
**IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT**

Docket No. 07-5166

**CONOCOPHILLIPS COMPANY,
Appellee-Plaintiff,
THE NORDAM GROUP, INC., NORRIS, DP
MANUFACTURING, INC., TULSA WINCH, INC., RAMSEY
WINCH, INC., and AUTO CRANE COMPANY,
Appellees-Intervening Plaintiffs,**

v.

**C. BRAD HENRY, Governor of the State of Oklahoma, and W.A.
DREW EDMONDSON, Attorney General of the State of Oklahoma,
and Their Agents and Successors,
Appellant-Defendants.**

**ON APPEAL FROM FINAL JUDGMENT BY THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA (CASE NO. 04-CV-820-TCK), HONORABLE TERRENCE
C. KERN**

**BRIEF OF THE *AMICI CURIAE*,
The Brady Center to Prevent Gun Violence; The American Society
of Safety Engineers; and ASIS International
IN SUPPORT OF PLAINTIFFS, FOR AFFIRMANCE**

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CORPORATE DISCLOSURE STATEMENT

Pursuant to FED.R.APP.P. 26.1, the undersigned counsel of record files the following corporate disclosure statement.

The *Amici Curiae*

All the *amici curiae* are non-profit organizations, have no parent corporations or subsidiaries, and have not issued stock to the public. The *amici* are the Brady Center to Prevent Gun Violence, the American Society of Safety Engineers; and ASIS International.

Arthur G. Sapper

DATE

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OSHA, FIELD INFORMATION REFERENCE MANUAL § III.C.2.c.(2)(d)2 (rev'd 1999)	18
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OSHA, Mem. to Regional Administrators, "Enforcement of Fall Protection on Moving Stock" (1996)	20

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OSHA, Record of citation issued to M. Marble (2000)	10
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I. THE *AMICI CURIAE*'S IDENTITY, INTEREST, SOURCE OF AUTHORITY TO FILE BRIEF

Amici respectfully represent that all parties have consented to the filing of this brief within the meaning of FED.R.APP.P. 29(a). In accordance with the Court's instructions, copies of electronic mail messages indicating consent are attached on pp. 25 to 27 below.

The Brady Center to Prevent Gun Violence is a non-profit organization working to reduce handgun deaths and injuries through education, research, and legal advocacy. The Center's Legal Action Project, through direct assistance to victims of gun violence and *amicus curiae* filings, advocates legal principles that will reduce gun violence. The Brady Center has published two major reports that document how access to firearms increases the risks of workplace violence. They are [FORCED ENTRY: THE NATIONAL RIFLE'S ASSOCIATION'S CAMPAIGN TO FORCE BUSINESSES TO ACCEPT GUNS AT WORK pp. 7-8 \(Nov. 2005\)](#), and [GUNS & BUSINESS DON'T MIX: A GUIDE TO KEEPING YOUR BUSINESS GUN-FREE \(1996\)](#).

The American Society of Safety Engineers (ASSE) is a global professional society representing 32,000 safety, health and environmental professionals who assist employers in protecting their employees and property from workplace safety, health and environmental risks. ASSE's members practice in every industry, in every state, and around the world. Its members join thirteen practice specialties, including construction, manufacturing, health care and industrial hygiene. ASSE is also a leading

developer of voluntary consensus standards in the occupational safety and health field.

ASIS International is the preeminent international organization of professionals responsible for security at corporate and government facilities. Founded in 1955, its 33,000 members advise employers, and federal, state, and local law enforcement officials on security matters. ASIS has two chapters in Oklahoma. ASIS's members are deeply concerned about the effect of the Forced Entry Laws on homeland security. Laws allowing employees and visitors to bring weapons onto a site—including nuclear and chemical plants, refineries, power stations, transportation facilities and the like—substantially impede the efforts of law enforcement officials and corporate security managers to protect critical infrastructure.

II. STATEMENT OF THE ISSUE

Are OKLA. STAT. tit. 21, §§ 1289.7a and 1290.22(B) (“the Forced Entry Laws”) preempted by 29 U.S.C. § 654(a)(1), the General Duty Clause of the Occupational Safety and Health Act, under the principle of obstacle preemption?

III. STATEMENT OF THE CASE

A. Statutory and Regulatory Background

1. Basic Structure of the Occupational Safety and Health Act

Congress passed the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651-678 (“the OSH Act”), “to assure so far as possible every

working man and woman in the Nation safe and healthful working conditions and to preserve our human resources” Section 2(b) of the OSH Act, 29 U.S.C. § 651.

Congress therefore authorized the U.S. Department of Labor to adopt “occupational safety and health standards,”¹ to conduct inspections,² and to issue citations and propose civil penalties to employers who violate the standards or the General Duty Clause,³ a catch-all provision that applies in the absence of a standard.⁴ Serious violations can be penalized up to \$7,000 per violation, while each “repeated” and “willful” violation can be penalized up to \$70,000. A penalty is mandatory for “serious”⁵ or “willful”⁶ violations. The Labor Department exercises these functions through its Occupational Safety and Health Administration (“OSHA”).⁷

¹ Sections 6(a) and 6(b) of the OSH Act, 29 U.S.C. § 655(a) and (b); see also section 3(8) of the OSH Act, 29 U.S.C. § 652(8) (definition of “occupational safety and health standard”).

² Section 8(a), (b), (d)-(h) of the OSH Act, 29 U.S.C. § 657(a), (b), (d)-(h).

³ Sections 9, 10 and 17(a)-(d) of the OSH Act, 29 U.S.C. §§ 658, 659 and 666(a)-(d).

⁴ Section 5(a)(1) of the OSH Act, 29 U.S.C. § 654(a)(1).

⁵ *New Age, Inc.*, 18 BNA OSHC 1742, [1999 OSAHRC LEXIS 35 \(OSHRC 1999\)](#) (“a monetary penalty for a serious violation is mandatory”).

⁶ *Chao v. OSHRC (Jindal United Steel Corp.)*, 480 F.3d 320 (5th Cir. 2007).

⁷ In this brief, the terms “OSHA,” “Labor Department,” and “Secretary of Labor” are used synonymously.

2. The General Duty Clause of the OSH Act

Congress recognized that OSHA would be unable to adopt standards to cover every possible hazard, so it placed in the OSH Act a provision that has come to be known as “the General Duty Clause,” 29 U.S.C. § 654(a)(1), § 5(a)(1) of the OSH Act. The General Duty Clause requires each employer to “furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees[.]”

This and other courts have held that the General Duty Clause requires employers to protect their employees against “feasibly avoidable recognized hazard[s].” *Baroid Div. of NL Indus., Inc. v. OSHRC*, 660 F.2d 439, 446 (10th Cir. 1981), citing *Beatty Equipment Leasing v. Sec’y of Labor*, 577 F.2d 534 (9th Cir. 1978); *Champlin Petroleum Co. v. OSHRC*, 593 F.2d 637, 640 (5th Cir. 1979) (“feasibly preventable” hazards).

3. Workplace Violence As An Occupational Safety and Health Problem

Violence in the workplace is a serious occupational safety problem. Workers have been shot by disgruntled co-workers,⁸ by spouses in domestic quarrels that spill over into the workplace,⁹ or by customers, such

⁸ See, e.g., *Workplace Avenger: Florida Gunman Fits Profile*, ST. LOUIS POST-DISPATCH, Feb. 11, 1996, at 6B (citing U.S. Department of Justice statistics).

⁹ In 1995, according to a study by the American Medical Association, disputes that started at home carried over into 60,000 instances of

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as hospital patients and their relatives angry at their treatment.¹⁰ A 2005 survey of major employers found that about sixty percent of major employers reported that disgruntled employees threatened to assault or kill senior managers in the last year.¹¹ The overall problem is well documented.¹² See Appendix A: Examples of News Reports About Mass

workplace violence. Doug Levy, *USA Almost Flunks Violence Report Card*, USA TODAY, June 12, 1996, at 1D.

