Crime—Gun Lawsuits

CRIME - GUN LAWSUITS

Testimony of Lt. Gen. William M. Keys USMC (ret.)
Chief Executive Officer
New Colt's Holding Company
Before the Senate Judiciary Committee
November 2, 1999

Thank you Mr. Chairman and Members of the Committee for inviting me here to speak. I am grateful for the opportunity to discuss with you the affect the multitude of trial attorney sponsored and politically backed anti-firearm groups lawsuits have had and could continue to have on Colt. Colt is a company with a time honored place in American history and today is engaged in an important legitimate business. Colt today, remains as one of the few U.S. military suppliers of vital military equipment and firearms. We have supplied military weapons to our armed forces in every conflict for over 100 plus years. In fact, our present product line consists of over 70% government and law enforcement weapons and our hand gun manufacturing has now been reduced to only two models. I would also like to state up front that we consider ourselves a responsible weapons manufacturer who is clearly concerned with gun safety in all respects and against any illegal use of firearms.

Nevertheless, Colt and other legitimate gunmakers currently today, face unfounded lawsuits from approximately 30 cities and counties and other entities in predominantly local state courts around the country. In connection with these lawsuits, Colt has been served with extraordinarily expansive and burdensome discovery requests seeking virtually every document in Colt's possession related to the design, manufacture and marketing of firearms — military and otherwise. In our defense, waves of lawyers have descended on Colt and other legitimate gun manufacturers, scouring every corner and aspect of our business in an effort to respond to these unreasonable requests. Indeed, the trial lawyers and anti-gun groups, who crafted and are behind these ill-conceived lawsuits, seek only to cripple, maim and, if possible, destroy legitimate businesses like Colt. And one would believe increase their personal gain in the process. In a *U.S. News* report dated November 1, 1999, about the litigation, Lester Brickman, a legal ethicist at the Benzamin N. Cordozo School of Law in New York properly pointed out that: "They [the plaintiffs' trial lawyers] . . . have invented a formula where they get megabucks . . . for being a superlegislature and creating policy to their liking without regard to the right of the electorate to make the ultimate decisions about public policy."

The fact of the matter is that the sale of firearms by companies like Colt is lawful. Aside from its Constitutional foundation, it has long been the will and considered judgment of the United States Congress that the manufacture and sale of firearms should be permitted. Congress properly has recognized that firearms serve important, legitimate and necessary purposes, including military, law enforcement, sporting, collector and self-defense uses.

Does this mean that firearms, like any other manufactured products, don't get misused? Of course not. But, Congress and other political entities have responded to the issue of firearm misuse by criminals and others by passing an extraordinary array of laws and regulations.

Additionally manufacturers, like Colt, also have continually sought to decrease the likelihood of misuse by seeking to educate firearm users regarding the risks, proper use and safe storage of firearms. In fact, death from accidental or criminal misuse of firearms is now and has been at historic lows, raising serious questions about the motives of the trial lawyers and others behind these lawsuits. Moreover, the evidence suggests that the best method of achieving even further reductions in firearms' misuse is to increase the enforcement of existing laws which number approximately 40,000 in this country and provide additional funding and staffing of law enforcement bodies, like the Bureau of Alcohol Tobacco and Firearms.

In sharp contrast to the considered judgment and actions of Congress, however, the backers of the Municipal Firearms Litigation are now attempting to circumvent the Legislature and turn to the courts to have them declare unlawful that which Congress has determined should be lawful and to prevent law abiding citizens — and, perhaps, even the military — from obtaining U.S. manufacturers products. Instead local governments who already have the power and authority to regulate the very issues against which now they complain have brought these lawsuits. Each of these cities can seek, through legislation; to require guns sold within those cities to have any design feature they would like as well as control control the distribution requirements. They can even ban sales on firearms if they would like. Mr. Chairman, litigation should not be used to replace the will of the people and the Legislature with respect to these issues of public policy. In fact, the first judge to consider these issues fully, Judge Ruehlman in Cincinnati, Ohio agreed by only the legislature has the power to engage in the type of regulation which is being sought by the City here.

It appears that the hidden agenda of the backers of this litigation is to put us out of business and, despite the lack of merit in these lawsuits, they may succeed even before we have the opportunity to obtain complete vindication in all these many lawsuits in courtrooms around the country. The legal fees that the industry has and will incur to defend against these lawsuits have been and will be astronomical. Sources of investment in our legitimate business are being discouraged and driven away. Insurance providers threaten not to renew policies. The manpower and time commitments of our executives and employees required to defend Colt in the litigation seriously disrupt our business operations.

In short, the Municipal Firearms Litigation threatens the very existance of legitimate businesses like Colt and, in the case of Colt, a business clearly important to the national defense. While Colt's Manufacturing is one of the oldest manufacturers in the world, it also is one of the few remaining U.S. suppliers of military weapons. Our company's historical relationship with the U.S. Armed Forces remains today one of the focal points of our business. We are one of the two suppliers of the M16 rifle and the sole supplier of the M4 carbine to the United States military, as well as, many of our allies. In fact, we are continually working with the military to develop new products to protect our armed forces and bring them the highest technology available. We believe, in fact, that we remain a major U.S. military supplier because of our ability to provide the highest quality products at a reasonable cost.

One of the reasons we are able to do this is because of the efficiencies we achieve as a result of our commercial business which consists of our Match Target rifle, our classic handguns and our law enforcement sales. In fact, the Army conducted a study in 1994 and has produced several documents thereafter, which recommend maintaining Colt as the sole supplier to the military because of our successful commercial business. It is less expensive for the U.S. government to buy from a commercial business supplier than it is to maintain a supplier who supplies only the military.

The Municipal Firearms Litigation will not only have a negative affect on our ability to supply the military at a more reasonable cost, but if it forces us out of business, it also will leave the military without an experienced base to turn to during a time of crisis. In the opinion, of the Department of Defense, it would take two to five years and significant government investment to return any of today's weapon systems to their current level of operational reliability should we loose this present capability.

Another aspect of our business that is jeopardized by the plaintiffs' trial attorneys is the development of the personalized handgun. Colt has been a company long known for its ingenuity and skill. Since Colt's re-birth in the mid 1990s, Colt has placed great emphasis on the development of high tech safety options, including the so-called "Smart Gun." As many of you know from the numerous press accounts of our project, we began working on this program several years ago. In 1998, we received a grant for $500,000 from the National Institute of Justice to further this process. Colt has also invested a significant amount of its own funds into this program.

In comparison, the army currently which is developing a new firearm with electronics on board and, despite their cost overruns, the project received over $15 million for research and development this year, a significant amount more than the funding we received from the Department of Justice. Viewed from that perspective, the $500,000 the government has awarded us clearly is only a small part of an investment to move this program to a commercially viable product. Nevertheless, because of our concern for safety, our company is committed to its development. Unfortunately, the very municipalities, which are suing us who, believe we are not interested enough in safety are the ones who may prevent us from completing this project. The heavy financial burdens of the Municipal Firearms Litigation clearly will continue to impede our progress and possibly jeopardize its very existence.

In summary, Mr. Chairman, I again state we consider ourselves to be a responsible gun manufacturer. And for the future Colt, now New Colt Holding Company, is intent on ensuring its position as the premier manufacturer of small arms to our military and allies throughout the world and most particularly, we seek to be the supplier of choice to our military. In the furthering interests of gun safety we will continue to develop the Smart Gun to the extent possible in the current costly legal environment and to work with any organizations both public and private who have a legitimate interest in gun safety. We have a new management team who together, will with our labor force share the vision for a successful future. Our union, which is approximately 70% of our workforce, has remained loyal because of their workmanship and pride in our product through our recent complicated period of readjustment.

We are uneasy and troubled by the fact that we and other companies in the future may be driven out of business by a wave of lawsuits, even if the courts eventually find out that the plaintiff's cases have no merit. We feel Tort law should not be used to achieve a narrow political goal that can not be achieved through legislative means.

Mr. Chairman, myself and every member of the Colt family is horrified when children take the lives of other children or other law-abiding citizens suffer death as the result of gun shot wounds but passing new laws and putting our company out of business is not the solution to solving this social problem. Rather, the best method of achieving even further reductions in firearms' misuse is to increase the enforcement of existing laws and provide additional funding and staffing of law enforcement bodies, like BATF and continue develop0ment of programs like the "Smart Gun".

Thank you very much for allowing me this opportunity.

TESTIMONY BY VICTOR E. SCHWARTZ, ESQ.
SENIOR PARTNER
CROWELL & MORING LLP

REGULATION AND TAXATION THROUGH LITIGATION: A NEW AND UNSOUND PUBLIC POLICY TREND

BEFORE

THE SENATE COMMITTEE
ON THE JUDICIARY

ON BEHALF OF THE AMERICAN TORT
REFORM ASSOCIATION

TUESDAY
NOVEMBER 2, 1999

THE NEW TREND OF REGULATION AND TAXATION THROUGH LITIGATION: WHY IT REPRESENTS UNSOUND PUBLIC POLICY

Mr. Chairman, thank you for your kind invitation to allow me to share some thoughts before the Committee about the new judicial trend of regulation and taxation through litigation. This trend intrudes on the separation of powers, reflects unsound public policy, and raises concerns that the bedrock principle of "equal justice under the law" might be set aside when the defendant is unpopular.

I am testifying today on behalf of the American Tort Reform Association ("ATRA"). ATRA is a broad-based coalition of more than 300 businesses, corporations, municipalities, associations, and professional firms who have pooled their resources to promote reform of the civil justice system with the goal of ensuring fairness, balance, and predictability in civil litigation. ATRA was founded in 1986; it is based in Washington, D.C.

Regulation and Taxation Through Litigation

Former Secretary of Labor Robert Reich concisely characterized the new trend of governments bringing their powerful resources to bear against lawful, private industries when he observed, "The era of big government may be over, but the era of regulation through litigation has just begun."[1] The new judge-made path toward regulation and taxation through litigation has been blazed by unpopular defendants – the people who tobacco, guns, or lead paint. On the horizon, reports have suggested that the next round of targets could include HMOs, manufacturers of latex products, automobiles, chemicals, alcoholic beverages, and pharmaceuticals, the gaming industry, "Hollywood" and the entertainment industry, internet

---

1 Robert B. Reich, Regulation is out, Litigation is in, USA Today, Feb. 11, 1999, at A15.

providers, and even the dairy and fast food industries.

Public officials and personal injury lawyers who have brought these lawsuits, and judges who support them, argue that since the Congress and state legislatures have not acted, judges must do so. Some regulation through litigation advocates suggest that executive branch regulators are captured by industry and will not act in the public interest, and that the only way to achieve certain public policy goals is through litigation.

Litigation may provide the opportunity for some to achieve their personal agenda of reform, because some judges who see themselves as public policymakers are willing to bend the law. Although the judiciary should be, in the words of the late Alexander Bickel, the "least dangerous branch," a few judges see it as the most activist branch. There are problems with this perspective.

One of the problems is that many judges are unelected; this is certainly true with respect to the entire federal judiciary. And, even in those states where judges are elected, judges face little public light or scrutiny. Therefore, judges who embrace "regulation through litigation" are not subject to the checks and balances of the more open arenas of public policy that you face as Members of Congress.

I will briefly share with you how Robert Reich's observation has played out so far and where it may go in the future. I suggest that this new, uncharted path poses serious dangers for our society. When the cheers fade for the state attorneys general tobacco victories, the public may realize that a new form of government has been unleashed and has the real potential to regulate them and tax them in ways that they neither require nor want.

Tort Law Or Outlaw?

Tort law principles should apply in the same way to all defendants. This does not always occur in practice. Sometimes courts have bent tort law rules to ensure findings of liability against unpopular defendants.

For example, in a 1982 case called Beshada v. Johns-Manville Products Corp.,[2] the Supreme Court of New Jersey overturned more than two centuries of tort law and imposed absolute liability on a manufacturer of an asbestos-containing product. The court broadly stated that manufacturers of products that caused serious harm should not be able to defend themselves on the ground that they neither knew nor could have known about the risks that might be caused by their products.

The Supreme Court of Louisiana reached the same conclusion in a case called Halphen v. Johns-Manville Sales Corp.[3] The court determined that asbestos products were unreasonably dangerous per se, in effect, of no social benefit. The court chose to ignore the fact that regardless of the risks asbestos may have created, it was the only insulation material available during World War II to ensure that Allied ships could stay warm inside. And, it was fireproof – an important fact when you are a thousand miles out at sea.

While principles in those cases were broadly stated, the New Jersey and Louisiana supreme court decisions were based on the judges' views that manufacturers of asbestos-containing products had engaged in heinous conduct. The companies had produced a product that had caused serious injuries and, in some cases, death. According to the plaintiffs'

---

2 447 A.2d 539 (N.J. 1982).
3 484 So. 2d 110 (La. 1986).

allegations, the manufacturers knew about the risks, but did not warn the public.

While the plaintiffs had made the central allegation that the defendants had known about the health risks associated with asbestos, the New Jersey and Louisiana courts eliminated the requirement that the plaintiffs prove that fact. By eliminating the need to prove that the defendants knew or should have known about the health risks of their products, the Supreme Courts of New Jersey and Louisiana anticipated that asbestos manufacturers would settle their cases and not litigate.

When the Beshada principle of law arose again, however, in a case against the manufacturer of a pharmaceutical product, the Supreme Court of New Jersey stated that absolute liability would not apply because the product at issue was a medical product.[4] The court opined that the nature of the product justified a different result.

The distinction drawn by the New Jersey Supreme Court between asbestos and a medical product was not based on neutral principles of law, but on how the justices on that court felt about the particular defendants -- people who made products that contained asbestos were tort law "outlaws"; people who manufactured pharmaceuticals were not.

A similar process occurred in Louisiana. Once the principle of absolute liability set forth in Halphen was unleashed in Louisiana, lower courts applied it to non-outlaw defendants. One example: escalator manufacturers. As a consequence, escalators in the state were shut down. When the case involving escalators reached the Supreme Court of Louisiana, the court confined

---

[4] See Feldman v. Lederle Labs, 479 A.2d 374 (N.J. 1984).

11/03/99 WED 13:37 FAX 011

the Halphen principle to manufacturers of asbestos-containing products.[5] The court believed that society could proceed without asbestos, but not without escalators.

In effect, these courts said that manufacturers of asbestos-containing products were outlaws and were not entitled to the same legal principles that applied to others.[6] A key public policy question that Congress should consider is whether our Nation should have neutral tort law or outlaw tort law.

Tobacco Law – Good-bye Subrogation, Hello "Quasi-Sovereign" Doctrine

The "tort law or outlaw" issue arose with respect to the state attorneys general tobacco cases. Will the principles established by a few courts against those who make tobacco products be confined to tobacco or spread to other manufacturers? Some background concerning long-standing tort principles sheds light on the answer to that question.

A fundamental principle of tort law is that an injured person's claim is greater than or at least equal to any claims by others for indirect economic harms that may flow from that injury. For example, if a worker is injured in the workplace as a result of a defective tool, his claim is the primary claim. No one else has a greater right to sue for the worker's injuries than the worker himself. If the worker's employer suffers economic losses as a result of the employee's injury (e.g., the employer has to pay workers compensation and medical expenses on the

---

5 See Brown v. Sears, Roebuck and Co., 514 So. 2d 439 (La. 1987).

6 Halphen and Beshada were overruled by legislation so as to require proof of defect. See N.J. Rev. Stat. § 2A:58C-3(3) (1987); La. Rev. Stat. Ann. § 9:2800.56(1) (1991). Another case, Kelley v. R.G. Indus., Inc., 497 A.2d 1143 (Md. 1985) (holding handgun manufacturer strictly liable for injury resulting from properly functioning "Saturday Night Special"), was subsequently overruled by legislation. See Md. Ann. Code art. 27, § 36-I(h) (West Supp. 1990).

employee's behalf, suffers loss of profits while the employee is out of work, or has to hire a substitute worker), the employer's claim is secondary to that of the injured party. Through a legal process called subrogation, the employer can join in the employee's tort claim against the manufacturer of the tool or put a lien on the employee's recovery, but the employer does not have a separate, independent claim or a greater claim than that of the injured worker.

Apart from the process of subrogation, the same result is reached through a traditional tort principle called the "remoteness doctrine." The remoteness doctrine prohibits people who may incur an indirect economic loss from bringing a claim against a person who may have caused a physical injury. For example, if a negligent driver injures a person and the accident ties up a highway, the injured person may have a claim, but those who suffer lost economic opportunities because of traffic delays do not. The remoteness doctrine is based on twin public policies of avoiding duplicate recoveries and preventing an avalanche of claims.[7]

Despite these fundamental aspects of tort law that have been respected for more than 200 years, a few lower state courts in the state attorneys general tobacco cases held that a state government could have greater legal rights than those of the individual smokers. In effect, the state could recover the cost and injuries allegedly sustained by a smoker, even though the smoker's case would fail. A smoker's case could fail, for example, because the person was clearly aware of the risk of smoking and made a conscious choice to smoke. Or a smoker's case might fail because the person did not establish that his or her particular illness was caused by

---

[7] See Victor E. Schwartz, The Remoteness Doctrine: A Rational Limit on Tort Law, -- Cornell J. Law & Public Pol'y -- (forthcoming Fall 1999) (providing history and public policy behind the remoteness doctrine).

smoking. Under established tort principles, the smoker could not prove this causal connection by statistics alone.

In one state's lawsuit against the tobacco companies, however, a trial court created a new principle, the "quasi-sovereign" doctrine, which granted the state "super plaintiff" status.[8] First, the "quasi-sovereign" doctrine, in effect, eliminated applicable neutral defenses such as assumption of risk and contributory negligence. Second, it allowed states to subvert traditional principles of causation by allowing causation to be established through a general statistical correlation between the activity of smoking and public health care expenditures. Third, it bypassed established rules for allocating liability by allowing the super-plaintiff State to provide liability by generalized market share statistics. It did not have to show that a particular citizen was injured because he or she smoked a particular defendant's product.

It remains to be seen whether the "quasi-sovereign super plaintiff" decision represents neutral tort law or outlaw tort law. The implications of either result will have profound effects on our society. If "super plaintiff" decisions become neutral tort law and are applied to other defendants, many industries could be at risk of new and unprecedented liability exposures.

For example, a very prominent plaintiffs' lawyer friend has shared with me his view that automobiles that go 90 miles per hour or more create a known risk that has no social justification. He fully appreciates that a person who drove a car above 90 miles per hour and was hurt would have his claim barred because of his own negligence or because he assumed the risk of injury. On the other hand, this sage plaintiffs' attorney observed that a claim by the state to

---

8 Texas v. American Tobacco Co., 14 F. Supp. 2d 965 (E.D. Tex. 1997).

recover Medicaid costs incurred in treating the driver's injuries might not be barred if the "quasi-sovereign" doctrine applied. For example, the driver's fault could be ignored. This plaintiffs' lawyer believes that state funds have incurred substantial Medicaid costs because of people who drive at excessive speeds. He believes that statistics can show that "speed kills." He also claims to have evidence that automobiles sold in certain foreign countries have computer chips which prevent the automobiles from going faster than the speed limit. He claims that U.S.-made automobiles should have these computer chips.

If the "quasi-sovereign" doctrine is limited in its application to unpopular defendants such as the tobacco industry, however, this plaintiffs' lawyer's theory would probably fail. The law would be different only because judges believe that we need automobiles, not tobacco.

Mr. Chairman, the legislation you have sponsored with Senator McConnell, S.1269, the Litigation Fairness Act, would address this issue and preserve the rights of individuals who may be injured. As the Litigation Fairness Act makes clear, an injured person's right to sue should be primary. Government should not have a greater right to sue than a citizen who has been hurt when that injury is at the heart of the government's claim.

Gun Law – Changing Law, Once Again, Against An Unpopular Defendant

The new cases filed by some cities against firearms manufacturers present the same issue of neutral tort law or outlaw tort law. The cities have proceeded on at least two rather novel theories. First, some of the city suits are predicated on a theory called "negligent distribution." These suits allege that the gun manufacturers knew or should have known that their products, lawfully sold in one state, would find their way into other states, where they could be used in criminal activity.

Recently, a Federal District Judge in the Eastern District of New York ignored basic principles of tort law and allowed a jury to consider this novel new theory of liability of negligent distribution.[9] The theory allows a jury to impose liability on various gun manufacturers. While the state or city was not the plaintiff in that case, its core principle would be helpful to governments that base their suits on negligent distribution claims.

---

9 Hamilton v. Accu-Tek, 1999 WL 557261 (E.D.N.Y. June 3, 1999).

Hello "Negligent" Distribution, Good-bye Cars and Beer

Fundamental tort law principles create a duty on the part of a person not to entrust another with a dangerous object. If I give my car to a drunk driver, and he causes an accident, I am subject to liability. That is the law of negligent entrustment. The same would be true if a gun seller knowingly sells a firearm to a "strawman" fronting for a felon or a bartender sold a bottle of vodka to a customer who was clearly inebriated.

For over 200 years, negligent entrustment has been based on face-to-face contact. There has been no tort of "negligent distribution," where liability is asserted against a manufacturer that neither saw nor knew the party that intentionally and wrongfully misused its product.

If negligent distribution principles, such as the one embraced by the New York Federal District Judge, were adopted and neutrally applied, a number of industries could be substantially at risk. For example, manufacturers of alcoholic beverages could face crushing and unfair liability exposure. To date, they have had no duty to stand guard over where their products are going or decide whether their products should be used in areas where they might be over-consumed by the local populace. The precedent that may be established in the gun cases, however, could create such a duty. Similarly, automobile manufacturers could have a duty to determine whether any dealer or car rental agency sold or leased vehicles to any person who might drive while intoxicated. Gasoline companies and matchmakers do not currently have a duty to determine whether the purchasers of their products might be arsonists.

In short, once a new duty regarding manufacturer's negligent distribution is created, and one is held responsible for the criminal acts of a person that one never knew nor saw in person, liability implications are limitless, unless judges decide forever that "we only meant guns, because we do not like guns; no one else need be concerned."

Defectless Products – Let's Invent A Perfect Kitchen Knife

A second theory used in gun cases is that firearms are "defective" because they do not feature adequate safety devices to protect third parties against criminal misuse of the product. Product liability principles since their inception have focused on protecting the product user. These principles also may protect bystanders if the product fails to perform in a safe manner – for example, if a wheel falls off a car and injures the driver and a pedestrian.

The concept of "defect" does not support the idea, pushed in the cities' firearms cases, that a protective device must be included to protect third parties from the intentional wrongful acts of the person who uses the product. If the legal definition of "defect" were to be extended to that point, there could be far-reaching implications for manufacturers of products that are intended to serve a legitimate purpose, but could cause significant harm if intentionally misused -- for example, matches, kerosene, or even knives.

The manufacturers of kitchen knives – especially long, sharp and potentially dangerous ones like those that have been used in well-publicized criminal cases – could have a potential duty to ensure that those knives are kept locked up and used only for their lawfully intended purpose (i.e., cutting food, not people). Again, we will have to see whether courts will adopt this radical new definition of "defect." Will we have neutral tort law or outlaw justice?

We are fortunate that, to date, at least some courts have respected existing principles of law and have not twisted them in order to regulate the firearms industry.[10]

Government Should Not Be "Pushing The Envelope" On Tort Law

Governments should not be part of the push to extend tort law far beyond its 200-year-old moorings. Governments also should stand for principles of equal justice under law and not try to create or extend existing legal principles for the purpose of attacking unpopular defendants. Government officials should appreciate that the legal theories created to fight unpopular industries could soon be applied to more popular industries. That is occurring now.

The latest extension is in Rhode Island with respect to the manufacturers of lead paint. At least one attorney general has suggested considering suits against manufacturers of latex. Publicly, however, most state officials have followed the example of the Attorney General of the United States. When Senator McConnell asked Attorney General Reno about the Federal Government's lawsuit against the tobacco companies to recover Medicare costs and whether she would consider suing producers of high fat foods, alcohol, firearms or automobiles in the future, she stated that she was "not aware of any other industry" with the characteristics of tobacco. It has been stated by many attorneys general that tobacco is the only product that causes disease when it is used as intended.

