



**BRADY CENTER TO PREVENT GUN  
VIOLENCE**

**LEGAL ACTION PROJECT**

**LITIGATION DOCKET**

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## **LIABILITY SUITS AGAINST GUN MANUFACTURERS, DEALERS & OWNERS**

The Brady Center's Legal Action Project ("LAP") represents gun violence victims and assists litigating attorneys throughout the country in numerous suits that seek to reform the gun industry, while compensating victims, by holding gun manufacturers, dealers and owners legally accountable for their irresponsible conduct that contributes to gun violence.

### **INDIVIDUAL LAWSUITS CONCERNING NEGLIGENT GUN DISTRIBUTION**

**Arce & Lopez v. Badger Guns, et al.**, No. 10CV018530 (Circuit Court, Milwaukee County)

On October 28, 2010, the Brady Center filed a lawsuit in Wisconsin state court on behalf of two police officers against Badger Guns, a West Milwaukee, Wisconsin gun store that has led the nation in crime gun sales for several years. In May 2011 the trial judge denied Badger Guns' motion to dismiss, holding that the federal Protection of Lawful Commerce in Arms Act ("PLCAA") does not bar the suit. The case is now in discovery.

Officers Alejandro Arce and Jose Lopez III were shot while on duty on November 6, 2007, by Jose Veloz, a 15-year-old member of the Latin Kings gang, who fired a Taurus 9mm pistol that was purchased by fellow gang member Jose Fernandez from Badger Guns a mere eight days before the shooting. Thirteen days before buying the Taurus, Fernandez purchased another gun from Badger, along with two high-capacity 30 round magazines, and a flash suppressor, raising additional red flags about the Taurus sale.

Immediately before shooting the officers, Fernandez and Veloz shot two members of a rival gang. When they left the scene of the gang shooting, they fired at a car that Veloz later said he thought contained more members of the rival gang. The car was actually an unmarked police squad car carrying Arce, Lopez, and a third uninjured officer.

Officer Alejandro Arce was shot in the leg and Officer Jose Lopez III was shot in the shoulder. Both men have continued pain from the shootings.

Veloz stated that he and Fernandez smoked marijuana before the shootings. According to news reports, Fernandez has a history of drug and weapons charges, and he told police he uses drugs daily and has a heroin problem. At the scene of the shootings, police searched Fernandez and found more than 25.59 grams of cocaine, 12.55 grams of marijuana, and a set of keys belonging to a car parked nearby that had been reported stolen. Inside the car was a box of ammunition, a digital scale, 25.85 grams of marijuana, \$1,557 in cash, and several prescription narcotics.

Veloz was charged as an adult and sentenced to 60 years in state prison for the shootings. Fernandez was charged with several felonies and was sentenced to 24 years in state prison.

The last six Milwaukee police officers wounded by gunfire, including Officers Arce and Lopez, were shot with guns sold by Badger Guns or its predecessor, Badger Outdoors. Officer Vidal Colon was shot on April 11, 2009; Officers Graham Kunisch and Bryan Norberg were shot on June 9, 2009; and Officer James Jekanoski was shot on September 30, 2009.

The lawsuit on behalf of Officers Arce and Lopez alleges causes of action including negligence, civil conspiracy, and public nuisance.

On February 4, 2011, the Brady Center filed a brief in opposition to Badger Guns' motion to dismiss. The brief argued that the Protection of Lawful Commerce in Arms Act ("PLCAA") does not apply to the case since Badger violated gun laws, and that the Act is unconstitutional. Oral arguments were held on the motion to dismiss and on May 17, 2011, Milwaukee County Judge Timothy Dugan denied the motion, agreeing with Brady Center arguments that the PLCAA allows claims since Badger knowingly violated gun laws and negligently entrusted the gun. The judge did not rule on the issue of constitutionality of the PLCAA.

Pat Dunphy of the Brookfield, Wisconsin law firm of Cannon & Dunphy is serving as local co-counsel in the case.

**City of Gary v. Smith & Wesson Corp.**, No. 45D02-9908-CT-0355 (Lake Superior Court, East Chicago, Indiana)

On August 27, 1999, the City of Gary, Indiana, by its Mayor Scott L. King, filed a lawsuit against 21 gun manufacturers and distributors, 6 local dealers, and 3 trade associations. The City asserts claims for public nuisance and negligence, and seeks damages and injunctive relief. The trial court, the Indiana Court of Appeals, and the Supreme Court of Indiana have denied several motions to dismiss the case by the gun industry defendants, and in doing so these courts have established important precedents that gun manufacturers, distributors and dealers may be liable to municipalities for engaging in business practices that supply the criminal gun market, and that the federal Protection of Lawful Commerce in Arms Act does not immunize gun companies from all liability for their misconduct. One of numerous lawsuits brought by cities and counties against the gun industry, the case is now in the trial court.

The lawsuit was initiated after an undercover investigation by the Gary Police Department, conducted in June and July 1999, revealed the severity of the problem with negligent distribution of guns in Northern Indiana. During this investigation, undercover officers were able to make straw purchases of at least nine handguns and numerous boxes of ammunition for persons who openly declared to the gun store clerks they were convicted felons or juveniles. One clerk told an undercover officer that buying a gun for a convicted felon would be a straw purchase and would be illegal, but advised the officer to leave the store and return in ten minutes to make the purchase. The officer did so, and the clerk sold the gun to him. Clerks refused to make only four of the thirteen straw purchases attempted by the undercover officers.

Gary obtained the first settlement reached in any of the lawsuits brought by the cities and counties. On December 2, 1999, the City entered into an agreement settling all of its claims against one of the retailer defendants, Fetla's Trading Company. To end the suit against it, Fetla's agreed to pay \$10,000 to the City, to stop selling handguns as soon as its current inventory was exhausted, and to cooperate fully with the City in addressing its handgun violence problem.

On March 13, 2001, the trial court dismissed the trade associations from the case on jurisdictional grounds, ruling that the trade associations did not have sufficient contacts with the State of Indiana to be subject to personal jurisdiction there. The court also dismissed Gary's claims against the manufacturers on multiple grounds, concluding that Gary did not state claims recognized by Indiana law, that an Indiana statute preempted the claims, and the relief sought would violate the U.S. Constitution.

Gary then appealed the case to the Indiana Appellate Court, and the Appellate Court reversed the dismissal against certain gun dealers, allowing the case against those dealers to proceed. In the same decision, the court split 2-1 on whether to allow Gary's case against gun manufacturers, distributors and other dealers to go forward. In a lengthy, stinging dissent, Judge Patricia A. Riley held that Gary's entire case should proceed, stating, "The majority cannot reasonably contend that [the gun industry's alleged] 'willful, deliberate, reckless, and negligent' distribution of firearms is legislatively authorized....A city's foremost concern is the health and welfare of its citizens. Appellees [the gun industry] make and sell a product that is demonstrably devastating to that health and welfare." City of Gary v. Smith & Wesson, 2002 WL 31100648 (Sept. 20, 2002, Ind. App.).

Gary appealed the decision to the Indiana Supreme Court. On January 23, 2003, the Supreme Court agreed to hear an appeal as to whether Gary's suit against the gun manufacturers could go forward. Oral argument on the appeal was held on February 27, 2003, at which the Brady Center argued on behalf of the city. On December 23, 2003, the Indiana Supreme Court unanimously ruled that the City of Gary may proceed with its lawsuit against gun manufacturers and sellers. The Court reversed a lower court ruling dismissing the City's claims and rejected virtually every argument made by the industry against the suit.

On November 23, 2005, defendants filed a motion asking the court to dismiss the case against them under the federal shield law, the Protection of Lawful Commerce in Arms Act ("PLCAA"). Plaintiffs filed a response opposing the motion, arguing that the legislation does not apply and is unconstitutional, and the case should be allowed to move forward. A hearing on the motions was held on May 10, 2006. The Brady Center argued the case on behalf of the City.

On October 23, 2006, Judge Robert Pete declared the PLCAA unconstitutional, finding it violates the U.S. Constitution's guarantees of Due Process and Separation of Powers. The court held that the law "is clearly an act which was passed in response to pressure from the gun industry" and "laws that serve as a deprivation of existing rights are particularly unsuited to a democracy such as ours." This is the first court to find it unconstitutional.

Defendant gun manufacturers appealed and the Court of Appeals heard oral argument on October 1, 2007, at which the Brady Center and the Center for Constitutional Litigation argued for the City. On October 29, 2007, the court unanimously rejected defendants' arguments and remanded the case for trial. Defendants filed a motion to reconsider the ruling that the court denied on January 8, 2008. Defendants filed a petition seeking transfer of the case to the Indiana Supreme Court in February 2008 and the Brady Center filed a response to defendant's petition in March 2008. The Indiana Supreme Court issued its ruling on January 12, 2009, denying the petition for transfer, letting stand the appeals court ruling that the case was not barred by the Protection of Lawful Commerce in Arms Act.

In February 2007, defendant gun dealer Westforth Sports Inc. filed a motion for summary judgment in the trial court. The motion was stayed, pending discovery against Westforth. In November 2007, on the eve of depositions being taken in the case, Westforth entered into a confidential settlement with the City of Gary.

The Brady Center represents the City along with Tony Walker and Lukas Cohen of the Walker Law Group in Indiana.

**Gilland v. Sportsmen's Outpost, Inc.**, No. X04-HHD-CV09-5032765-S (Superior Court, Hartford, CT)

The Brady Center represents the family of Jennifer Magnano in a lawsuit against the Connecticut gun store that supplied her abusive husband with the gun used to kill her in 2007.