¹⁰ OSHA, [GUIDELINES FOR PREVENTING WORKPLACE VIOLENCE FOR HEALTH CARE & SOCIAL SERVICE WORKERS](#), Pub. No. 3148-01R (rev. 2004) (increased risk to healthcare workers because of the “prevalence of handguns and other weapons among patients, their families or friends”).

¹¹ [Risk Control Strategies, Workplace Violence Survey Results](#) (2003). The survey was sponsored by Risk Control Strategies, a threat management firm specializing in workplace violence prevention. A total of 602 senior executives from firms whose annual sales ranged from \$20 million to \$480 million responded to the survey; the senior executives were responsible for the “security” and/or personnel function. This 2005 study is the most recent available from that organization.

¹² *E.g.*, Dana Loomis, Stephen W. Marshall, and Myduc L. Ta, *Employer Policies Toward Guns and the Risk of Homicide in the Workplace*, 95 AM. J. OF PUB. HEALTH 830 (2005) (hereinafter “American Journal of Public Health Study”); Kristi R. Anderson, Mary P. Tyler & E. Lynn Jenkins, *Preventing Workplace Violence*, 34 J. OF EMPLOYEE ASSISTANCE 48 (2004); [Critical Incident Response Group, Workplace Violence: Issues in Response](#), NATIONAL CENTER FOR THE ANALYSIS OF VIOLENT CRIME, FBI ACADEMY (Mar. 1, 2004); Jane Lipscomb et al, *Preventing Injuries & Abuse: Perspectives on Legal Strategies to Prevent Workplace Violence*, 30 J.L. MED. & ETHICS 166 (2002); Dana Loomis et al, *Homicide on the Job: Workplace and Community Determinants*, 154 AM. J. OF EPIDEMIOLOGY 410 (2001); [Detis T. Duhart, Violence in the Workplace, 1993-99](#),

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Shootings At Businesses in the United States, and Appendix B: Breakdown of 2003 Workplace Shootings.

The availability of guns in vehicles in company parking lots worsens the problem, for suddenly angered workers can easily retrieve firearms from their locked cars and re-enter the workplace to shoot fellow workers. *E.g., Tanks v. Lockheed Martin Corp.*, 417 F.3d 456 (5th Cir. 2005) (worker parked car in factory parking lot with loaded firearms in trunk; re-entered plant with two firearms, killing seven workers, wounding nine).¹³ Scores of such mass workplace shootings have occurred.¹⁴ An epidemiological study published in the peer-reviewed American Journal of Public Health

BUREAU OF JUSTICE STATISTICS, OFFICE OF JUSTICE PROGRAMS, U.S. DEPARTMENT OF JUSTICE; Injury Prevention Research Center, Univ. of Iowa, *Workplace Violence: A Report to the Nation* (2001); Terry S. Boone, *Violence in the Workplace and the New Right to Carry Law – What Employers Need to Know*, 37 S. TEX. L. REV. 873, 891 (1996); Dean J. Schaner, *Have Gun Will Carry: Concealed Handgun Laws, Workplace Violence, and Employer Liability*, 22 EMP. REL. L.J. 83 (1996). A more complete compendium can be found at [Brian J. Siebel, Brady Center to Prevent Gun Violence, FORCED ENTRY: THE NATIONAL RIFLE’S ASSOCIATION’S CAMPAIGN TO FORCE BUSINESSES TO ACCEPT GUNS AT WORK p. 26 n. 54 \(Nov. 2005\)](#).

¹³ See also Clay Harden, *Motive Unknown in Deadly Attack*, The Clarion-Ledger, July 9, 2003, at 1A (same incident; multiple weapons found in trunk).

¹⁴ See Appendix A: Examples of News Reports About Mass Shootings At Businesses in the United States and Appendix B: Breakdown of 2003 Workplace Shootings.

found that “workplaces where guns were specifically permitted were 5 to 7 times more likely to be the site of a worker homicide relative to those where all weapons were prohibited.”¹⁵ The authors concluded that their findings “bear directly on policy for workplace safety” and make it “reasonable to question the costs and benefits of policies permitting firearms in the workplace.”¹⁶

Employers have a sharply limited range of measures that they can take against such events. Psychological profiles of workers run legal risks and are unreliable.¹⁷ As one administrative law judge noted, “[h]umans introduce a wild card into the scenario. Employers have less control over employees than they do over conditions because employees have a will, an intention, and an intellect that drives their behavior.... The hazard of physical assault arises ... from anger and frustration of people ... [and] may be fueled by drugs, alcohol or mental health problems.”¹⁸ Hence, as

¹⁵ Dana Loomis, Stephen W. Marshall, and Myduc L. Ta, *Employer Policies Toward Guns and the Risk of Homicide in the Workplace*, 95 AM. J. OF PUB. HEALTH 830 (2005) (hereinafter “American Journal of Public Health Study”). The study was supported by the National Center for Injury Prevention and Control of the U.S. Centers for Disease Control and Prevention.

¹⁶ *Id.*

¹⁷ E.g., Jonathan A. Segal, *When Charles Manson Comes to the Workplace*, HR MAGAZINE (June 1994).

¹⁸ *Megawest Financial, Inc.*, 1995 OSAHRC LEXIS 80, at *26-28 (OSHRC 1995).

discussed in Part III.A.5, beginning on page 11 below, the most widely-recommended solution is for employers to exclude weapons from the workplace.

4. OSHA and the Regulation of Workplace Violence

Although OSHA has adopted many standards,¹⁹ it has not yet adopted a standard on workplace violence. OSHA has, however, stated that workplace violence can be a “recognized” hazard covered by the General Duty Clause and that employers can be cited if they fail to take measures against it. Formal interpretations issued by OSHA in 2006 and 1992 both state:

In a workplace where the risk of violence and serious personal injury are significant enough to be ‘recognized hazards,’ the general duty clause would require the employer to take feasible steps to minimize those risks. Failure of an employer to implement feasible means of abatement of these hazards could result in the finding of an OSH Act violation.²⁰

OSHA stated that this policy statement “permits the Agency to reinforce its guidance and outreach efforts with appropriate enforcement action.”²¹

¹⁹ See, e.g., 29 C.F.R. Parts 1910 (general industry), 1915 (maritime), 1926 (construction) and 1928 (agriculture).

²⁰ [Letter from R. Fairfax \(OSHA\) to M. Melekos \(Sept. 13, 2006\)](#); and [Letter from R. Clark \(OSHA\) to J. Schuller \(Dec. 10, 1992\)](#).

²¹ *Id.*

OSHA treats injuries from workplace violence as “occupational” and requires that they be reported to it and recorded as such.²² In 2001, after a comprehensive revision of its reporting and recording regulations, OSHA decided to not exempt workplace violence by an employee’s family member or ex-spouse.²³ It also specifically included injuries in employee

²² 29 C.F.R. § 1904.5(a) & (b) (injury is work-related “if an event or exposure in the work environment either caused or contributed to the resulting condition”; “[w]ork-relatedness is presumed for injuries ... resulting from events or exposures occurring in ... the establishment ... where ... employees are working or are present as a condition of their employment.”). See 66 Fed. Reg. 5916, 5946 col.3 (2001) (sexual assault by co-worker work-related).

²³ See OSHA's discussion at 66 Fed. Reg. at 5955-56:

OSHA believes that injuries and illnesses resulting from acts of violence against employees at work are work-related [O]ccupational factors are directly involved in many types of workplace violence, such as *assaults engendered by disputes about working conditions or practices*, or assaults on security guards or cashiers and other employees, who face a heightened risk of violence at work. Accordingly, OSHA does not accept the premise ... that workplace violence is outside the purview of the statute.