But, as people who suffer from heart disease can attest, high fat foods used as intended can contribute to serious illness, including arteriosclerosis. This is particularly true with young males. Medical data show that at least 25 percent already have incipient arteriosclerosis, a disease that seriously reduces the probability of a long and healthy life. If a court were to stretch

10 See City of Cincinnati v. Beretta U.S.A. Corp., No. A9902369 (Ct. Cm. Pl. Oct. 27, 1999).

019

existing legal principles in order to allow the Federal Government to sue tobacco companies for alleged Medicare costs, there is nothing to prevent future attorneys general from deciding to extend this new principle to manufacturers of products other than tobacco.

Separation Of Personal Injury Lawyers And State

Apart from and, to some extent, linked with the creation of "outlaw tort law" against unpopular defendants is the new and unprecedented partnership between governments and private contingency fee personal injury lawyers. Personal injury lawyers are enterprising professionals and have helped many seriously injured people. Nevertheless, this attorney general-personal injury lawyer linkage creates at least four fundamental public policy problems.

First, government and private contingency fee personal injury lawyers are guided by different goals and principles. Attorneys general take oaths to the Constitution of the United States; that document is their guiding light and their interest is the public interest. The guiding light of private contingency fee personal injury lawyers, by contrast, is profit. To quote the old Seinfeld show, "not that there's anything wrong with that," but it is clear that the goals of contingency fee personal injury lawyers and the goals of government are not the same. If personal injury lawyers run the show, the result may not be in the public interest.

Second, as has been amply demonstrated in the Texas tobacco lawsuit, there is a strong potential for fraud and abuse when public officials make private fee arrangements with contingency fee personal injury lawyers. In almost every other context, government contracts are made in the public light and are priced through a competitive bidding process.

That is a proper way to resolve public contracting opportunities. Public contracting should achieve the very best values for taxpayers. That goal is achieved by conducting the bidding process in the open. When public officials make agreements in private about contingency fees, however, potential abuses can include a wink and a nod about political contributions, or a wink and a nod about future employment at a private contingency fee law firm.

Third, assuming such agreements are negotiated on the "up and up," private multi-million or billion dollar agreements between contingency fee personal injury lawyers and attorneys general may not result in the selection of the best person at the best cost. Contingency fees do not have to be automatically 33 percent or 25 percent of the total recovery. It is in the public interest to have the amount of the fee based on neutral criteria. For example, the probability of a successful outcome, whether work already has been performed by others to achieve the goals of the litigation, and the amount of time actually spent on the case. Marketplace open bargaining should be the norm – not backroom deals in the dark.

Fourth, governments and contingency fee personal injury lawyers have shown the strong potential for fee disputes that can result from "backroom deals." Such disputes have occurred in a number of states. The potential for such fee disputes would be reduced if the agreements were made in public.

The American Legislative Exchange Council (ALEC), a group of over 3,000 state legislators, has developed a proposal to address these problems. ALEC's model bill, "The Private Attorney Retention Sunshine Act," was recently enacted in Texas and North Dakota. The Act would clarify how and under what terms state governments may enter into contingency fee contracts with private lawyers. Here is what the ALEC model bill would do.

First, the filing of a contingency fee contract would have to be approved by a Legislative Budget Board if the state's anticipated recovery was likely to be more than $100,000 and adequate funds had not been budgeted to prosecute the case. Second, the contracting attorney or law firm would have to keep complete time and expense records. Expenses would have to be reasonable, proper, necessary, and actually incurred. In most cases, the time and expense records would be subject to public disclosure. Third, hourly rates would be capped at $1,000 an hour. Attorney fees could not exceed 35 percent of the total recovery, and the "risk" and "difficulty" multipliers could not exceed four times the base rate without prior approval by the legislature. All litigation and settlement funds recovered by the state would become the property of the state. Fourth, the payment of fees and expenses would have to be specifically approved by a governing body. Finally, no state or local officer could waive the requirements imposed by the legislature.

For over ten years, I had the privilege to represent plaintiffs and it was a very satisfying portion of my professional life. But, I know from that experience and the experience of others that a plaintiff's counsel has a goal and, in part, an instinct to both push tort law principles as far as they will go, and to create new principles when the old ones do not reach far enough to permit a recovery. That is a legitimate private goal, not a public goal.

A few years ago, legal experts stated almost universally that plaintiffs' lawyers would never sue the firearms industry because gun manufacturers do not have "deep pockets" like those of the tobacco industry. Experience has shown otherwise. This is true, in part because the balance between the plaintiffs' lawyer and the defense changes when the government is the contingency lawyer's sponsor and partner. For that reason, the pursuit and extension of new changes in law have no end. The contingency fee lawyer would not wish to confine the principles to one or two industries; he or she wants liberal tort law rules applied to everyone from whom a monetary recovery is possible. The future will demonstrate the truth of this statement. For example, the lead paint industry already is now exposed to new style lawsuits. As has been suggested, at least one attorney general has strongly suggested that the latex industry be next on the list for the state official contingency fee personal injury partnership.

Intrusion On The Separation Of Powers Principle

When Robert Reich wrote that "the era of big government may be over, but the era of regulation through litigation has just begun," his examples of this new trend were state suits against unpopular defendants -- tobacco and guns. Robert Reich said that the public policy goals of these and future lawsuits could not be achieved through the normal political process of enactment of legislation or through well-considered regulatory proposals. He analogized the new effort to the United States Supreme Court's civil rights decisions under the Constitution of the United States.

Mr. Reich's perception of a new and major trend in tort law is perceptive and valid, but his analogy to the civil rights movement is misplaced. Equal protection under the law were words that were guideposts for the Supreme Court in civil rights cases. Tobacco, gun, and other new-style lawsuits, by contrast, operate in an almost completely open-ended, uncharted world. The words of the Constitution of the United States do not frame the picture as they did for civil rights. There is virtually no limit to what courts can do in creating new tort law and now they are demonstrating that fact.

When courts create totally new causes of action and nullify long-established precedent they go beyond their appropriate governmental role and act as legislators. Apart from the fact that such lawmaking initiative trespasses on the vital separation of powers between the judicial and legislative branches of government, bad public policy can result. This is why.

First, judge-made law is retroactive. If the Congress made law in the same way, it would be an unconstitutional ex post facto law. Second, judges do not have the information that legislatures gather through the hearing process. That process helps legislative lawmakers appreciate the full public policy implications of their decisions. While two lawyers before an appellate court presenting their points of view are a source of good information, they are not a substitute for the legislative or regulatory fact-gathering process. Third, lawyers in court argue and focus on narrow rules of law, not major changes in public policy. If lawyers were allowed to focus on public issues far beyond the instant case they are arguing, courts would abandon the fundamental principle that judges must only resolve actual cases and controversies. Consideration of issues that go beyond a particular case or controversy is properly the job of legislatures.

Those that have advocated that courts should make law where legislatures have refused to do so ought to think about the full implications of their new approach. If the courts become the forum in which to remedy failures in the legislative arena, what would happen if tort reformers who are unable to persuade legislatures take their case before judges who are empathetic to reform efforts? Would it be appropriate to have judges place caps on punitive damages? Would it be appropriate to have judges create statutes of repose and limit the liability of a manufacturer to a fixed number of years? I do not think so. Those are decisions for legislatures, not courts.

Conclusion

The greatest argument of Robert Reich is that legislatures simply will not act on things that he and those who share his values believe are appropriate for legislative action. But it touches upon a bedrock principle of our Government to give up on the legislature because you cannot get your way. It has been shown that legislatures are politically responsive to the wishes of the general public. As Senator Everett Dirksen of Illinois once said, "When they feel the heat, they will see the light." Legislators do act when the public consistently wants them to do so. Moreover, if legislators are not responsive to the public, voters have a direct remedy at the polls. The judiciary, on the other hand, is the least politically accountable branch of government.

As state or the federal government tries to regulate or tax unpopular defendants through litigation, Members of this Committee should ask themselves whether we will have neutral tort law or outlaw tort law justice. If new and unprecedented judicial lawmaking is applied only against unpopular defendants, the principle of "equal justice under law" that is set forth on the top of an august building near here, the Supreme Court of the United States, will be nullified. We will have an outlaw tort law system. On the other hand, if courts adopt and broadly apply these new principles of tort law, judges could begin to regulate the marketplace and tax the public, deciding what products and services are to be available, how they are to be marketed, and at what price. No doubt, the implications of these lawsuits for our society are frightening; they undercut the very basic principles of our democratic form of government.

they go beyond their appropriate governmental role and act as legislators. Apart from the fact that such lawmaking initiative trespasses on the vital separation of powers between the judicial and legislative branches of government, bad public policy can result. This is why.

First, judge-made law is retroactive. If the Congress made law in the same way, it would be an unconstitutional ex post facto law. Second, judges do not have the information that legislatures gather through the hearing process. That process helps legislative lawmakers appreciate the full public policy implications of their decisions. While two lawyers before an appellate court presenting their points of view are a source of good information, they are not a substitute for the legislative or regulatory fact-gathering process. Third, lawyers in court argue and focus on narrow rules of law, not major changes in public policy. If lawyers were allowed to focus on public issues far beyond the instant case they are arguing, courts would abandon the fundamental principle that judges must only resolve actual cases and controversies. Consideration of issues that go beyond a particular case or controversy is properly the job of legislatures.

Those that have advocated that courts should make law where legislatures have refused to do so ought to think about the full implications of their new approach. If the courts become the forum in which to remedy failures in the legislative arena, what would happen if tort reformers who are unable to persuade legislatures take their case before judges who are empathetic to reform efforts? Would it be appropriate to have judges place caps on punitive damages? Would it be appropriate to have judges create statutes of repose and limit the liability of a manufacturer to a fixed number of years? I do not think so. Those are decisions for legislatures, not courts.

Conclusion

Atlanta Wins Ruling Allowing Its Suit Against Gun Manufacturers to Proceed

By Paul M. Barrett
And Vanessa O'Connell
Staff Reporters of The Wall Street Journal

Giving a boost to the legal assault on guns, a Georgia state judge ruled that Atlanta may move ahead with its lawsuit seeking to hold gun makers liable for the carnage their product creates.

Judge Gino Brogdon of Fulton County state court rejected gun makers' request to throw out the suit, which accuses manufacturers of negligently failing to make guns as safe as possible and to warn of their dangers.

Atlanta is one of 28 cities and counties that have sued the gun industry, seeking reimbursement of the public costs of gun violence and reform of manufacturing and marketing practices. Yesterday's ruling was important for the antigun side because it indicates that at least some of the cities might succeed in pushing their cases to a jury trial.

An Industry Appeal

Gun-industry lawyers said they are likely to appeal the decision. The industry won a potentially important legal victory this month when, in the first decision concerning the antigun suits, an Ohio state court judge dismissed Cincinnati's suit against the industry.

While the two decisions—one favoring gun makers, and now, another against them—still leave unanswered the question of whether municipal suits will be a viable way to force gun makers to change their practices, the Atlanta ruling means that the antigun side can now move ahead with the pretrial discovery process, which includes demands for documents and statements under oath from company officials.

Atlanta Mayor Bill Campbell said, "We are delighted with the ruling, which marks the first time a case against the industry has survived a motion to dismiss." Nicholas Moraitakis, an outside lawyer for Atlanta, added that the decision "is the first step in what will be a long process" of seeking company documents that the city believes will show that gun makers could have done more to make guns safe.

Issue of State Statute

Gun makers had hoped the lawsuit would be ended by a Georgia state law, enacted in February, banning cities from filing such legal actions. But Judge Brogdon, without explanation, apparently didn't decide that issue, leaving some ambiguity hanging over the case. Paul Jannuzzo, vice president of the U.S. unit of Austrian handgun maker Glock GmbH, said the industry is likely to appeal the decision on the grounds that the ban on antigun court actions should apply to the Atlanta suit because "the city is a creature of the state."

Anne Kimball, an attorney for Smith & Wesson Corp., a unit of Britain's Tomkins PLC, said, "We are disappointed in the ruling, and we continue to believe that the Georgia statute is an absolute bar" to the lawsuit. "We do not believe that the judge has ruled on the statute." She said that the gun companies haven't decided whether they will appeal this ruling immediately, or renew their effort to knock out the lawsuit at a later stage.

Gun-industry representatives have agreed to continue tentative discussions aimed at settling many of the suits nationwide, though they decided this week to postpone any formal response to an array of proposals made by officials from the 28 municipalities suing gun makers.

Jim Hahn, the city attorney for Los Angeles, stressed in an interview that the talks hadn't produced any substantive agreement and that the lawsuits "will continue actively in court."

Judge Brogdon's decision allows Atlanta to seek to hold gun makers liable for their alleged negligence in designing guns to be "unreasonably dangerous." Atlanta also accuses gun makers of negligence in marketing guns, with the result that guns wind up in criminal hands, but the judge didn't address that allegation in yesterday's decision.

THE WALL STREET JOURNAL
THURSDAY, OCTOBER 28, 1999

Guns — Gun Lawsuits

Gun Manufacturer Requires Dealers to Sign Code of Ethics

By David B. Ottaway
and Barbara Vobejda
Washington Post Staff Writers

Smith & Wesson Corp., the country's leading handgun manufacturer, has told dealers selling its products that they must immediately sign a code of ethics, the first time a gunmaker has attempted to assert formal control over the sale and distribution of its products.

Company officials said dealers who refuse to sign or are accused of abetting illegal sales will be banned from selling Smith & Wesson products.

The action comes amid a backdrop of lawsuits by 29 cities and counties, many alleging that gun manufacturers have been grossly negligent in refusing to take responsibility for the marketing of their weapons. The company's ethics code is unprecedented in the closely held firearms industry, which has traditionally resisted attempts to control the sale of firearms.

In a letter mailed in mid-July, Smith & Wesson gave its 3,500 registered dealers 60 days to pledge that they would avoid sales practices that facilitate the illegal flow of guns to young people and criminals. The two-page "Stocking Dealer Code of Responsible Business Practices" commits dealers to obey all firearms laws; to only sell Smith & Wesson guns with safety locks; and to closely monitor buyers to avoid illegal purchases.

Among the most serious accusations leveled against dealers is that they turn a blind eye to "straw purchases," sales to individuals acting on behalf of others whose criminal backgrounds would bar the transactions.

"Smith & Wesson has never been a follower in this industry," said Paul Pluff, manager of retail sales for the Massachusetts company. "We kind of like to set the benchmark."

He said "well over three-quarters" of the 3,500 dealers authorized to sell its guns have already signed and returned the code of ethics. "Those who have not responded in the next 30 days will no longer be registered Smith & Wesson dealers," he warned.

Pluff denied his company was responding to pressure from the lawsuits, saying that work on the code had been underway for more than a year. But he said he expected other manufacturers to follow Smith & Wesson's lead in light of the legal climate.

"It sounds like the industry is starting to move. It's clearly because of these lawsuits," said Brian Siebel, senior attorney at the Center to Prevent Handgun Violence, which is assisting several cities in the lawsuits. "It proves that every gun manufacturer can control distribution of its guns, a point they've denied for years."

"I think they are doing it hoping this will protect them legally," said Stephen Teret, director of the Johns Hopkins Center for Gun Policy and Research in Baltimore. "They want to be able to tell juries, 'Look, we required the dealers to follow this pledge of good conduct.'"

Teret said the main value of the ethics code was that, for the first time "gun manufacturers recognize they should follow a gun beyond the factory door."

A major theme in the lawsuits filed against gunmakers is that the companies have failed to place any controls on distributors or dealers. As a result, they have shirked all responsibility for the crime caused when their products fall into wrong hands, cities and gun control advocates allege.

"I think it's a great first step," said Wayne Roberts, spokesman for the 8,000-member National Alliance of Stocking Gun Dealers. "Now we need to see how it works and where the flaws are."

One flaw Roberts cited was that wholesalers are not covered under the new policy, so that some smaller dealers could still purchase products from wholesalers without signing the ethics code.

However, Pluff said Smith & Wesson has contracts with its 22 wholesale distributors that include an even more stringent ethics code covering marketing practices.

The company's mid-July letter to dealers declared that "the manufacturing, distribution and sales of firearms are significant and important undertakings for our businesses and the community."

In additioning to their signatures on the code, the company asked dealers to provide proof that their federal licenses were up to date, along with pictures of their shop storefronts and other details to ensure they were legitimate.

The company initially gave dealers 60 days to respond. But after learning that some dealers had not received or responded to the letter, the company granted an additional 30 days.

Some in the industry said they were most struck by Smith & Wesson's warning that it would cut off any dealer accused of questionable business practices by police or government officials. That is significant because a number of the city lawsuits name dealers as defendants along with the manufacturers.

"We have a problem with that in that [the dealers] have not been convicted of anything," said Sanford Abrams, vice president of the Maryland Licensed Firearms Dealers Association.

Crime -
Gun
Lawsuits

The Washington Post
Friday, October 22, 1999

The Washington Post
Friday, October 22, 1999

THE RELIABLE SOURCE

By Lloyd Grove

The House Is Not a Home

■ The Source's resident "It" Couple—Rep. **Mary Bono** (R-Calif.) and her country drummer boyfriend, **Brian Prout**—were spotted smooching yesterday in the Rayburn Room between votes on the House floor. While they weren't frightening horses and children in the highly trafficked meeting area that often resembles a bus station, witnesses told us that Bono and Prout didn't lack for passion.

"They were just inside the doorway and it was *real* kissing," said one informant.

Said another: "It was less than making out, but there was repeated kissing and definitely lip-lock. He had a goofy grin on his face afterward."

We reached Bono's press secretary, **Frank Cullen,** who was in the middle of explaining things in the dullest possible way when Bono herself grabbed the phone. "It was not a big, passionate kiss—that's totally unfair," the congresswoman told us. "We were not lip-locked by any means. It's my 38th birthday on Sunday and I'm not going to see Brian because he has to tour with his band"—Diamond Rio. "It was just a quick little kiss goodbye, certainly not anything to upset Washington decorum. Anybody who would think that ought to get a life. And if you want me to confirm that I'm in love with him, yeah, I'm in love with him, and that's that!"

COURTESY OF M. DANDY

"Quick little kiss" or "lip-lock"? Mary Bono and squeeze Brian Prout.

So, for His Next Trick, Will Bradley Go One-on-One With Gore?

We're not sure if this is a qualification for the presidency, but former New York Knick **Bill Bradley** can still, at 56, make baskets from the foul line with his eyes closed. If you don't believe us, "60 Minutes" will broadcast documentary evidence this Sunday. "We took him back to Madison Square Garden, and he shot some baskets with his eyes closed from different positions on the court, and he made three foul shots in a row," said correspondent **Ed Bradley,** who insists that he's not a relative of the Democratic presidential contender. "I was impressed," Ed told us. "He has great muscle memory."

We, of course, sought reaction from **Vice President Gore's** camp—which has been pressing Bradley for one-on-one debates—and to learn whether Gore has any special talents. "My guy climbed Mount Rainier and ran a marathon," said press secretary **Chris Lehane.** "Maybe he can't make baskets with his eyes closed, but he's willing to have three debates next week with his eyes closed."

PHOTOS COURTESY CBS

The two Bradleys: showoff Bill, above, and Ed of "60 Minutes," left.

THIS JUST IN . . .

■ "Law & Order" star and New York resident **Richard Belzer,** who'll emcee the Top Cop Awards at the Washington Hilton tonight, sounds jaded about a Senate race between **Hillary Rodham Clinton** and **Rudy Giuliani:** "I'm into it in terms of the psychology and drama, as an entertainment, but politically I think it's absurd—a vicious embarrassment between two people who couldn't deserve each other more."

FILE PHOTO/ABC

Anne Archer.

■ Actress **Anne Archer** and her son, **Tom Davis,** an official of the Church of Scientology, joined members of Congress yesterday to urge the German government to stop "discriminating against" religious minorities. The German Embassy referred us to its government's stated policy that Scientology is a commercial venture, not a religion.

Here's the Turnoff

In the Market for Guns, The Customers Aren't Coming Back for More

With Hunting on the Wane And Stigma on the Rise, The Pool Is Shrinking

'You Feel Like a Smoker'

A1

By VANESSA O'CONNELL
And PAUL M. BARRETT
Staff Reporters of THE WALL STREET JOURNAL

Michael Maul doesn't have anything against guns; he owns six. But the Houston radio-station engineer hasn't hunted for eight years, and he doubts that he will ever buy another gun. When he wants to shoot animals these days, Mr. Maul, 40 years old, uses a camera.

"It's a lot easier in the city to go to a nature trail or an arboretum," he says.

The gun business is losing customers. Hunters and target shooters – the industry's core market – are gradually walking away from those sports. Subdivisions have encroached on land once used for hunting. Bicycling, kayaking and other hobbies are luring people away from firing ranges.

Most ominously, gun companies' efforts to cultivate new buyers among women and teenagers have failed to stem the erosion. And gun manufacturers face a dramatic shakeout, as recent high-visibility killings have made guns less socially acceptable in many people's eyes.

"Our future is rather tenuous," says Paul Jannuzzo, vice president of the U.S. unit of Austrian handgun maker Glock GmbH.

Mr. Jannuzzo's industry has attracted public attention lately as it attempts to fend off a legal assault by 28 cities and counties across the country. But however that courtroom fight ends, gun companies face the peril of a shrinking consumer market. U.S. gun production and imports have fallen more than 20% since the late 1970s, and despite an unusual buying surge this year, industry analysts predict little to no overall growth in the decade ahead.

Retail giants such as Wal-Mart Stores Inc. and Kmart Corp. recently have reduced their gun and ammunition displays in favor of other sporting goods. The ranks of gun wholesalers – the middlemen between the factory and the store – have thinned by 16%, to about 160, since 1996.

A consolidation wave among manufacturers is already under way. Colt's Manufacturing Co. just this month eliminated its less expensive civilian-handgun lines and is negotiating a possible merger with rival Heckler & Koch Inc. Three small California makers of inexpensive handguns have either shut down or sought bankruptcy-court protection this year. Smith & Wesson Corp., the largest U.S. handgun manufacturer, is diversifying into everything from police bikes to car parts to clothing.

With more than 200 million guns already in civilian hands, industry officials worry that the market is nearing saturation. Just 10 million people own roughly half the national stock, which translates into about 10 guns per owner.

In the 1980s, the proportion of men who said they personally owned a gun held steady at 52%, but by 1998, the figure dropped to 38%, according to regular surveys by the National Opinion Research Center at the University of Chicago. Female ownership has hovered around 11% since 1980.

The lurid massacres of the past two years are statistically an aberration; violent crime has dropped nationally for seven straight years. But round-the-clock reports of gun killings have created a "much broader negative perspective, a tainting" of firearms, says Douglas Painter, executive director of the National Shooting Sports Foundation, the main industry trade group. In the wake of the Littleton bloodshed, his group dropped its first-ever mainstream-magazine advertising campaign, what would have been a $3 million effort to create a wholesome image for shooting sports.

Shooting traditionally has relied on family relationships and word-of-mouth promotion to attract neophytes. But fear of social disapproval is muffling veteran participants, Mr. Painter says. "Does that have a negative impact? You bet it does."

Lory Ambriz bought a new gun every year for more than four decades, displaying his favorites, including an assault rifle, above the fireplace in his La Mirada, Calif., home. But following this year's school shootings, his grandchildren and other house guests questioned why he kept such a potentially dangerous arsenal.

"I began to think I don't need them anymore," says the 68-year-old retired truck driver, who hadn't fired a gun for years. He says he has moved his 40 weapons to a neighbor's safe and has begun to sell them.

To be sure, there are tens of millions of loyal gun users who still raise their children to hunt or target shoot. Mark Anderson, an insurance agent in Columbia, Mo., for example, was taught to shoot by his father and today owns more than 20 guns. A recent purchase was a .22-caliber rifle for his 12-year-old son, who is interested in target shooting. His next purchase is likely to be a quail-hunting shotgun for the boy, Mr. Anderson says.

But in many gun-owning families, these traditions aren't being passed to the next generation. Mr. Maul of Houston learned to hunt with his older male relatives, but they are back in rural Illinois, where he grew up, and as an adult, he hasn't found new hunting buddies. He doesn't plan to encourage his own son, now three years old, to take up the sport. "I expect he'll develop other interests, as I have," Mr. Maul says.