On July 13, 2007, Scott Magnano, an abusive man subject to multiple domestic violence restraining orders, entered a Wolcott, Connecticut gun shop, Sportsmen's Outpost, asked a lot of questions about guns and asked to see Glock handguns. A store manager concluded he was a "suspicious customer." Two days later, Magnano returned to the store wearing the same clothing, and again asked to see Glock handguns. He was shown handguns and corresponding ammunition by a store employee. Magnano did not provide identification or a state issued firearms permit. As he was subject to a restraining order, he could not pass a Brady background check, and he did not have a Connecticut state issued firearms permit. Nonetheless, he walked out of the store with a Glock 21 handgun and a 14 bullet magazine.

On August 23, 2007, Scott Magnano used the Glock handgun to murder Jennifer Magnano, his estranged wife. He came to her home, in violation of a restraining order, and struck her on the head with the handgun and then dragged her out of the house at gunpoint in front of her children. Scott pulled Jennifer by the hair towards the front steps of the home where he shot her multiple times, in the back and face at close range. David Magnano, following shortly behind them, found his mother collapsed on the stairs, checked her for a pulse, and found none. Scott fled in Jennifer's van and shortly thereafter shot himself in the head outside the vehicle.

The causes of action asserted in the complaint in the case against Sportsmen's Outpost and Mr. Cortigiano include negligence, negligent entrustment, and illegal sale.

Defendants filed a motion to dismiss, and on August 13, 2010 the Brady Center drafted an opposition to the motion. The court granted the motion to dismiss in May 2011, ruling that the case was barred by the PLCAA. The Brady Center appealed to the Connecticut Court of Appeals, who dismissed the case on November 16, 2011. The Brady Center plans to appeal to the Connecticut Supreme Court.

The Brady Center joins Robert D. Laurie and Elizabeth F. Ahlstrand of the SGL Law Group of West Hartford, CT, in representation on behalf of Richard Gilland Jr., Administrator of the Estate of Jennifer Magnano, and Steven R. Dembo, Guardian for Jennifer's children: David Magnano and Emily Magnano (n/k/a/ Emily Thibeault), and Jessica Rosenbeck.

**Kim v. Coxe**, No. 1-JU-08-761 (Superior Court for the State of Alaska, First Judicial District at Juneau).

The Brady Center represents the family of Simone Kim, who was killed by a drug-addicted criminal with a gun supplied by a Juneau, Alaska gun dealer. The case against the dealer is on appeal before the Supreme Court of Alaska.

On August 4, 2006, Simone Young Kim, a 26-year-old painter working in Juneau, Alaska, was shot and killed by Jason Coday. Coday was a felon, a methamphetamine user, and a fugitive from justice, having fled Nevada with numerous criminal charges pending against him and in breach of his conditions of release, who was prohibited by federal law from purchasing or possessing a firearm. Nonetheless, on August 2, 2006, he was able to walk into Rayco Sales, a gun shop in Juneau, Alaska owned by Ray Coxe, and walk out with a Ruger .22 rifle without submitting himself to a background check. Coday was able to do this because Coxe left him on the sales floor surrounded by unlocked firearms, and Coday simply left the store with the firearm of his choosing.

At Rayco Sales, Coday asked Coxe to see a Ruger rifle. Coxe allowed Coday to walk behind the counter to where the guns were, showed him a used Ruger .22 rifle, and informed him it was \$195. Coday asked how much a new gun would cost, and when Coxe showed him a catalogue and informed him of the price, Coday said he would think about it. Coxe believed that Coday was not familiar with guns, given the way he acted and handled the gun. Then Coxe went to another part of the store, leaving Coday unsupervised. Within minutes, Coday walked out of the store with the Ruger rifle, leaving two \$100 bills on the counter. Apparently there were no security measures that indicated when a customer or gun was leaving the store. Coxe also claimed that the two video recording systems in the store malfunctioned on August 2, 2006.

As early as August 1996, ATF specifically warned federal firearms license holders that “[f]ederal firearms licensees are experiencing a dramatic increase in firearms theft.” The ATF recommended that “to reduce your risk of experiencing firearms theft, some of the following security tips may be considered,” including:

- (1) Keep display case locked at all times.
- (2) Show only one firearm at a time to your customers.
- (3) Do not leave a customer unattended while handling a firearm.
- (4) Remove guns from direct customer access.
- (5) Use electronic security stickers or wires.
- (6) Keep counters and display cases locked.
- (7) Improve internal controls, with checks and balances.
- (8) Disable display firearms by removing firing pin or use/insert plastic ties.
- (9) Place mirrors in locations within the business to afford increased visibility.

Had Rayco followed even some of these recommendations, Coday would not have been able to obtain the Ruger rifle.

At some point later, Coday purchased a hacksaw and some ammunition. With the hacksaw he cut off several inches of the barrel of the gun, rendering it an illegal weapon. Then, on August 4, 2006, two days after he was able to take the gun from Rayco Sales, Coday used the rifle to shoot Simone Kim, a man he had never met or spoken to, in the head and body multiple times, killing him.

Shortly thereafter Coday was arrested. He was convicted of murder and sentenced to 99 years in prison.

The Brady Center's lawsuit, filed in August 2008 in Superior Court for the State of Alaska against Ray Coxe dba Rayco Sales, contends that the gun dealer is liable for Kim's death for negligently and potentially illegally providing the rifle to Coday.

On June 8, 2009, defendant moved for summary judgment and on January 28, 2010, the judge denied the motion. The court's opinion accepted all of the arguments presented in the Brady Center's opposition to motion for summary judgment, including that a jury could find that the gun dealer is liable for the murder using the gun, notwithstanding that it was used in a crime.

Discovery in the case is ongoing, and on August 20, 2009, Ray Coxe was deposed. At deposition, Coxe was asked why he still does not lock up long guns in his gun shop, Rayco Sales, despite ATF recommendations for safe gun storage and display by FFLs, and the fact that a long gun that was displayed unlocked in his store was used to kill Simone Kim. Coxe replied "Because it's just too much trouble." On January 29, 2010, a clerk who worked in the gun shop was deposed and stated that he urged Ray Coxe to lock up the guns at Rayco Sales but Coxe repeatedly refused to do so.

Defendant filed a motion for summary judgment under the Protection of Lawful Commerce in Arms Act. The Brady Center responded with an opposition to motion for summary judgment in February 2010. A hearing on the motion was held on May 7, 2010.

On October 7, 2010, the trial court dismissed the case against defendant Rayco Sales and Ray Coxe.

Even though a jury could find that Coxe illegally sold and negligently entrusted the gun to a criminal, the trial court incorrectly ruled that the PLCAA shielded Coxe from liability. The judge made incorrect factual and legal conclusions, among them stating that a jury was required to accept Coxe's version of events, and that the PLCAA prohibited the imposition of liability on the dealer. The trial judge's ruling runs counter to Alaska law, under which a jury should be allowed to find the facts of the case, and federal law, which Coxe violated by transferring the gun without a background check.

The Brady Center filed a brief in the Supreme Court of Alaska seeking a reversal of the lower court's decision on August 29, 2011.

Jonathan E. Lowy and Daniel R. Vice of the Brady Center are representing Kim's estate and family, along with Mark C. Choate of the Law Offices of Mark Choate in Juneau, Alaska.

**Kunisch & Norberg v. Badger Guns, et al.**, No. 10CV020655 (Circuit Court, Milwaukee County)

On December 6, 2010, the Brady Center filed a lawsuit against Badger Guns of West Milwaukee, Wisconsin, a top seller of crime guns in the nation. The suit was filed on behalf of Milwaukee police officers Bryan Norberg and Graham Kunisch. In June 2011 the trial judge denied Badger Guns' motion to dismiss, holding that the federal Protection of Lawful Commerce in Arms Act does not bar the suit. The case is now in discovery.

Officers Norberg and Kunisch were shot and seriously injured with a handgun sold by Badger Guns. The complaint, filed in the Circuit Court of Milwaukee County, alleges that Badger Guns sold the gun used to shoot the officers in a blatantly illegal "straw sale."

This is the second recent lawsuit filed by the Brady Center on behalf of Milwaukee police officers against Badger Guns. On October 28, 2010, Milwaukee officers Alejandro Arce and Jose Lopez III sued Badger Guns for unlawfully selling the gun used to injure them to a drug-using gang member days before they were shot.

The complaint alleges that Officers Norberg and Kunisch were shot with a Taurus PT140 Pro .40 caliber handgun sold by Badger Guns in a patently illegal transaction. In May, 2009, Julius C. Burton, 18, who could not legally buy a gun, picked out the handgun he wanted to buy while in the store with Jacob D. Collins, an unlawful drug user. Collins then illegally purchased the gun for Burton.

The complaint further alleges that Collins indicated to Badger Guns that he was not the actual buyer. It is unlawful to sell a firearm in a "straw sale" to someone who is not the actual buyer of the gun, but is purchasing it on behalf of another person. The complaint alleges that rather than terminate the sale and contact police about the attempted straw purchase, Badger Guns conspired with Collins to change his answer on the federal background check paperwork to claim falsely that he was the buyer of the gun. Badger Guns then sold Collins the firearms in an unlawful straw sale.

According to the complaint, operating under the names Badger Guns, Badger Outdoors, and Badger

Guns & Ammo, Badger has ranked as the No. 1 crime gun dealer in America, selling more guns traced to crime in a year than any other dealer. The filing contends that Badger has sold an average of more than one crime gun every day of the year - an average of more than 10 a week; has sold firearms in violation of state and federal laws and engaged in unlawful straw sales; has accounted for two-thirds of all the crime guns recovered in Milwaukee; and that in recent years, 90 percent of straw buyers prosecuted in Milwaukee purchased their guns at Badger. All told, Badger has sold more than 4,000 crime guns.