In some cases, *acts of violence committed by a family member or ex-spouse at the workplace may be prevented by appropriate security measures enforced by employers*. ... Accordingly, the final rule does not allow employers to exclude injuries and illnesses resulting from violence occurring in the workplace from their Logs. ... [Emphasis added.]

parking lots because they “are part of the employer’s premises [and] ... under the control of the employer”²⁴

OSHA has prosecuted employers for not meeting their obligation under the General Duty Clause to protect employees from workplace violence. In 1993, OSHA issued citations and proposed penalties to a Chicago psychiatric hospital for not protecting employees from violence by patients,²⁵ and to the employer-owner of an apartment complex in a high-crime area.²⁶ In 2000, a state-OSHA agency issued a General Duty Clause citation alleging a violation because the employer had not taken measures against “verbal threats and physical altercations ... between a management representative and numerous employees”²⁷ Many other examples could be cited.

OSHA has also issued several publications on how employers can protect employees from workplace violence. These include [RECOMMENDATIONS FOR WORKPLACE VIOLENCE PREVENTION PROGRAMS IN LATE-NIGHT RETAIL ESTABLISHMENTS, Pub. No. 3153 \(1998\)](#), and [GUIDELINES FOR PREVENTING WORKPLACE VIOLENCE FOR HEALTH CARE & SOCIAL SERVICE](#)

²⁴ [Instruction CPL 02-00-135, Recordkeeping Policies and Procedures Manual, Ch. 5, Q.5-10 \(2004\)](#).

²⁵ "Psychiatric Hospital in Chicago Cited by OSHA for Workplace Violations," 23 O.S.H. Rep. (BNA) 646 (1993).

²⁶ *Megawest Financial, Inc.*, 1995 OSAHRC LEXIS 80 (OSHRC 1995).

²⁷ [OSHA, Record of citation issued to M. Marble \(2000\)](#).

[WORKERS, Pub. No. 3148-01R \(rev. 2004\)](#). In the latter, OSHA notes that healthcare workers faced an increased risk of workplace violence because of the “prevalence of handguns and other weapons among patients, their families or friends[.]”

A special page on OSHA’s web site entitled “[Workplace Violence](#)” contains extensive materials on the prevention of workplace violence. The materials include a page entitled “[Possible Solutions](#),” which in turn has links to numerous other sites and materials on preventing workplace violence, including those of the National Institute of Occupational Safety and Health of the U.S. Department of Health and Human Services.

5. Measures Recommended by OSHA and Taken By Employers to Meet Their General Duty under the OSH Act

OSHA has implicitly endorsed weapon-exclusion policies by employers as a means of complying with the General Duty Clause. Among the publications that OSHA favorably cites on its web page is “[Workplace Violence Prevention: A Comprehensive Guide for Employers and Employees](#)” by the Minnesota Department of Labor & Industry. That guide includes a “[Sample Workplace Weapons Policy](#),” which sets out the following model “policy statement”:

Policy statement

In order to ensure a safe environment for employees and customers, our establishment, *[Employer Name]* prohibits the wearing, transporting, storage, or presence of firearms or other dangerous weapons in our facilities or on our

property. Any employee in possession of a firearm or other weapon while on our facilities/property or while otherwise fulfilling job responsibilities may face disciplinary action including termination. ...

Federal OSHA has also endorsed an Oregon state government publication recommending a “policy prohibiting weapons” as a preventive measure that employers can take.²⁸ A Washington State workplace safety agency recommends the same policy.²⁹

Employers have made wide use of weapon-exclusion policies to protect their employees and have done so at the recommendation of safety professionals. According to a survey of corporate risk managers and safety and health professionals, ninety percent of their employers have “a written policy addressing regulations about weapons or specified prohibited items on the premises.”³⁰ The International Association of Chiefs of Police has

²⁸ OREGON-OSHA, *VIOLENCE IN THE WORKPLACE* (OR-OSHA Pub. No. 702, 2002), cited by 2004 Report of the Occupational Safety & Health State Plan Association, “Grassroots Workplace Protection: State Initiatives: Changing The Work Environment.”

²⁹ WASHINGTON STATE DEP'T OF LABOR AND INDUSTRY, *WORKPLACE VIOLENCE: AWARENESS AND PREVENTION FOR EMPLOYERS AND EMPLOYEES* (2000) (Pub. F417-140-000).

³⁰ ASSE, “2004 Workplace Violence Survey,” 3 RM/INSIGHT, RISK MANAGEMENT/ INSURANCE PRACTICE SPECIALTY NEWSLETTER No. 4 (Spring 2004). The survey was taken of members of the American Society of Safety Engineers (ASSE), who were asked: “Does your organization have a written policy addressing regulations about weapons or specified

(continued...)

long recommended that employers “[e]stablish a policy applicable to everyone employed by the company or on company property, *including the company parking lot*, prohibiting the possession of weapons”³¹ The largest organization of security professionals similarly recommends that employers “typically” adopt a “no-weapons policy.”³² Attorneys who practice employment law commonly advise their clients that, to avoid OSH Act and other liability, they “should prohibit employees from possessing, while at work, weapons, broadly defined.”³³ The House of Delegates of the American Bar Association adopted a resolution last year that discussed how forced entry laws undermine the legal duty of employers under the General Duty Clause. [ABA Recommendation and Report No. 107 by the Special Committee On Gun Violence \(Feb. 12, 2007\)](#).

prohibited items on the premises?” Of the 704 respondents, ninety percent (632) indicated that their organizations have such a written policy.

³¹ [International Association of Chiefs of Police, “Combating Workplace Violence: Guidelines for Employers and Law Enforcement” p. 4 \(1996\) \(emphasis added\)](#).

³² [ASIS International, “Workplace Violence Prevention and Response Guideline” p. 20 \(2005\)](#).

³³ *E.g.*, Segal, *When Charles Manson Comes*, HR MAGAZINE, *supra* note 17.

IV. ARGUMENT

A. **The Oklahoma Forced Entry Laws Materially Impair the Ability of Employers to Comply With Their Obligations Under the General Duty Clause of the Federal Occupational Safety and Health Act**

There can be little doubt – and the Oklahoma defendants do not appear to dispute – that gun violence at many worksites poses a “recognized hazard causing or likely to cause death or serious physical harm” within the meaning of the General Duty Clause of the Occupational Safety and Health Act, 29 U.S.C. § 654(a)(1). A “hazard” under the General Duty Clause is “a condition that creates or contributes to an increased risk that an event causing death or serious bodily harm to employees will occur.”³⁴ Although the risk of violence is known to exist at many workplaces, it can suddenly arise at any workplace, and the ready availability of guns greatly increases the risk of death or serious bodily harm. As noted on p. 6 above, the peer-reviewed American Journal of Public Health Study established that “workplaces where guns were specifically permitted were 5 to 7 times more likely to be the site of a worker homicide relative to those where all weapons were prohibited.”

Furthermore, that hazard would be “recognized” under the General Duty Clause if a conscientious employer were to *itself* recognize it as such.³⁵

³⁴ *Baroid Div. of NL Indus., Inc. v. OSHRC*, 660 F.2d 439, 444 (10th Cir. 1981).

³⁵ *Brennan v. OSHRC (Vy Lactos Laboratories, Inc.)*, 494 F. 2d 460 (8th Cir. 1974); *Baroid*, 660 F.2d at 444; *see also UAW v. General Dynamics Land Sys. Div.*, 815 F.2d 1570, 1577 (D.C. Cir. 1987); *Pratt & Whitney Aircraft Div. v.*

(continued...)

For example, an employer can immediately “recognize” a “hazard” if a manager were to be suddenly confronted or threatened by a terminated or disciplined employee, or if a female employee were to credibly complain that an estranged husband or paramour is threatening to harm her at work or is following her there.³⁶ The same is true if safety experts familiar with the issue have recognized the availability of guns as posing an increased hazard³⁷ – which, in the case of workplace violence, they widely have, as noted at pp. 11-13 above.

Sec’y of Labor, 649 F.2d 96, 100 (2d Cir. 1981); *Continental Oil Co. v. OSHRC*, 630 F.3d 446, 448 (6th Cir. 1980). See generally OCCUPATIONAL SAFETY AND HEALTH LAW 97 (Randy Rabinowitz ed., 2d ed. 2002) (“Actual knowledge may be an alternative basis for finding that a hazard was ‘recognized,’ even if the hazard is not known generally to the industry.”).