The upshot is that each of the industry's key markets is eroding. Hunting, which accounts for about 60% of consumer gun sales, has declined steadily for decades. The number of adults who hunt tumbled 17% from 1990 to 1998, according to Mediamark Research Inc., a market-research firm. The number of hunting licenses issued annually by states fell 11%, to 14.9 million, from 1982 to 1997, the most recent year for which statistics are available from the U.S. Fish & Wildlife Service.

Target shooting, which accounts for 25% of sales, is slowly fading, too. From 1993 to 1997, participation fell 5%, to 18.5 million people, according to a survey by the National Sporting Goods Association.

As their ranks thin, hunters and shooters are graying. At last month's New Jersey State Outdoor Pistol Championship, in the town of South River, 66 mostly grandfatherly types fired at paper bull's-eyes. Competitor James Phillips, 72 years old and clad in surgical stockings and orthopedic shoes, describes his fellow shooters as "a bunch of old men." Lone spectator Bill Nolan recalls that in the 1950s and 1960s, the parking lot overflowed with the recreational vehicles of 200 young and middle-age shooters and their families. "Boy, have times changed," says Mr. Nolan, 58.

People who buy firearms for self-protection, mostly handguns, make up the remaining 15% of the market. In an anomaly, sales in this area increased this year, partly because of the threat of stiffer gun-control measures and fear of social breakdown related to year-2000 computer problems. But the larger trend, as crime rates have fallen, is a drop in demand for self-protection guns. In any event, this isn't particularly fertile ground for gun makers because consumers buying only for protection tend to tuck a handgun away in a closet and not return to the gun store for more purchases.

Attitudes toward guns vary from region to region. They are more popular in the South, less in the Northeast. But there is growing anecdotal evidence from around the country that some gun enthusiasts are viewed—and view themselves—as pariahs with an unseemly habit, akin to cigarette smoking. Indeed, the danger for the industry would be that gun ownership could become as unfashionable and frowned upon as chain-smoking, a habit that as recently as a decade ago wouldn't have raised eyebrows.

Fred Cunnings, a gun owner in Holiday, Fla., felt like such "an outsider" that he sold the pistol he had kept for years in a closet. "You almost feel like a smoker in a restaurant," says the 48-year-old landlord.

Most gun makers seem resigned to the erosion of their core customer base and are focusing on finding new faces. "The No. 1 challenge facing the gun industry is finding nontraditional consumers—women, young people, and suburbanites—to make up for the gradual decrease in traditional male hunting customers," says Ronald Stewart, who was chief executive of Colt's from 1996 through late last year.

Neither Colt's nor the industry at large is succeeding.

Since the late 1980s, handgun makers such as Colt's, Smith & Wesson and Italy's Beretta SpA have tried to convince women that they need to protect themselves and their families. Smith & Wesson, for example, pitched its LadySmith revolver, with pearl handles, as a "personal security plan" for women. But as crime rates eased in the late 1990s, the portion of women who personally own a gun dropped to 10.7% in 1998 from its recent high of 13.8% in 1993, according to the National Opinion Research Center.

Paxton Quigley, a handgun advocate who endorses Smith & Wesson products, recalls a "frenzy of interest" in her all-women handgun self-defense classes following the Los Angeles riots in 1992. Held at gun ranges nationwide, the classes now typically draw only 15 students, down from 35 in the early 1990s, she says.

For years, Dawn Brachmann, a home-

THE WALL STREET JOURNAL
TUESDAY, OCTOBER 26, 1999

1/2

maker in Holiday, Fla., kept her husband's .25-caliber Sterling pistol loaded and in a bread box on top of her refrigerator. But she asked him to get rid of it last month after a church sermon on gun violence at schools caused her to worry that her three-year-old son might stand on a chair and get at it. "I don't want to own any more guns," she says, "but I wouldn't mind finding something else to use in my self-defense."

In addition to problems recruiting women, gun makers acknowledge that they are failing to win over enough young people to replace aging shooters and hunters.

In recent years, the gun industry has aggressively courted kids, getting nearly three million a year to participate in rifle programs sponsored by the NRA and groups such as the farming-oriented 4-H clubs and the U.S. Junior Chamber of Commerce. Some manufacturers have tried to capitalize on this activity. H&R 1871 Inc., Gardner, Mass., says that by lending firearms to these programs, among other promotions, it has doubled annual sales of youth guns since 1995, to more than 50,000.

But aside from such small pockets of success, overall efforts to recruit younger customers aren't working, gun executives say. People between the ages of 18 and 24 made up only 8% of all hunters in 1995, down from 17% in 1986, according to the National Shooting Sports Foundation. In one major hunting state, Pennsylvania, sales of junior hunting licenses have dropped 40% during the past three decades, to roughly 98,000.

At a time when participation in scholastic sports is at an all-time high, riflery drew just 2,966 participants in the 1998-99 school year, 47% fewer than in 1974-75, according to a survey of 17,000 schools by the National Federation of State High School Associations. More than four times as many students played on badminton teams.

Robert Soldivera, who coaches shooting teams at three private high schools in Staten Island, N.Y., says that at first, many children "want to learn to shoot because it is the forbidden fruit." But that curiosity tends to wear off quickly, as students conclude that "making holes in paper targets gets boring really fast," Mr. Soldivera says. He estimates that fewer than 20% of his students remain active through their senior year; most quit after just a few months.

Like schools, many summer camps are phasing out shooting programs. Kent Meyer, who oversees Camp Chief Ouray in the Colorado Rockies, suspended its 92-year-old rifle program in response to this spring's school shootings in Littleton and Conyers, Ga. Scott Brody, who owns Camps Kenwood and Evergreen in Potter Place, N.H., dropped rifle programs in June and added more woodworking and dance. "They don't have the dangers of the riflery program," says Mr. Brody.

Worried about a stagnant gun market, some major manufacturers are putting more emphasis on military and law-enforcement sales or diversifying into other products altogether. Sturm, Ruger & Co., Southport, Conn., the largest U.S. gun manufacturer, makes golf equipment. Ed Shultz, Smith & Wesson's chief executive, says he is steering his 147-year-old company, which once made only firearms, toward a 50-50 balance of gun and nongun products.

Other companies are trying more exotic niche-marketing strategies. Smith & Wesson, Springfield, Mass., Colt's, based in West Hartford, Conn., and Mossberg & Sons Inc., North Haven, Conn., are scrambling to be the first to offer a "smart gun" to women and people generally who otherwise wouldn't buy a firearm because of safety concerns. Smart-gun prototypes rely on microchip technology to allow only authorized users to pull the trigger. But the cost and reliability of smart guns are very much in doubt.

Savage Arms Inc., Westfield, Mass., aims to boost sales among aging diehards by designing new guns for older, arthritic hands. Savage reduced the weight of some of its rifles to 5½ pounds from eight pounds by using plastic parts rather than wood and added devices to reduce the sometimes-painful recoil that comes with firing a gun.

Both modifications appear to be hits with Savage's maturing customer base, says company President Ronald Coburn. But the problem, he adds, is that "as our audience matures, the younger generation isn't coming up behind them."

2/2

Today's debate: Gun sales by police

A bad idea returns

OUR VIEW **Selling extra guns makes money, but it's not worth the price.**

In the pantheon of bad ideas that just will not die, few rank as highly as the decision by police departments to sell or recirculate used and confiscated weapons, thus expanding the armory available to criminals and nut cases.

In the latest case, officials in Miami-Dade County are scrambling to investigate a report this month by CBS that guns formerly owned by the county police have been used in violent crimes in Illinois. The guns were among 1,100 traded to a firearms dealer for $82,000.

Miami-Dade's mortified officials are not alone. When hatemonger Buford Furrow killed postal worker Joe Ileto during his August rampage in Los Angeles, he used a handgun once owned by the police department in Cosmopolis, Wash. The gun had been traded to a private dealer for a larger one, then sold, and then sold again at least once before Furrow bought it at a gun show.

On the other side of the country, a 1996 investigation by the New York State inspector general found that weapons originally used by officers in the New York State Department of Environmental Conservation had been employed in crimes in at least two states. Earlier, a gun originally used by New York State police was traced to two California murders.

The International Association of Chiefs of Police passed a resolution last winter against the recirculation of confiscated firearms, warning that such sales increase "the availability of firearms that could be used again to kill." And *The Wall Street Journal* has reported that of 193,200 firearms traced by the Bureau of Alcohol, Tobacco and Firearms in 1998, "at least 1,100" were former police weapons.

Still, police officials cite two reasons for the practice: The guns represent a hefty source of revenue, and with 200 million guns in private hands already, the addition of a few more won't make an appreciable difference.

There is big money at stake. In Detroit, officials acknowledge sales have earned $800,000. New Orleans officials traded almost 10,000 weapons to a gun maker in exchange for a $400,000 credit. And despite the additional guns in the marketplace, firearm homicides, nevertheless, fell 7.1% last year.

But firearms still account for almost 11,000 murders a year. And if the risk is slight that a cop's gun will be used in a crime, the notion that police departments are to compromise public safety for easy cash is bleakly ironic and deeply disturbing.

Some police departments try to buffer the effect of selling their weapons by demanding that the guns not be resold in their states. But merely shipping guns someplace else — even to Thailand — is no solution. And even the tightest controls fall apart the minute the guns enter the unregulated secondary market.

The alternative need not be the destruction of unwanted weapons. In Baton Rouge, officials are contemplating a program to use some of their surplus firearms for training, and to break down others and sell them for parts.

Such plans won't realize the guns' full market value. But in this case, supplementing public coffers means supplementing private coffins, too. Is that a reasonable trade-off? The victims and their survivors vote no.

Selling old guns makes sense

OPPOSING VIEW **And it is a good way for police to raise funds.**

By Edward J. Connor

As a professional law enforcement official, I am in full agreement with those who propose keeping firearms out of the hands of criminals. To prevent a law enforcement agency from taking advantage of a legitimate market for used equipment, however, is absolutely preposterous. Why should the fact that firearms are the used equipment make a difference?

To those who say it should, I ask whether you would prevent me from stretching the tax dollar as far as I can by selling or trading in my outdated or obsolete vehicles? I submit that as long as the end user does not abuse that vehicle by driving it recklessly or under the influence, then it makes good common sense to get as much value for that piece of equipment as I can.

It should be the same with a firearm. My department has upgraded its sidearms twice in the past 10 years by selling or trading old or outmoded firearms at a cost savings of thousands of dollars to our residents. We actually received more trade-in value for two of those firearms than we did for most of the police cruisers we have traded in. They happened to be very desirable as collector's pieces and were simply gathering dust in an arms locker.

These two weapons completely funded the transition from old but very serviceable revolvers to modern semiautomatic pistols. It is very unlikely that my officers currently would be carrying up-to-date sidearms if we were prevented from taking advantage of the market as we did.

This issue, like many of the issues relative to firearms, is fueled by emotion and politics. The abuse of firearms, like the abuse of many other items, from alcohol to prescription drugs to vehicles, will not be addressed by eliminating or prohibiting the items, but by a return to traditional values, morals and standards, and that means punishing the abuser.

Eliminating a source of revenue for fiscally challenged police departments, large or small, would be playing to political and emotional hype, resulting only in more feel-good but ineffective legislation; it would not address the problem of violent crime at its source.

Edward J. Connor is chief of police of the Ferguson Township, Pa., Police Department.

LOS ANGELES TIMES
(first-edition) Page 1 for Tuesday, Oct. 26, 1999:

Top of page:

Col 1: Financial newsfeature. Moving later with art.

Cols 2-4: A Learjet carrying U.S. Open golf champion Payne Stewart and four others flew uncontrolled above the United States' heartland Monday its windows iced over, radio silent and passengers apparently unconscious or dead before running out of fuel and plummeting 45,000 feet into a muddy field of weeds near Mina, S.D. All those aboard were killed. (with art) (CRASH-TIMES, moved).

Cols 5-6: Israel opens a safe-passage corridor that links the Palestinian-controlled Gaza Strip and West Bank, allowing hundreds of Palestinians for the first time to traverse the Jewish state in search of a taste of freedom, a long-unseen relative, or a job. (MIDEAST-TIMES, moved).

Above fold:

Col 4: The death of John H. Chafee, Rhode Island's senior senator, marks the decline of a Senate breed that wielded influence far beyond its numbers: moderate Republicans who often helped reach compromise between the ideological extremes of the two parties. (CHAFEE-OBIT-TIMES, moved).

Col 6: Texas Gov. George W. Bush is getting a serious taste of Campaign 2000 reality: a rash of recent polls showing for the first time that the tremendous popularity of the presumptive Republican candidate for president is slipping significantly nationwide and in the crucial early primary state of New Hampshire. (BUSH, moved).

Below fold:

Cols 5-6: The United Nations civilian administration is working to create a tribunal that will try to resolve the thousands of property disputes born of the war to control Kosovo; the disputes are numerous and complex. (BALKANS-DISPUTE, moving Tuesday).

Bottom of page:

Cols 1-2: Foreign newsfeature. Moving later.

Cols 4-6: Newsfeature. Moving later with art.

Clinton Chastises Pharmaceutical Industry for High Price
By James Gerstenzang
Los Angeles Times

WASHINGTON President Clinton angrily chastised the nation's pharmaceutical industry Monday for charging prices beyond the means of many elderly patients. Reiterating his call for expanded prescription drug insurance, Clinton ordered a federal study of drug costs.

The president, who was stung in 1994 when opponents' advertising helped defeat his wide-ranging health insurance plan, took special aim at the drug manufacturers' advertising, built around a character named Flo and her warning that the federal government is about to enter the nation's medicine cabinets.

``Old Flo's up there arguing for keeping 13 million seniors, just like her, from having any access to any drugs," Clinton said. ``Bet she wouldn't be making that ad if she had found herself in the same position."

The pharmaceutical industry's lobbying arm, anticipating Clinton's attack, began defending itself with an active fax campaign, even before he spoke.

``This whole thing is about politics," said Alixe Mattingly of the Pharmaceutical Research and Manufacturers of America.

Indeed, the question of drug prices has made its way into the presidential campaign.

In New Hampshire last week, Vice President Al Gore spoke to members of AARP and, as props, held up two bottles representing drugs purchased in New Hampshire and Canada. The Canadian drugs could be purchased at less than half the price paid in New Hampshire, he asserted.

Clinton joined that debate Monday.

Accusing the pharmaceutical industry of distorting the course he had taken, the president said: ``I wish they'd spend this ad money explaining why seniors have to get on the bus and go to Canada to buy drugs at less than half the price they can buy them in America, when the drugs are made in America with the benefit of the American system and American research and American tax systems."

The industry has long argued that its prices reflect the high cost of research and extensive trials that develop drugs as well as the limited market for some of them.

In addition, they say, it is unfair to compare U.S. prices with the retail costs charged in countries that offer subsidies or impose price controls.

To the industry's assertion that elderly patients would be forced into a government-run drug plan, the president responded: ``Under our plan there are no government restrictions of any kind. Doctors would be able to prescribe any needed drug for any patient at any time and the benefit would be purely voluntary. Completely optional. If seniors want to keep their current coverage, they're perfectly free to do so."

He said that 13 million elderly Americans have no insurance coverage for prescription drugs and that millions more have inadequate coverage.

The commission the president created was ordered to produce in 90 days an analysis of how much those with and without prescription drug coverage pay for the most commonly prescribed drugs.

Clinton has been unsuccessful so far in winning congressional approval of his plan to include prescription drug coverage in Medicare, the government's health insurance program for the aged and disabled.

``One of the key reasons no action was taken on prescription drugs this session was because the pharmaceutical industry spent millions of dollars on an all-out media campaign filled with flat-out falsehoods," Clinton said.

The 'Second Lady' Rethinks Crusades for Children, Husband
Chen covers the White House for the Los Angeles Times.
By Edwin Chen
Los Angeles Times

WASHINGTON She has been called the ``second lady.' And the ``second first lady." Somebody once introduced her as ``the second lady of vice." But after nearly seven years as wife of America's 45th vice president, such confusion no longer surprises

The Washington Times
MONDAY, OCTOBER 25, 1999

Rebels with a violent cause

Lawsuits follow shootings at Columbine

The parents of Dylan Klebold, one of the killers at Columbine High, intend to sue the sheriff of Littleton, Co. The parents of Isaiah Shoels, the only black student killed in the Colorado massacre, will sue the parents of Eric Harris and Dylan Klebold. Parents of other victims say they'll sue school officials.

Questions proliferate. Who knew what and when? Could anyone have prevented the massacre? The parents of Dylan Klebold say that if the sheriff had told them about Eric Harris' hateful Internet site, they would have broken up the friendship between Dylan and Eric. The Shoels say the parents of the murderers failed to act when their sons stockpiled guns and bombs. Other parents question the inadequate security at the school and ask whether school officials were aware of the damage caused by student cliques.

Colorado law requires anyone who wants to sue the government to file a notice of intent within six months of a litigious incident. Last week the deadline passed. Many parents say their suits are not about money, but about finding out everything they can. Maybe such teen violence can be avoided in the future.

Suzanne Fields

Litigation offers no solace (except to the lawyers) but such suits may uncover overlooked clues leading to the violence. With 20/20 hindsight investigators may find links in the chain of inevitability.

One of the terrible psychological spillovers from the school massacres is the way the massacres prey on a teen-ager's imagination and anxieties. In a poll of 1,038 teen-agers between 13 and 17, more than half said they believed a similar rampage of killing could take place in their school. That's a distorted expectation of possibility, but the kids believe it.

The poll, conducted by the New York Times and CBS News, also found that social critics (like myself) who worry that parents are not paying enough attention to sons and daughters aren't necessarily right when it comes to parents knowing where their children are. Nearly all the Generation Y children polled said they must routinely tell their parents where they're going before they leave the house. Nearly 90 percent have rules about when they have to be home.

Other statistics contradict the perception of the acceleration of violence in our children's lives. Incidents of teen-agers engaging in fist-fights between 1991 and 1997 have decreased by 14 percent, and the number of kids who say they carry a weapon has gone down by 30 percent, according to the Centers for Disease Control and Prevention. The number of teen-agers who worry about being shot has declined by half; the number of those who know someone who has been shot declined from 40 percent to 34 percent.

Does that mean we can relax our vigilance over violence in the lives of our children? Just the opposite. The teen-agers identify potential troublemakers as the outcasts —the kind of boys other kids make fun of. The outcasts are more likely to be nerds than thugs. In fact, they're kids who in another generation probably wouldn't fight back. But now that weapons are readily accessible and images in the movies, television and on video games make violence look easy for anybody, the teen-agers who murder can spring out of nowhere.

Violent teen-agers don't fit a "typical" profile. They aren't the stereotypical toughs of "West Side Story" or members of an inner city gang. Lt. Col. Dave Grossman, who has taught psychology at West Point and is regarded as an expert in what he calls the field of "killology," and Gloria DeGaetano, a former cop, blame entertainment that sanitizes and glamorizes violent death.

In their new book "Stop Teaching Our Kids to Kill," they note that Michael Carneal, 14, stole a handgun from a neighbor before he shot eight children in a prayer meeting in a school in Paducah, Ky. Michael was obsessed with movies in which young boys seek revenge, but before he stole the gun he had never shot anyone. His aim was excellent. He hit eight children with eight shots, striking the head or upper torso, killing three, and paralyzing one for life.

The average experienced, qualified marksman, according to the FBI, succeeds with less than one bullet in five. How was a child able to hit each human target? Easy. He had learned it on point-and-shoot video games, similar to the simulators used to teach police and soldiers marksmanship. He had practiced for hundreds of hours at arcades and at home, killing human figures that looked real and winning bonus points for head shots. It was fun and games.

Suzanne Fields, a columnist for The Washington Times, is nationally syndicated. Her column appears here Monday and Thursday.

UDC poised for the future

Resurrected from debt and mismanagement

By Julius Nimmons Jr.

In November of 1996, I assumed the acting presidency of a terribly troubled University of the District of Columbia, facing a potential deficit of $18 million. Absent immediate operating cost reductions, including the streamlining of degree programs from 132 to 76, the city's only public institution of higher learning would have fallen into a sinkhole and died. But let's not dwell on the past here because I have every faith that the university family recognizes that we can't look back. We must move forward creatively, efficiently and effectively.

This is very serious business, and a responsibility I take willingly and with the utmost commitment. A new day is dawning at the university, in our city and the region. Not only in terms of the changes the new millennium is bound to bring, but in the partnerships, collaborative efforts, and volunteers that can team together to bring renewed vitality to our campus and across the social and economic fabric.

I intend to harness all opportunities that are possible to turn UDC into a more useful and functioning resource of the city. We have only just begun by implementing ambitious reforms that have ended the last two fiscal years with a surplus; maintained UDC's 10-year, level-one accreditation, as well as professional accreditations across programs; put in place a new management and personnel evaluation and accountability system; stabilized external research funding at $25 million; attracted $1.5 million in new annual Title III monies for infrastructure improvements; beautified the campus and renovated classroom and office space; increased workforce development certification and vocation-technical degree programs; increased undergraduate enrollment by 11 percent and law school enrollment by 50 percent; completed a fiber optic cabling project, with Internet access to all main campus facilities; established several new departmental computer laboratories; and continued UDC's national ranking in the number of minority undergraduates going on to earn their doctorate from other institutions.

What does the future hold? My view is that if we can, as we did, avert an $18 million deficit in just four short months, we can accomplish anything. We plan the establishment of:

DISTRICT FORUM

New visionary academic and vocational-technical programs. With the vast majority of inner-city residents achieving only a high school diploma and roughly one-third without that credential, UDC stands to be one of the most significant resources in the city and the region in meeting workforce development needs. We must move more citizens to productive self-sufficiency; we will work closely with the D.C. Public Schools to train more teachers and improve student education outcomes.

Absent immediate operating cost reductions, the city's only public institution of higher learning would have fallen into a sinkhole and died.

Accessible community learning centers. Our plans are to bring needed education and vocational-technical programs directly to adult and out-of-school youth through community learning centers, soon to be established in partnership with other key agencies of the city. These we envision as whole family learning centers, deployed within our schools, recreation centers and other community-centered venues, so that we impact the most difficult to reach segments of our community.

Expanded land grant services to our community. As the nation's only urban land grant institution, UDC receives substantial funding that, when matched with city dollars, enables us to conduct relevant and meaningful research and technical assistance regarding social and environmental problems and their solutions. There is already much that UDC has contributed in this area. But as the city strives even more to improve the quality of life of its citizens and increase economic prosperity in our communities, UDC will move more of these resources to resolving critical issues.

Greater alignments with the city's plans and initiatives. UDC has always been a partner to city agencies in bringing needed services to the city's residents. From architectural assessments and designs for urban homesteaders, to assessing day-care subsidies for greater parity, to training District workers and welfare-to-work participants in new technologies, to conducting stress tests of construction materials used in buildings and roads, to training new mothers in prenatal and infant care, UDC has played a significant role in supporting the city's capacity development needs.

New initiatives are on the horizon, and the university stands as a staunch supporter of the goals and objectives of the city's leaders. Although there are challenges that still confront the university, relations between the UDC Board of Trustees and its administration have never been better. These relationships will allow us to move the University forward in a more expeditious manner and bring about the desired results.

We can now focus our energies on the delivery of quality education and educational support services for our students. We are finally pointed in the right direction — forward.

Julius Nimmons Jr. is president of the University of the District of Columbia.

The Washington Times
MONDAY, OCTOBER 25, 1999

3rd trial to start today in Texas dragging death

By C. Bryson Hull
The Associated Press

JASPER, Texas — Was Shawn Allen Berry a hometown boy caught in the wrong place with the wrong people or a thrill-seeking killer in a racist rage?

A jury will decide during the third trial stemming from the dragging death of a disabled black man behind a pickup one night last year in Texas.

Jury selection for Berry's trial in the murder of James Byrd Jr. begins today.

Berry's co-defendants and roommates, John William King and Lawrence Russell Brewer, were convicted of Byrd's murder and sent to death row.

The three white men were accused of chaining Byrd, 49, to the bumper of Berry's pickup and dragging him over 3 miles of bumpy country road June 7, 1998.

Byrd's body, with the head, neck and right arm shorn off, was found on a road northeast of Jasper.

Five hundred jurors were initially summoned, and 150 to 200 were expected to appear in state District Judge Joe Bob Golden's court today. Lawyers must cull a panel of 14 from the group, 12 jurors and two alternates.