Badger filed a motion to dismiss, the Brady Center responded with a brief in opposition, and oral arguments on the motion to dismiss were held on June 9, 2011, at the Circuit Court of Milwaukee County before Judge Thomas R. Cooper. Judge Cooper denied Badgers' motion to dismiss, agreeing with Brady Center arguments that the PLCAA allows claims since Badger knowingly violated gun laws and negligently entrusted the gun used to injure the officers.

Patrick Dunphy of the Brookfield, Wisconsin law firm of Cannon & Dunphy is serving as co-counsel in the case with attorneys from the Brady Center.

**Shirley v. Glass, et al.**, No. 05CV92 (Cherokee County, Kansas District Court, Eleventh Judicial District).

The Brady Center represents Elizabeth Shirley, whose 8-year old son was killed with a gun allegedly sold in an illegal straw purchase by a Kansas gun dealer. After winning a precedent-setting decision in the Kansas Court of Appeals, the case is now before the Supreme Court of Kansas.

On the night of September 5, 2003, Russell Graham killed his 8-year-old son, Zeus, and then himself with a shotgun purchased for him that afternoon by a straw purchaser from Joe and Patsy George at Baxter Springs Gun & Pawn Shop.

Russell Graham was a prohibited purchaser due to a prior felony conviction for rape and attempted kidnapping and a domestic violence restraining order. On the morning of September 5, 2003, Russell Graham called Baxter Springs Gun & Pawn Shop to ask about shotguns. Later that day he was driven to the pawn shop by his grandmother, Imogene Glass. At the pawn shop, Graham and Glass were helped by owners Joe George and Patsy George. Graham asked to see the shotgun he was told about over the telephone and after examining it, he selected the shotgun for purchase. According to Glass, Graham told the Georges that he was a felon so Glass filled out the 4473. Glass, however, did not answer all of the questions on the form, including the question asking if she was the actual buyer or if she was buying the gun for someone else; the Georges filled out that section. Graham then paid for the shotgun in cash and left the store carrying it, along with ammunition he also bought.

At approximately 11:50 pm the night of the sale, Russell Graham called his estranged wife, and the mother of Zeus, Elizabeth Shirley, and told her that he could not get a shotgun on his own because of his felony conviction and restraining order, but that he purchased a shotgun that day with Glass's help. Graham told Shirley to come over or else Graham would kill Zeus; Graham stated that he was going to kill himself that night regardless. (On previous occasions Graham had beaten up Shirley after luring her

home.) Shirley called for help, then called Graham back, but got his answering machine. By that time Graham had killed Zeus and himself with the gun sold by the Georges.

The next day, law enforcement began to question the Georges. During subsequent meetings with ATF, the Georges claimed that Glass paid for the shotgun with a check. When ATF and the Georges discovered no check at the bank, Patsy George claimed to remember that Glass, not Graham, paid by cash. Further, the pawn shop videotapes all transactions, but when law enforcement inquired about the tape of the Graham/Glass sale, the Georges claimed that the day after the sale they discovered that the VCR was malfunctioning and the tape was destroyed. The Georges threw away the tape before it could be examined by law enforcement.

Elizabeth Shirley brought suit against Joe and Patsy George, Baxter Gun & Pawn, and Imogene Glass, claiming that they are liable for the shooting that foreseeably resulted from supplying Graham with a gun, under negligence, negligent entrustment, negligence per se, and conspiracy. The trial court granted summary judgment for the Georges and Baxter. Shirley has appealed that decision to the Court of Appeals of Kansas. The Brady Center joined the case on appeal. Oral arguments in the Kansas Court of Appeals were held on July 27, 2010.

On October 8, 2010, the Kansas Court of Appeals unanimously reversed the trial court's dismissal against defendants Baxter Springs Gun & Pawn Shop and Joe and Patsy George, finding that they may be liable to Elizabeth Shirley. The Court of Appeals held that the Georges' failure to produce the videotape from their shop's surveillance system could lead to an inference that they illegally sold the gun to Russell Graham. This is a precedent setting victory in Kansas, which had never before held that gun dealers may be held civilly responsible for shootings resulting from the negligent entrustment of firearms. The Court's ruling reversing the trial court allows the case to go to trial on the cause of action of negligent entrustment. However, as the Court upheld the dismissal of Shirley's negligence and negligence per se counts, the Brady Center sought review of those decisions in the Kansas Supreme Court. On November 2, 2010, we filed a Petition for Review before the Kansas Supreme Court, asking the court to hold that Elizabeth Shirley can recover under negligence and negligence per se theories of liability, as well as negligent entrustment, as the Court of Appeals ruled.

In September 2011, the Kansas Supreme Court agreed to consider whether the gun dealer may be liable in negligence and negligence per se. Argument is expected before the Kansas Supreme Court in the coming months.

Elizabeth Shirley is represented by Jonathan E. Lowy of the Brady Center and James R. Shetlar and Melanie Caro of the Overland Park, Kansas Law Offices of James R. Shetlar.

**Tuft & Hinckley v. Rocky Mountain Enterprises, Inc., et al.**, No. 080902325 (Salt Lake City, Utah, Third Judicial District Court)

The Brady Center represents Carolyn Tuft, who was shot and whose 15-year old daughter, Kirsten Hinckley, was killed in a mass shooting at a Salt Lake City shopping mall with a gun illegally sold by a

Utah gun dealer. After the Utah Supreme Court upheld the trial court's denial of the dealer's motion for summary judgment, the case is in discovery to prepare for trial.

On February 12, 2007, five people were killed and four were wounded by a gun-wielding 18-year-old, Sulejman Talovic, at the popular Trolley Square shopping mall in Salt Lake City, Utah. Among his victims were 15-year-old Kirsten Hinckley, who was killed, and her mother, Carolyn Tuft, who survived. Talovic was armed with a Mossberg 12-gauge pump action shotgun with a pistol grip, which he used to shot Kirsten, Carolyn, and all but one of his victims, and a Smith & Wesson .38 caliber five shot revolver.

Talovic wreaked all of this havoc in less than 10 minutes. He shot Carolyn Tuft and Kirsten Hinckley while they were shopping in a card shop. After shooting his victims, he fought a gun battle with police in the mall's hallways. Soon after, Talovic was killed by police while still in the mall.

The lawsuit seeks to recover for the wrongful death of Kirsten Hinckley and the personal injuries to Carolyn Tuft, and includes claims of negligence and creating a public nuisance. It was filed February 8, 2008, in the Third Judicial District Court in Salt Lake City, Utah.

The lawsuit contends that the gun dealer, Sportsman's Fast Cash Pawn in West Valley City, Utah, is liable because Talovic should never have had the pistol grip shotgun he used to shoot Kirsten and Carolyn. Talovic was able to buy the gun because the gun dealer violated federal law. Talovic purchased the pistol grip shotgun at issue in this lawsuit on November 13, 2006 from store clerk Westley Wayne Hill for \$201.48. Talovic, a Bosnian immigrant with resident alien status, was 18 years old at the time of the purchase. Under federal law, the pistol grip shotgun could not legally be sold to anyone who the seller had a reasonable basis to believe was under 21 because the shotgun was manufactured without a shoulder stock. The dealer knew that Talovic was 18 when he purchased the gun, although he claimed not to know that the law prohibited the purchase of a pistol grip shotgun to an 18-year-old.

Hill was indicted on one count of willful sale to a person under 21 years of age of a firearm that is not a rifle or a shotgun and one count of failure to make appropriate entry and maintain required records because Hill failed to fully complete an ATF form required when selling a firearm to an individual with resident alien status.

On November 30, 2007, Hill pled guilty to one count of failure to make appropriate entry and maintain required records because he knowingly failed to complete question 20(b) of ATF Form 4473 when selling a firearm to a resident alien, a violation of Title 18, United States Code, Sections 922(m) and 924(a)(3)(B). The count of willful sale to a person under 21 of a firearm that is not a rifle or shotgun, knowing or having reasonable cause to believe that the purchaser is under 21, in violation of Title 18, United States Code, Sections 922(b)(1) and 924(a)(1)(D), was dismissed. Hill was sentenced to 12 months probation and a \$500 fine.

On September 25, 2008, defendants filed a motion to dismiss. District Judge Glenn Iwasaki heard arguments on the motion on February 2, 2009, with the Brady Center arguing that the case should proceed to trial. Judge Iwasaki took the matter under consideration and issued his ruling on March 4, 2009, denying defendant's motion to dismiss and ruling that a lawsuit against the pawn shop may proceed to trial.

On February 14, 2011, the Brady Center argued against a motion for summary judgment that sought to dismiss the case. On February 28, 2011, Judge Glenn Iwasaki denied the pawnshop's motion for summary judgment, ruling instead that Carolyn Tuft's case against the gun shop may proceed to trial. The court ruled that Tuft presented sufficient facts to allow a jury to decide whether the shop violated federal law by selling Talovic the gun.

The February 28 ruling follows rulings in other cases that have allowed cases against gun sellers who supply firearms to criminals to proceed to trial. More than a dozen courts in recent years have denied motions by gun sellers to dismiss cases seeking to hold them liable for supplying guns to criminals or dangerous persons.

The gun shop appealed the February 28, 2011 decision to the Utah Supreme Court. In June 2011, the Utah Supreme Court denied the gun shop's appeal, clearing the way for the lawsuit to proceed toward trial.

Carolyn Tuft and Kirsten Hinckley are represented by Jonathan E. Lowy and Daniel R. Vice of the Brady Center and Mark J. Williams of the Salt Lake City, Utah firm of Jones, Waldo, Holbrook & McDonough.