³⁶ See Dec. at 80, citing Nicole Buonocore Porter, *Victimizing the Abused?: Is Termination the Solution When Domestic Violence Comes to Work?*, 12 MICHIGAN J. OF GENDER AND L. 275, 315-16 (1996) (“an employer would be hard pressed to explain why such violence was not foreseeable and remediable under the statute”). See also Mack, *This Gun for Hire: Concealed Weapons Legislation in the Workplace and Beyond*, 30 CREIGHTON L. REV. 285 (1997).

³⁷ *Kelly Springfield Tire Co. v. Donovan*, 729 F.2d 317, 321-22 (5th Cir. 1984) (“common knowledge of safety experts familiar with the circumstances of the industry or activity in question”) (quoting *Nat’l Realty & Constr. Co.*, 489 F.2d 1257, 1265 n.32 (D.C. Cir. 1973)). That a hazard is recognized by the employer’s industry (*Pratt & Whitney*, 649 F.2d at 100) or is one of obvious hazardousness (*Safeway, Inc. v. OSHRC*, 382 F.3d 1189, 1195 n. 4 (10th Cir. 2004), citing *Tri-State Roofing & Sheet Metal, Inc. v. OSHRC*, 685 F.2d 878, 880-81 (4th Cir. 1982), are alternative ways of establishing hazard recognition.

Amicus National Rifle Association (NRA) objects that the District Court did not make a “hazard” finding “related in any way to the workplaces operated by plaintiffs.” Br. 4-5. To the contrary, the District Court’s finding completely satisfied *Baroid*. Just as gravity is in all workplaces an ever-present force that can materialize in injury if certain circumstances suddenly arise, stress and emotional conflict are ever present in human relations and are magnified in the workplace, where they can suddenly burst into violence. As noted on p. 5 above, about sixty percent of major employers reported that disgruntled employees threatened to assault or kill senior managers in the last year. The risk is increased within *Baroid* when employees can readily retrieve guns from their cars in company parking lots; this is shown by the American Journal of Public Health Study finding that the presence of guns substantially raises the risk of death³⁸ and by the many cases in which mass workplace shootings have occurred under just these circumstances. See nn. 8-15 on pp. 4-7 above, including Appendix A: Examples of News Reports About Mass Shootings At Businesses in the United States, and Appendix B: Breakdown of 2003

³⁸ Note 7 on p. 15. *See also* FRANKLIN E. ZIMRING & GORDON HAWKINS, CRIME IS NOT THE PROBLEM: LETHAL VIOLENCE IN AMERICA 122-23 (1997) (“[c]urrent evidence suggests that a combination of the ready availability of guns and the willingness to use maximum force in interpersonal conflict is the most important single contribution to the high U.S. death rate from violence. Our rate of assault is not exceptional; our death rate from assault is exceptional.”).

Workplace Shootings. Inasmuch as “[t]he goal of the [OSH] Act is to prevent the first accident” *Mineral Indus. & Heavy Constr. Group v. OSHRC*, 639 F.2d 1289, 1294 (5th Cir. 1981),³⁹ the District Court was entirely right in finding an increased hazard from the presence of guns in the workplace: “an altercation between employees ... can escalate from a scuffle or an argument to a deadly gun fight in a matter of seconds based on the presence of firearms on company property....” Dec. 83. Indeed, in many cases, it already has.⁴⁰

³⁹ The NRA argues at length that *Megawest Financial* “undermines” the District Court’s conclusion because the citation there was vacated. But the District Court twice noted that the decision did just that (Dec. 73, 76). Inasmuch as *Megawest Financial* held that OSHA “is not precluded from asserting that workplace violence constitutes a general duty clause violation,” and found a “hazard” of workplace violence, the District Court was quite right to infer that in a proper case an “employer may be liable” for failing to take steps against workplace violence. Dec. 85. (The NRA also makes a train of mischaracterizations of *Megawest Financial*, none of which have the slightest merit.)

The Court should be wary of other NRA statements, such as its dismissive characterization of OSHA’s website as concerning “popcorn.” Br. 18. The reference is to a page on OSHA’s website entitled “[Flavorings-Related Lung Disease](#)”, which discusses *bronchiolitis obliterans* (“popcorn lung”), which is caused by vapors of diacetyl, a food flavoring.

⁴⁰ See, e.g., *Tanks v. Lockheed Martin*, *supra* at 6 & n. 13 (disgruntled employee retrieved firearms from vehicle in company parking lot after grievance hearing and shot 16 co-workers and supervisors, killing seven).

As to the feasibility and utility of a means of abatement, employees and OSHA could also rightly observe that a weapon-exclusion rule would be feasible and effective, for it has been widely recommended by safety experts and used by employers, and has been implicitly endorsed by federal OSHA and other safety agencies (see pp. 11-12 above). The General Duty Clause requires employers to take the most effective feasible protective method,⁴¹ regardless of whether it is perfectly effective⁴² or its use is customary in the employer's industry.⁴³

Yet, the Oklahoma Forced Entry Laws bar employers from using what may be the most effective means of protecting employees against gun violence by fellow employees. For this reason alone, the District Court was undoubtedly correct in its finding that, because the Forced Entry Laws "makes it exceedingly more difficult to comply" with the General Duty Clause (Op. at 91), they "present a material impediment to the employer's ability to 'abate' [the] hazards" of gun violence. Op. at 85. Moreover, this

⁴¹ [Chevron Oil Co.](#), 11 BNA OSHC 1329, 1334 n.16 (OSHRC 1983); and OSHA, FIELD INFORMATION REFERENCE MANUAL § III.C.2.c.(2)(d)2 (rev'd 1999) ("If the proposed abatement method would eliminate or significantly reduce the hazard beyond whatever measures the employer may be taking, a Section 5(a)(1) citation may be issued.").

⁴² *Chevron*, note 41 *supra* (abatement method need not "entirely free the workplace of the hazard. It is enough that the prescribed abatement method would materially reduce the hazard to employees.").

⁴³ *E.g.*, *Gen. Dynamics Corp. v. OSHRC*, 599 F.2d 453, 464 (1st Cir. 1979).

particular record shows that that the Oklahoma Forced Entry Laws effectively bar employers from using what is often the only effective means against the increased risk of gun violence. As the District Court put it, these laws “strip employers of their ability to abate a well-documented hazard.” Op. at 89.

The Oklahoma Defendants try to deny these findings (Br. at 19), asserting, without citation to the record, a lack of “material impediment.” To the extent that factual questions are involved, the claim falls far short of showing that the District Court’s contrary factual findings are “clearly erroneous” within the meaning of FED.R.CIV.P. 52(a). To the extent that the District Court’s conclusions turn on questions of federal law, nothing in the Oklahoma Defendants’ argument indicates that the reasoning of the District Court was in error.

The NRA implies that workplace violence is not an “occupational” hazard because it does not arise from a condition “inherent” in the workplace, such as falling, lead or noise (NRA Br.4), in contrast to lighting or meteorites (*id.* at 7). But there is no requirement that a hazard “inhere” in the workplace or that it satisfy any criterion for work-relatedness other than that in the General Duty Clause itself – that “employment” *or* “place of employment” are not free of hazards to “employees.” Thus, OSHA has

issued General Duty Clause citations alleging exposure to lightning,⁴⁴ has stated that employers must protect employees atop rail cars against “inclement weather such as icy conditions or heavy rains and winds,”⁴⁵ and has told employers that, because pandemic influenzas could be spread in the workplace, “social distancing” should be used to prevent employee contact.⁴⁶ There is no reason in principle why the Clause does not cover the hazard of workplace violence, especially as it is exacerbated by the presence of readily-available firearms. That is why OSHA requires injuries from workplace violence – including employee-upon-employee violence – to be recorded and reported. Pp. 9-10 & nn.22 to 24.