Berry, whose family roots are three generations deep in Jasper, asked to be tried in his hometown, hoping a local jury would be sympathetic.

"I don't know whether he is a good person at all, but I know he is better than those other two. He is not a racist like the others," said Betty Hamilton, a retiree who lives in Jasper.

"Motive in this case is either one of two things: he lived with these (racists) and developed their way of thinking, or he's a thrill-seeker who got caught up in the killing like he was in a pack of dogs," Jasper County District Attorney Guy James Gray said.

If convicted of capital murder, Berry will either be sentenced to death or given 40 years in prison without chance of parole. Berry turned down an earlier plea bargain for a life sentence, his lawyer, Joseph Hawthorn said.

Smith & Wesson promotes gun ethics

By Martin Kasindorf
USA TODAY

The makers of Smith & Wesson handguns have moved toward meeting one of the major demands in damages suits by cities against the gun industry: clamping down on dealers to prevent criminals and juveniles from buying firearms.

Springfield, Mass.-based Smith & Wesson Corp., a defendant in lawsuits by 29 municipalities, is asking 3,500 storefront retailers handling its products to sign a "code of responsible business practices."

Dealers must agree, among other things, not to knowingly sell to a "straw purchaser," someone who buys a gun for a person not legally allowed to own it.

The company's action marks a first break from gunmakers' contentions that they have no control over how weapons are marketed or used after wholesalers buy them, said lawyer Brian Siebel of the Center to Prevent Handgun Violence, a Washington group that is advising cities and counties suing the gun manufacturers.

The Smith & Wesson pledge may catch on.

"If there's anything in it that suggests something that we haven't thought of yet, we're always receptive to any reasonable safeguard to help protect against the wrongful distribution of firearms," said Jeff Ray, general counsel for Beretta USA Corp.

"It's an encouraging step forward by one of the major gun manufacturers," said Scott Brown, spokesman for New York Attorney General Eliot Spitzer. New York has threatened to file the first suit by a state against the industry.

Smith & Wesson spokesman Ken Jorgensen said the ethics code doesn't stem from the lawsuits, which allege negligence, fraud or deceptive business practices in makers' failure to curtail a shady "secondary market." Letters asking dealers to accept the code went out in mid-July after a year of planning. Three-quarters of the dealers have signed so far, Jorgensen said.

Smith & Wesson didn't mention its new ethics code during a Sept. 27 meeting in Washington between gunmakers and cities that could lead to a nationwide legal settlement, lawyers who were present said.

But Siebel reads the Smith & Wesson action as a veiled defensive response to the lawsuits. "There's no question that these lawsuits have forced this industry to reconfigure itself," he said.

Earlier this month, Colt's Manufacturing Co., citing litigation costs, said it will stop selling most of its handguns to non-military buyers.

Smith & Wesson isn't threatening to blacklist dealers who won't take the pledge. Those who don't comply risk losing company help with advertising and promotion.

"There's no real teeth," Siebel complained. What's needed, he said, is for manufacturers to train and monitor dealers. Also, gunmakers must command wholesale distributors to stop doing business with irresponsible gun stores, he said.

cusing on seniors. Lawmakers are debating the long-term solvency of Social Security, a "bill of rights" for patients in managed care, how to bolster Medicare and whether to add a prescription drug benefit to the federal health-care program for the elderly.

But all the talk hasn't yet brought results. To the contrary, both parties seem more interested in creating sharp campaign issues than in reaching bipartisan agreements.

"I am concerned that good policy will be trumped by good politics," Rep. Cal Dooley, D-Calif., says.

Competition between Democrats and Republicans for swing seniors' votes means each side is angling for an issue to club the opposition with in 2000. Compromise would force both parties to share the credit.

Consider these stalemates:

▶ **Social Security.** There's no agreement on how to keep the program solvent when the baby boom generation starts retiring in a decade. Republicans proposed, and many Democrats embraced, the symbolic idea of a "lockbox" to prevent the government from spending Social Security surpluses on anything else. "But that doesn't solve the problem," says Sen. Bob Kerrey, D-Neb., one of the few lawmakers pushing for major reforms that would require lower benefits, higher taxes or both. "They won't confront the fact that the program's future liability is more than we can afford." Declaring the Social Security surplus off limits has created a crisis over this year's budget.

▶ **Medicare.** Neither side has made a serious effort to slow the fastest-growing federal program out of fear they'll be blamed for cutting benefits. Instead, Clinton and Congress are working on a short-term fix that would restore billions of Medicare dollars cut in 1997.

▶ **Prescription drugs.** Clinton wants to offer coverage to Medicare beneficiaries. Republicans criticize the cost, which the Congressional Budget Office puts at $111 billion over 10 years. Last week, Congress scuttled attempts to pass more modest plans. Clinton is set to tout his proposal today.

▶ **Managed health care.** Senate Republicans are fighting a broad patient "bill of rights" passed by the House this month. Unlike the more limited Senate version, the House bill would let patients sue health maintenance organizations for denying medical care.

Republicans say the gridlock stems from a Democratic strategy to sharpen the differences between the two parties. Even Stark acknowledges that his party appeals to seniors by "scaring them to death" with charges that Republicans will cut their Social Security or Medicare benefits.

'Great idea, Joe'

The gridlock dismays Doris Kelley, 69, a Bowie, Md., grandmother of 11 and a Girl Scout leader for 38 years.

Kelley, a registered Democrat who sometimes votes Republican, says the politicians in Washington are just paying lip service to the elderly. "Seniors are more vocal than the younger folks, and we do vote, yes," she says. "But the politicians say 'Great idea, Joe,' and then don't pay attention to anybody."

In fact, members of Congress pay close attention to seniors, particularly their clout on Election Day. Though people 60 and over represent 21.5% of the voting-age population, they cast 27% of votes in the last presidential election.

In contrast, people 18 to 24 make up nearly 13% of the voting-age population but fewer than 8% of those who cast ballots.

The result is that a rising share of federal tax dollars is showered on the elderly. "You have a maldistribution of benefits going to seniors, while kids coming out of college are saddled with huge college loans and taxes," Rutgers University political scientist Ross Baker says. "They don't get anywhere near as much federal help because they're not politically organized."

Yet hardly anyone seem to resent the fact that Medicare, Social Security and other programs for retirees now consume 40 cents of every $1 in federal spending, more than double the Pentagon budget.

One reason for the broad political support is that government subsidies have eased the financial burden aging parents can pose to their children.

According to an Oct. 8-10 USA TODAY/CNN/Gallup Poll, 68% of respondents said politicians pay "too little" attention to the needs of seniors. Another 25% said Washington devotes the "right amount" of attention. Only 4% thought seniors get too much attention. Even among younger voters, 18 to 29 years old, 9% said they thought seniors got too much attention; 66% said too little.

Politicians conclude from such results that there is no downside to their wooing of seniors while ducking Social Security and Medicare reform, so long as the day of financial reckoning is still years away.

And lawmakers can count on these seniors to keep showing up on Election Day. The challenge is winning them over.

Consider Thelma Knight, 73, of Boston. She supports Democratic issues, such as a new drug benefit under Medicare because "pharmaceuticals are too expensive." However, she's leaning Republican because "Democrats sometimes say a lot and then they don't back it."

Victory in November 2000 may well come down to the battle for Thelma Knight and the other "swing seniors" like her.

2/2

Kurds' Way

THE CAPTURE of Abdullah Ocalan, head of the Kurdish separatist and terrorist party known as the PKK, gave Turkey the chance to show it could run a transparent and reasonably fair trial. In the eyes of the United States and the Council of Europe, the Turks did this passably well in the course of convicting Mr. Ocalan and giving him a death sentence that is now under review. But a second, larger challenge remains—to make a political deal between Turks and the great majority among the 12 million Kurds (a fifth of the population) who support nonviolence.

The Turkish establishment has a strategy: to neutralize the PKK not only as a military threat but as a political actor and to look elsewhere among the Kurds for interlocutors at once moderate and representative. But many in the armed forces as well as in civilian life in Turkey are more eager to isolate the PKK than to look for Kurds to build up in its place. President Suleyman Demirel set an example by meeting elected Kurdish mayors, but too many Turks lack his view of the big picture. Turkey cannot expect to bring peaceful Kurds into a dialogue if it is not prepared to permit them certain cultural and then political rights.

The PKK Kurds, defeated in battle, have been alert to the emerging requirement to make themselves an acceptable political partner. From his jail, Mr. Ocalan has called for a cease-fire, a "show of goodwill" and a reconciliation with the state. In their most conciliatory gesture in 15 years of war, dozens of PKK guerrillas the other day offered to turn themselves in. At this point, however, the Turks are unwilling to take the PKK's professed abandonment of insurgency to heart. Ankara is playing the amnesty card stingily.

It matters to the United States that Turkey's window of political opportunity remain open. Turkey is a friend, ally and economic and strategic partner. But, to its anger, the United States and Europe, though sympathetic to its terrorist threat, have hesitated to accept Turkey as a political equal as long as it was commiting terrible human rights abuses against Kurds. Here lies Turkey's chance for a breakthrough with its Kurds. Here lies the United States' duty to encourage Turkey along its difficult way.

Requiring Childproof Guns

Guns–
Gun
crusade

IT WAS TOO much to expect that gun manufacturers and industry lobbyists would rally around Maryland Gov. Glendening's call that all handguns sold in the state be fully childproof. At a hearing in Annapolis, representatives of owners, dealers and the state's largest gun manufacturer rattled off a string of reasons for opposing any such requirement, claiming that the technology to make these weapons isn't up to it. To attempt enactment of a law would put state gun dealers out of business, witnesses argued, and would give gun owners a false sense of security.

Sanford M. Abrams of the Maryland Licensed Firearms Dealers Association took the opposition a step further, calling Maryland too small a state to matter to gun makers if it were to require childproof handguns. The result could be the "extermination" of the approximately 300 dealers in the state, he warned. But this and other dire forecasts appear to assume enactment of a law with a requirement that all guns be childproofed immediately. That's not what supporters of this gun safety measure are calling for. The purpose of the legislation would be to hasten research and development already underway. While officials of the Maryland-based Beretta USA Corp. were reciting shortcomings in the development of any childproof gun, other evidence suggests that a required phase-in could and should be set, with reasonable deadlines for compliance.

The message in pressing for such a law is to accelerate industry efforts to produce weapons that can be fired only by the owners. Colt Manufacturing Co. officials have said that their company is close to developing a "personalized gun" for limited marketing, perhaps within three years. They could not attend this week's meeting but said they will display products at a future session of the governor's task force that is working on language for a childproof gun bill.

This is not Mission Impossible. And if it were, it would be all the more reason to take the most effective step to protect adults as well as kids from lethal tragedies: Ban all concealable weapons, period.

California Court Says Gunmakers Can Be Sued
By Maura Dolan
Los Angeles Times

SAN FRANCISCO In a landmark decision, a California Court of Appeal ruled Wednesday that gunmakers can be sued for promoting their products to criminals who use them to murder.

The 2-1 ruling by the First District Court of Appeal here is the first by an appellate court in the nation to allow victims of shootings to sue gunmakers for negligence, according to the dissenting justice and lawyers in the case.

The decision allows the suit, filed by families of victims of a bloody rampage in an office highrise here in 1993, to proceed to trial. A Superior Court judge had previously dismissed the suit.

''It is a body blow to the gun industry," said Dennis Henigan, legal director of the Center to Prevent Handgun Violence.

The attorney for the gunmaker named in the suit could not be reached for comment Wednesday but other lawyers in the case said it is likely that the manufacturer will appeal to the California Supreme Court. In the meantime, the decision will be binding on all California trial courts and may influence gun cases in other jurisdictions.

More than 20 local governments across the nation have lawsuits pending against gun manufacturers,

The appellate court majority determined that the gun industry has a duty to conduct itself in a way that reduces the risk of criminal violence. The dissenting justice said the court overstepped its bounds, by transposing ''personal opinions into judicial doctrine."

Following a similar recent ruling by a federal trial court, Wednesday's decision ''essentially creates a new and dramatic threat of liability" for the gun industry, Henigan said.

Frederick Brown, an attorney for the mother of one of the eight people killed in suit-prompting shootings, said the decision may force the gun industry to revamp the way it develops and promotes semiautomatic weapons.

''It is going to change the way that business is done by the firearms industry, especially the small segment of the firearms industry that produces guns that primarily appeal to criminals," Brown said.

In an opinion written by Justice Anthony J. Kline, the court said that Navegar Inc., a Florida-based gunmaker, owed ''a duty to exercise reasonable care not to create risks above and beyond those inherent in the presence of firearms in our society."

Navegar made the semiautomatic assault weapons used by Gian Luigi Ferri when he entered a San Francisco office building and opened fire in the offices and hallways. Ferri killed eight men and women and wounded six others before shooting himself to death in a stairwell.

Kline cited evidence from the plaintiffs that the weapons, TEC-DC9s, were primarily used by criminals. He said evidence also showed that Navegar '''deliberately targeted the marketing" of its semi-automatic weapons to ''persons attracted to or associated with violence."

Company advertisements boasting that the weapon had ''excellent resistance to fingerprints," were placed in such magazines as Soldier of Fortune, SWAT, Combat Handguns, Guns, Firepower and Heavy Metal Weapons, the court observed.

The gunmaker also gave or loaned the weapons to producers of violent films and television programs to promote sales, the court noted. Kline cautioned that a manufacturer of a legal and nondefective firearm may not be found negligent for simply producing the product.

But gunmakers can be found negligent and be forced to pay victims compensation if they ''created risks above and beyond those (that) citizens may reasonably be expected to bear in a society in which firearms may legally be acquired and used and are widely available," Kline wrote. Justice James R. Lambden concurred.

In a dissent, Justice Paul R. Haerle complained that the court ''has become the first appellate court anywhere in this land to declare that, in an ordinary negligence action, a gun manufacturer owes a duty of care" to those injured by criminal use of the product and to their survivors.

''In so doing," Justice Haerle said, ''I sadly conclude it has undertaken what I believe to be an egregious exercise in judicial legislation. ... We are not elected policymakers of the State of California."

In February, a federal district court jury in Brooklyn held gunmakers liable for shootings because of negligent marketing practices. The trial judge upheld the verdict.

Ernest J. Getto, an attorney for Navegar, could not be reached for comment. Lawyers for the plaintiffs, however, said they would not be surprised if he asked the California Supreme Court to review Wednesday's decision.

San Francisco City Attorney Louise Renne praised the Court of Appeal of decision. ''The gun makers know they are escalating the level of societal violence," she said in a prepared statement, ''and if they refuse to change, it is essential for the courts to impose responsibility upon them."

Reagan Biographer Defends Controversial Book
By Josh Getlin

California Appellate Court Reinstates Case Involving Gun Made by Navegar

By PAUL M. BARRETT
Staff Reporter of THE WALL STREET JOURNAL

An intermediate state appeals court in California reinstated a closely watched lawsuit against a Miami gun manufacturer, in a decision that could inject additional energy into other litigation against the firearm industry.

The First Appellate District Court of Appeal in San Francisco said yesterday that gun makers may be held liable when their otherwise legal weapons are used by criminals. This notion lies at the core of a wave of lawsuits that have been filed against the gun industry as a whole by 27 cities and counties across the country.

Yesterday's ruling is expected to be appealed to the California Supreme Court, and it is far from the last word on the question of firearm manufacturers' civil liability after deadly shootings.

The San Francisco case stems from a 1993 massacre of eight people at a law firm in that city. The shooter, a disgruntled client of the firm, used two semiautomatic guns manufactured by Navegar Inc. of Miami, as well as a third weapon. Six other people were wounded.

Relatives of some of those who died filed suit against Navegar, arguing that its guns, from the company's TEC-9 line, were marketed for illegitimate paramilitary and criminal uses. The high-capacity semiautomatic handguns gained notoriety in the 1980s, when they were used by criminal characters on the television show "Miami Vice."

In May 1997, a state trial judge dismissed the suit against Navegar, saying, in essence, that manufacturers of guns that comply with federal and state firearm regulations can't be held responsible for the criminal misuse of the weapons.

But yesterday, the appellate court said the trial judge had been wrong and that gun companies have a duty to exercise "reasonable care" in manufacturing and marketing their wares. The court said that the plaintiffs may proceed to trial based on the theory that Navegar's negligence helped cause the bloodshed in 1993.

Noting that most suits of this variety have been dismissed by courts around the country, the appeals court said that "most gun cases do not relate to a firearm that appears to have virtually no legitimate civilian use." The TEC-9, while capable of firing 30 or more rounds in a short period of time, is known for being inaccurate, prone to jamming and generally not suited for hunting or target shooting.

The appeals court added that it wasn't aware of any prior gun suit that "presented the strong evidence we have in this case of affirmative acts [by the manufacturer] increasing the risk of harm above and beyond that normally presented by firearms."

Gun foes were "ecstatic" over the ruling, said Dennis Henigan, the top lawyer at Handgun Control Inc., a Washington, D.C., group that is representing the plaintiffs in the case. Mr. Henigan pointed out that California's courts historically have influenced courts in other states in the product-liability area.

Ernest Getto, Navegar's lead attorney, didn't return a phone call seeking comment.

THE WALL STREET JOURNAL
THURSDAY, SEPTEMBER 30, 1999

Colt's Cuts Role Of Handguns In Revamping

By Paul M. Barrett
Staff Reporter of The Wall Street Journal

Colt's Manufacturing Co., the storied gun maker, is restructuring in a way that will shrink significantly its role in producing handguns for the consumer market.

The restructuring stems from several causes, but in one sense it is the most drastic response so far by a major gun maker to the wave of municipal litigation pending against the firearm industry. Lawsuits filed by 27 cities and counties across the country specifically target the sort of handguns that Colt's is planning to move away from.

Steven Sliwa

Internal company documents show Colt's, West Hartford, Conn., is in the process of spinning off into a separate company its controversial project aimed at producing a high-tech "smart gun" that can only be fired by an authorized user.

The documents also indicate the remaining core business will be focused more narrowly on production of military small arms, an area that Colt's has emphasized heavily over the past two years. New York financiers Donald Zilkha and John Rigas, who control the manufacturer, have used Colt's as a vehicle to acquire other makers of small military arms, and the restructuring appears to be another step in that direction.

In fact, there are rumors in the gun business that Colt's is close to a new acquisition of a rival, but those rumors couldn't be confirmed.

While immediate plans for the company's well-known lines of consumer handguns aren't clear from the documents that were reviewed, the documents do show that litigation against the gun industry has been a major concern to Colt's owners. Messrs. Zilkha and Rigas have indicated in the past that they would consider getting out of consumer handgun manufacturing as a way of trying to minimize their exposure to the municipal lawsuits.

Messrs. Zilkha and Rigas didn't return telephone messages.

Steven Sliwa, chief executive of Colt's, said he is going to head the new high-tech spinoff, which is known as iColt. Retired Gen. William Keys, a Colt's board member, will take over the remaining core Colt's business, focusing on military small arms.

"Gen. Keys and I are looking forward to working together on the two ventures and

Please Turn to Page A6, Column 1

taking Colt's into the 21st century," Mr. Sliwa said.

Among major gun makers, Colt's has been among the most determined to send signals that it wants to resolve the municipal litigation without a protracted and expensive court fight. But a quick settlement of the suits doesn't appear to be part of the restructuring plan, and lawyers representing Colt's are continuing to try to get those suits dismissed.

The commercial handgun segment of Colt's business produces about 30% of revenue but a larger share of profit, because margins are greater in that segment than in military sales, the company documents show. Nevertheless, Messrs. Zilkha and Rigas are said to see the commercial handgun market as too risky to remain a major part of the overall business.

Donald Zilkha

The company has struggled financially for more than 15 years, seeing itself surpassed by more nimble competitors in markets ranging from law enforcement to military rifles. A Zilkha-led group bought the company while it was in bankruptcy-court proceedings in 1994 and since then, Colt's has won back some important U.S. military contracts for its M-16 family of rifles, among other weapons. In December 1998, Colt's also completed its acquisition of Saco Defense Corp., a smaller maker of military arms, and remains in the hunt for another acquisition in the area.

In 1998, Colt's and Saco had combined revenue of about $136 million and operating profit of $13.4 million, said a person familiar with both companies' results.

One risk the restructuring creates is a negative reaction from activist gun owners, who could perceive a withdrawal from the consumer handgun market as another indication of Colt's bending to gun-control proponents. Gun owners in New Jersey, California and other states mounted a boycott of Colt's products last year, partly in response to the company's development of the smart gun, which also was seen as a manifestation of weakness in response to gun foes.

On the other hand, by spinning off Colt, Colt's may be able to distance itself from the smart-gun controversy.

The smart gun is an effort to use microprocessor technology to prevent the misuse of guns by children, thieves or other unauthorized users. Colt's has developed a prototype handgun that can fire only when the trigger is pulled by someone wearing a wristband that emits a coded radio signal that is received by a computer microchip in the gun's handle. Still unreliable as recently as this spring, when it was demonstrated for The Wall Street Journal, the smart gun is ultimately seen as a product that would appeal to middle-class consumers who wouldn't otherwise buy a gun because of safety concerns.

Several other major gun companies, including Smith & Wesson Corp., a unit of Britain's Tomkins PLC, are scrambling to perfect smart-gun models, but it remains to be seen whether the idea will succeed commercially and whether pro-gun activists will punish companies that identify themselves with the smart gun.

THE WALL STREET JOURNAL
WEDNESDAY, SEPTEMBER 29, 1999

Crime -
Gun Lawsuits

Industry Opposes Glendening 'Smart Gun' Plan

By DANIEL LEDUC
Washington Post Staff Writer

Gun manufacturers and enthusiasts tried yesterday to head off a showdown in Maryland over safety technology by telling a state task force that the specialized guns Gov. Parris N. Glendening wants to mandate remain too experimental for mass production.

Glendening (D) has vowed to champion legislation next year that would require that "smart guns" be the only type of handguns sold in the state. The guns would be fitted with technology that would permit them to be fired only by their owners, and the proposal already is shaping up to become the most controversial issue in the next General Assembly session.

A longtime proponent of gun control, the governor is pushing to make Maryland a national leader on the new technology. He has compared the effort to the push for air bags in cars, which came about only after government imposed new regulations on the auto industry.

But representatives of Beretta USA Corp., the only gun manufacturer based in the state, and several gun enthusiast groups said that such a requirement would put gun dealers out of business and give gun owners a false sense of security, and that it simply wasn't feasible yet. They told a panel Glendening has created to draft smart gun legislation that the technology is unproved.

Prince George's County-based Beretta USA, whose guns are sold to the U.S. military and many police departments, has been researching possible designs, said Gabriele de Plano, the company's product manager. But, he said at the hearing in the State House in Annapolis, "we have not found some of these technologies to be conceptually sound."

The governor has told his task force that its job is not to determine whether legislation is needed but how it should be written. Several types of smart gun technology are on the horizon. Prototypes, for instance, have been developed of guns that read an owner's fingerprints before they can be fired. Other specialized weapons require an owner to wear a special ring to enable the gun to fire.

But Sanford M. Abrams, of the Maryland Licensed Firearms Dealers Association, said: "The Wright brothers had a prototype—it flew 300 yards. How long does it take to develop?" He told the task force yesterday that it could be a decade before gun buyers see such weapons on the market.

Colt, the Connecticut-based gun manufacturer, has said it is close to developing smart guns. Company representatives didn't testify yesterday but plan to meet soon with Maryland officials.

"We're at the grass-roots level of building a model that the rest of the country can look at," said the state police superintendent, Col. David B. Mitchell, who heads Glendening's task force.

While yesterday's hearing was to hear from those opposed to new mandatory legislation, Mitchell said, "what I didn't hear was anybody who was opposed to making guns safe."

Beretta's representatives were challenged by some task force members about why the company hadn't invested more on technological research. And it seemed clear from the tone of the questions from the group yesterday that some sort of mandatory legislation would be proposed.

"I think they got the message they've got to try harder," Sen. Jennie M. Forehand (D-Montgomery) said of the gun industry representatives. Forehand is a member of the task force and serves on the Judicial Proceedings Committee, which will consider the legislation. "It's a doable thing."