**Williams v. Beemiller, Inc. et al.**, No. I2005-7056 (N.Y. S. Ct., Erie County)

The Brady Center represents Daniel Williams, who was shot in Buffalo, New York with a gun that was sold as part of an 87 gun purchase by an Ohio gun dealer to a gun trafficking ring. After the trial court dismissed the lawsuit against the dealer, distributor and manufacturer that supplied him, the case is on appeal in New York state court.

On July 28, 2005, the Brady Center filed a lawsuit on behalf of Daniel Williams, who was 16 when he was shot in the stomach and severely wounded as he played basketball on August 16, 2003 at his home in Buffalo, New York. The suit seeks to recover damages from the gun companies who negligently enabled known gang member, Cornell Caldwell, to obtain the gun and shoot Williams.

Caldwell obtained one of the hundreds of guns trafficked to Buffalo from Ohio by notorious gunrunner James Nigel Bostic. The *Buffalo News* reported that between May and October 2000, Bostic purchased at least 250 guns from gun dealer Charlie Brown, and other gun sellers, at gun shows in Dayton, Ohio. Bostic traveled to Ohio, which, unlike New York, does not require a license to purchase a gun or impose a waiting period, to buy mainly Hi-Point Saturday Night Special handguns for under \$100 a piece, then sold them for two to three times the price on the streets of Buffalo.

The suit alleges that gun dealer Charlie Brown was negligent in selling Bostic and his straw purchasers 190 Saturday Night Special handguns. It also alleges that Bostic and his girlfriend, Kimberly Upshaw,

purchased guns from Brown on five occasions, including a purchase of 87 handguns, one of which was the handgun used to shoot and injure Williams. The suit alleges as well that Bostic sometimes used girlfriends to purchase guns for him in order to avoid being the purchaser of record, however, Bostic selected the guns and paid for them in cash.

Brown, the President of MKS Supply, and sole distributor of Hi-Point firearms, completed the sales of 190 handguns to Bostic and his straw purchaser even when it should have been obvious that the guns were headed for the streets. This is not the only time Brown has made sales to traffickers - in addition to the guns recovered in Buffalo, 630 guns sold by Brown were recovered in connection with crime in New York City, and a semiautomatic rifle sold by Brown was used in the 1999 Columbine High school massacre.

The lawsuit includes claims against Brown, MKS Supply, Bostic, Upshaw, and Hi-Point, the maker of the gun used to shoot Williams, for negligence and helping to create a public nuisance.

Despite Brown's record, the U.S. Department of Justice did not file any charges against him and ATF has not revoked his license. Weak federal laws make it extremely difficult for ATF to take action against negligent gun dealers. Hi-Point continued to supply Brown with Saturday Night Specials.

Williams was shot as he prepared to enter his junior year at McKinley High School where he was a good student and star point guard on the basketball team. As Williams picked up a basketball, a red Volkswagen Jetta drove up to him while the front-seat passenger stuck a gun out the driver's window and fired it at Williams, shooting him in the stomach. The shooter's car fled the scene, but police apprehended the shooter, Cornell Caldwell, with a Hi-Point 9mm semi-automatic pistol. Caldwell shot Williams mistakenly thinking he was a rival gang member.

The carnage wrought by Bostic's trafficking ring was the subject of a four-part series in the *Buffalo News*, "*The Damage Done*," in June 2005. The series exposed the deadly role that gun trafficking and the gun industry play in supplying firearms to dangerous criminals and focused on the scores of guns supplied by Brown and other Ohio gun dealers to Bostic.

On November 29, 2005, Beemiller, MKS and Charles Brown removed the case to federal court. Plaintiffs moved for remand on December 23, 2005, and on September 21, 2006, the court remanded the case back to state court. The court also directed Plaintiffs be awarded attorney fees for Defendants' "spurious" removal. Defendants appealed the ruling to the Second Circuit Court of Appeals and on April 30, 2008 arguments were held before the Second Circuit over the lower court's ruling sending the case back to state court and awarding fees to Plaintiff. The Second Circuit reversed the federal trial court's order sending the case back to state court because the federal judge used the wrong standard in deciding the issue. The case went back to the federal trial judge, U.S. District Court Judge William M. Skretney, who, on June 25, 2009, ruled that the case should be sent back to state court and that the gun dealer should pay costs for improperly removing the case to federal court.

In a motion to dismiss filed in November 2009, the defendants claim that they should be immunized from liability for their wrongdoing by the federal Protection of Lawful Commerce in Arms Act. The Brady Center responded with a brief that again urged the court to reject the gun defendants' motion and

allow the case to proceed to trial. The brief points out that the Protection of Lawful Commerce in Arms Act does not shield these gun makers and sellers from liability for their unlawful conduct in supplying obvious gun traffickers with deadly weapons. The brief also urges the court to strike down this unprecedented, special interest law as an unconstitutional effort to strip away the judiciary's power to decide cases that are valid under state law. Arguments on the motion to dismiss were held on April 26, 2010. The judge dismissed the lawsuit. On May 26, 2011, we filed a notice of appeal with the Appellate Division of the Supreme Court of New York and submitted our opening brief in September 2011.

Williams is represented by attorneys with the Brady Center and Terrence M. Connors of the Buffalo law firm of Connors & Vilardo, LLP.

### **IMPORTANT PAST CASES ON NEGLIGENT GUN DISTRIBUTION**

#### **Anderson v. Bryco Arms Corp.**, No. 00-L-007476 (Circuit Court, Cook County, Illinois)

On June 29, 2000, almost one year after white supremacist Benjamin Nathaniel Smith's three-day shooting rampage in which he targeted racial and religious minorities in Illinois and Indiana, the Brady Center announced the filing of a civil lawsuit on behalf of victims of the Smith shootings. The Brady Center filed the lawsuit on behalf of Reverend Stephen Anderson, Steven Kuo and Hillel Goldstein, who were all injured in the shootings, and Mrs. Ricky Byrdsong, widow of Ricky Brydsong, Ricky Byrdsong's children and the family of Won-Joon Yoon. Both Ricky Byrdsong and Won-Joon Yoon were fatally wounded. The plaintiffs brought claims of negligence and creating a public nuisance against the parties that armed Smith, including gun manufacturer Bryco Arms, an Illinois gun shop, and a gun trafficker.

On the weekend of July 4, 1999, the nation witnessed a horrible rampage of hate-motivated gun violence. Over the course of three days, Benjamin Nathaniel Smith drove across Illinois and Indiana, randomly targeting African-Americans, Asian-Americans and Jews. From Chicago to Skokie, to Springfield to Decatur, to Urbana to Bloomington – he left two dead and nine wounded in three days of shooting.

Smith, a follower of the white supremacist World Church of the Creator, attempted to purchase guns from a federally licensed gun dealer in Peoria Heights, Illinois in June 1999. Smith was turned down when a background check turned up an outstanding domestic violence restraining order against Smith, making him a prohibited purchaser. Smith then turned to classified ads in a local paper, where he saw Donald Fiessinger's ads for guns for sale from his home. Fiessinger would routinely buy handguns – usually cheap "Saturday Night Specials," popular with criminals due to their relatively small size and low cost – from the Old Prairie Trading Post in Pekin, Illinois, and then re-sell them. Over a two-year period, Old Prairie sold 72 guns to Fiessinger, yet the gun store never questioned whether or not these weapons – which have little collector's value – were for his personal use. Smith purchased two handguns from Fiessinger – including a Bryco .380 – with no questions asked. He then commenced his shooting spree.

The case against Bryco Arms Corp. was based on Bryco's intentional and reckless sales and distribution practices. Bryco manufactures and sells guns, such as a gun used by Smith in his shooting spree, without taking reasonable steps to ensure that its guns are not diverted to prohibited purchasers. Bryco has long known of the grave and highly foreseeable risks posed when handguns are sold without reasonable measures to keep them out of the hands of prohibited purchasers and those willing to sell them guns. Bryco also knows or should know that its gun distribution methods result in the frequent diversion of guns to prohibited purchasers, yet it has not taken reasonable actions to prevent this

Bryco Arms moved to dismiss on October 11, 2000. Old Prairie Trading Post also moved to dismiss on October 26, 2000, asserting that it cannot be held liable for a lawful sale of a handgun. On April 10, 2002, the court ruled that the case should not be dismissed, allowing a claim for creating a public nuisance to go forward against all defendants and a claim for negligence to continue against the dealer.

On October 19, 2000, the gun dealer, Robert Hayes of Old Prairie, was indicted on thirteen counts of violating federal firearms sales laws. The seventh count in the indictment concerned the Bryco .380 that Old Prairie illegally sold to Fiessinger, and that Fiessinger in turn illegally sold to Benjamin Smith. Hayes pled guilty to one count of making an illegal sale of a gun to Feissinger and was sentenced to two years of probation. Fiessinger also pled guilty to and was sentenced to ten months in prison and two years supervised release.

Fiessinger has failed to file an appearance in this case, and plaintiffs therefore have the right to get a default judgment against him. Hayes filed for bankruptcy, which automatically stayed the case against him in state court. Plaintiffs then asked the bankruptcy court to let the case proceed, and they issued a ruling allowing the case to proceed against Hayes in state court. The parties continued to engage in discovery and the Brady Center took depositions of representatives of Bryco Arms, Inc. and B.L. Jennings, Bryco's distributor, as well as Fiessinger and Hayes.

Bryco Arms, Inc. and B.L. Jennings thereafter filed for bankruptcy protection, requiring the case against them to be stayed.