The NRA implies (Br. 3-4) that a “hazard” must “operat[e] directly upon employees” at work, citing *Am. Cyanamid Co.*, 9 BNA OSHC 1596, 1600 (OSHRC 1981), *aff’d*, 741 F.2d 444 (D.C. Cir. 1984) (self-sterilization caused by non-workplace economic, social factors). But guns *are* equipment or machines that operate directly on employees. Specifically, a

⁴⁴ *E.g.*, citations issued to: [Suess Electronics Inc., Insp. No. 306795733 \(2004\)](#); [R.A.C Construction Framing, Inc., Insp. No. 310379854 \(2006\)](#); and [Thomas Produce Inc., Insp. No. 311084867 \(2008\)](#). *See also* LIGHTNING PROTECTION CODE, NFPA 78-1989 (requiring lightning rods for “masts” and similar structures).

⁴⁵ [OSHA, Mem. to Regional Administrators, “Enforcement of Fall Protection on Moving Stock” \(1996\)](#).

⁴⁶ *E.g.*, [OSHA, GUIDANCE ON PREPARING WORKPLACES FOR AN INFLUENZA PANDEMIC \(Pub. No. 3327-02N, 2007\)](#).

gun is a “physical agent[] that could injure employees” and can thus contribute to a “hazard” under the General Duty Clause. *Arcadian Corp.*, 20 BNA OSHC 2001, 2013 (OSHR 2004). That employees rather than the employer bring them onto the worksite does not mean that employers have no obligation to feasibly protect other employees from them.⁴⁷

The NRA also implies (Br. 9) that the General Duty Clause does not cover harm intentionally caused between fellow employees. That is wrong. The Clause can cover any kind of behavior that threatens other employees, whether it is negligent or intentional,⁴⁸ or caused by a “demented, suicidal,

⁴⁷ *Comm’r of Labor & Indus. v. Bethlehem Steel Corp.*, 344 Md. 17, 684 A.2d 845 (1996) (employee electrocuted by toaster oven brought to work by fellow employee; violation found of provision closely resembling General Duty Clause); *Chicago & North Western Transport. Co.*, 5 BNA OSHC 1121, 1122-23 (OSHR 1977) (employee-owned fan).

⁴⁸ *E.g.*, *Gen. Dynamics*, 599 F.2d at 458 (employer “must do all it feasibly can to prevent foreseeable hazards, including dangerous conduct by its employees.”); *I.T.O. Corp. of New England v. OSHRC*, 540 F.2d 543, 545 (1st Cir. 1976) (deliberate employee misconduct; concerted refusal to work hard hats); *Brennan v. OSHRC (Hanovia Lamp Div.)*, 502 F.2d 946, 951-52 (3d Cir. 1974) (deceased employee under “unusual emotional stress”; remand for finding on whether additional supervision feasible). The NRA claims that an employer may be held responsible for employee misconduct “if an employee is negligent or creates a violation of a safety standard.” NRA Br. 9, quoting *Brennan v. Butler Lime & Cement Co.*, 520 F.2d 1011, 1017 (7th Cir. 1975) (emphasis by NRA). That is incorrect. The decision did not indicate that employee negligence or violative conduct was necessary but that it was irrelevant, for an employer may be liable if the conduct was “preventable” through “feasible precautions.” *Id.* at 1017.

or willfully reckless employee.”⁴⁹ The question is instead whether the behavior is preventable – *i.e.*, whether employer precautions would be feasible.⁵⁰ Inasmuch as the NRA does not claim, and could not credibly claim, that stress, argument and other workplace-related circumstances could not cause violence to arise or that keeping guns away is not a feasible means of protection, the argument misses the mark.

The NRA also argues that, to be covered by the General Duty Clause, a hazard must be both “obvious and recognized,” quoting this Court’s decision in *Safeway, Inc. v. OSHRC*, 382 F.3d 1189, 1195 n. 4 (10th Cir. 2004). But *Safeway Stores* did not hold that obviousness is a necessary element of every General Duty Clause case (a reading that would cause it to stand alone). A careful reading indicates that the decision held that, first, obviousness is a sufficient (rather than necessary) reason to reject a claim that the Clause is preempted by a standard under 29 C.F.R. § 1910.5(f) (382 F.3d at 1194, citing *UAW v. General Dynamics Land Sys. Div.*, 815 F.2d 1570, 1577 (D.C. Cir. 1987)) and, second, that obviousness provides an

⁴⁹ *Nat’l Realty*, 489 F.2d at 1266 & n.36 (rejecting view that “an employer’s statutory responsibility for a hazard vanishes, or is even diminished, because the hazard was directly caused by an employee.”).

⁵⁰ *Id.* After noting the possibility of a “demented, suicidal, or willfully reckless employee,” the court concluded that although “[a]n employer has a duty to prevent and suppress hazardous conduct by employees,” “Congress intended to require elimination only of preventable hazards,” as to which “the informed judgment of safety experts” is important.

alternative way of proving that a hazard is “recognized.” 382 F.3d at 1195 n. 4, citing *Tri-State Roofing & Sheet Metal, Inc. v. OSHRC*, 685 F.2d 878, 880-81 (4th Cir. 1982)); see OCCUPATIONAL SAFETY AND HEALTH LAW 98 (Randy Rabinowitz ed., 2d ed. 2002). Even so, given the frequency with which firearms are used by disgruntled employees in workplace violence incidents, the hazard recognized by the District Court is both “obvious” and “recognized.”

In sum, the District Court correctly found that the material impairment of the ability of employers to comply with federal law makes the Oklahoma Forced Entry Laws invalid as a substantial obstacle to the achievement of the federal goal of a safe and healthful workplace.

V. CONCLUSION

The decision of the District Court should be affirmed.

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1. This brief complies with the type-volume limitation of FED. R. APP. P. 32(a)(7)(B) and 29(d) because this brief contains fewer than 7000 words (specifically 5573), excluding the parts of the brief exempted by FED. R. APP. P. 32(a)(7)(B)(iii). The undersigned relied on his word processor to obtain that count.
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Arthur G. Sapper, Attorney for *Amici curiae*

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I certify that (1) all required privacy redactions have been made; (2) that, with the exception of those redactions, the digital version and hard copies of the foregoing brief are identical; and (3) that a virus scan was performed on the Brief using Symantic AntiVirus 9.0, and that it is free of viruses as reported by the software.

Arthur G. Sapper, Attorney for *Amici curiae*

Written Consent of the Parties to File Brief *Amici Curiae*

Re: Ramsey Winch Inc., et al v. C. Henry, 10th Circuit Docket No. 07-5166 - Message (HTML)

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From: Sherry.Todd@oag.ok.gov Sent: Tue 12/18/2007 10:34 AM
To: Sapper, Arthur G.
Cc:
Subject: Re: Ramsey Winch Inc., et al v. C. Henry, 10th Circuit Docket No. 07-5166

Mr. Sapper,

We have no objection.

Sherry Abbott Todd
Assistant Attorney General
313 N.E. 21st St.
Oklahoma City, Oklahoma 73105
405-521-4274

"Sapper, Art" <asapper@mwe.com> To: "Todd@oag.state.ok.us" <Todd@oag.state.ok.us>
cc
12/14/2007 10:20 AM Subject Ramsey Winch Inc., et al v. C. Henry, 10th Circuit Docket No. 07-5166

Dear Ms. Todd,

I am an attorney representing the Brady Center to Prevent Gun Violence. The Brady Center (possibly with other organizations) intends to file an amicus curiae brief in the above case in support of the District Court decision. Under Fed.R.App.P. 29, we respectfully seek your consent to the filing.

Please feel free to call me if you have any questions at all.

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From: Steve Broussard [SBroussard@HallEstill.com] Sent: Fri 12/21/2007 11:26 AM
To: Sapper, Arthur G.; Mark Blongewicz; Robert Fitzpatrick; Marshall Wells
Cc:
Subject: RE: Ramsey Winch Inc., et al v. C. Henry, 10th Circuit Docket No. 07-5166

[Arthur, we have no objection to the Brady Center to Prevent Gun Violence filing an amicus curiae brief. Steve Broussard](#)

From: Sapper, Arthur G. [mailto:asapper@mwe.com]
Sent: Thursday, December 20, 2007 7:10 PM
To: Mark Blongewicz; Steve Broussard; Robert Fitzpatrick; Marshall Wells
Subject: Ramsey Winch Inc., et al v. C. Henry, 10th Circuit Docket No. 07-5166

Dear counsel,

I am an attorney representing the Brady Center to Prevent Gun Violence. The Brady Center (possibly with other organizations) intends to file an amicus curiae brief in the above case in support of the District Court decision. Under Fed.R.App.P. 29, we respectfully seek your consent to the filing.