The Washington Post
TUESDAY, SEPTEMBER 28, 1999

Talks to Settle Gun Lawsuits Produce Little

By PAUL M. BARRETT
Staff Reporter of THE WALL STREET JOURNAL

The first widely attended meeting aimed at settling litigation against the gun industry produced little substantive agreement, as dissension broke out within antigun ranks.

In a two-hour session in Washington, D.C., industry representatives for the first time met lawyers and public officials from a broad array of the 27 municipalities—including Chicago, Los Angeles and San Francisco—that have sued firearms companies. Also in attendance were the attorneys general of New York and Connecticut, which have threatened to become the first states to join the legal assault on the industry.

Previous efforts to start settlement discussions have involved much smaller, less representative groups from either side. People on both sides said after yesterday's session that there had been an agreement to continue talking and a generally "positive" tone. But no specific consensus emerged on how the litigation could be resolved.

What's more, a contingent of lawyers who were excluded from yesterday's meeting threatened to step up the court clashes. "We're taking our five cases and pushing forward," said John Coale, a member of the excluded group, a New Orleans-based attorney consortium that has filed suit on behalf of that city as well as of Atlanta, Cincinnati, Cleveland and Newark, N.J. The gun industry, Mr. Coale added, "needs maximum pressure before they will talk about anything meaningful."

Mr. Coale's group apparently was left out of yesterday's meeting out of concern that it wouldn't cooperate with other segments of the antigun side. The attorney group, which is headed by New Orleans plantiffs' lawyer Wendell Gauthier, is particularly sensitive to being cut out of the action, because that is essentially what happened to it in connection with the national litigation against the tobacco industry. After investing huge amounts of time and energy in fighting the cigarette companies, the group saw its legal strategy fail, while another cadre of attorneys stepped in to forge a series of massive settlements on behalf of the states.

The municipal suits seek reimbursement for the public costs of gun violence but have evolved into an effort to force the industry to accept new restrictions on how it makes and sells firearms.

Even attorneys who participated in yesterday's peace talks said that lawsuits will proceed without delay. "Nothing that happened today would affect the pace of our lawsuit," said Los Angeles City Attorney Jim Hahn.

By coincidence, just after yesterday's meeting concluded in Washington, a state-court judge in Cincinnati heard the gun industry's argument that that city's suit ought to be dismissed. A ruling in that case is expected in coming weeks. Over the next five weeks, similar industry motions will be heard by judges in Atlanta, New Orleans, Bridgeport, Conn., and Detroit. If one side wins all or most of these preliminary court encounters, it may back away from further settlement talks.

Yesterday, however, the industry sounded conciliatory. "There was agreement on common objectives which are to reduce the criminal and accidental misuse of firearms," said Robert Delfay, president of the National Shooting Sports Foundation, the industry's main trade group. "We will move forward," he added, "with each side working independently" on proposals to end the litigation.

The industry has said that it won't agree to any sort of money settlement and has balked at some of the more commonly discussed marketing curbs, such as limiting the number of guns that a person can purchase each month.

Connecticut Attorney General Richard Blumenthal confirmed that the discussions will continue but declined to elaborate. He did say that Connecticut would continue to consider filing its own lawsuit against the industry.

CRIME -
GUN LAWSUITS

THE WALL STREET JOURNAL
TUESDAY, SEPTEMBER 28, 1999

The Washington Post
Friday, October 22, 1999

Gun Manufacturer Requires Dealers to Sign Code of Ethics

By David B. Ottaway
and Barbara Vobejda
Washington Post Staff Writers

Smith & Wesson Corp., the country's leading handgun manufacturer, has told dealers selling its products that they must immediately sign a code of ethics, the first time a gunmaker has attempted to assert formal control over the sale and distribution of its products.

Company officials said dealers who refuse to sign or are accused of abetting illegal sales will be banned from selling Smith & Wesson products.

The action comes amid a backdrop of lawsuits by 29 cities and counties, many alleging that gun manufacturers have been grossly negligent in refusing to take responsibility for the marketing of their weapons. The company's ethics code is unprecedented in the closely held firearms industry, which has traditionally resisted attempts to control the sale of firearms.

In a letter mailed in mid-July, Smith & Wesson gave its 3,500 registered dealers 60 days to pledge that they would avoid sales practices that facilitate the illegal flow of guns to young people and criminals. The two-page "Stocking Dealer Code of Responsible Business Practices" commits dealers to obey all firearms laws; to only sell Smith & Wesson guns with safety locks; and to closely monitor buyers to avoid illegal purchases.

Among the most serious accusations leveled against dealers is that they turn a blind eye to "straw purchases," sales to individuals acting on behalf of others whose criminal backgrounds would bar the transactions.

"Smith & Wesson has never been a follower in this industry," said Paul Pluff, manager of retail sales for the Massachusetts company. "We kind of like to set the benchmark."

He said "well over three-quarters" of the 3,500 dealers authorized to sell its guns have already signed and returned the code of ethics. "Those who have not responded in the next 30 days will no longer be registered Smith & Wesson dealers," he warned.

Pluff denied his company was responding to pressure from the lawsuits, saying that work on the code had been underway for more than a year. But he said he expected other manufacturers to follow Smith & Wesson's lead in light of the legal climate.

"It sounds like the industry is starting to move. It's clearly because of these lawsuits," said Brian Siebel, senior attorney at the Center to Prevent Handgun Violence, which is assisting several cities in the lawsuits. "It proves that every gun manufacturer can control distribution of its guns, a point they've denied for years."

"I think they are doing it hoping this will protect them legally," said Stephen Teret, director of the Johns Hopkins Center for Gun Policy and Research in Baltimore. "They want to be able to tell juries, 'Look, we required the dealers to follow this pledge of good conduct.'"

Teret said the main value of the ethics code was that, for the first time "gun manufacturers recognize they should follow a gun beyond the factory door."

A major theme in the lawsuits filed against gunmakers is that the companies have failed to place any controls on distributors or dealers. As a result, they have shirked all responsibility for the crime caused when their products fall into wrong hands, cities and gun control advocates allege.

"I think it's a great first step," said Wayne Roberts, spokesman for the 8,000-member National Alliance of Stocking Gun Dealers. "Now we need to see how it works and where the flaws are."

One flaw Roberts cited was that wholesalers are not covered under the new policy, so that some smaller dealers could still purchase products from wholesalers without signing the ethics code.

However, Pluff said Smith & Wesson has contracts with its 22 wholesale distributors that include an even more stringent ethics code covering marketing practices.

The company's mid-July letter to dealers declared that "the manufacturing, distribution and sales of firearms are significant and important undertakings for our businesses and the community."

In additioning to their signatures on the code, the company asked dealers to provide proof that their federal licenses were up to date, along with pictures of their shop storefronts and other details to ensure they were legitimate.

The company initially gave dealers 60 days to respond. But after learning that some dealers had not received or responded to the letter, the company granted an additional 30 days.

Some in the industry said they were most struck by Smith & Wesson's warning that it would cut off any dealer accused of questionable business practices by police or government officials. That is significant because a number of the city lawsuits name dealers as defendants along with the manufacturers.

"We have a problem with that in that [the dealers] have not been convicted of anything," said Sanford Abrams, vice president of the Maryland Licensed Firearms Dealers Association.

Gun Ban Unrealistic, Glendening Says

'Smart' Firearms Favored Over Curran's Plan

By Daniel LeDuc
Washington Post Staff Writer

Maryland Gov. Parris N. Glendening said yesterday that state Attorney General J. Joseph Curran's call for a ban on handguns is "unrealistic" but could help the governor's push to mandate "smart guns" by making that proposal appear more moderate.

Curran (D) has proposed an eventual prohibition on handgun ownership by nearly everyone except law enforcement officials, some people who shoot for sport and some who need personal protection. Recognizing such a ban would require a long political struggle, Curran said state lawmakers should take the interim step of adopting a series of new gun restrictions, such as Glendening's plan to require technology on new guns that prohibits them from being fired by anyone but their owner.

Gun control opponents have been outraged by Curran's call for a handgun ban, and Glendening (D) said the controversy could actually help his efforts.

"By comparison, my bill now tends to be more centrist and moderate," he said in an interview. "All we're saying is make the guns safe."

Until Tuesday, when Curran announced his plans to reporters, Glendening's call for smart guns had been the most aggressive gun control push in Maryland in several years. Curran's announcement escalated the drive even as Glendening called it a "non-starter."

"It's unrealistic and unpassable," he said.

Curran acknowledged it would take years to win approval for handgun restrictions and said that is why he favored interim steps such as Glendening's proposal as well as other changes in gun laws he would push for in the next General Assembly session. "But," he said in an interview, "I also say, what's the goal? Now's the time to put the brakes on."

Curran's proposal for an eventual handgun ban is a much tougher stance than many gun control groups advocate. Marylanders Against Handgun Abuse and the national organization, Handgun Control Inc., have not urged a ban, for instance.

Gun control opponents, meanwhile, said they were suspicious of Curran's motive and questioned whether the attorney general was engaged in some contrived maneuvering.

"Maybe they're going to ask for a mile and settle for an inch," said Sen. Timothy R. Ferguson (R-Carroll), who sits on the Maryland Senate's Judicial Proceedings Committee, which considers gun legislation.

Curran and Glendening said there had been no coordination between them. Curran spoke to the governor about the proposal for the first time Tuesday afternoon, and Glendening said he supports many of the attorney general's other proposals, such as expanding the background checks done on people purchasing guns.

The governor, however, said he would focus his lobbying efforts on his smart guns proposal because he deemed it more likely to pass the legislature than Curran's package.

"There are responsible gun owners out there," Glendening said. But "the more extremists have a conspiracy mentality."

Ferguson, a longtime gun control opponent, said he planned to fight any restrictions, declaring that any attempt at a ban would "run into a buzz saw." He called Glendening's smart gun bill "a dead issue."

Virtually all gunmakers, except Colt's Manufacturing Co., have said the technology is not yet possible to make handguns that either read a fingerprint or use another device to allow only their owners to fire them.

"We continue to believe the governor's position is unrealistic," said John Stierhoff, a lobbyist for Beretta U.S.A., Maryland's only major gun manufacturer. "The technology is not available for production at this time."

Curran has yet to detail exactly who would be eligible to own a handgun under his proposed ban, saying only that "individuals with a professional need to have a gun—law enforcement officers, gun collectors, some business owners and certain other professional groups—will continue to keep handguns on business premises or for use on the job."

But some opponents said talk of a handgun ban could reenergize a potent gun lobby to fight any new laws restricting gun ownership.

"It awakens a sleeping giant," said John H. Josselyn, legislative vice president of the Associated Gun Clubs of Baltimore, which he said has 4,500 members. "We tend to lay back and not bother anybody. But attack us, and expect to get a response from us. My phone has been ringing all morning."

Ferguson said that Curran's move has prompted him to push in the other direction. He said he will seek legislation in the next session to make it easier for people to get concealed weapons permits; there was a hearing on a House version of the bill yesterday. He also supports a bill preventing municipalities from suing gunmakers as nearly 20 cities and counties across the nation have to recoup the costs of treating gunshot victims. Curran has said he wants legislation to make it easier to sue.

Curran is "going to put in his bill. I'm going to put in mine," Ferguson said. "He moves his bishop, and I move mine. It's a chess match."

The Washington Post
Thursday, October 21, 1999

CRIME -
GUN LAWSUITS

The Big Bang

Evolution of a Cause: Why the Gun Debate Has Finally Taken Off

After 30 Years of Status Quo, Lawsuits and Littleton Redrew the Battle Lines

Eight Who Made a Difference

A1

By Paul M. Barrett
Staff Reporter of The Wall Street Journal

One morning last summer, Eliot Spitzer, New York state's attorney general, was approached on the street in his Upper East Side Manhattan neighborhood by a short, well-dressed man.

"I'm Donald Zilkha," the man said, handing the attorney general his card. "We should talk."

Mr. Zilkha owns Colt's Manufacturing Co. Mr. Spitzer has threatened to make New York the first state to join the municipal legal assault on guns. And the on-again, off-again settlement negotiations that followed their encounter, involving Colt's and other manufacturers, could lead to a reshaping of the entire firearm industry. Unilaterally, Mr. Zilkha's company outraged gun-rights proponents this month by cutting production of less-expensive civilian handguns – the very weapons that Mr. Spitzer and other government officials want to see curbed.

The once-unimaginable is unfolding.

For 30 years, gun-control advocates failed to enact all but modest regulation of the manufacture and sale of firearms. Gun companies deflected lawsuits like so many spitballs.

Yet today, the industry is enmeshed in broadening litigation that could force it to change its most fundamental marketing and manufacturing practices.

How did this happen? In the space of a few years, a small collection of people – some well-known, some anonymous – contributed to the destabilization of one of the country's oldest industries. The Columbine High School killers spurred a seemingly irresistible demand for tougher federal gun control. National Rifle Association lobbyists resisted strenuously, throwing attention back to the courtroom and state legislatures. Others played important roles: They include an aging activist judge, eager once more to expand the law; a Philadelphia law professor, determined to see someone try his new theory on suing gun makers; and Mr. Zilkha, the wealthy financier, fretting as liability fears strangle his storied firearm company – who found himself on a street corner making a truly remarkable overture.

Barbara Hohlt

The Matchmaker

Historic legal cases often begin serendipitously. Barbara Hohlt was the accidental matchmaker of gun litigation.

A soft-spoken computer programmer, Ms. Hohlt began doing technical work for a gun-control group in 1991. The issue absorbed her, and eventually she became a full-time firearm foe.

Ms. Hohlt, now 56 years old, helped organize demonstrations, the most striking of which displayed hundreds of pairs of empty shoes, eerily symbolizing victims of gun violence. But enacting meaningful new gun-control laws, either in New York or Washington, proved far more difficult than she had anticipated. Her all-volunteer group, New Yorkers Against Gun Violence, which operates from a one-room office in lower Manhattan, is no match for the well-funded NRA.

"It can be demoralizing," she says.

It was through her organizing that Ms. Hohlt met Freddie Hamilton, a Brooklyn social-services administrator. In 1993, Ms. Hamilton lost her teenage son, Njuzi Ray, to a bullet she says was intended for another teenager. Ms. Hamilton, 56, says that after the killing, she concluded that manufacturers should be held accountable for the prevalence of guns and that the only place to do this was in court.

"I was sympathetic, of course," recalls Ms. Hohlt, "but what could I do?"

In late 1994, an answer arrived in the form of a phone call from attorney Elisa Barnes. A sole practitioner in New York, she had become convinced it was possible to sue the firearm industry for negligently distributing a dangerous product, much as makers of the antimiscarriage drug DES were sued a decade earlier.

The lawyer had pluck but little big-case experience and, more pertinent, she lacked suitable clients. A mutual friend steered her to Ms. Hohlt, who "said she had some people for me to meet," Ms. Barnes remembers.

Those people included Ms. Hamilton.

In January 1995, Ms. Barnes filed a suit against the gun industry that became known as the Hamilton case. "We put items about it in our newsletter," says Ms. Hohlt, but "it didn't attract that much attention."

At least not at first. Over the next four years, Hamilton would evolve into a threat to the gun industry transcending all of the gun-control projects at which Ms. Hohlt previously had toiled. Aid came from unlikely sources, including financier George Soros, whose foundation in October 1998 gave a grant of $300,000 to make sure that Ms. Barnes got the case to trial.

"You don't need a legislative majority to file a lawsuit," says Ms. Barnes, who wound up representing the families of seven New York shooting victims. Citing lawsuits against the tobacco industry as a model, she says, "Ultimately it was litigation, and the danger of punitive damages, that brought the cigarette companies to the table" and produced multibillion-dollar settlements in 1998.

The casual connection made by Ms. Hohlt gave the antigun side a weapon that caught the gun industry by surprise.

Jack Weinstein

The Trailblazer

Sometimes the judge who hears a novel case makes all the difference. U.S. District Judge Jack Weinstein of Brooklyn, N.Y., was a guiding force behind the Hamilton suit.

Judge Weinstein enjoys reminding visitors that his bland modern courthouse, without imposing columns or marble stairs, signals to ordinary citizens that they can walk in, file a suit, and get his attention. To emphasize his point, the 78-year-old populist wears a business suit in court, rather than black robes.

Judge Jack Weinstein

In landmark cases involving asbestos and the herbicide Agent Orange, he gained a national reputation for stretching legal principles to force manufacturers to compensate large groups of victims.

Ms. Barnes hoped he would do the same for her. And to steer the Hamilton suit into Judge Weinstein's courtroom, she used a federal procedure allowing an attorney to request a judge who has heard a "related case." In this instance, Ms. Barnes invoked the fact that Judge Weinstein had overseen a mass-injury suit against makers of DES (or diethylstilbestrol), the antimiscarriage drug.

This was a fateful development. For years, judges had repeatedly refused to entertain suits alleging that guns are too dangerous; after all, guns are designed to be lethal. To get around those precedents, Ms. Barnes was groping for a theory with which to prove that the industry as a whole was negligent in distributing guns. Time and again, Judge Weinstein provided a guiding hand.

During a preliminary hearing in June 1995, for example, he suggested to Ms. Barnes: "One of your arguments, I take it, although I am not clear," is that gun manufacturers "oversold the market . . . and this leads to an overflow of the surplusage of arms into hands of non-responsible people."

"Yes, your honor," said Ms. Barnes. "That is absolutely our claim."

In fact, in her original complaint, Ms. Barnes hadn't included what came to be known as the "oversupply" argument, which would become central to her case.

Ms. Barnes "did a heroic job," battling a dozen corporate defense lawyers, but at key junctures, Judge Weinstein "brought Elisa right along," says David Kairys, a law professor at Temple University in Philadelphia who studied the courtroom transcripts and favors the antigun side.

In an August 1996 ruling, Judge Weinstein went beyond any precedent to provide Ms. Barnes a roadmap. There may "come a point," he wrote, "that the market is so flooded with handguns sold without adequate concern over the channels of distribution and possession that they become a generic hazard to the community as a whole because of the high probability that these weapons will fall into the hands of criminals or minors."

Tall and erect in bearing, Judge Weinstein is technically semiretired but continues to handle a heavy workload. His conduct and rulings indicate that he viewed the Hamilton case as another chance, in the twilight of his career, to show how legal innovation can help ordinary people deal with the perils of modern society.

THE WALL STREET JOURNAL

THURSDAY, OCTOBER 21, 1999

1/4

The judge, a former Columbia University law professor, at times relied on classroom-style Socratic dialogue to assist Ms. Barnes. In a pretrial hearing in December 1998, for example, he prodded the lawyer to explain how gun makers could be found negligent in connection with sales by retail dealers.

"You were saying," he noted, that the manufacturers' "negligence is in failing to supervise the initial sale to responsible persons."

"Yes."

"Now I have a better idea what you're claiming, how the oversupply of the market and this point of sales are interrelated," the judge said.

"That's going to be the theory, your Honor."

"I didn't see that in your papers."

Ms. Barnes says in an interview that Judge Weinstein "did nothing more than what all other judges do." Judges, she adds, "have views of where the law should go and how things should be." In February, the Hamilton jury became the first ever to find gun companies liable for criminal shootings. After that breakthrough, Ms. Barnes returned to Judge Weinstein's courtroom to file a new suit against the industry—this one on behalf of the National Association for the Advancement of Colored People. Mr. Soros provided financing for that suit, too. Legal papers were served on gun companies this month.

David Kairys

The Strategist

A garrulous, bearded man, Temple law professor David Kairys has unimpeachable antiestablishment credentials. Yet he was essential in the next step: bringing city hall into the gun litigation.

In late 1996, he joined a mayoral commission on youth violence in his beloved hometown of Philadelphia and began investigating legal tools for curbing guns. Mr. Kairys, 56, who handles civil-rights and free-speech cases in addition to teaching, quickly decided against suits on behalf of individual victims. "Those had never worked and for a good reason," he says. "When you focus attention on particular shootings, there's always that person pulling the trigger who is more immediately to blame for the bloodshed."

So who should sue? State attorneys general had gone to court against the tobacco industry, seeking reimbursement of taxpayer money spent on cigarette-caused illnesses. Why couldn't Philadelphia sue the gun industry, he mused, demanding that it reimburse the public costs of gun violence: emergency medical and police services?

From there, his thinking moved to his past efforts to mediate among Philadelphia's youth gangs. "These kids said they could get guns on the street pretty easily." This led him to the notion that a "criminal market" in guns endangers a community much like industrial pollution. In legal parlance, such dangers are called "public nuisances." And a city may sue the source of a public nuisance.

Judge Weinstein's pretrial pronouncements in the Hamilton case fortified Mr. Kairys, who by coincidence had been a student of then-Prof. Weinstein in the mid-1960s at Columbia University Law School. "Here was an eminent federal judge writing an opinion that said there was a criminal market in guns," Mr. Kairys says. "My job was to adapt the idea so a city could sue." In early 1997, he wrote a secret memo proposing that Philadelphia take the gun industry to court.

The idea got an ambivalent reception from Philadelphia Mayor Edward Rendell. The mayor, a former prosecutor who

David Kairys

badly wanted to reduce crime, quietly hired Mr. Kairys at a rate of $150 an hour to draft a nuisance suit. But Mr. Rendell worried that any such lawsuit would be too speculative and expensive to take to trial.

Moreover, a suit could hinder Mr. Rendell's chances if he decided to run for governor of Pennsylvania in 2002. Outside of Philadelphia, the state is a haven for hunters and other legitimate gun enthusiasts.

Mr. Rendell denies that gubernatorial concerns affected his thinking about a gun suit. But he didn't file the Kairys suit, choosing instead to negotiate with gun companies about proposed reforms.

When the mayor's consideration of a suit leaked to the media in July 1997, however, other cities began looking to Mr. Kairys for advice about bringing their own legal actions. He stayed silent, constrained by his confidential lawyer-client relationship with Philadelphia. But he grew impatient. In January 1998, he quit representing Philadelphia, and faxed and mailed more than 100 copies of a litigation blueprint to municipal lawyers around the country.

He had hoped Philadelphia would be the pioneer, Mr. Kairys says, but he "just wanted to get out this work."

He ended up as a legal adviser to most of the 28 municipalities that have sued so far, including Chicago, Los Angeles and San Francisco. And Mr. Kairys's public nuisance strategy would become the centerpiece of that litigation.

James Jay Baker

The Enforcer

As the list of cities suing the gun industry lengthened in early 1999, James Jay Baker, the NRA's chief lobbyist, worried about whether his side would show enough backbone.

Mr. Baker's intransigence ironically helped keep the controversy in the courts, where down the road the threat of huge punitive damages could force the industry to accept more radical change.

James Jay Baker

The Hamilton verdict had already raised the stakes considerably. The jury had concluded that three manufacturers—American Arms Inc. and the U.S. units of Italy's Beretta SpA, and Brazil's Forjas Taurus SA—should pay a total of $520,000 damages in connection with one nonfatal shooting.

Publicly, industry executives scoffed at the verdict and the growing number of municipal suits, vowing to fight them all to the finish. But privately, to Mr. Baker's disgust, some of the same executives wondered about the cost of a protracted legal battle and the advantages of compromising and returning to selling guns.

Encouraging this more pragmatic view was Richard Feldman, a former NRA operative who headed a trade organization, the American Shooting Sports Council, that was trying to assert itself as the industry's voice. With support from at least two major companies—the U.S. unit of Austria's Glock GmbH and Smith & Wesson Corp., a unit of Britain's Tomkins PLC—Mr. Feldman in early 1999 opened back-channel communication with a consortium of plaintiffs' lawyers representing New Orleans and several other cities.

"We felt we could do business with Feldman," says John Coale, the attorney negotiating for the cities.

When he learned of these overtures, Mr. Baker got on the phone to tell senior industry executives that the NRA opposed any settlement involving more regulation. "Baker was angry and let people know," says one executive. Mr. Feldman, to be sure, had created enemies who viewed him as a grandstander, and officials at some gun companies, including the largest, Sturm, Ruger & Co., would have taken a hard line on their own.

Still, the industry traditionally listens when the NRA speaks, at least partly out of fear that the group can mobilize gun owners to boycott disfavored manufacturers. But by the late 1990s, Mr. Feldman represented a nascent view within the industry that the NRA's no-prisoners approach might not be good for business.