Plaintiffs recovered monies from the bankruptcy estate of Robert Hayes in 2006, ending the case. The family of Won-Jon Yoon donated the monies to a scholarship fund set up in Won-Jon Yoon's name at Indiana University.

The Center was assisted in the filing of the suit by Sachnoff & Weaver. Co-counsel in the suit were Joseph A. Power, Jr. of Power Rogers and Smith in Chicago and Jin Han of Jin Han & Associates, for the estate of Won-Joon Yoon.

**Arnold v. American Security et al.**, No. 3118 (Court of Common Pleas of Philadelphia County)

On July 28, 2005, the Brady Center filed a lawsuit on behalf of the family of Faheem Thomas-Childs, a 10-year-old Philadelphia boy who was shot and killed as he walked through the gates of his elementary school. The suit sought to recover damages from the gun companies who negligently supplied firearms to gang members who shot Faheem with a Ruger handgun.

On the morning of February 11, 2004, Faheem was walking to Thomas M. Peirce Elementary School, at 2300 W. Cambria Street in Philadelphia, where he attended third-grade, when a gun battle broke out between gangs. As bullets flew around them, students ran screaming to the school. A crossing guard who tried to herd the children was shot in the foot and Faheem was shot in the face. He was able to speak to police, but then lost consciousness. After remaining on life support for five days, he died on February 16, 2004.

The suit alleged that American Gun and Lock (f/k/a Fishtown Lock and Gun), of Girard Avenue in Philadelphia, negligently sold the murder weapon in a straw sale to gang members. A criminal, who was not permitted to buy guns, accompanied the straw purchaser to the store, picked out the gun, and supplied the money to the straw purchaser who did the paperwork for the transaction. The store's clerk even charged a "handling fee" for the straw purchase, which the criminal paid. American Gun had sold guns to several other gun traffickers over the years.

The suit charged that American Gun negligently sold the handgun to a straw purchaser, and that the dealer had helped to create a public nuisance in Philadelphia through its reckless sales practices. American Gun has since gone out of business and has not responded to the Complaint against it.

The lawsuit also included claims against Sturm Ruger, the manufacturer of the gun who continued to supply American Gun without any reasonable conditions, even after the store had supplied other traffickers. Sturm Ruger does not require its dealers to follow industry guidelines for preventing straw sales.

On January 9, 2006, Sturm Ruger filed a motion asking the court to dismiss the case against it under the federal shield law, the "Protection of Lawful Commerce in Arms Act." Plaintiffs filed a response opposing the motion, arguing that the legislation does not apply and is unconstitutional, and the case should be allowed to move forward. On February 28, 2006, the U.S. Department of Justice filed a motion to intervene, arguing that the legislation is constitutional. On March 1, 2006, a hearing on the motions was held before Judge Jacqueline Allen of the Philadelphia Court of Common Pleas. The Brady Center argued on behalf of the plaintiffs.

On June 23, 2006, Judge Allen denied Sturm Ruger's motion to dismiss and ordered discovery to proceed. Ruger appealed Judge Allen's ruling to the Superior Court, which denied Ruger's request on September 22, 2006. The ruling allowed Plaintiffs to begin to prepare for trial, despite passage of the Commerce in Arms Act.

In March 2007 the case ended in a settlement between the parties.

Faheem's family was represented by attorneys with the Brady Center and by the Philadelphia firm Anapol, Schwartz, Weiss, Cohan, Feldman and Smalley.

**Conrad Johnson, et al. v. Bull's Eye Shooter Supply, et al.** (Superior Court of the State Of Washington, Pierce County)

On behalf of the families of several victims of the D.C. area sniper, on January 16, 2003, the Brady Center filed a civil lawsuit against the snipers, the gun dealer that supplied one of the guns used by the snipers, and the gun manufacturer who made the gun. The case resulted in a \$2.5 million settlement for the plaintiffs. The settlement was a major breakthrough, representing the first time a gun manufacturer paid damages for negligence leading to criminal gun violence.

John Allen Muhammad and John Lee Malvo were convicted in connection with a series of sniper shootings using a Bushmaster XM-15 E2S .223 caliber semi-automatic assault rifle in the fall of 2002. Muhammad and Malvo obtained the Bushmaster assault rifle through the gross negligence of gun dealer Bull's Eye Shooter Supply and gun manufacturer Bushmaster Firearms. Bull's Eye ran its gun store in such a grossly negligent manner that scores of its guns routinely "disappeared" from its store and it kept such shoddy records that it could not even account for the Bushmaster assault rifle used in the sniper shootings when asked by federal agents for records of sale for the weapon. At least 238 guns "disappeared" from Bull's Eye over just three years.

Bushmaster deliberately continued to utilize Bull's Eye as a Bushmaster gun dealer and supplied it with as many guns as Bull's Eye wanted, despite years of audits by the Bureau of Alcohol, Tobacco and Firearms showing that Bull's Eye had dozens of missing guns. If Bull's Eye and Bushmaster had acted responsibly in the sale of their guns, Muhammad and Malvo would not have been able to obtain the assault rifle they needed to carry out their shootings, as they were prohibited purchasers under federal law. This suit sought damages for the injuries caused by the gun industry's negligence and the public nuisance their negligence created as well as the intentional acts of Muhammad and Malvo.

This suit had two main claims. Claims of negligence were asserted against the gun industry defendants – Bull's Eye Shooter Supply for its grossly negligent sales practices that allowed dozens of guns to "disappear" from its store and Bushmaster for deliberately using such an irresponsible dealer to sell its assault weapons. This claim is based on the common law of negligence that requires all persons and companies to act reasonably and responsibly in the conduct of their affairs. Also named were the individuals who own Bull's Eye (Brian D. Borgelt and Charles N. Carr) and currently unknown "John Doe" distributor(s) that may have distributed the Bushmaster assault rifle used in the sniper shootings.

The second legal claim was that the actions of Bull's Eye, Bushmaster and the other gun industry defendants created a public nuisance. The suit alleges that the gun industry defendants created a public nuisance by distributing and selling guns in such a grossly negligent manner that dozens of guns routinely "disappear" from Bull's Eye retail store, to be used by violent criminals like Muhammad and Malvo to terrorize the public.

The plaintiffs included the families of sniper victims Conrad Johnson, James L. "Sonny" Buchanan, Jr., Hong Im Ballenger, Premkumar Walekar, Sarah Ramos and Linda Franklin, as well as two victims who survived the shooting, Rupinder "Benny" Oberoi and 13-year old Iran Brown.

In addition to seeking compensation for the sniper victims' families, this suit sought to make it costly for reckless gun dealers and manufacturers to continue to do "business as usual" when scores of guns

routinely “disappear” from a store like Bull’s Eye into the hands of criminals like Muhammad and Malvo. While Muhammad and Malvo were caught and convicted, Bull’s Eye and Bushmaster continued to sell guns in the same irresponsible manner as before the sniper shootings. The plaintiffs not only sought monetary damages, but also asked the court to order that Bull’s Eye and Bushmaster abate the public nuisance they have created by acting responsibly in their sales of guns.

Both Bushmaster and Bull’s Eye moved to dismiss plaintiffs’ case, arguing that they are immune from responsibility for supplying guns to criminals. The Brady Center responded to these motions, and on June 27, 2003, the court denied both motions to dismiss. In ruling that plaintiffs’ case should proceed to trial, the court specifically noted that “[t]he facts in the present case indicate that a high degree of risk of harm to plaintiffs was created by Bull’s Eye Shooter Supply’s allegedly reckless or incompetent conduct in distributing firearms.”

Bushmaster then filed a Motion to Reconsider the court’s ruling on July 7, 2003. The court also denied this motion on August 11, 2003. Bushmaster then filed a Motion for Discretionary Review with the appeals court. The Center filed an opposition to this on August 26, 2003. On October 3, 2003, the Commissioner of the appeals court denied this motion. Bushmaster failed to appeal this denial, essentially conceding that the case should proceed to trial.

Discovery in the case continued and a trial date was set for April 4, 2005. On September 8, 2004, Bushmaster and Bull’s Eye entered into a mediation session. The negotiations resulted in Bull’s Eye agreeing to pay \$2 million and Bushmaster agreeing to pay the balance of its \$1 million insurance policy, \$568,000, in damages to the families. Bushmaster will also educate its dealers on safer business practices. The settlement is the first time a gun manufacturer has ever paid damages for negligence leading to criminal violence, and the largest settlement by a gun dealer ever.

It was reported that since the lawsuit, Bull’s Eye has instituted 14 new security measures as well as training new staff.

The Brady Center served as co-counsel in the case with the renowned Washington State law firm Luvera, Barnett, Brindley, Beninger & Cunningham.

**Hernandez v. Kahr Arms, Inc.**, No. 021747C (Worcester, Massachusetts Superior Court)

The Brady Center represented the family of Danny Guzman, who was killed with a gun taken by a drug-addicted employee of gun manufacturer Kahr Arms. The case resulted in an historic settlement, announced on July 26, 2011, in which Kahr Arms agreed to pay nearly \$600,000 to end the case. The settlement is the largest damages payment ever by a gun manufacturer charged with negligence leading to the criminal use of a gun. The settlement is doubly significant, as it was made after enactment of “the Protection of Lawful Commerce in Arms Act,” a federal gun law that the gun industry contends shields it from most liability cases. By agreeing to the settlement, Kahr Arms averted a pending motion challenging the applicability and constitutionality of the Act.