Please feel free to call me if you have any questions at all.

Arthur G. Sapper

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From: kturner@newtonoconnor.com Sent: Fri 12/14/2007 5:49 PM
 To: Sapper, Art
 Cc:
 Subject: Re: Ramsey Winch Inc., et al v. C. Henry, 10th Circuit Docket No.07-5166

No objection.
 Sent via BlackBerry by AT&T

-----Original Message-----
 From: "Sapper, Art" <asapper@mwe.com>

Date: Fri, 14 Dec 2007 10:33:56
 To: "Steve@awlaw.net" <Steve@awlaw.net>, "tracy@awlaw.net" <tracy@awlaw.net>, "rfitzpatrick@hallestill.com" <rfitzpatrick@hallestill.com>, "mblongewicz@hallestill.com" <mblongewicz@hallestill.com>, "jgvens@piercecouch.com" <jgvens@piercecouch.com>, "mbower@nrahq.org" <mbower@nrahq.org>, "jgreen@piercecouch.com" <jgreen@piercecouch.com>, "sbroussard@hallstill.com" <sbroussard@hallstill.com>, "pleadings@awlaw.net" <pleadings@awlaw.net>, "kevin@awlaw.net" <kevin@awlaw.net>, "jerwin@shjlaw.com" <jerwin@shjlaw.com>, "eddieerwin@cox.net" <eddieerwin@cox.net>, "tendalla@aol.com" <tendalla@aol.com>, "stahmassebi@nrahq.org" <stahmassebi@nrahq.org>, "jlove@titushillis.com" <jlove@titushillis.com>, "ctrutchley@newtonoconnor.com" <ctrutchley@newtonoconnor.com>, "asteele@piercecouch.com" <asteele@piercecouch.com>, "kturner@newtonoconnor.com" <kturner@newtonoconnor.com>, "destreck@juno.com" <destreck@juno.com>, "david.strecker@streckerlaborlaw.com" <david.strecker@streckerlaborlaw.com>, "mwells@hallestill.com" <mwells@hallestill.com>

Subject: Ramsey Winch Inc., et al v. C. Henry, 10th Circuit Docket No. 07-5166

Dear counsel,

I am an attorney representing the Brady Center to Prevent Gun Violence. The Brady Center (possibly with other organizations) intends to file an amicus curiae brief in the above case in support of the District Court decision. Under Fed.R.App.P. 29, we respectfully seek your consent to the filing.

Please feel free to call me if you have any questions at all.

Arthur G. Sapper

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I hereby certify that on this 27th day of February 2008, I electronically transmitted the attached document to the Clerk of Court at esubmission@ca10.uscourts.gov and by using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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Arthur G. Sapper

STATUTORY ADDENDUM

Section 5(a) of the Occupational Safety and Health Act, 29 U.S.C. §§ 651-678:

Sec. 5 Duties [29 U.S.C. § 654]

- (a) Each employer –
 - (1) shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees;
 - (2) shall comply with occupational safety and health standards promulgated under this Act.

“General
Duty
Clause”

Appendix A: Examples of News Reports About Mass Shootings At Businesses in the United States

Source: The following compilation of news reports of mass shootings at businesses in the United States was first published in Brian J. Siebel, Brady Center to Prevent Gun Violence, *FORCED ENTRY: THE NATIONAL RIFLE'S ASSOCIATION'S CAMPAIGN TO FORCE BUSINESSES TO ACCEPT GUNS AT WORK* pp. 7-8 (Nov. 2005), with an updated list recently published on the Brady Campaign's website at www.bradiycampaign.org/action/workplace/pdf/workplace-shootings.pdf.

Baltimore, Maryland. January 12, 2008. An applicant returns to discuss a problem with a person at a business to which he had applied. The discussion with the supervisor escalates into a fight. The applicant pulls out a revolver, shoots the supervisor in the leg, and flees the scene.¹

Jackson, Mississippi. December 19, 2007. An argument between two employees at an engineering company triggers one man to walk out to the parking lot and retrieve a gun he had kept in his car. He comes back into the building and shoots the other employee.²

Phoenix, Arizona. October 11, 2007. An argument between two employees at a bakery escalates to the point that one of them walks out of the bakery and returns with a firearm. He shoots the other employee several times before running off.³

¹ Gigi Barnett, *Suspect Kills Self After Workplace Shooting*, WJZ, Jan. 12, 2008.

² *Workplace Shooting Leaves Man Hospitalized*, WLBT, Dec. 19, 2007.

³ Nikki Renner and Teana Wagner, *Workplace Shooting at Phoenix Bread Company*, AZ CENTRAL, Oct. 11, 2007.

Bronx, New York. August 30, 2007. A man walks into his former workplace in an apparent case of revenge, and opens fire on its employees. He kills his ex-supervisor and then shoots two other workers, one critically. He tries to shoot other employees, but runs out of bullets according to one witness, then leaves the building.⁴

Santa Cruz, California. April 27, 2007. An employee of the Lode Street Wastewater Facility enters the administrative building of the company, kills his estranged wife and a supervisor, before turning the weapon on himself and committing suicide.⁵

Troy, Michigan. April 9, 2007. A member of the professional staff at a consulting firm walks into the office with a long gun and shoots 3 people where he had worked, killing one before leading police on a high-speed chase.⁶

Miami, Florida. March 9, 2007. A man walks into the back offices of the company where his former girlfriend works and shoots at her repeatedly while running after her through the cubicles. He then turns the gun on himself, but the semiautomatic handgun has been emptied. After undergoing surgery, the victim - shot in the hip and arm – is in critical condition.⁷

Signal Hill, California. March 5, 2007. Three employees at a menu printing company are injured when a gunman opens fire on the premises. The

⁴ *Bronx Workplace Shooting Leaves 1 Dead, 2 Wounded, WCBSTV, Aug. 30, 2007.*

⁵ *Two Dead, One Wounded in Workplace Shooting, KCBS, Apr. 27, 2007.*

⁶ *1 Dead, 2 Hurt in Mich. Office Shooting; Police Say Suspect Had Worked There, USA TODAY, Apr. 9, 2007.*

⁷ *Ex-Boyfriend Arrested in Office Shooting, ABC NEWS, Mar. 9, 2007.*

gunman is an employee of the company, and his hours at the plant had recently been reduced to zero, which distressed him. Before the SWAT team gets to him inside the building, the gunman kills himself with the 9 mm Beretta semiautomatic gun.⁸

Houston, Texas. February 14, 2007. A warehouse worker at Service Wire Co. enters the break room and fatally shoots a co-worker's husband who was waiting for his wife. After apparently misfiring the semiautomatic pistol, the gunman fired again, shooting the victim in the head. Co-workers tackled the gunman and restrained him until police arrived. Police found two other ammunition magazines at the scene.⁹

Indianapolis, Indiana. January 11, 2007. At 6:30 AM, an employee brings a semiautomatic handgun into Crossroads Industrial Services, a company employing mostly people with disabilities, and shoots three people in the cafeteria and one in an office. The gunman, who is on medication for bipolar disorder, said that his shooting of the three production workers and an office manager was "over respect."¹⁰

Denver, Colorado. June 26, 2006. A Safeway employee burst into a north Denver warehouse with a handgun, gunned down five co-workers - one fatally - and injured a police officer before dying in a firefight with police.

⁸ Hanna Chu. *911 Caller: 'We Have Shots Fired In Our Plant'*. DAILY BREEZE, Mar. 7, 2007, at A3.