Mr. Baker, 46, who wears cowboy boots to work and chain smokes unfiltered cigarettes, usually has a genial manner common on Capitol Hill. But he plays disciplinarian when he feels he needs to—with members of Congress who take NRA money and with members of his own industry. When gun company executives gathered in February for an industrywide meeting in Phoenix, Mr. Baker was there, and his approval was much on the other attendees' minds, according to people familiar with the session.

It quickly became clear that Mr. Baker had helped erode support for Mr. Feldman, even among the more-conciliatory gun companies. Mr. Feldman's employers, the board of the American Shooting Sports Council, volunteered to get rid of him in the name of unity. The settlement initiative was dead, at least for the moment.

The shooting sports council board suggested that Mr. Feldman be replaced by his deputy, Robert Ricker, who was seen as less assertive.

Heads swiveled toward Mr. Baker. Could the NRA live with Mr. Ricker?

It could, Mr. Baker said.

Asked about this account, Mr. Baker doesn't deny it. Smiling, he says: "I'm not going to discuss private meetings."

The idea of negotiating a resolution of the lawsuits resurfaced a few months later. But Mr. Baker's behind-the-scenes role in the Feldman ouster remains a vivid reminder of the pressure within gun circles to fight the suits. In late June, the shooting sports council was folded into a rival trade group friendlier with the NRA.

"We'll win this," Mr. Baker says of the litigation. "We don't have to compromise."

Eric Harris & Dylan Klebold

The Catalysts

The April massacre in Littleton, Colo., appeared to change everything.

Television bombarded viewers with round-the-clock coverage. The telephones of Handgun Control Inc. jammed solid with calls. And President Clinton proposed what he called "the most comprehensive gun-crime legislation any administration

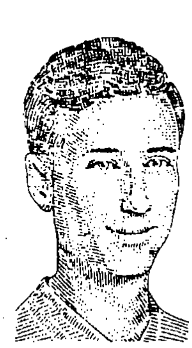
THE WALL STREET JOURNAL

THURSDAY, OCTOBER 21, 1999

2/4

has put forward in a generation."

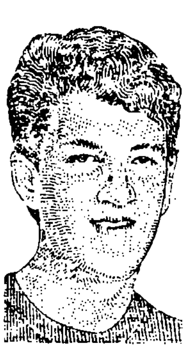
Coming after a series of school shootings elsewhere in the country, the carefully planned rampage by Columbine High School students Eric Harris and Dylan Klebold seemed like precisely the sort of lurid evidence that gun foes needed to enact new national gun-control laws and put the industry further on the defensive.


Eric Harris

"We hadn't seen a public reaction like this before," says Robert Walker, president of Handgun Control in Washington, the country's largest gun-control organization. "We perceived an historic opportunity."

But the appearance was deceiving. After an awkward initial response, the NRA regrouped and put on an awesome display of high-pressure politicking.

A month after Columbine, the Senate, with much fanfare and a tie vote broken by Vice President Al Gore, approved a package of gun provisions fiercely opposed by the NRA. But as Mr. Walker, 48, concedes, the price of the interim victory was steep.


Dylan Klebold

Gun foes barely pushed through the least controversial provisions proposed by President Clinton, chiefly a requirement that unlicensed dealers at gun shows conduct background checks on customers, just as federally licensed dealers must. Quickly jettisoned were tougher measures, such as limits on the number of guns a person may buy in a month.

Even this modest victory wouldn't last. By June, as the debate shifted to the House, the NRA recovered its balance. Mr. Baker coordinated a $1.5 million campaign of radio ads, phone banks and mass faxes, relying on his group's 2.8 million members around the country to warn their congressmen away from backing the modest Senate bill. Mr. Walker's organization had less than one-third the money and one-seventh the members to deploy.

Legislative agility is also part of the story. Mr. Baker cooperated with aides to Michigan Rep. John Dingell, a longtime NRA ally, in drafting a gun-show bill that could be promoted as a variant of the Senate legislation. In fact, the House version contained a booby trap.

Mr. Dingell's bill proposed a 24-hour cap on all gun-show background checks. Since existing law already allowed for 72-hour checks by licensed dealers, the Dingell approach would actually give law-enforcement officials less time to look for criminal histories.

Mr. Baker maintains that the possibility of a three-day wait inhibits legitimate sales. But he admits that his real goal was to see nothing approved—and that is what he got. Gun-control backers decrying a covert weakening of the background check formed an unlikely alliance with pro-gun lawmakers opposed to any sort of firearm regulation. The package containing the Dingell bill fell.

The lesson of Columbine, says a triumphant Mr. Baker, is that new gun laws aren't the answer to senseless killings.

Mr. Walker disagrees, pointing hopefully to the 2000 presidential race, in which the Democratic candidate is expected to make guns an issue. But for his part, Mr. Walker has decided that after seven years at Handgun Control, he will soon step down. "It takes a lot out of you," he says of the job.

The nationwide furor set off by Messrs. Harris and Klebold in the end provided a reminder of how close to impossible it is to enact serious gun control at the national level. In the view of some gun foes, this reality underscores that if the production and sale of firearms are to be significantly altered any time soon, it will occur by means of litigation.

Donald Zilkha

The Wild Card

The NRA's success in Washington provided little solace to Donald Zilkha.

A member of a cosmopolitan clan of bankers and investors originally from Iraq, Mr. Zilkha took a risk in 1994 by acquiring a decrepit Colt's Manufacturing. The company, maker of weapons ranging from civilian handguns to the M-16 military rifle, had lost key defense contracts, failed to modernize its factory, and was then in bankruptcy-court proceedings. As if that weren't enough, Mr. Zilkha didn't know much about firearms.

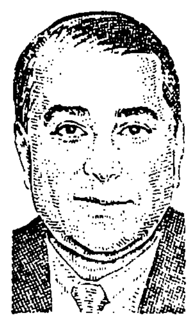
"We're not gun nuts," the cherubic 48-year-old says of himself and partner John Rigas, 36. "We're businessmen with a business plan."

The plan was to use Colt's as a vehicle to buy other military small-arms manufacturers, and then resell the consolidated company. Mr. Zilkha also hoped to revive the sluggish handgun business by developing a high-tech "smart gun" that fires only for an authorized user.

He made progress over the next few years—and 1999 could have marked a real turnaround. With the acquisition of a rival military-arms maker and the recovery of valuable defense contracts, orders soared this year, reaching a total of nearly $200 million, a huge amount considering that Colt's (together with its acquisition) had revenue of only $136 million in 1998.

But then the lawsuits began exploding like artillery shells.

Legal bills poured in, and are expected to reach a total of about $3 million in 1999 alone. Insurance will cover two-thirds of that, says Mr. Zilkha, but the remaining $1 million is a significant hit for a still-struggling company that expects to have net income of only about $2 million this year. Worse, the company's main insurer, American International Group Inc., notified Colt's that it may contest its responsibility for paying any jury award or settlement—a potentially "disastrous situation," says Mr. Rigas. An AIG spokesman declines to comment.


Donald Zilkha

Exacerbating this situation, some of the wealthy investors in a new investment fund set up by Mr. Zilkha specified that they want their millions kept out of the gun industry.

With cash so tight, Colt's couldn't buy nearly enough parts to fill all of its back orders. Delivery schedules slipped. Rather than expanding, factory lines are running at only 70% capacity, or less. At the West Hartford, Conn., gun factory, that translates into a loss of potential revenue of at least $2 million a month.

If the lawsuits are intended to damage and distract gun companies, they are succeeding, Mr. Zilkha says. "I am spending 70% of the time I devote to Colt's talking to lawyers, rather than planning growth."

He complains that part of the problem for American gun manufacturers is that they operate in what his partner Mr. Rigas calls "an incomplete regulatory environment," in which the companies' responsibility for supervising firearm distribution is unclear. Under pressure from the NRA, Congress exempted the gun business from federal consumer-safety laws. "We would be happy . . . to know what the rules are," Mr. Rigas says, citing the U.S. Food and Drug Administration's role overseeing the pharmaceutical industry.

Seeking to protect what he considers to be a promising defense business, Mr. Zilkha decided to cease production of his company's less-expensive civilian handguns, lay off as many as 200 of its 725 workers in West Hartford, and spin off the smart-gun project into a new company, iColt. As a legal matter, the company can't necessarily erase its potential liability by discontinuing a product line or shifting corporate structure. But as a practical matter, dropping the handguns, which Mr. Zilkha says weren't profitable anyway, could demonstrate his willingness to compromise.

Eliot Spitzer

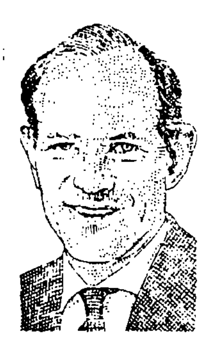
The Deal Maker

The New York attorney general has a similarly pragmatic mindset, but from a reverse perspective.

Far from being a fire-breathing gun abolitionist, he is a realist who sees the municipal litigation as chancy in legal terms, but handy as a way to force the industry to accept a new "code of conduct," in exchange for a truce.

Even some of his putative allies are wary. "I think he means well, but he's being used by the industry," says Mr. Coale, the attorney helping to represent New Orleans and several other cities. "He wants a deal so badly that it might not be a good deal."

The surprising thing is that Mr. Spitzer pushed himself to the center of the settlement discussion without even filing a suit of his own.


Eliot Spitzer

A former assistant district attorney, Mr. Spitzer skipped the lower rungs of political life to run for attorney general in 1994, at the age of 35. He lost, but ran again last year, and won.

Soon after taking office in January 1999, he ordered his staff to draft a suit that would make New York the first state to join the antigun litigation—a move that could draw in other states. Simultaneously, he asked subordinates to draft an industry code of conduct—detailed rules on gun marketing and industry monitoring—that he would offer manufacturers as an alternative to a New York suit. In late spring 1999, he launched his strategy by contacting Colt's headquarters in West Hartford. That overture led Mr. Zilkha to approach Mr. Spitzer on Fifth Avenue over the summer.

In the months since, there have been a series of meetings and telephone conference calls involving Mr. Spitzer's office and representatives of Colt's, Smith & Wesson, Glock, and other companies. To the dismay of some of the municipal officials who went to the trouble of actually filing suit, Mr. Spitzer's office has become a focal point for still-tentative settlement discussions. This is largely because he has offered the most coherent plan for how the industry might change its behavior to end the legal assault.

Not that Mr. Spitzer's ideas have been warmly received by the gun companies. "He doesn't understand the mechanics of the industry," Mr. Zilkha says. After reviewing a draft of the code of conduct, the gun-company owner says, "I told him, 'Your agenda must be political mush.'" (Mr. Spitzer declines to comment on this exchange.)

Neither side will discuss the substance of the talks, but a draft of the code shows that Mr. Spitzer would require all manufacturers to take some of the steps that Colt's has, including ceasing production of less-expensive handguns and trying to develop a smart gun. Mr. Spitzer would also have gun manufacturers supervise retail sales practices and cut off dealers who allow buyers to walk out of the store with more than one gun.

The most controversial proposal is that the industry subject itself to an outside "monitor," similar to the independent officials who oversee wayward labor unions. The gun monitor would have authority to enforce the code and review confidential corporate books.

Last month, industry officials conferred in Washington with Mr. Spitzer and officials representing many, but not all, of the suing municipalities. The industry promised within a period of weeks to produce a formal response to the Spitzer code and other proposals from the government side.

That was before an Ohio state judge in Cincinnati this month issued the first ruling on the merits of one of the suits, dismissing that city's legal action. The judge rejected the suit as an attempt to accomplish through the court system what is really the job of a legislature.

"New York's law is better in this area," Mr. Spitzer notes. He still has his lawsuit sitting in a desk drawer, ready to go.

THE WALL STREET JOURNAL

THURSDAY, OCTOBER 21, 1999

Today's debate: Controlling guns

Why stop cities from suing?

OUR VIEW **More legislatures blocking local lawsuits against gun makers.**

Faster than speeding bullets, laws to protect gun makers from a mounting legal threat have whizzed through legislatures this year in 12 states.

Their target: lawsuits filed by 25 cities and counties across the nation seeking millions of dollars in damages, new safety measures and changes in the way guns are marketed.

Lawmakers justify their efforts by saying the cities are using the courts to skirt the legislative process. They argue that state legislatures have every right to tell cities, which are governmental units of the state, what they can and can't do.

But neither fact justifies bestowing yet another special privilege on the gun industry, to the detriment of the public.

Already, thanks to the gun lobby, 42 states reserve for themselves the right to make all gun laws for their states. Usually, that has worked to the advantage of pro-gun interests.

Atlanta, for instance, had some tough gun laws until 1995, including a waiting period for background checks of gun buyers. Then, state lawmakers passed a law that wiped out the waiting period and gutted other local gun-control measures. So much for Atlanta's ability to deal with its special gun problems.

This year, Atlanta became the fourth city to file suit against gun makers. It took state lawmakers only five days to quash Atlanta's new attempt to control firearms: They passed a law to prohibit city lawsuits against the gun industry, applying it even to the suit already on file. Now Atlanta is fighting the issue in court.

Other states quickly followed. If the National Rifle Association gets its way, similar legal shields could be passed before year's end in Michigan and Pennsylvania.

Such interference ignores the problems and huge costs that cities face from gun violence. The Chicago Police Department spent more than $75 million in 1997 to deal with gun violations, according to Chicago's lawsuit. Wayne County, home to Detroit, says its tab for gun crimes is about $20 million a year for prosecutors, courts, jails and the morgue

Better to leave the issue to the courts where lawsuits are facing tough scrutiny and generating balanced and productive results.

An Ohio judge, the first to look closely at a city gun case, threw out Cincinnati's lawsuit this month, calling it "an improper attempt" to get the court to substitute its judgment for the legislature's.

In other cases, the threat of court action has nudged some gun makers in the right direction. A few companies recently began talking with their legal foes about settling the cases in exchange for major safety concessions.

Special shields against lawsuits are rare. HMOs won protection through a quirk in federal law, and their immunity is now at the center of a bitter controversy. Doctors, acting as good Samaritans, are protected from lawsuits to encourage them to help injured strangers. Blood banks are shielded from some lawsuits over infected blood.

Gun makers, of all industries, shouldn't be added to this short list.

Suits threaten our freedoms

OPPOSING VIEW **At stake: Principle that legislatures make laws.**

By Valde Garcia

The separation of powers has stood as the cornerstone of our democracy. It is the concept that keeps this country strong and free from the dregs of tyranny. Yet, as we enter a new millennium, powerful special interests seek to overturn this idea, and, with it, our nation's Constitution and the freedom it guarantees.

More than the Second Amendment is at stake when cities and states file lawsuits against gun manufacturers. The entire Constitution and the principles underlying it are, too.

In this country, the power to make laws and regulate business rests with Congress and state legislatures. These harassment lawsuits are nothing more than backhanded attempts to circumvent this process and use the courts to regulate businesses.

That's why a Cincinnati judge recently threw out that city's lawsuit against gun manufacturers, ruling that it is the responsibility of Ohio's legislature to regulate gun makers.

If these special interests want to change gun laws, they should make their case before the elected representatives of the people.

To do otherwise would set a terrible precedent: holding manufacturers of a product responsible for how others misuse it.

Guns are meant for self-defense, sporting and hunting — not for committing crimes.

Rather than waste taxpayers' money going after law-abiding businesses, government would be better served enforcing the 40,000 gun laws on the books and arresting criminals who commit gun crimes. They are the ones responsible for the costs of gun violence, and we make them pay by locking them up.

Suing gun manufacturers only drives up the cost of guns and makes it harder for the average citizen to own them for recreation or protection. Because lawsuits do not reduce the availability of guns to criminals, the only winners will be criminals, as they are the only ones who will have guns.

Filing lawsuits is a haphazard way to make policy and often succeeds only in enriching lawyers at the expense of the Constitution, our nation's history and the personal freedoms we all enjoy.

Valde Garcia is a Michigan state representative and chief sponsor of a bill to prohibit cities from suing the gun industry.

Politics over security

I am concerned that some people are willing to place this country's security at jeopardy simply to support President Clinton's agenda. Such seems to be the case with USA TODAY readers Lewis Yeager and Douglass Lamkin ("Senate rejection of nuke test ban 'tragedy' for the USA"; "GOP: What's your excuse?" Letters, Friday).

Both of these gentlemen support a president who has proved himself, repeatedly, to be completely unworthy of trust or support. If Clinton was concerned about the security of the world's nuclear arsenal, as he stated, he easily could have accepted the compromise offered on the Comprehensive Test Ban Treaty — that is, waiting until he left office. His true motives, however, were political and self-serving. This is where character was needed, but lacking.

This nuclear treaty was flawed, allowing terrorist nations to sign onto the treaty with no intention of abiding by its terms. Since we would be unable to verify compliance, this would lead to a situation that would put not only the USA but also the rest of the world in jeopardy. Many terrorists have demonstrated a lack of concern for their own countrymen and wouldn't hesitate to launch a nuclear device.

E. Thrift
Knoxville, Tenn.

What drives market?

Does Federal Reserve Chairman Alan Greenspan drive the market or does it drive itself ("Stocks suffer from more than just inflation," Money, Tuesday)?

Surely not all people who have invested in the stock market are that uninformed. I have a great deal of respect for Greenspan and think he does a wonderful job.

But comments that start a stock slide are not healthy for our economy. I wonder whether certain meetings would not be better if held behind closed doors.

Ron Prior
Huntingburg, Ind.

Children offer 'joy, love and hope for future'

USA TODAY reader Penny Mitchell criticized the column by Joyce Madelon Winslow on the issue of whether to have children ("One can be 'child-free' and very happy, too," Letters, Friday; "Is life really just the end of the line?" The Forum, Oct. 13).

Mitchell stated that if most parents would put as much thought into the decision to have children as she and her husband put into their decision not to have children, society would benefit in many ways.

As a parent, I feel that I should enlighten Mitchell.

Most parents, including myself, put a great deal of thought into this important decision.

I waited five years after marrying to have a child.

I have never regretted it.

Our child brings joy, love and hope for the future into our home.

Mitchell also stated that having children adds to the overburdening of world resources.

Perhaps she has forgotten that children eventually become adults and do, indeed, contribute to world resources.

Mitchell needs to think for a moment: If her parents had felt the same way she does, she would not have been here to write her letter.

Carrie DiCostanzo
Piscataway, N.J.

To comment . . .

We welcome your comments on editorials, columns, other topics in USA TODAY or any subjects important to you. Only letters that include name, address and day and evening phone numbers, and that are verified by USA TODAY, can be considered for publication. Letters to the editor of 250 or fewer words have the best chance of being published. Letters are edited for length, accuracy and clarity. Send letters by e-mail to editor@usatoday.com.; fax to 703-247-3108; or mail to 1000 Wilson Blvd., Arlington, VA 22229. Letters to the editor and articles submitted to USA TODAY may be published or distributed in print, electronic or other forms.

Grant –
Gun Lawsuits
10/8/99

SAFETY AND CRIME AT HEART OF TALKS ON GUN LAWSUITS

MAKERS AND CITIES MEET

Efforts for a Settlement Turn on Protective Devices and Crackdown on Dealers

By FOX BUTTERFIELD

In their first major meeting with officials from cities that are suing the firearms industry, the nation's leading gun manufacturers, trying to get the suits dropped, have agreed to begin negotiations to improve gun safety and reduce the flow of weapons to criminals.

Gun executives who attended the meeting said they would quickly respond to a list of the cities' demands, including mandatory safety devices on weapons and a crackdown on corrupt gun retailers.

If an agreement can be reached, municipal officials said, they will withdraw their suits, which demand hundreds of millions of dollars in compensation for the cost of gun violence on their streets.

The firearms industry had previously resisted talks with its opponents, insisting that it could prevail in court against any lawsuits, as it almost always has. So the very meeting of the two sides, which was held in Washington on Monday, was seen as highly significant by the participants.

"There were some manufacturers on our side," one industry executive said, "who two or three months ago would never have expected to go to such a meeting."

Pressure had been growing on the gun makers, however, as the first several of the lawsuits filed by 28 cities and counties moved into or near the discovery phase, which the plaintiffs maintained might well uncover damaging corporate documents. Such documents proved crucial in producing settlements between the states and the tobacco industry last year.

More pressure came later this week, as a California appeals court cleared the way for a trial in which a gun maker, Navegar Inc., could be held liable for a murderer's use of its product. In addition, the Colt's Manufacturing Company, one of the nation's oldest gun makers, trying to lessen its own risk from litigation, acted this week to reduce its role in producing handguns for the consumer market.

The participants at the Washington meeting cautioned that the talks were preliminary and that many obstacles to a settlement remained. Some gun makers, most notably the so-called Ring of Fire companies that encircle Los Angeles and produce cheap guns favored by criminals, were not invited. Also uninvited was a leading opponent of the industry, John Coale, a Washington

Safety and Crime Are at Heart of Talks on Cities' Suits Against Gun Makers

Continued From Page A1

cases against the industry, did not attend.

But one reason for optimism, some participants said, is that Robert Delfay, president of the National Shooting Sports Foundation, the industry's major trade organization, was behind a carefully developed framework that provided common ground for both sides in the talks.

Mr. Delfay, who has close ties to the National Rifle Association, stressed that the discussions should focus on ways to reduce accidental shootings and curb the flow of guns to criminals. Agreement on that focus, along with a willingness on the part of most cities to drop their demand for money, led one industry lawyer to remark, "I don't think I've ever been at such a meeting where both sides want the same thing."

The municipalities' demands were presented by Jim Hahn, the City Attorney of Los Angeles, an easygoing man who is said to have made a good impression on the industry officials.

Perhaps the most important and far-reaching of the demands was that the gun companies establish tighter contractual control over their chain of distribution to wholesalers and then retailers, and so curb the supply of handguns to criminals and juveniles through corrupt dealers. Any dealer who was found by Federal tracing to be providing a sizable number of guns used in crimes would lose his supply of products from the manufacturer. Until now, the gun makers have denied that they bear any responsibility for what happens to a gun after it leaves the factory.

To enforce the agreement, the cities would require that it be entered as a consent decree by courts in the states where the cities suing the gun industry are situated. An independent monitor, picked by the cities and approved by the gun makers, would be appointed with authority to oversee the agreement. The gun companies would pay for the monitor, who could be removed only for serious breach of duties, lawyers involved in the talks said.

The idea for the monitor came from Eliot J. Spitzer, New York State's Attorney General, who helped get the talks started by threatening to file the first state suit against the gun makers but then delayed it to give them a chance to negotiate. Mr. Spitzer attended the Washington meeting, as did Richard Blumenthal, Connecticut's Attorney General, who has also threatened to sue.

The most prominent gun company executive in attendance was Ed Shultz, the chief executive of Smith & Wesson, the nation's largest firearms manufacturer. Also present were officials from Sturm, Ruger & Company, Colt's Manufacturing, O. F. Mossberg & Sons, Taurus, Glock and Beretta.

Among other steps that the companies would have to take under the demands put forward by Mr. Hahn would be agreement to stop selling handguns at gun shows or on the Internet, a halt to advertisements claiming that handguns increase safety in homes and support for limiting customers to one handgun purchase a month, a way to try to stop illegal traffickers and straw purchasers who buy guns to resell to criminals or juveniles.

The one-gun-a-month idea, which is now law in Virginia and California, has been strongly opposed in the past by industry executives, who describe it as profit-compromising interference that will do little to stop criminals. Gun executives at the Washington meeting asked the cities instead to agree to lobby Congress for an increase in the budget of the Bureau of Alcohol, Tobacco and Firearms so that the agency can better monitor dealers and trace more guns used in crimes, and to push the Justice Department to get United States attorneys to prosecute gun traffickers more vigorously. The cities are happy to support those proposals but hardly find them sufficient.

As for gun safety, the cities said the companies should be required to provide by next year external locks on all guns and to incorporate by 2004 new technology, still under development, that would personalize a gun so that only its owner could fire it.

One city attorney who took part said Mr. Hahn had presented the proposals as a wish list but had told the gun companies that if they did not agree to almost everything on the list, the cities would go ahead with their lawsuits.

"We regard this as a sweet deal" for the gun makers, this lawyer said, because the cities would be giving up the potential for hundreds of millions of dollars in claims.