On December 24, 1999, Danny Guzman, an innocent bystander, was shot and killed in front of a nightclub in Worcester, Massachusetts. Six days later, police recovered a 9-mm Kahr Arms handgun without a serial number behind an apartment building, near where Mr. Guzman was shot. The loaded gun had been found by a four-year-old child who lives in the building. Ballistics tests determined that the gun was the one that had been used to kill Mr. Guzman.

Later investigation revealed that the gun was one of several stolen from Kahr Arms by Kahr employees with criminal records. One of the employees, Mark Cronin, had been hired by Kahr to work in its Worcester manufacturing facility, despite the fact that he had a history of drug addiction, theft to support that addiction, alcohol abuse, and violence, including several assault and battery charges. Police determined that Cronin had stolen guns from Kahr even before the weapons had serial numbers stamped on them, and resold them to criminals in exchange for money and drugs. In March 2000, police arrested Cronin, who pled guilty to the gun thefts.

The Brady Center served as co-counsel for Danny's family in this lawsuit, which alleged that Kahr was negligent and created a public and private nuisance because of Kahr's complete failure to screen its employees or secure its facility to prevent repeated thefts of unmarked guns. The case has exposed the lack of security, record keeping and other reasonable safeguards at Kahr Arms. The gun manufacturer conducted no criminal or general background checks on employees, despite the fact that Cronin's criminal history could have been easily uncovered from public court records. Nor did the company test prospective or existing employees for drugs. Kahr Arms had no metal detectors, x-ray machines, security cameras or other similar devices to monitor the facility or determine if employees were stealing, nor did they check employees at the end of their shifts. The company did not even have security guards.

Furthermore, Kahr Arms had no inventory tracking system to determine when weapons or parts were missing. From February 1998 to February 1999, approximately 16 shipments from Kahr Arms to legal buyers did not arrive at their destinations, nor were those weapons ever located. After an inventory tracking system was implemented, weapons were found to be missing from the facility when the inventory indicated they were still present. Worcester Police Captain Paul F. Campbell classified the record keeping at the facility as so "shoddy" that it was possible to remove weapons without detection.

Kahr Arms' CEO is Kook Jin Moon, son of the Reverend Sun Myung Moon, leader of the Unification Church. The suit also names the corporate parents and affiliates of Kahr and others involved in the theft of the gun and the shooting of Danny Guzman. This includes Kahr Arms employee Mark Cronin, a man with a criminal record who stole the gun from Kahr Arms's manufacturing facility and sold it to Robert Jachimczyk in exchange for drugs. The suit also names Jachimczyk, who plaintiffs believe transferred the gun to Edwin Novas, who is also named in the suit for shooting and killing Danny Guzman.

The complaint was filed on August 15, 2002. Motions to dismiss were then filed by each of the defendants. The plaintiffs filed their opposition, with the Brady Center's assistance, on February 12,

2003. On April 7, 2003, the court denied the motions to dismiss, allowing plaintiffs' claims for negligence and public nuisance to go forward. The ruling sends a clear signal to gun makers that they will pay the consequences if they run their manufacturing plants in a negligent and reckless manner.

The case proceeded to discovery and trial was set for January 2006. Defendants then filed a motion to dismiss the case on November 3, 2005. Defendants argued that the new "Protection of Lawful Commerce in Arms Act" requires the case to be thrown out. Plaintiffs filed a response opposing the motion, arguing that the legislation does not apply and the case should be allowed to move forward. On February 9, 2006, the Department of Justice filed a motion to intervene, arguing that the legislation is constitutional. Before a hearing on the motions could be held on March 27, 2006, the parties requested a continuance.

In July 2011, Kahr Arms agreed to settle the case for nearly \$600,000. The settlement is the largest damages payment ever by a gun manufacturer for negligence leading to the criminal use of a gun. The settlement is also significant because it was made after enactment of the PLCAA.

The plaintiff were also represented by Hector E. Piñeiro, Esq. and Robert H. Beadel, Esq. of Worcester, Massachusetts.

**Hopper v. Wal-Mart Stores, Inc.**, Civ.-98-C-1496-NE (U.S. District Court for the Northern District of Alabama)

The Brady Center assisted in a lawsuit that resulted in the payment of a substantial settlement by a store that negligently sold a firearm despite the purchaser's acknowledgment that he was prohibited by law from making the purchase. The case was filed on June 11, 1998, in federal court in Alabama, on behalf of the family of the late Sherry Lee White. The plaintiffs sued Wal-Mart for negligently selling a shotgun to James Michael White – Ms. White's estranged husband – who was under a domestic violence restraining order and was therefore prohibited from buying a firearm under federal law. On April 8, 1998, within two weeks of buying the shotgun, Mr. White used it to murder his estranged wife and her brother. Wal-Mart sold Mr. White the gun despite the fact that he filled out the federal purchase form truthfully, indicating that he was "subject to a court order restraining [him] from harassing, stalking, or threatening an intimate partner." As a result, federal law prohibited Mr. White from buying the gun. Nonetheless, after a Wal-Mart clerk *and* supervisor reviewed and signed the form, Mr. White was sold the murder weapon. Because of similar oversights, Wal-Mart has been sued repeatedly for negligent firearm sales, failure to properly train its gun sales staff, and negligent supervision.

On February 22, 2000, the court entered an order approving a voluntary settlement of the case. The Associated Press reported that Wal-Mart agreed in the settlement to pay \$16 million to the 2-year old and 5-year old daughters of the late Sherry Lee White.

Mark Craig, of Craig & Craig in Decatur, Alabama, and Nat Bryan of Marsh, Rickard, & Bryan, P.C. of Birmingham, Alabama, were counsel of record for the plaintiffs.

**Jefferson v. Amadeo Rossi, S.A.** (Court of Common Pleas of Philadelphia County)

On April 18, 2001, the Brady Center filed suit on behalf of Tennille Jefferson, the mother of a seven-year-old boy killed by another child with a gun. The suit charged that this tragic shooting occurred because the gun was negligently distributed and sold through an irresponsible gun dealer to an illegal drug user and gun trafficker.

On April 19, 1999, Nafis Jefferson was playing near his home in South Philadelphia. Other children playing along the same street found a gun lying under an abandoned car. The gun was a .44 caliber revolver, Rossi model 720. One of the children picked up the gun and fired it. The bullet struck Nafis in the head, and he died approximately six hours later at the hospital.

The complaint, filed on April 18, 2001, includes claims under the law of negligent distribution and public nuisance. The defendants include Rossi, Taurus, Interarms, Sauers Trading, and Perry Bruce. The suit alleges that this shooting occurred because the Rossi revolver was negligently distributed through an irresponsible gun dealer to an illegal gun trafficker. The dealer does business in Williamsport, PA, under the name Sauers Trading. At the time Sauers Trading sold this gun, Williamsport was a center for illegal gun trafficking and in particular a source of guns for criminal use in Philadelphia. The Rossi revolver was one of at least ten guns that Sauers Trading sold to Perry Bruce, an illegal drug user engaging in an illegal gun trafficking business supplying weapons to convicted criminals, drug users and dealers, and others with criminal intent who could not purchase guns legally or did not want to do so in order to avoid a paper trail connecting them to the gun.

Sauers Trading knew or should have known, based on the circumstances of the sale, that trafficker Perry Bruce was not buying these guns for his personal use and was illegally trafficking them to others. Several months after buying the Rossi revolver and illegally re-selling it or trading it for drugs, Bruce was arrested for violating federal gun laws, and he was eventually sentenced to 46 months imprisonment for illegally trafficking guns including the Rossi revolver. Guns trafficked by Bruce have been recovered after being used in crimes. Neither Rossi nor the wholesale distributor of the gun, Interarms, took any of the reasonable and responsible steps they could have taken to keep the gun from flowing to the illegal market, illegal gun traffickers, and illegal gun users.

In May 2001, the defendants removed the case to the Eastern District of Pennsylvania federal court. In June 2001, Jefferson filed a motion to remand the case back to state court. In a victory for Jefferson, in January 2002, the Eastern District of Pennsylvania remanded the case back to the state court in Philadelphia for trial. Defendants then filed preliminary objections to plaintiffs' complaint, the Pennsylvania equivalent of a motion to dismiss. Defendants' motions to strike plaintiffs' claims were denied and plaintiffs were allowed to move forward with their case.

An amended complaint was filed on May 3, 2002. Legacy Sports then filed a motion for summary judgment. On May 16, 2003, the court denied Legacy Sport's motion.

During discovery the Brady Center deposed corporate representatives of Taurus and Interarms as well as the gun trafficker, Perry Bruce. Discovery ended in October 2003. Defendants Sauers and Interarms filed for summary judgment in November and December 2003. The Brady Center assisted in drafting responses for Jefferson. On January 29, 2004, Philadelphia Judge Nitza Quinones Alejandro rejected both motions for summary judgment, clearing the case for trial on July 16. On June 15, 2004, Taurus, Interarms and Legacy Sports were voluntarily dismissed from the case, and the trial date was postponed as Sauers Trading entered into settlement negotiations with plaintiff.

On August 20, 2004, the court approved a settlement between the parties. Sauers agreed to pay a confidential amount to Jefferson in exchange for being dismissed from the case. The *Philadelphia Inquirer* reported a settlement figure of \$850,000. The settlement will have nationwide implications for gun dealers who sell to straw buyers – transactions which occur everyday in gun shops around the country.

The Brady Center represented the plaintiff, Tennille Jefferson, with co-counsel Mark LeWinter of the law firm of Anapol, Schwartz, Weiss, Cohan, Feldman and Smalley P.C.

**Johnson v. Carter's Country**, No. 2008-56372 (District Court of Harris County, Texas).

The Brady Center represented Houston police officer Joslyn Johnson, whose husband, Houston police officer Rodney Johnson, was killed with a gun allegedly sold in an illegal straw purchase by Texas gun dealer Carter's Country. In April 2011 Carter's Country settled the lawsuit brought against it by the Johnson family.