⁹ Mike Glenn. *Motive Unknown in Fatal Valentine's Workplace Shooting: HPD Says Suspect in Death of Man Waiting for His Wife at Her Work Is 'Not Saying Anything'*. HOUSTON CHRONICLE, Feb. 16, 2007.

¹⁰ Associated Press. *Workplace Shooting Injures 4 in Capital*; FT. WAYNE JOURNAL GAZETTE, Jan. 12, 2007, at 2C.

An employee who had recently moved from California said, "I can't imagine this happening out here. It could happen anywhere."¹¹

Pine Bluff, Arkansas. April 21, 2006. Two weeks after Tyson Foods Inc. suspended him from his job, Julian English returns to Tyson's poultry processing plant with two pistols and shoots and seriously wounds a co-worker.¹²

St. Louis, Missouri. April 18, 2006. After raping a woman and killing another at separate non-work locations, Herbert Chalmers, Jr. shoots two people and then himself at his place of employment, Finninger's Catering. Chalmers apparently went on the rampage because he was being charged too much for child support.¹³

Goleta, California. January 29, 2006. A postal worker on psychological disability -- with a history of psychological problems -- brandishes a 9mm semiautomatic pistol and shoots. She reloads at least once, shooting all of the victims in the head, killing six and herself.¹⁴

Glen Burnie, Maryland. November 23, 2005. A former employee shoots two supervisors and then kills himself with a .38 caliber handgun at the offices of H&M Wagner.¹⁵

¹¹ Associated Press. *Gunman Killed After Fatal Shooting*. NEW YORK TIMES, June 26, 2006, at A14.

¹² *Worker Opens Fire*. AKRON BEACON JOURNAL, Apr. 21, 2006, at A8.

¹³ Associated Press. *Missouri Is Reviewing Records For Possibly Links to Shootings*. BELLEVILLE NEWS DEMOCRAT, Apr. 24, 2006, at B4.

¹⁴ Tim Molley. *8 Now Dead in Postal Rampage*. DAILY BREEZE, Feb. 2, 2006, at A6.

¹⁵ Anica Butler. *Shooting Leaves 2 Wounded, 1 Dead Fired Arundel Worker Injures Ex-Managers, Kills Self*. BALTIMORE SUN, Nov. 24, 2005, at 1B.

New Windsor, New York. September 27, 2005. A former employee fired after he was arrested on child pornography charges shoots the two co-owners and a manager of the factory where he worked and then kills himself.¹⁶

Oak Lawn, Illinois. September 16, 2005. After a work-related dispute, a restaurant employee enters the back door of the restaurant and shoots and kills two of his co-workers.¹⁷

San Francisco, California. May 9, 2005. A year after being fired from a mental health center, Gregory Gray returns to his former place of employment armed with a shotgun and handgun. Gray opens fire with the handgun and fatally shoots a former co-worker. Another employee tackled and subdued Gray when he reached for his shotgun.¹⁸

Souderton, Pennsylvania. May 6, 2005. A meat packing plant employee brings a 9 mm pistol to work with him in his car. After finishing his shift, he and two co-workers go to his car to look at the gun. One of the men accidentally shoots both of his co-workers, seriously wounding them both.¹⁹

¹⁶ *Worker Who Shot Three Faulted Bosses for Arrest*. ALBANY TIMES UNION, Oct. 1, 2005, at A3.

¹⁷ Stefano Esposito. *Source: Murder Motive Was Jealousy Over 'Top Fryer' Job*. CHICAGO SUN TIMES, Sep. 20, 2006, at 6.

¹⁸ Joe Garofoli. *San Francisco Homicide at Social Service Agency: Fired Worker Enters Agency on Ninth Street and Starts Shooting*. SAN FRANCISCO CHRONICLE, May 10, 2005, at B1.

¹⁹ Dalondo Moultrie. *Two Shot Outside Montco Plant in an Apparent Accident*, THE MORNING CALL, May 7, 2005.

Houston, Texas. May 5, 2005. A lawyer working for an oil-services company walks into an office armed with two handguns and shoots a co-worker to death before turning the gun on himself.²⁰

Los Angeles, California. February 25, 2005. A Los Angeles city worker kills his boss and another employee with an AK-47 after being reprimanded for showing up late to work.²¹

Pascagoula, Mississippi. February 21, 2005. An angry employee at Northrup Grumman shipyard opens fire with a Smith & Wesson 9 mm handgun, shooting two supervisors.²²

Kansas City, Kansas. July 2, 2004. A 21-year-old described as a “disgruntled worker” brings two handguns to ConAgra Foods Inc.’s plant, killing five people and wounding two others before killing himself. The killer had no criminal record.²³

Chicago, Illinois. August 27, 2003. A fired worker shoots and kills six of his co-workers with a .38 caliber semi-automatic pistol.²⁴

²⁰ *Man Kills Co-Worker, Self in Office Building*, DENTON RECORD-CHRONICLE, May 6, 2005.

²¹ Natasha Lee, *Two Are Shot To Death at Maintenance Yard; L.A. City Employee Allegedly Killed His Boss, Coworker After Being Reprimanded*, LOS ANGELES TIMES, Feb. 25, 2005, at B1.

²² Wlox.com, *Police: Witnesses Say Lett Was Shooting To Kill*, Mar. 2, 2005.

²³ Associated Press, *Six Dead in Kansas Workplace Shooting: Authorities Still Don’t Know Gunman’s Motive*, MSNBC, July 3, 2004.

²⁴ Frank Main, *Enraged Ex-Employee Was Fired 6 Months Ago ‘A Bomb Waiting to Explode’ Slays 6 Before Cops Kill Him*, Chicago Sun Times, Aug. 28, 2003.

Andover, Ohio. August 19, 2003. An angry employee shoots and kills a co-worker then wounds two others before killing himself. The shooter was armed with four handguns.²⁵

San Antonio, Texas. July 23, 2003. A man walks into a real estate office where he worked and opens fire. He fatally shoots two co-workers before killing himself during a chase with police.²⁶

Meridian, Mississippi. July 9, 2003. A factory worker at a Lockheed Martin assembly plant retrieves guns from his vehicle and goes on a rampage with a shotgun and semiautomatic rifle, killing five and injuring nine before taking his own life.²⁷ Afterward, investigators recover three additional guns from the killer's truck, which was parked 50 feet from the factory.²⁸

Jefferson City, Missouri. July 1, 2003. An industrial radiator factory worker opens fire with a .40 caliber semi-automatic pistol, killing three and wounding five others. The killer leaves the plant in his truck and then commits suicide after a gun battle with police.²⁹

²⁵ Dennis R. Roddy, *Two Dead, Two Wounded As Ohio Worker Opens Fire*, PITTSBURGH POST-GAZETTE, Aug. 20, 2003, at A-1.

²⁶ Maro Robbins & Mary Moreno, *Co-worker Turns Killer: Office Nightmare – Top Seller At North Side Real Estate Firm Kills Two and Wounds One*, SAN ANTONIO EXPRESS-NEWS, July 24, 2003, at 1A.

²⁷ CBS News, *Six Dead in Mississippi Massacre*, July 9, 2003.

²⁸ Clay Harden, *Motive Unknown in Deadly Attack*, The Clarion-Ledger, July 9, 2003, at 1A.

²⁹ Bill Bell Jr. & Virginia Young, *Police See Job Stress As Possible Motive in Factory Killings: Worker Who Killed Three Was on Probation*, ST. LOUIS POST-DISPATCH, July 3, 2003, at A1.

New York, New York. September 16, 2002. An insurance executive calls two employees into his office, shoots both of them and then shoots himself. All three die. Police find two semiautomatic handguns – a .9mm and a .45 caliber – as well as another gun in his office.³⁰

Goshen, Indiana. December 6, 2001. An employee of Nu-Wood Decorative Millwork plant returns to the plant and opens fire with a shotgun and semi-automatic weapon killing two, including himself. Six others are injured.³¹

Palm Beach Gardens, Florida. July 23, 2001. Construction worker Keith Adams walks out to his truck, pulls out an AK-47 machine gun and shoots and kills two co-workers. Police recover more than 80 live rounds from the shooters truck.³²

Chicago/Melrose Park, Illinois. February 5, 2001. Factory worker William Baker arrives at the Navistar International factory with an AK-47, a .38 caliber revolver, a pump shotgun and a hunting rifle. He kills four fellow workers and himself.³³

³⁰ *Insurance Executive Kills Co-Workers, Self*, THE AUGUSTA CHRONICLE, Sept. 17, 2002, at A02.

