

#NeverAgain

By Lee S. Harris



Once again gun violence has shocked the conscience of America with the senseless loss of life in a south Florida high school. It is a sad truth that we have as a nation acted on so many consumer safety issues that claim the young – including protection of children in cars and sensible restrictions on teen drivers – while we have ignored the safety of our school students being murdered by gunmen.

Unfortunately, some think that action on guns for the public good, no matter how justified, is a part of a conspiracy to destroy our freedom. In fact, we have walked gun safety protection backwards since I was in the 101 California office tower during the July 1, 1993 mass shooting in San Francisco.

I will never forget the people streaming into our office in the high rise from the floors above as they fled the gunman. The personal nature of gun violence was impressed upon me as I sat with a partner from Davis Wright Tremaine when he called the hospital about his legal secretary, who had been shot. He soon learned that she had died. Later, I looked down from our locked-down floor to see the body bags

neatly lined up on the street. It is a vision that will always be with me.

The mass murder at 101 California sparked a number of legal and legislative actions that were precursors to the Violent Crime Control and Law Enforcement Act, better known as the assault weapons ban. The Act took effect in 1994, but died a decade later with the expiration of a sunset provision and the refusal of Congress to extend the assault weapons ban. In 2005 Congress went further, passing the Protection of Lawful Commerce in Arms Act, federal legislation that absolves gun manufacturers from liability if a firearm is “misused” in a crime.

The PLCAA was a reaction to initial success in using the trial courts to reign in gun terror. State attorneys general across the country framed state civil actions as negligent marketing and public nuisance cases. Turning to the courts had the promise of encouraging market solutions to the epidemic of gun violence. Gun oriented economic and social groups fought this trend and pushed the PLCAA.

The most recent tragedy and the moving testimony by surviving high school students create the possibility of real movement. Social scientists have described sudden changes following a dramatic shift in public opinion as “regime change cascades.” These cascades are huge political upheavals that can quickly emerge, seemingly out of nowhere. In fact, these upheavals happen due to the concurrence of a number of events.

We may be on the verge of such a cascade with the confluence of the mass shootings and the eloquence of the high school survivors. Reactionary responses to the massacres, such as calls to arm teachers or fantasies of bystanders stopping active shooters by rushing unarmed into buildings, are being rejected and met with derision. Acceptance of the political status quo has also been weakened by a number of other unrelated events and scandals as revealed in the #MeToo movement and the ongoing investigations into foreign interference in our elections.

The question is, if there is sudden change of the political will, what is the best way to move?

Trial lawyers have provided an example that works. Holding companies responsible for the harm caused by problems with the products they make has saved lives and been a boon to public health. By making the price of a gun reflect its true social cost, the companies in the chain of commerce will be motivated to be more responsible in their marketing. Greater accountability would increase the price of guns enough that there would presumably fewer opportunities for impulse mass murders. A model could be the public health successes resulting from the Big Tobacco lawsuits of the 1990s, where states and people made ill from smoking tried to recoup health care costs by suing the tobacco industry.

Progress will only occur if and when public opinion cascades into a reversal of federal and state laws protecting gun violence. #MeToo needs to be joined by #NeverAgain. ■



Students evacuate after Feb. 14 mass shooting at Marjory Stoneman Douglas High School in Florida.

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