On September 21, 2006, Houston Police Officer Rodney Johnson, 40, was shot and killed by Juan Quintero, 34, a felon and an illegal immigrant. Johnson stopped Quintero for speeding and placed him under arrest for not having a license. Quintero was patted down subsequent to arrest but Johnson missed a 9 mm Smith & Wesson handgun in Quintero's waistband. Quintero was then handcuffed and placed in the backseat of the patrol car when he used the gun to shoot Johnson seven times as the officer filled out a booking sheet. Four of the shots were to the back, three were to the head.

The complaint alleged that the murder weapon was illegally sold by Carter's Country, a prominent Texas gun dealer, to Quintero's wife, Theresa Lynn Quintero, in a straw sale. Juan Quintero, a prohibited purchaser, picked out the gun, but store employees allowed his wife, a U.S. citizen, to fill out the required paperwork for its purchase. Quintero was ineligible to buy a gun due to his status as a felon and an illegal immigrant. He pleaded guilty to indecency with a child in Harris County, Texas in 1999 and was deported to Mexico; he also had several DWI convictions. Quintero returned to Houston illegally after his guilty plea.

Quintero was sentenced to life in prison without parole for the murder of Officer Johnson.

Officer Rodney Johnson was a twelve-year veteran of the Houston Police Department at the time of his shooting. He earned two Lifesaving Awards and one Medal of Valor from the state of Texas. One of the awards was for saving children from a burning building.

Joslyn Johnson, individually and for the estate of Rodney Johnson, filed suit, seeking to recover for the wrongful death of Officer Rodney Johnson. The lawsuit included claims of negligence and negligence per se and was filed in the District Court of Harris County on September 22, 2008. In April 2011 Joslyn Johnson reached a settlement with the gun shop.

The Brady Center served as co-counsel in the case with local Houston attorney Ben Dominguez.

The Brady Center was co-counsel in a lawsuit against Carter's Country several years ago, in which a former sales clerk at Carter's testified that he had been told by management that when a prospective purchaser could not buy a gun because of his record, the clerk should ask if someone with a clean record could buy the gun for the prohibited purchaser – that is, it was suggested that he engage in straw sales. William Carter, the owner of Carter's, has been a leader among gun dealers nationwide.

**Lemongello and McGuire v. Will Jewelry and Loan, Sturm Ruger & Co., James Gray, Tammi Lea Songer, The Estate of Shuntez Everett**, Circuit Court of Kanawha County, Charleston, West Virginia

A lawsuit was filed on November 14, 2002, on behalf of two New Jersey law enforcement officers who were shot and seriously wounded while on duty. The officers were shot with a Sturm Ruger 9 mm semi-automatic pistol that was originally sold by a gun dealer to a gun trafficker in a straw purchase and multiple sale. Although law enforcement has informed Sturm Ruger and others in the gun industry for years that criminals and gun traffickers commonly obtain guns through multiple sales and straw purchases, both Sturm Ruger and the gun dealer have continued to utilize these dangerous business practices, and have profited from guns funneled into criminal hands, such as the gun utilized in this case. The case resulted in a \$1 million settlement for the plaintiffs. The settlement is the first time a gun seller has paid damages for its role in facilitating gun trafficking to criminals. The gun dealer also implemented a one-handgun-a-month rule in its shop to prevent future problems as a result of the lawsuit.

On January 12, 2001, Orange, New Jersey police officers were operating an undercover surveillance operation at a gas station that had been robbed repeatedly in recent months. A career criminal by the name of Shuntez Everett acted suspiciously as he walked up to the gas station, then turned away. Police Detective David Lemongello approached Everett a few blocks away to question him and Everett turned toward him and opened fire. Lemongello was hit in the chest and left arm and Everett fled. Other officers, including Kenneth McGuire, found Everett hiding beneath bushes in a nearby back yard. Everett began shooting again and McGuire was hit in the right abdomen and leg. McGuire and two other officers fired back and killed Everett.

Both McGuire and Lemongello survived but suffered serious, debilitating injuries.

Everett had been wanted for attempted murder and was previously arrested seven times for various charges including a weapons-related charge and conviction, so he could not have legally purchased a gun. However, he was able to obtain a gun through the underground market, specifically through the negligence of these defendants.

Gun trafficker James Gray traveled from New Jersey to West Virginia in order to purchase guns to be trafficked. On July 20, 2000, he and a local female companion, Tammi Lea Songer, visited Will Jewelry and Loan (“Will”), a pawnshop in South Charleston, West Virginia, and purchased one gun. Songer acted as a “straw purchaser” and bought the gun for Gray, as Gray was prohibited from legally purchasing guns as an out-of-state resident and a three-time convicted felon.

Gray and Songer returned to Will’s seventeen days later and purchased twelve more guns, which Songer bought and paid for with thousands of dollars in cash. Gray picked out guns for Songer to buy in full view of Will’s personnel – a clear signal that the twelve gun cash purchase was an illegal straw purchase. Gray paid Songer a bonus for acting as an illegal straw purchaser. One of the straw-purchased guns was the Sturm Ruger pistol later used to shoot Officers McGuire and Lemongello. Although Will’s personnel suspected that the gun purchases were illegal straw sales, they nonetheless completed the transaction. After the sale was completed and Will’s cash profit was ensured, Will’s then contacted the Bureau of Alcohol, Tobacco and firearms, (“ATF”) to report the suspicious sales. The ATF then contacted Songer, who agreed to assist the ATF in a sting operation that resulted in the capture of gun trafficker Gray. Although ATF was able to conduct a sting and arrest Gray, in the one and a half weeks it took ATF to set up its sting, Gray trafficked the 9 mm Sturm Ruger gun. The gun ultimately ended up in the New Jersey underground market in the hands of criminal Shuntez Everett, and was used to shoot Officers McGuire and Lemongello.

The legal theory behind the suit was that Will’s, the gun dealer, acted negligently in failing to detect and prevent suspect sales, including straw purchases and multiple sales. Will’s does not train its personnel to detect straw purchases or other high risk sales, and allows sales to be made in dubious situations such as suspected straw purchases, multiple sales and high-risk sales paid for with large quantities of cash. Sturm Ruger also acted negligently in not monitoring, training or preventing its distributors and dealers from engaging in straw purchases and multiple sales. As Sturm Ruger makes a profit from every straw sale, multiple sale and high-risk sale that is completed, Sturm Ruger does not require its distributors and dealers to screen for and refuse to engage in suspicious sales. Songer and Gray enabled Everett to be supplied with the means to injure Officers McGuire and Lemongello through their purchase and trafficking of the gun. The gun would not have been on the streets, nor in the shooter’s hands, but for the negligence of the defendants. These sales practices also created a public nuisance which endangered the public and caused the arming of a felon prohibited from possessing guns, and the shooting of Officers McGuire and Lemongello.

Sturm Ruger and Will each filed motions to dismiss the case. The Brady Center drafted plaintiffs’ opposition to these motions and represented the plaintiffs at the hearing on March 19, 2003. In a ruling from the bench, Judge Irene Berger denied both motions to dismiss, upholding the legal sufficiency of each of the officers’ claims against the pawnshop and Sturm Ruger. In her ruling delivered in open court,

Judge Berger emphasized that guns are particularly dangerous products and that it is reasonable to place the burden on gun manufacturers and sellers to reduce the risk of sales into the illegal market. *See Lemongello, et al. v. Will et al.*, 2003 WL 21488208 (W.Va. Cir. Ct. June 19, 2003).

Songer, the straw purchaser, was deposed and admitted that she made the purchases for a criminal gun trafficker, as plaintiffs alleged. She also testified that she was high on drugs when she made the purchases and that it would have been obvious to anyone waiting on her. If Will's employees had asked Songer any of the gun industry's recommended questions about her purchases, she would not have been able to answer them competently. The industry does not require dealers to ask such questions and Will's failed to do so. Portions of the deposition transcript are on file with the court as part of the agreed motion to dismiss Songer as a defendant. She was dismissed on January 29, 2004.

Employees of Will Jewelry & Loan were also deposed by the Brady Center. The employees admitted that Songer's purchase was suspicious and they should not have sold the guns to her because the circumstances of the sale made it likely that the guns were to be used illegally.

Shortly after their depositions, Will Jewelry & Loan made an offer to settle the case against them. In a landmark achievement, on June 23, 2004, the trial court approved payment of \$1 million from Will to plaintiffs in exchange for Will being dismissed from the case. This settlement is the first time a gun seller has paid damages for its role in facilitating gun trafficking to criminals. Will has also implemented a one-handgun-a-month rule in its shop to prevent future problems as a result of the lawsuit.

On July 8, 2004, Sturm Ruger filed a motion for summary judgment, again asking the court to dismiss plaintiffs' case against it. The Brady Center drafted a response and argued the case at a hearing on September 30, 2004, however, Judge Irene Berger granted Sturm Ruger's motion for summary judgment.

Officers McGuire and Lemongello were represented by the Brady Center and prominent West Virginia attorney, Scott Segal of the Segal Law Firm in Charleston.

### **Municipal Lawsuits Summary**

On October 30, 1998, the Brady Center, on behalf of the City of New Orleans and its then-Mayor, Marc Morial, filed the first lawsuit in the nation by a government entity against the gun industry. The suit sought to recover damages for taxpayers and the community caused by the gun industry's negligent business practices. *Morial v. Smith & Wesson Corp.*, No. 98-18578 (Orleans Parish Civil District Court), No. 2000-CA-1132 (Louisiana Supreme Court). Over time, 34 government entities filed similar lawsuits against the gun industry, seeking redress for their contribution to gun violence. The Brady Center represented 29 of the 34 entities that filed lawsuits against gun manufacturers and distributors.