³¹ Tom Vanden Brook, *Two Die After Employee Opens Fire At Factory*, USA TODAY, Dec. 7, 2001, at 3A.

³² Bill Douthat, *Laborer Blames Two Killings on Job Harassment*, PALM BEACH POST, Aug. 22, 2001, at 3B.

³³ Scott Fornek, Robert C. Herguth & Art Golab, *Five Die in Shooting at Navistar Plant, Gunman Wounds Four in Rampage With AK-47 and Revolver at Melrose Park Site*, CHICAGO SUN-TIMES, Feb. 5, 2001, at 1.

Wakefield, Massachusetts. December 26, 2000. Employee Michael McDermott brandishes a .12 gauge shotgun and a semiautomatic rifle and opens fire at the Edgewater Technology firm, killing seven.³⁴

Irving, Texas. March 20, 2000. Robert Wayne Harris shoots and kills five and wounds another at Mi-T-Fine carwash.³⁵

Seattle, Washington. November 4, 1999. Kevin Cruz, a shipyard worker, shoots four employees at Northlake shipyard, killing two and wounding the two others.³⁶

Honolulu, Hawaii. November 2, 1999. A disturbed Xerox repairman walks into Xerox offices and begins shooting a 9 mm handgun killing seven people.³⁷

Pelham, Alabama. August 8, 1999. A disgruntled worker shoots and kills two co-workers at a heating and air conditioning firm and then goes to another location and kills his former supervisor at another company.³⁸

Newington, Connecticut. March 6, 1998. An accountant angry over a dispute with his employer, the Connecticut Lottery, shows up at work and

³⁴ Carey Goldberg, *Seven Die in Rampage at Company, Co-Worker of Victims Arrested*, NEW YORK TIMES, Dec. 27, 2000, at A1.

³⁵ Tim Wyatt, *Car Wash Shootings Suspect Stands Trial Starting Monday*, THE DALLAS MORNING NEWS, Sep. 25, 2000, at 1A.

³⁶ Tracy Johnson, *Life in Prison for Shipyard Killer: Weary Families – Victims and Cruz’s – Relieved Ordeal is Over*, SEATTLE POST-INTELLIGENCER, Mar. 9, 2002, at A1.

³⁷ Staff, *Tragedy in Paradise*, THE HONOLULU ADVERTISER, Nov. 3, 1999, at 8A.

³⁸ *Three Killed by Gunman on Rampage*, BIRMINGHAM EVENING MAIL, Aug. 6, 1999.

opens fire with a semi-automatic handgun killing four people before shooting himself.³⁹

Aikens County, Georgia. September 15, 1997. A shooter pulls up in his car, tells the security guard "I've got work to do," and opens fire, injuring the security guard. He continues into the plant and kills four people and injures two others.⁴⁰

Santa Fe Springs, California. June 5, 1997. Daniel S. Marsden has an argument with co-workers, walks out to his car in the parking lot at Omni Plastics and returns with a 9mm semi-automatic pistol. He fatally shoots two co-workers, wounds four others, and then kills himself two hours later.⁴¹

³⁹ Blaine Harden, *Worker Kills Four At Conn. Lottery; Accountant Shoots Executives, Self*, THE WASHINGTON POST, Mar. 7, 1998, at A01.

⁴⁰ Greg Rickabaugh, *Workers Recall Day of Terror At Phelon. Co.*, THE AUGUSTA CHRONICLE, Jan. 28, 2001, at A01.

⁴¹ Matea Gold & Peter Y. Hong, *Worker Kills Two Colleagues, Wounds Four More*, THE LOS ANGELES TIMES, June 6, 1997, at A1.

Appendix B: Breakdown of 2003 Workplace Shootings

DATE	PLACE	STATE	KILLED	WOUNDED	EMPLOYMENT OFFICE
2/21/03	Queens, NY	NY	0	1	Jamaica Service Program for Older Adults
2/25/03	Huntsville, AL	AL	4	1	Labor Ready Inc.
5/9/03	Cleveland, OH	OH	1	1	Case Western Reserve University
6/2/03	Atlanta, GA	GA	1	0	In Touch Wireless
6/23/03	Pittsburgh, PA	PA	1	0	United States Postal Carrier
7/2/03	Holts Summit, MO	MO	3	5	Modine Manufacturing Co.
7/8/03	Meridian, MS	MS	7	8	Lockheed Martin Factory
7/9/03	San Angelo, TX	TX	2	0	Verizon Wireless
7/17/03	Charleston, WV	WV	0	1	Kanawha County School Board
7/23/03	San Antonio, TX	TX	3	1	Century 21 Real Estate Office
7/23/03	New York, NY	NY	1	1	NY Council Chambers
7/25/03	Huntsville, AL	AL	1	1	Marriott Hotel
7/28/03	Boynton Beach, FL	FL	3	2	Golf Leaf Nursery
8/8/03	Wilmington, DE	DE	2	1	MBNA America
8/19/03	Andover, OH	OH	2	2	Andover Industries
8/27/03	Chicago, IL	IL	7	0	Windy City Core Supply
8/29/03	Nashville, TN	TN	2	0	Electric Picture Company
9/1/03	Texarkana, TX	TX	3	0	Outback Steakhouse Office
9/10/03	Gulfport, MS	MS	1	0	Newman Lumber Company
9/13/03	Redwood City, NJ	NJ	1	0	Yellow Cab Car

	NJ				
9/15/03	Louisville, KY	KY	0	1	Kidwell's Auto Beautifi cation
9/19/03	Los Angeles, CA	CA	0	1	Kaiser Permanente Medical Center
9/29/03	Minneapolis, MN	MN	0	2	Hennepin County Government Center
10/4/03	Clarksdale, MS	MS	2	1	V's Grocery
10/5/03	Atlanta, GA	GA	3	0	Turner Monumental AME Church
10/7/03	Alcoa, TN	TN	1	0	Slide Lock and Tools
10/8/03	St. Paul, MN	MN	1	0	J & J Distributing
10/28/03	Memphis, TN	TN	1	0	Aiki Kai Martial Arts School
10/28/03	Boca Raton, FL	FL	1	0	Corner Deli
10/31/03	Forsyth, GA	GA	1	0	Paramont Grading
10/31/03	Shreveport, LA	LA	0	1	L & M Grocery
11/4/03	Fort Pierce, FL	FL	1	0	End Time Tabernacle Church
11/6/03	West Chester, OH	OH	2	3	Watkins Motor Lines West Chester Offi ce
11/6/03	Spartanburg, SC	SC	4	0	Superbike Motorsports
11/7/03	Cincinnati, OH	OH	0	1	C & D Drive-Thru
11/7/03	Barberton, OH	OH	0	2	Sydmor's Jewelry Co.
11/10/03	Riviera Beach, FL	FL	1	2	Keller Trust
11/13/03	Houston, TX	TX	0	2	Westwood Technology Center
11/19/03	Baton Rouge, LA	LA	0	1	Microtel Inn and Suites
11/26/03	Miami, FL	FL	1	1	El Peruanito Cafeteria
11/26/03	Cranston, RI	RI	0	1	Eastland Food Products
12/9/03	Visalia, CA	CA	2	0	Print Xcel
12/12/03	Bensalem, PA	PA	1	0	Street Road Firestone Tire
12/15/03	Worcester, MA	MA	0	2	Lowe's Home

					Improvement
12/29/03	North Philadelphia, PA	PA	2	0	Liberty Management Service Contract Department of Corrections

Source: *Nine to Five: Guns in the American Workplace, 1994-2003*,
Handgun-Free America 11 (May 2004).