Detroit and Chicago did not take part, a lawyer familiar with their thinking said, "because the tobacco

Long resistant to negotiating, the firearms industry agrees to do so.

companies only made concessions when they realized they could lose, and the gun companies don't yet believe they will lose."

"Right now," the lawyer said, "they are just putting up a smokescreen."

Mr. Coale, whose group of lawyers represent New Orleans, Atlanta, Cleveland, Cincinnati and Newark, said he too felt that the gun companies were not yet ready to negotiate seriously. He held earlier talks with Robert Ricker of the American Shooting Sports Council, another industry group, only to see Mr. Ricker fired for daring to meet with him.

"I think Spitzer and Blumenthal are being used," Mr. Coale said, "to make it look like the gun industry is reasonable."

On the other side, Bruce Jennings, who owns B. L. Jennings Inc., a large gun wholesaler in Nevada, and has close ties to the group of handgun makers around Los Angeles, said none of those California companies had been invited to attend, or even informed about the talks by Mr. Delfay, breeding suspicion that any agreement would be reached at their expense.

The exclusion of the California companies from the talks underscores one of the major differences between this latest development and the negotiations that eventually produced a settlement between the states and the tobacco industry. There are only a handful of cigarette companies, and, while competitive, they had a largely unified negotiating stance. But the gun industry is made up of many small, often barely profitable companies that are characterized by different cultures and dislike one another.

One of the California gun makers, Davis Industries, in part to avoid the municipal suits, has filed for Federal bankruptcy protection, a tactic that the others in the Ring of Fire group may copy.

California Appellate Court Allows Gun Maker to Be Sued

SAN FRANCISCO, Sept. 29 (AP) — A California appeals court reinstated a lawsuit today against the maker of semiautomatic pistols used to kill eight people in a law office here in 1993.

The ruling is the first by an appellate court to allow a gun manufacturer to be held responsible for a criminal shooting.

The victims' families are entitled to a trial on their claims that the manufacturer marketed the guns to appeal to criminals and should have foreseen that they would be used in a massacre, the court, the First District Court of Appeal, said in a 2-to-1 ruling.

The court acknowledged that every other state and Federal appellate court to consider the issue had ruled that manufacturers of legal, properly functioning guns could not be sued for their criminal misuse.

But the court said this case was unusual for several reasons: The Tec-DC9 has been banned in California, though not in Florida, where the pistols were made, or Nevada, where they were sold; there was evidence that the Tec-DC9 has no legitimate civilian use, and the company's advertisements, including one promoting the gun as fingerprint-resistant, suggested criminals were among its intended customers.

The manufacturer, Navegar Inc., "had substantial reason to foresee that many of those to whom it made the Tec-DC9 available would criminally misuse it to kill and injure others," said the opinion by Justice J. Anthony Kline.

In dissent, Justice Paul Haerle accused the majority of "judicial legislation" and said the gunman, who killed himself, bore sole responsibility.

A gun-control group that represented the families said the ruling should help Los Angeles, San Francisco and 10 other California cities and counties that have sued gun makers in the last year, claiming faulty design, manufacture and distribution. Similar suits have been filed by local governments elsewhere. Wilmington, Del., filed suit today.

Navegar's lawyer, Ernest Getto, was unavailable for comment, his office said. The ruling could be appealed to the state Supreme Court.

The case dates from July 1993, when Gian Luigi Ferri, a mentally disturbed man with a grudge against lawyers, opened fire in a law office with two Tec-DC9's and a revolver. He killed eight people and wounded six before killing himself.

Judge James Warren of Superior Court in San Francisco, in his earlier ruling dismissing the suit, said there was no evidence that the company's marketing influenced Mr. Ferri or helped cause the killings. Judge Warren also said the Legislature had outlawed such weapons but had not authorized suits for their misuse.

The New York Times
THURSDAY, SEPTEMBER 30, 1999

5th Death Attributed to Mosquito-Borne Virus

By JENNIFER STEINHAUER

City health officials said yesterday that a a 79-year-old woman from Queens who died in early September was stricken with a form of the West Nile virus. The woman, whom officials did not name, is the fifth victim in the area and the fourth city resident known to have died from the disease since August; health officials have now confirmed that 31 people in New York City were infected with the virus, which was first thought to be St. Louis encephalitis.

In Westchester, eight cases have been confirmed, as have four in Suffolk County, on Long Island.

New York City Health Department officials also said yesterday that they would begin a study in northern Queens to help them better understand the scope of the outbreak of West Nile, the first in the Western Hemisphere. The four city residents who died lived in Queens, where most of the illnesses were reported.

City health department workers, with the help of the Federal Centers for Disease Control and Prevention, will conduct door-to-door surveys of random households in the Auburndale, Linden Hill, Murray Hill and Whitestone neighborhoods over the next three weeks. Workers will take blood samples from willing participants, who will be allowed to remain anonymous.

"The study aims to determine the infection rate in the area where the virus was first identified and to determine the infection rate in different age groups," said Dr. Ned Hayes, an epidemiologist from the C.D.C., who will coordinate the study.

While West Nile virus would leave

Epidemiologists plan a campaign to determine the disease's spread.

a person's blood very soon after infection, antibodies can remain for months or even years, even among people who, although they were infected, did not develop symptoms of the illness, which in most cases are very mild.

"We hope to get a better understanding of the symptoms caused by West Nile virus, as well as possible risk factors for infection," Dr. Hayes said. "This understanding will improve the effectiveness of prevention and control strategies for the future."

Scientists, fascinated by the illness's appearance in this country, are concerned because little can be done to prevent it when so little is known about how it reacts in a new environment.

West Nile virus is usually found in Africa and Asia, and occasionally in Europe. Birds carrying the illness transmit it to mosquitoes, which in turn bite people and can infect them.

The virus's symptoms include fever and headache, and in rare cases the illness can cause neurological disorders and even death. Elderly people, young children and people with weakened immune systems are most vulnerable.

New York, New Jersey and Connecticut are studying samples from dead birds, some of which have already tested positive for a West Nile-like virus. Birds have died by the hundreds in the region since late July, but how many had West Nile is far from clear.

Canadian news organizations reported yesterday that a 75-year-old Toronto man died of what health officials there said was an encephalitis-like illness. He had recently visited Queens, they said.

New York City officials said they had not heard of the case.

With a Death, Advocates of Gene Therapy Express Concerns for Future of the Field

By NICHOLAS WADE

The death of a patient in a gene therapy trial at the University of Pennsylvania is another disappointment in a field that could provide radical new treatments for many diseases but has so far had few successes.

The patient, Jesse Gelsinger, an 18-year-old from Arizona, died on Sept. 17, four days after being injected with a high dose of genetically engineered viruses intended to correct his condition.

Dr. Steven Raper, the principal scientist in charge of the trial, said that the cause of death was not yet known but that coming so soon after the injection, the treatment could have been responsible.

The virus used in this and 50 other current gene therapy trials is adenovirus, one of the causes of the common cold. It usually causes no more than inflammation at the site of injection and the mild fever associated with a cold.

Most gene therapy trials depend on viruses of one sort or another to deliver corrective genes to human cells. In the course of evolution, viruses have learned how to penetrate human cells and force the cell's machinery to make the products of the virus's genes.

In gene therapy, the virus's harmful genes are excised and a corrective human gene is inserted in their place. But despite the promise of the idea, and hundreds of gene therapy trials, only a handful have yet yielded possibly useful treatments.

Mr. Gelsinger was one of 18 patients who, in groups of three, were receiving increasingly higher doses of the adenovirus. Mr. Gelsinger was in the group that received the highest dose, which was considerably lower than the amount found to cause a severe response in animals.

The patients all suffered from a serious metabolic disease, ornithine transcarbamylase deficiency, which impairs the ability to process ammonia. The defective gene is usually inherited, but Mr. Gelsinger had a

A crucial question: Did the injection of gene-altered viruses kill a teen-ager?

rare mutation that must have occurred spontaneously.

Dr. Raper said that the university voluntarily stopped the trial immediately after Mr. Gelsinger's death and that the Food and Drug Administration, which oversees such studies, later issued a clinical hold on the trial. Another Federal body, the Recombinant DNA Advisory Committee of the National Institutes of Health, will send out a letter tomorrow to all scientists conducting gene therapy trials with adenovirus. The committee reviews the protocols for gene therapy trials on behalf of the Food and Drug Administration.

Dr. Amy Patterson, the National Institutes of Health official who oversees the advisory committee, said the letter would inform researchers of the circumstances of Mr. Gelsinger's death and ask them to report any relevant information that might explain it.

Both Dr. Raper and Dr. James M. Wilson, director of the Institute for Human Gene Therapy at the University of Pennsylvania, said they intended to learn as much as possible about Mr. Gelsinger's death and to share the information with other gene therapists. "We owe it to the field and to the patient, who really wanted to participate and wanted us to learn," Dr. Wilson said.

Dr. Wilson expressed concern about the possible impact that Mr. Gelsinger's death might have on the field of gene therapy. Although the field in general is unlikely to be affected, he said, "With this particular virus, we definitely need to pause and sort out what happened."

He suggested the way the virus was administrated — injection to an artery of the liver — might have had something to do with its lethal effect.

Dr. Ronald G. Crystal, a gene therapy expert at New York Presbyterian Hospital, said that Mr. Gelsinger's death was tragic but that it would not in his view have a significant impact on the field. It is difficult to develop revolutionary medical therapies in perfect safety and gene therapy is no different, he said.

One of the adenovirus's drawbacks as a delivery vehicle is that the body's immune system attacks cells that harbor the virus and its corrective gene, allowing the patient to benefit for a few weeks at best. Why were Mr. Gelsinger and the 17 other patients in a trial that offered risk with little lasting benefit?

Dr. Wilson said the adenovirus treatment, if successful, could be used to treat the acute crises that occurred in the disease. Adenovirus was the only viral vehicle available when the protocol was approved in 1995. The health institutes' advisory panel voted 11 to 1 in favor. The only dissenter objected to the risk of catheterization, Dr. Wilson said.

Dr. Patterson said that if Mr. Gelsinger's death proved to have been caused by the adenovirus it would be the first treatment-related death she knew of to have occurred in a gene therapy trial. Open discussion of such adverse effects was particularly important, she said, to retain public confidence in gene therapy.

Mr. Gelsinger's father, Paul Gelsinger, a handyman in Tucson, Ariz., said his son became interested in the gene therapy trial after he had begun to rebel against the restrictive nonprotein diet and the 50 pill-a-day regimen that eased his symptoms.

"He was a rebellious teen-ager who thought he could manage his own illness," his father said.

Mr. Gelsinger said he did not have hard feelings toward the researchers who conducted the trial. "The doctors are as devastated as I am," he said. "It was because of these men that I had my son for 18 years."

The New York Times

THURSDAY, SEPTEMBER 30, 1999

New York's Spitzer Seeks to Resolve Municipal Suits Against Gun Industry

By PAUL M. BARRETT
Staff Reporter of THE WALL STREET JOURNAL

New York Attorney General Eliot Spitzer has restarted a stalled effort to settle the wave of municipal lawsuits against the gun industry, according to people familiar with the situation.

Without actually having filed a suit himself, Mr. Spitzer has been trying recently to take a leading role in resolving litigation that seeks reimbursement for the public costs of gun violence, as well as changes in how firearms are made and sold.

His latest move has been to pay personal visits in recent days to some of the mayors whose cities have filed suits, trying to persuade these officials to join a settlement that he wants to broker, according to the people familiar with the situation. The settlement, as currently under discussion, would involve "some but not all" of the major gun manufacturers, including **Colt's Manufacturing Co.**, West Hartford, Conn., according to people familiar with the situation.

The aggressive New York prosecutor has told major gun companies that they can forestall a suit by his state—and possibly settle suits filed by 26 cities and counties around the country—if the industry will agree to a "code of conduct" drafted by his office.

People familiar with the proposal say it calls for gun makers and wholesalers to take far more responsibility than they now do for overseeing how firearms are sold. One approach would involve greater gunmaker supervision of retail dealers, over whom gun companies now exercise little if any control. The code would also require greater industry cooperation with the federal Bureau of Alcohol, Tobacco and Firearms, a direction in which the industry professes to be moving on its own.

New York, if it does opt to sue the gun industry, would be the first state to do so, and other states are thought more likely to join the antigun campaign if New York goes first.

Nevertheless, it is far from certain that Mr. Spitzer will succeed in forging a deal. Last month, gun-industry representatives rebuffed his settlement proposal, saying that it reflected "a complete lack of understanding of how the industry works." It couldn't be determined whether Mr. Spitzer has revised his proposal in connection with his most recent meetings with various mayors.

Another potential obstacle to a quick settlement is the desire of lawyers for some of the cities that have sued, including San Francisco and Los Angeles, to review gun-company documents and debrief industry officials before agreeing to any sort of compromise. One scenario that has been discussed is an attempt to settle with one company, such as Colt's, in exchange for that company's opening all of its files to the municipalities' lawyers. Colt's has signaled a willingness to consider a settlement as part of a corporate strategy that includes more emphasis on military contracts and development of a high-tech "smart gun" that can be fired only by an authorized user.

Other manufacturers that have communicated with Mr. Spitzer's office, either directly or through intermediaries, include Smith & Wesson Corp., Springfield, Mass., a unit of Britain's **Tomkins** PLC; and **Sturm, Ruger** & Co., Southport, Conn.

A spokesman for Mr. Spitzer said the prosecutor wouldn't comment yesterday. Colt's spokesman for litigation matters didn't return telephone messages. Robert Delfay, head of the National Shooting Sports Foundation, a trade group that has represented the industry in talks with Mr. Spitzer, also didn't return phone messages.

David Kairys, an outside lawyer helping to represent Chicago, San Francisco and other cities in their lawsuits, also declined to comment.

FCC Encourages Court to Stop Portland From Making AT&T Open Cable Lines

By BRYAN GRULEY
Staff Reporter of THE WALL STREET JOURNAL

WASHINGTON—The Federal Communications Commission nudged a federal appeals court toward stopping Portland, Ore., from requiring **AT&T** Corp. to open its high-speed wires to rival Internet service providers.

In a friend-of-the-court brief filed yesterday, the FCC stopped short of specifically asking the U.S. Court of Appeals for the Ninth Circuit in San Francisco to overturn Portland's effort to force AT&T to make its cable-television pipelines available to competitors such as **America Online** Inc.

But the brief reflected FCC Chairman William Kennard's belief that federal regulators—not local officials—should decide the matter and that it is too early to impose Portland-like requirements on AT&T or others that control "broadband" Internet access.

"While we continue to monitor closely this market's dynamics, I believe it is far too early for any government regulator to move in," Mr. Kennard said, echoing arguments by AT&T and other cable operators.

The broadband issue has assumed national importance since Portland regulators in December imposed their requirement as a condition for local approval of AT&T's acquisition of cable giant **Tele-Communications** Inc. AT&T sued to have the condition thrown out. A federal judge ruled in Portland's favor, and AT&T appealed.

Since then, Broward County, Fla., has decided to require open access, and other communities are likely to consider the question as they decide whether to grant approvals for AT&T's pending acquisition of cable-TV company **MediaOne Group** Inc. Regulators imposing the broadband conditions fear that without them, AT&T could command a monopoly on Internet access.

While the FCC isn't a principal in the Portland case, courts consider the agency an expert in telecommunications, and its opinion is likely to be taken seriously. Mr. Kennard has said he wants to ensure a national no-regulation policy for the Internet, rather than let local governments impose rules that could differ from community to community.

Inconsistent regulation "could undermine the development of intermodal competition" among cable operators, phone companies, wireless carriers and satellite carriers, the FCC's brief said. The FCC referred to a recent report in which its staff found that "different companies are using different technologies to bring broadband to residential customers," and "multiple methods" soon will be available.

David Olson, Portland's top cable regulator, said the FCC should have stayed out of the case. "The FCC has no docket on the pros or cons of local government" considering the broadband issue, "so the notion that they would come to the Ninth Circuit on the side of the cable industry, having never publicly addressed this issue, violates any notion of fairness we can think of," Mr. Olson said.

In a statement, AT&T said it was pleased with the commission's filing and that the FCC agreed with its position that forced cable-access requirements will slow delivery of new telecommunications services. "We look forward to making oral arguments on this case in the fall and are confident that the Ninth Circuit will overturn the lower-court ruling sometime later this year or early next year," said JimMcGann, a company spokesman.

The company has committed more than $120 billion to buying cable companies. But it says these investments won't be worthwhile if it must open its cable lines to competitors. AT&T has vowed to work with rivals, but has said it doesn't want regulation to force its hand.

AT&T's deals have brought complaints from AOL and others that cable operators should be required to provide access to their networks, much as local phone companies must give rivals access to the Bell networks. AOL and others have launched intense local lobbying campaigns.

Separately, several consumer groups are expected today to file formal papers with the Justice Department and the FCC urging the agencies to block the AT&T-MediaOne deal. The deal isn't expected to meet with strong resistance from either agency.

THE WALL STREET JOURNAL

TUESDAY, AUGUST 17, 1999

Treasurys' Trading Volume Is Down Sha
Amid Budget Surplus, Weak Market for Bona

By JOHN MONTGOMERY
Dow Jones Newswires

NEW YORK—It has been a dismal year so far for trading in Treasurys, thanks to the U.S. budget surplus and a struggling market.

Trading volume in the cash Treasurys market is down 20% on a dollar-value basis, compared with the same period last year, according to GovPx, a price- and volume-dissemination service owned by a consortium of dealers and brokers.

Yesterday, as investors marked time ahead of the Labor Department's July consumer-price report, trading volume in Treasurys fell 42% below the average Monday in the third quarter of 1998, according to GovPx. The newly issued benchmark 30-year Treasury bond rose 6/32 to 100 14/32. Its yield fell to 6.084% from 6.098% late Friday, as bond yields move inversely to prices.

In fact, concerns about trading activity in the government-debt market have contributed to the Treasury Department's decision to pursue a program that would allow it to buy back old Treasury issues. That would allow the Treasury to keep issuing a large supply of new debt.

Evidence of the slowdown in Treasurys trading is widespread. GovPx captures about 70% of the trading among dealers in the Treasurys market and is generally considered the benchmark for cash-market volume. But other data show a similar trend.

Federal Reserve statistics show that primary dealers' daily average trading volume in the second quarter was the lowest since the third quarter of 1993, according to Ray Stone of Stone & McCarthy Research Associates.

In futures, volume in the Chicago Board of Trade's 30-year bond contract through the first seven months of 1999 is down nearly 17% from the same period last year, according to exchange data. Two-year-note futures volume is off by about the same amount, while five-year and 10-year-note volume is up slightly.

Various factors are responsible for the decline in Treasurys trading, but the biggest is probably the U.S. budget surplus, which has caused the government to cut back on its borrowing by auctioning fewer securities.

"It starts with cutbacks in auctions, and from there it goes to the shrinking role of Treasurys in the fixed-income universe," said Lee Cohen, managing director and co-manager of the primary dealership at CIBC World Markets in New York.

With fewer new Treasurys to go around, supply-and-demand issues have taken a larger role in the market, eroding established yield relationships that provided trading opportunities, Mr. Cohen said. Government debt's role as a hedge against other fixed-income positions has also been eroded.

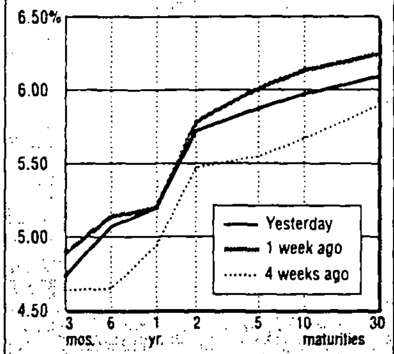
At the same time, private-debt offerings have ballooned. In 1993, Treasury securities accounted for about one-third of a $9.1 trillion fixed-income marketplace, according to Bond Market Association estimates. Currently, Treasurys represent about 25% of a $13.3 trillion fixed-income market.

Government debt's reduced role and mergers in the banking industry have combined to cut the number of primary dealers in the Treasury market to 29 from a peak of 45 in 1988.

Meanwhile, trading activity has increased in other fixed-income products, thanks to the burgeoning supply of corpo-

Treasury Yield Curve

Yields as of 4:30 p.m. Eastern time



Source: Thomson Global Markets

YIELD COMPARISONS

Based on Merrill Lynch Bond Indexes, priced as of midafternoon Eastern time.

	8/16	8/13	–52 Week– High	Low
Corp.-Govt. Master	6.50%	6.50%	6.62%	4.84%
Treasury 1-10yr	5.87	5.86	5.98	4.19
10+ yr	6.43	6.42	6.51	4.86
Agencies 1-10yr	6.50	6.54	6.69	4.71
10+ yr	6.76	6.78	6.85	5.22
Corporate				
1-10 yr High Qlty	6.79	6.80	6.93	5.08
Med Qlty	7.29	7.29	7.43	5.59
10+yr High Qlty	7.39	7.42	7.50	5.91
Med Qlty	7.87	7.89	7.96	6.46
Yankee bonds(1)	7.43	7.45	7.56	5.87
Current-coupon mortgages (2)				
GNMA 7.50%	7.64	7.69	7.93	5.79
FNMA 7.50%	7.58	7.64	7.91	5.87
FHLMC7.50%	7.61	7.68	7.94	5.89
High-yield corporates	10.43	10.43	10.81	8.96
Tax-Exempt Bonds				
7-12-yr G.O. (AA)	5.02	4.99	5.02	4.05
12-22-yr G.O. (AA)	5.53	5.48	5.53	4.50
22+yr revenue (A)	5.81	5.77	5.81	4.67

Note: High quality rated AAA-AA; medium quality A-BBB/Baa; high yield, BB/Ba-C.

(1) Dollar-denominated, SEC-registered bonds of foreign issuers sold in the U.S. (2) Reflects the 52-week high and low of mortgage-backed securities indexes rather than the individual securities shown.

rate, agency and mortgage-backed debt. Fed data show "a measurable pickup in agency activity and the same thing in mortgage-backed securities," Stone & McCarthy's Mr. Stone said.

Primary-dealer transactions in agency debt averaged $52.9 billion a day in the second quarter of this year, up 17% from the same quarter last year, according to Mr. Stone. Dealer transactions in mortgage-backed securities are up nearly threefold in the past five years. The Fed doesn't track dealer trading in corporate debt, but Mr. Stone is confident the trend is the same.

Nongovernment debt tends to be concentrated in intermediate maturities, which likely explains the increased trading activity in five-year- and 10-year-note futures, used by traders to hedge positions in corporates and other issues.

A bear market has also taken a toll on Treasurys trading, according to CIBC's Mr. Cohen. The 30-year-bond yield, which moves counter to the price, has jumped above 6% from around 5.10% at the start of the year. Bull markets tend to attract more interest, since investors are generally more inclined to trade from the long side.

The slowdown in Treasurys trading could become a problem over the long term if it threatens the U.S. government debt's status as the world benchmark. The U.S. is able to borrow more cheaply than other governments because investors are willing to accept a lower yield to purchase the most actively traded fixed-income instrument in the world.

"If the benchmark status of the Treasury market is at risk, it could be somewhat costly for taxpayers," David Greenlaw, chief U.S. fixed-income economist at Morgan Stanley Dean Witter, said.

In other words, if Japanese government bonds become the world's benchmark because traders are able to get in and out of them more easily, Treasury yields have to move higher to attract buyers.

That is what has the Treasury Department concerned.

Buying back old Treasurys would allow the government to continue reducing its outstanding debt without further cuts in its issuance of new debt. Without such a measure, the trend of smaller Treasury auctions and slower trading would continue, Mr. Greenlaw said.

Here are the details of yesterday's auction by the Treasury of 13-week and 26-week bills:

All bids are awarded at a single price at the market-clearing yield. Rates are determined by the difference between that price and the face value.

	13-Week	26-Week
Applications	$22,050,007,000	$22,780,158,000
Accepted bids	$8,001,207,000	$8,006,058,000
Accepted noncompet'ly	$1,367,638,000	$1,234,290,000
Auction price (rate)	98.817 (4.680%)	97.523 (4.900%)
Coupon equivalent	4.815%	5.108%
Bids at market yield	94%	79%
Cusip number	912795CV1	912795DH1

Both issues are dated Aug. 19. The 13-week bills mature Nov. 18, 1999, and the 26-week bills mature Feb. 17, 2000.

