Robert Bonaventure taken in the *California Firearm Case* on Dec. 14, 2001 (“Bonaventure deposition”), at 55:12-22.
- <sup>246</sup> Ugo Beretta deposition, at 63:12-64:5.
- <sup>247</sup> Deposition of Sy Bloom taken in the *California Firearm Case* on Feb. 20, 2002, at 50:9-51:10; Brazeau deposition, at 90:3-15; Jannuzzo 1/10/02 deposition, at 135:20-136:23; Morrison deposition at 132:18-136:12; Sanetti 9/11/01 deposition, at 89:16-91:2; Scott deposition, at 36:18-37:12, 96:4-20.
- <sup>248</sup> H.R. Rep. No. 94-1103, at 20 (1976).
- <sup>249</sup> Documents produced by Sturm, Ruger & Co. in the *California Firearm Case* (SR 21091-93).
- <sup>250</sup> Higgins declaration ¶ 12.
- <sup>251</sup> Higgins declaration ¶¶ 16-17.
- <sup>252</sup> Higgins declaration ¶ 18.
- <sup>253</sup> Documents produced by Sturm, Ruger & Co. in the *California Firearm Case* (SR 23028-38).
- <sup>254</sup> Documents produced by Sturm, Ruger & Co. in the *California Firearm Case* (SR 20612-14).
- <sup>255</sup> Documents produced by Sturm, Ruger & Co. in the *California Firearm Case* (SR 23628-31).
- <sup>256</sup> Higgins declaration ¶ 27.
- <sup>257</sup> Killoy deposition, at 71:8-72:4, 80:2-9; Reh deposition, at 61:15-63:9; Deposition of John Steele taken in the *California Firearm Case* on Aug. 9, 2002, at 15:3-6.
- <sup>258</sup> Brazeau deposition, at 45:14-46:3; Reh deposition, at 79:22-80:12.
- <sup>259</sup> Document produced by Sturm, Ruger & Co. in the *California Firearm Case* (SR 26948).
- <sup>260</sup> Document from *Hamilton v. Accu-Tek* case (H 5237).
- <sup>261</sup> Documents produced by Browning Arms in the *City of Boston v. Smith & Wesson* case (BACO 4117-27, BACO 4128-38; BACO 2237-41); Documents produced by Heckler & Koch in the *California Firearm Case* (HK CA 52-55); Documents produced by North American Arms in the *California Firearm Case* (NAA CA 1054-60); Documents produced by H & R 1871 in the *California Firearm Case* (HR 13-16); Documents produced by RSR Wholesale in the *California Firearm Case* (RSR 120-23, RSR 129-33, RSR 152-56); Documents produced by Sturm, Ruger & Co. in the *California Firearm Case* (SR 4000-24); Documents produced by Smith & Wesson in the *California Firearm Case* (SW 8219-22, SW 14893-900, SW 19586-90); Documents produced by Taurus in the *City of Boston v. Smith & Wesson* case (TI 1579-83)
- <sup>262</sup> Meyer deposition, at 109:16-110:16; Reh deposition, at 73:9-74:14; Thompson deposition, at 68:1-69:10, 75:17-76:22.

<sup>263</sup> Documents produced by H&R 1871 in the *California Firearm Case* (HR 13-16); Defendant H&R 1871, Inc.'s Further Supplemental Objections and Responses to Plaintiffs' First Set of Special Interrogatories, filed in the *California Firearm Case*, on Oct. 1, 2001, at 48.

<sup>264</sup> Sanetti 9/11/01 deposition, at 138:10-13, 193:17-194:20; Documents produced by Sturm, Ruger & Co. in the *California Firearm Case* (SR 4000-24).

<sup>265</sup> Campbell deposition, at 89:20-97:22; Documents produced by Beretta in the *California Firearm Case* (BUSA 16843).

<sup>266</sup> Higgins declaration ¶¶ 28-29.

<sup>267</sup> Gundlach declaration ¶¶ 89-96.

<sup>268</sup> Bonaventure deposition, at 13:9-15:7.

<sup>269</sup> Campbell deposition, at 155:16-156:7.

<sup>270</sup> Meyer deposition, at 91:6-92:4.

<sup>271</sup> Documents produced by Heckler & Koch in the *California Firearm Case* (HK CA 52-55).

<sup>272</sup> Killoy deposition, at 193:15-194:3, 195:14-196:19; Pluff deposition, at 139:10-140:9, 145:13-150:7, 155:21-23, 162:2-22, 166:1-167:24, 170:17-172:23.

<sup>273</sup> Ricker declaration ¶ 15.

<sup>274</sup> *Id.*

<sup>275</sup> Documents produced by Plaintiffs in the *California Firearm Case* (PLTF 101672-73).

<sup>276</sup> Delfay deposition, at 111:25-112:19; Documents produced by SAAMI in the *California Firearm Case* (SAAMI 1721-26).