Corporate Bonds

Investors eagerly awaited **DaimlerChrysler AG**'s $3.75 billion three-part global bond offering, which is scheduled to come to the market today via **Credit Suisse Group**'s Credit Suisse First Boston Corp. and **Citigroup Inc.**'s Salomon Smith Barney Inc.

Traders said the hefty offering hasn't put pressure on the market, indicating that few investors are selling outstanding securities to make room for the new issue.

A $750 million, three-year floating-rate portion is expected to yield 0.28 percentage point over the three-month London interbank offered rate. In addition, a $1 billion five-year part is expected to yield 1.17 percentage points over Treasurys, and a $2 billion 10-year piece 1.36 percentage points over Treasurys.

Traders said those levels were in line with where outstanding **Ford Motor Co.** debt was trading. Ford Motor Credit's 5.8% notes due 2009 were quoted at around 1.38 percentage points over Treasurys, while the company's recently issued 6.7% notes due 2004 were quoted at about 1.18 percentage points over Treasurys.

Municipal Bonds

Terms for institutional investors will be set today for $630.7 million in insured New Jersey Development Authority bonds, the week's largest tax-exempt issue. **PaineWebber Group Inc.**'s PaineWebber Inc. is lead underwriter for the securities, which will have a maximum maturity of 2018. Proceeds will fund light projects.

Many investors have been sidelined recently, and the issue's pricing will have to take into account the cautious market tone, some people said.

Meanwhile, a two-day retail-order period will start today for $283 million New Jersey Housing and Mortgage Finance Agency revenue bonds, according to lead underwriter **Goldman Sachs Group Inc.**'s Goldman, Sachs & Co.

In trading, municipal-bond prices were off 1/4 to 1/2, traders said.

—Catherine Valenti and Linda Tavano contributed to this article.

Raw-Steel Production In U.S. Declines 0.2%

By a WALL STREET JOURNAL *Staff Reporter*

WASHINGTON—Raw-steel production by the nation's mills decreased 0.2% in the week ended Saturday to 2,009,000 tons compared with the 2,014,000 tons produced the previous week, the American Iron and Steel Institute said.

The week's output was down 4.8% from the 2,111,000 tons produced during the year-earlier period.

The industry used 82% of its capacity during the week, compared with 82.2% the previous week and 87.9% a year earlier.

Ricochet

Cities Suing Gun Firms Have a Weak Spot: They're Suppliers, Too

Police Trade-Ins Cut Costs, But Many of the Weapons Land in the Wrong Hands

Tracing Mr. Furrow's Glock

A1

By VANESSA O'CONNELL And PAUL M. BARRETT
Staff Reporters of THE WALL STREET JOURNAL

Since last fall, 26 municipalities have sued the gun industry, accusing it of flooding the market with handguns, many of which end up in criminal hands.

There is an incongruity in the municipalities' position, though: Most of the cities suing the industry are themselves, in effect, gun suppliers – and some could be accused of a degree of carelessness in how they unload used police weapons and confiscated firearms. Major cities that have taken the industry to court, including Boston, New Orleans and San Francisco, have together poured hundreds of thousands of second-hand police guns into the civilian market.

The cities say they need to sell or trade in the weapons to cut the cost of obtaining new, higher-power models – much as old police cars are auctioned off for cash. Yet the practice incurs a cost of a different kind. Thousands of these castoff guns have turned up in crimes, such as last week's shooting rampage in Los Angeles by neo-Nazi Buford O. Furrow Jr. After wounding five people in his attack on a Jewish community center, the confessed killer allegedly murdered a mailman of Filipino descent with a Glock 26 pistol.

Police traced that gun to the Cosmopolis, Wash., police department, which in 1996 had traded the pistol to a gun dealer in the small town. In return, the department received a larger Glock pistol, says Cosmopolis Police Chief Gary Eisenhower. The gun dealer sold the Glock 26 to a private individual, and it ultimately wound up at a gun show before reaching Mr. Furrow's hands.

"It's upsetting," says Chief Eisenhower, that his five-person department's old gun was used in the killing, though he says that with a $400,000 annual budget, he can't afford simply to destroy used service weapons.

But it wasn't an isolated incident. Data obtained by The Wall Street Journal under the Freedom of Information Act show that at least 1,100 former police guns were among the 193,203 crime guns traced last year by the federal Bureau of Alcohol, Tobacco and Firearms. Because of inconsistencies in how the agency compiles gun-trace data, any such annual count of former police guns connected to crime "probably represents the tip of the iceberg," says Howard Andrews, a Columbia University bio-statistician who assisted the Journal in its analysis. Citing privacy laws, the ATF won't release the names of police agencies whose guns were most often used in crimes.

So many former police guns wind up on the street that the International Association of Chiefs of Police is urging all law-enforcement agencies to destroy used service guns, as well as guns confiscated by police agencies. In a resolution enacted last October, the group warned that "the recirculation of these firearms back into the general population increases the availability of firearms which could be used again to kill or injure additional police officers and citizens."

For the same reason, some antigun activists also decry police trade-ins. But Handgun Control Inc., the nation's biggest gun-control group, has tried to play down the issue, at least in part because it is helping organize and lead the municipal lawsuits against the gun industry. Dennis Henigan, Handgun Control's top lawyer, denies that the cities' role in trade-ins undercuts their legal case against gun makers. Talk of police gun swaps, he says, is an attempt by gun companies to "launch a counterattack" against the cities by focusing on "extraneous issues."

In a typical deal, a police department will sell its old guns to a wholesaler offering the agency new weapons at little or no cost. Last year, for instance, gun wholesaler Interstate Arms Corp. of Billerica, Mass., paid the Boston police $324.87 apiece for old 9mm pistols and charged the department an identical $324.87 each for new .40-caliber Glocks. Boston agreed to the deal and traded about 2,350 guns, for a savings of roughly $763,000.

A department ships its old guns to the wholesaler, which resells them at a markup to gun dealers around the country. For example, Kiesler Wholesale of Jeffersonville, Ind., recently was offering a $225 "allowance" to police departments looking to unload their old Smith & Wesson Model 645 semiautomatic pistols. Dealers looking to buy the used guns paid $299 apiece, according to its catalog.

Dealers, in turn, sell the used guns for as little as half as much as new models might fetch. For instance, a used Glock or Beretta might retail for $200 or so, compared to the typical price of $400 for a new model from these top-of-the-line gun makers.

"It's the gun equivalent of a pre-owned Lexus," says Joseph Vince, who retired last year from his position as the chief of crime-gun analysis at the ATF. "You get a high-quality gun, but one you maybe couldn't afford when it was new."

Police trade-ins first became common in the mid-1980s, when many law-enforcement agencies began switching from six-shot revolvers to semiautomatic pistols that can accommodate more ammunition and can be reloaded more quickly. At the time, police budgets were tight, and gun makers were pitching semiautomatic pistols as an improvement over the Smith & Wesson six-shot revolvers most departments had used since the 1970s or earlier.

Gun makers such as Glock encouraged wholesalers to bid for a department's old revolvers and resell them to dealers throughout the country. Even though revolvers are generally less popular than semiautomatics, old police guns retain a certain mystique in the eyes of many shoppers and sell quickly, says Wain Roberts, a dealer in Pinellas Park, Fla.

Despite the anxiety expressed by the international police chiefs' association, the pace of trade-ins has picked up recently, thanks largely to more aggressive marketing by Glock, a leading supplier to the law-enforcement market.

Boston Police Commissioner Paul Evans says that over the past two years, his department has switched to the Glock .40-caliber pistol from the company's 9mm model, partly because Glock suggested that larger .40-caliber bullets were less likely to pass through a suspect's body and hit an innocent bystander. "There are liability issues," Commissioner Evans explains.

Apart from the characteristics of particular guns, the 1994 federal crime bill created separate incentives to pursue police trade-ins. The law included a ban on the manufacture of magazines that can contain more than 10 rounds. (A magazine is the part inserted into a semiautomatic weapon that holds the ammunition.) Congress created an exception, however, for guns sold to law-enforcement agencies, which could have magazines exceeding 10 rounds.

As often happens in response to a new gun regulation, demand among gun enthusiasts for larger magazines jumped beginning in 1994. Gun wholesalers saw an opportunity to profit. The wholesalers offered police departments financial enticements to trade in their used service weapons and the large magazines that came with them. The wholesalers thus got their hands on many thousands of extra "high-capacity" magazines, which in the years since they have resold on the civilian market for twice or three times their original "pre-ban" value.

A common incentive that wholesalers have offered police departments is an even swap of new guns for used service weapons with large-capacity magazines. "Here's an offer you can't refuse!" blares a recent flier from Interstate Arms, promising to trade new Glocks for old at no extra cost to police departments.

But as police trade-ins grew more common in the mid-1990s, so did the number of former police guns showing up at crime scenes. The ATF started noticing that so many guns once owned by police were being used illegally that the agency created a special computer code—S5—for the guns it traced back to law-enforcement agencies. But while the ATF now tries to compile traces of former police guns, it hasn't worked out kinks in its database to allow for a comprehensive accounting of the problem.

Recently, a backlash has begun to build. After used police guns were recovered in several high-profile crimes, a number of states, including New York, Connecticut and Wisconsin, enacted laws mandating the destruction of old police guns, or

1|2

THE WALL STREET JOURNAL
MONDAY, AUGUST 16, 1999

requiring that the guns be sold overseas. Such laws force cash-strapped police departments to hold on to their guns for longer than they might have. "I would hate to see 20 nice-condition Glocks get ground up" just because they can't be traded in, says Capt. Daniel Crawford of the Ashland, Wis., police department. He says his department plans to use its current Glocks until they wear out.

Since last fall, officials in a number of cities that were filing or planning to file suit against the gun industry have worried that their own police departments' methods for getting rid of old service weapons would expose the cities to allegations of hypocrisy. The municipal suits accuse the industry of failing to oversee aggressively how guns are distributed and sold; the municipal officials fretted that the cities, too, could be accused of negligence if there was a risk that guns they were getting rid of might end up in criminal hands.

In San Francisco, for example, the police department since 1995 had sold or traded obsolete service revolvers and confiscated guns to out-of-state wholesalers. Part of the motivation for the sales was to help finance the purchase of new, more powerful Beretta semiautomatic pistols that carry more rounds and allow users to reload more rapidly.

One of the conditions of the sales of the old and confiscated guns was that the wholesalers would sell the guns to foreign buyers, says city attorney Louise Renne, but San Francisco officials were concerned by reports that some of the weapons may have been turning up in the U.S. In late May, as Ms. Renne's staff was putting the finishing touches on the city's suit against the gun industry, the San Francisco police department announced that it would stop selling its old and confiscated guns and instead would destroy them. Less than a week later, Ms. Renne announced the filing of the suit.

The city attorney emphasizes that even under the abandoned trade-in policy, San Francisco "attached strings," such as the overseas-buyer requirement, that were intended to protect against the city's police guns ever being used in crime—at least in this country. That approach "was a far different thing" from how the gun industry does business, she adds. San Francisco's suit, like most of the others filed on behalf of 26 cities and counties around the country, alleges that the industry pours handguns into areas with lax gun laws, encouraging illegal traffickers to siphon off numerous guns that are then sold to criminals. Gun manufacturers, says Ms. Renne, essentially "attach no strings" once their products leave the factory. (Gun companies dispute this, saying that they do business only with reputable wholesalers that agree to operate responsibly.)

But Ms. Renne concedes that both governments and the industry "ought to learn from the lessons of the past" that gun sales haven't been monitored closely enough. "All policies"—public and industry—"ought to be changed" in light of what has been learned, she adds.

New Orleans Mayor Marc Morial, who filed the first city suit against the gun industry last October, has since been embarrassed publicly on the trade-in issue by Glock's vice president and general counsel, Paul Jannuzzo. Near the end of a joint appearance earlier this year on NBC's "Today Show," Mr. Jannuzzo pointed out that New Orleans is perhaps the biggest distributor of used guns in Louisiana, having recently agreed to obtain new Glocks in a swap for 7,300 weapons seized in crimes, as well as 700 Berettas that had belonged to New Orleans police.

Mr. Morial tried to justify the deal, claiming that as part of the agreement, Glock had "agreed not to sell them in Louisiana." But by late April, a New Orleans newspaper was running an ad from a local gun shop promoting the sale of Beretta 9mm pistols once carried by New Orleans officers. "Own a piece of New Orleans history," the ad declared. "All are original duty weapons and are numbered and stamped N.O.P.D." The guns came with a bonus: two 15-round "pre-ban clips."

The mayor was unavailable for an interview, according to a spokesman. But the spokesman says New Orleans suspended the Glock swap before it was completed, and as a result, now owes the gun company an unspecified amount of cash.

Kiesler's Wholesale, which served as middleman in the New Orleans-Glock deal, has likewise grown more sensitive to concern about police trade-ins—without actually ceasing to participate in them. For example, Kiesler's has stopped billing the police guns it buys and resells as "police trade-ins" and now marks them merely "pre-owned." The wholesaler also has added pages to its catalog, promising police officials several "politically acceptable ways to help your department" dispose of its weapons. These options include arranging for Kiesler's to resell the guns outside of the geographical area or state where the agency is based, or reselling them only to police officers. The restrictions come with a price; a department will receive a smaller credit for each gun it trades in to obtain either limitation.

Boston Police Commissioner Evans discovered a few months ago that some of the guns his department had traded in materialized on the civilian market nearby. In April, Boston agreed to pay $231,525 to the wholesaler, Interstate Arms, to cover the extra cost of disposing of its guns overseas, according to a new agreement. Commissioner Evans calls it "money well spent."

At Glock's U.S. headquarters in suburban Atlanta, the company says it believes it has worked out a solution for the trade-in problem: a proposed program under which it would lease its guns to police departments that lack the cash for a capital outlay. Because departments wouldn't technically own the guns, they wouldn't be able to resell or trade them. Instead, Glock would take the guns back and resell them. The plan could be seen as relieving city governments of responsibility for former police guns, although the weapons would still end up back on the civilian market.

Glock's Mr. Jannuzzo declines to comment on the new lease plan, except to say it is something "a lot of people are contemplating."

2/2

NAACP Suit Puts Race on Table in Gun Debate

By PAUL M. BARRETT
Staff Reporter of THE WALL STREET JOURNAL

By suing the gun industry, the NAACP has brought race to the surface of the firearms debate.

Late last month, the National Association for the Advancement of Colored People filed a complaint in federal court alleging that African-Americans have been "disproportionately injured" by the gun industry's "negligent marketing." The purported negligence: Manufacturers and wholesalers pour weapons into jurisdictions with lax gun laws, thereby making it easier for traffickers to siphon firearms into the inner city, where gun laws are typically stricter.

The industry vehemently denies the allegation, insisting that it legitimately responds to consumer demand for a legal product.

With its suit, the civil-rights group joined 26 cities and counties that have taken gun makers and distributors to court. But the municipalities have couched their action in terms of protecting children and recouping the costs of police and emergency medical services. The NAACP, which has 500,000 members and says it represents other blacks' interests as well, focuses on who is being hurt most severely by gun violence.

NAACP President Kweisi Mfume predicts that in the absence of tougher legislative gun control, the group's gun suit will galvanize social reform by means of the courts. He compares the suit to the group's earlier legal battles to desegregate schools and enforce blacks' right to vote.

Yet the parallels may not be so clear-cut. Black victims of official segregation faced off against unsavory white opponents blocking the doors to schools and polling places. These days, black murder victims are slain 94% of the time by black offenders, according to the Federal Bureau of Investigation. In addition, some African-Americans argue that their race and the neighborhoods they live in make it necessary for them to protect themselves—with guns.

Meanwhile, the gun industry appears to be happy to have the NAACP put race on the table. Gun foes have long accused the firearms industry of playing on white fears of black criminals when they market handguns for home defense. But since the municipal gun suits began being filed in October, firearms-company executives and lawyers have been muttering privately that the litigation is a ploy by big-city mayors to distract their constituents from the plague of black-on-black violence.

"I love it!" Paul Jannuzzo, vice president and general counsel of the U.S. unit of Austria's Glock GmbH, says of the NAACP suit. Pointing out that the municipalities and the civil-rights group share some of the same outside lawyers, Mr. Jannuzzo disparages all of the industry's courtroom opposition as "racist." "That's what they are," he says, "blaming the inner-city problems on white gun manufacturers."

Mr. Mfume acknowledges that there are "pathologies in any society that contribute to violence," including, in the case of the black urban underclass, teenage pregnancy, lack of education and drug and alcohol abuse. But he says the NAACP is "prepared to deal with these pathologies, and we are doing so," and he cites as an example an NAACP program that offers prison inmates counseling and helps them find jobs upon release. At the same time, he argues, "the gun industry must be willing to deal with its business practices that are oversaturating our streets with guns."

Lately, black gun violence has been obscured somewhat by shootings in predominantly white settings. Episodes such as this week's in Los Angeles and the one in April in Littleton, Colo., draw massive media attention. But "there is a distinct, disproportionate crisis" of gun death and injury in black urban communities that has been overshadowed by anomalous suburban bloodshed, says Elisa Barnes, an antigun attorney in New York who is helping to represent the NAACP.

Even as the overall homicide rate drops nationwide, young black men are continuing to die from gun injuries at a rate that is nearly nine times that of their white counterparts. A study by the U.S. Centers for Disease Control and Prevention reports that the gun homicide rate in 1997 among 15- to 24-year-old black males was 104 per 100,000 people in that age group, compared with 11 for whites.

Unlike the municipal suits, which demand hundreds of millions of dollars in damages, the NAACP suit seeks an elaborate court order changing the way guns are made and sold. Among the changes sought are a limit of one gun sale a month per customer, greater oversight of retail gun dealers and a curtailment of supplies to dealers who sell at flea-market-like gun shows. Law-enforcement officials say gun shows are often a source of the weapons used in crimes because they're less thoroughly regulated than retail stores.

Legal expenses for the NAACP suit are being paid by a nearly $300,000 joint grant from two New York foundations: the Irene Diamond Fund and the Center on Crime, Communities and Culture, an affiliate of financier George Soros's Open Society Institute. The NAACP's suit, which was filed in federal district court in Brooklyn, N.Y., will soon be augmented by a parallel action on behalf of people, regardless of ethnicity, who have suffered spinal-chord injuries from gunshots, says Perry Weitz, another New York lawyer for the NAACP. The goal, he says, is to prevent "another generation of victims."

Some blacks disagree with the NAACP's approach. Instead of trying to restrict access to guns, the group "should be the strongest proponent of self-reliance and self-defense," because African-Americans have always been threatened by white society, argues Kenneth Blanchard, a black gun owner in Washington, D.C. Six years ago, he started the Tenth Cavalry Gun Club, a predominantly black recreational shooting group named for a storied all-black 19th-century military unit. He says the group has about 100 members in the Washington area.

Mr. Blanchard traces his own interest in firearms, in part, to his grandparents, who lived in rural Virginia and "needed the shotguns, rifle and pistols they owned to protect themselves from rogue hunters, the Klan and thieves."

Mr. Blanchard, a private security consultant, acknowledges that his gun hobby is frowned upon in most black circles. Polls consistently find lower levels of gun ownership among blacks, compared with whites, and greater support for legislative gun control.

But those figures are skewed by the fact that blacks primarily live in big cities, where legal gun ownership rates are lower than in more sparsely populated areas, according to Gary Kleck, a criminologist at Florida State University. Gun ownership levels in rural areas are roughly the same for blacks and whites. Even in urban areas, there are a lot of "closet gun owners," Mr. Blanchard says.

Robert Cottrol, a professor at George Washington University Law School, says that many African-Americans, including himself, share a connection to "a hidden history of blacks and guns." That history includes the enactment in the late 19th and early 20th centuries of state gun-control laws that were aimed specifically at keeping guns out of the hands of ex-slaves, other blacks and recent immigrants. And, says Prof. Cottrol, it includes still-vivid family memories of relatives who had to fend for themselves against groups like the Ku Klux Klan.

He keeps his firearms for occasional target shooting and in case of an emergency. After all, he says, "I don't want the only thing standing between [White Aryan Resistance leader] Tom Metzger and my family to be Mark Fuhrman," the former Los Angeles policeman whose racist remarks became an issue in the O.J. Simpson murder case.

—Philip Connors contributed to this article.

THE WALL STREET JOURNAL
FRIDAY, AUGUST 13, 1999

Boeing, Union Are Scrapping Over Pensions

By JEFF COLE
Staff Reporter of THE WALL STREET JOURNAL

A standoff between Boeing Co. and the machinists union over control of about $15 billion in pension funds has cropped up as a pivotal issue in labor contract talks now entering their final phase, according to officials on both sides.

The dispute, in which the leadership of the International Association of Machinists and Aerospace Workers union wants to take control of the funds managed by the aerospace company, tops a list of difficult issues facing negotiators preparing to begin round-the-clock talks on Monday.

The company's current labor agreement with the union, which represents 44,000 Boeing workers, expires just after midnight Sept. 2.

Preliminary discussions during the past year have been notably upbeat. Boeing President Harry Stonecipher has been among the company leaders continuing to promote the notion that workable solutions are available to every matter on a volatile slate of issues ranging from pensions and job security to flexible work schedules and health-care costs.

But union leaders' emphasis on cooperation now is giving way to tougher public rhetoric, and some company officials have begun sending cautionary signals about the prospects for smooth progress.

The Seattle-based company's last effort to negotiate a machinists contract ended with a 69-day strike in 1995. Investors fear a strike this year could set back Boeing's nascent effort to recover from a run of poor performance in its huge commercial-jet division.

Dick Schneider, lead negotiator for the machinists, said that despite the atmosphere of goodwill in talks so far, "right now we are just oceans and oceans and oceans apart" on a slate of major issues. In the case of the pension dispute, he said, "I guarantee you, it's a strike issue."

Close observers have noted that the pension matter is dear to the interests of the union's top leaders, who have played an important role in maintaining a cooperative tone between the company and the powerful union districts and locals in Washington state, Oregon and Kansas. Even within the union, activists in the Seattle area have pressed a particularly aggressive "take-it-back" campaign that calls for major Boeing concessions on every issue.

The giant pension fund at Boeing is significantly overfunded, with about $11 bil-

Please Turn to Page A6, Column 3

Continued From Page A3

lion in liabilities, enabling the company to meet its commitments to retirees without contributing funds annually.

Retirement Benefits

Union leaders said the retirement benefit available to workers would increase significantly if the union took control. They also charge that the surplus funds are at risk of being raided should another company one day seek to buy Boeing.

Boeing officials maintain that placing the funds with the union wouldn't result in any increased retiree benefit and would dilute the interests of Boeing employees because the funds would be pooled with those for other employee groups. In one recent internal memo, Boeing Vice President and lead negotiator Jerry Calhoun also said the switch to union control would add to company costs for funding a plan.

People with expertise in the pension matter have suggested Boeing could be forced to spend $45 million or more annually for years to meet its contract commitments, if fund control changes.

Issue of Jobs Creation

Mr. Stonecipher said recently that the company doesn't consider any of the issues "as a strike issue, and the union shouldn't consider them as such either." For example, he said Boeing's call for new language allowing the company greater flexibility in scheduling workers has been widely misunderstood. Boeing wants to be able to run certain parts of its operations all day every day without paying overtime.

Mr. Stonecipher said Boeing hasn't suggested that it should be able to impose weekend work on employees who are unwilling, and he said hundreds of new jobs could be created for union members by such a change.

The union's Mr. Schneider expressed skepticism over Mr. Stonecipher's view of compromise on any issue. He said union members believe any change in rules calling for overtime pay for weekend work would set a dangerous precedent.

Bill Johnson, president of the largest union district in Seattle, said he continues to see job-security issues as among the most difficult. He said the union believes it is suffering as many as 7,000 job losses from outsourcing and that members were duped by the company's failure to live up to language over a shared role in subcontracting decisions that was included in the 1995 agreement.

With 620 jetliners to deliver this year, Boeing can't afford a strike, Mr. Johnson said, adding that "we're going to cram subcontracting language down their throat."

THE WALL STREET JOURNAL
FRIDAY, AUGUST 13, 1999