These municipal lawsuits achieved a number of significant accomplishments:

- As a result of these lawsuits, one of the nation's leading firearms manufacturers, Smith & Wesson, agreed to a settlement in which it promised to reform its distribution practices to prevent the supply of guns to irresponsible gun dealers and gun traffickers, and to implement life-saving safety features into its guns to prevent unintentional shootings.
- A number of municipal lawsuits won important legal precedents that recognized that gun manufacturers, distributors and dealers can be held legally responsible for gun violence caused in part by negligent business practices – including decisions by the Indiana and Ohio Supreme Courts.
- In discovery, Brady Center attorneys questioned numerous gun industry executives and whistleblowers under oath, exposing – for the first time – how gun manufacturers engaged in “willful blindness” to profit off of the criminal market by supplying corrupt gun dealers and distributing guns in ways that repeatedly supply traffickers. Much of this evidence was chronicled in a Brady Center report, *Smoking Guns* (<http://www.bradycenter.org/xshare/pdf/reports/smokingguns.pdf>).

As a result of settlements, state immunity laws, and negative rulings on dispositive motions, none of these cases were ultimately tried, though one suit, brought by the City of Gary, is set to be tried in the near future. In addition to the cases described below, the Brady Center provided assistance to suits brought by the State of New York and the NAACP.

New Orleans, Louisiana

*Morial v. Smith & Wesson Corp.*, No. 98-18578 (Orleans Parish Civil District Court), No. 2000-CA-1132 (Louisiana Supreme Court). Filed October 30, 1998.

Chicago and Cook County, Illinois

*City of Chicago and County of Cook v. Beretta U.S.A. Corp. et al.*, Nos. 95253, 95243, 95280 (Supreme Court of the State of Illinois), Case No. 00-3541 (Appellate Court of Illinois, First District), No. 98 CH 15596 (Circuit Court of Cook County). Filed November 12, 1998.

Bridgeport, Connecticut

*Ganim v. Smith & Wesson, Inc.*, No. CV-99-0361279S (Superior Court, Judicial District of Fairfield, at Bridgeport, Connecticut). Filed January 27, 1999.

Miami-Dade County, Florida

*Penelas v. Arms Technology, Inc.*, No. 99-01941 CA-06 (Circuit Court for 11th Judicial District in and for Miami-Dade County, Florida), aff'd, No. 3D00-113 (District Court of Appeal of Florida, 3d District Feb. 14, 2001). Filed January 27, 1999.

Cleveland, OH

*White et al. v. Smith and Wesson Corp, et al.*, No. 1: 99 CV 1134 (U.S. Dist. Ct. N.D. Ohio). Filed April 15, 1999.

Wayne County, Michigan

*McNamara v. Arms Technology, Inc.*, No. 99-912662 NZ (Circuit Court for the County of Wayne, Michigan). Filed April 26, 1999.

Detroit, Michigan

*Archer v. Arms Technology, Inc.*, No. 99-912658 NZ (Circuit Court for the County of Wayne, Michigan). Filed April 26, 1999.

Cincinnati, Ohio

*City of Cincinnati v. Beretta U.S.A. Corp.*, No. A9902369 (Court of Common Pleas, Hamilton County, Ohio), affirmed, Nos. C-990729, 990814, 990815 (Court of Appeals, 1st Appellate District, Hamilton County, Ohio), 95 Ohio St.3d 416, 2002-Ohio-2480 (Ohio Supreme Court). Filed April 28, 1999.

St. Louis, Missouri

*City of St. Louis v. Cernicek*, No. 992-01209 (Circuit Court of the City of St. Louis, Missouri, 22nd Judicial District, Division 1), removed to federal court, No. 4:00CV01895 CEJ (U.S. District Court for the Eastern District of Missouri). Filed April 30, 1999.

State of California

*People of the State of California v. Arcadia Machine & Tool, Inc.* (Superior Court of California, County of San Diego) No. JCCP 4095. Filed May 25, 1999.

Camden County, New Jersey

*Camden County Board of Chosen Freeholders v. Beretta U.S.A. Corp.*, 123 F. Supp. 2d 245 (U.S. District Court for District of New Jersey 2000). Filed June 2, 1999.

Boston, Massachusetts

*City of Boston v. Smith & Wesson Corp.*, No. 99-2590 (Superior Court Department, Suffolk County, Massachusetts), petition for interlocutory appeal denied, No. 2000-J-0483 (Massachusetts Appeals Court). Filed June 3, 1999.

Newark, NJ

*James v. Arcadia Machine & Tool, Inc.*, No. ESX-L-6059-99 (Superior Court of New Jersey, Law Division, Essex County). Filed June 9, 1999.

Camden, New Jersey

*City of Camden v. Beretta U.S.A. Corp.*, No. CAM-L-4510-99 (Superior Court of New Jersey, Law Division, Camden County). Filed June 21, 1999.

Washington, D.C.

*District of Columbia v. Beretta U.S.A. Corp.*, No. 00-0000428 (Superior Court, District of Columbia). Filed January 20, 2000.

New York, New York

*City of New York v. Beretta U.S.A. Corp., et. al.*, No. 1:00-cv-3641 (U.S. District Court for the Eastern District of New York). Filed June 19, 2000

Jersey City, New Jersey

*City of Jersey City v. Smith & Wesson Corp.*, No. HUD-L-2567-02 (Superior Court of New Jersey, Hudson County). Filed March 28, 2002.

**Oliver v. Lou's Loans, et al.**, No. 1836, (Court of Common Pleas of Philadelphia County)

On July 20, 2005, the Brady Center filed a lawsuit on behalf of the family of Anthony Oliver, Jr., against the gun companies that negligently supplied the illegal market with the gun used to kill him.

Anthony was 14-years-old when he was unintentionally shot and killed by his friend, Quamere Durham, on July 23, 2004, in Philadelphia. Quamere, a 14-year-old who should never have had access to a gun, was showing a .25 caliber Phoenix Arms semiautomatic handgun to his friends when, mistakenly thinking the safety was on, he pulled the trigger and shot Anthony in the stomach. After the children called 911 and tried to staunch Anthony's bleeding with paper towels and toilet paper, Anthony died that night at the hospital.

The suit alleges that Lou's Loan of Upper Darby, Pennsylvania, the top supplier of crime guns in Pennsylvania, negligently sold guns to a gun trafficker, one of which was used in the shooting. Lou's Loan, as well as Phoenix Arms, the maker of the "Saturday Night Special" handgun used to kill Oliver, negligently enabled Durham to obtain the gun. The suit also alleges that the defendants helped to create a public nuisance in Philadelphia through their reckless sales practices.

The handgun was one of multiple guns that Lou's Loan sold to a gun trafficker who was illegally re-selling or trading the guns. Lou's Loan sold the Phoenix Arms handgun just seven months before Anthony's shooting.

Lou's has been a frequent supplier of weapons to traffickers, straw purchasers, and even convicted felons. Press accounts have continually noted that Lou's is one of the nation's most prolific suppliers of guns traced to crime. In 2003, Lou's Loan sold 178 guns traced to crime. That year, less than 1% of the

more than 3000 dealers in Pennsylvania sold even one gun traced to crime. From 1996 to 2000, Lou's Loan sold 441 guns traced to crime, ranking it the number one gun dealer in Pennsylvania for numbers of guns sold traced to crime, and 43rd in the nation.

Phoenix Arms, the manufacturer of the gun, continued to supply Lou's Loan even after repeated public disclosures of Lou's record of supplying crime guns.

On September 6, 2005, Lou's Loans asked the court to dismiss Oliver's Complaint against it. Brady Center attorneys drafted a response to the motion, explaining to the Court that Oliver's claims against Lou's were valid. The Court agreed, denying Lou's request on October 6, 2005, and ordering Lou's to file an Answer to the Complaint. On December 16, 2005, Lou's Loans again asked the court to dismiss the Complaint against it, this time under the federal shield law, the "Protection of Lawful Commerce in Arms Act." Defendant Phoenix Arms joined in the motion. Plaintiffs filed a response opposing the motion, arguing that the legislation does not apply and is unconstitutional, and the case should be allowed to move forward. On February 28, 2006, the Department of Justice filed a motion to intervene, arguing that the legislation is constitutional. On March 1, 2006, a hearing on the motions was held before Judge Jacqueline Allen of the Philadelphia Court of Common Pleas. The Brady Center argued on behalf of the plaintiffs.

On June 23, 2006, Judge Allen denied Lou's Loans and Phoenix Arms motions to dismiss and ordered discovery to proceed. Defendants appealed Judge Allen's ruling to the Superior Court, which denied their request on September 22, 2006. The ruling allowed Plaintiffs to prepare for trial, despite passage of the Commerce in Arms Act.

In March 2007, the parties reached a settlement agreement. Lou's Loans and its attorney attempted to undo enforcement of the settlement, further prolonging resolution of the case for Plaintiffs. Finally, in January 2008, the case settled on its original terms.

Anthony's family was represented by attorneys with the Brady Center and Mark J. LeWinter, Esq. of Anapol, Schwartz, Weiss, Cohan, Feldman, and Smalley.

**Tucker v. Cary Jewelry & Pawn, et al**, (Wake County Superior Court, North Carolina)

On October 17, 2005, the Brady Center filed a lawsuit on behalf of the widow of a Wake County, North Carolina Sheriff's Investigator, charging that a gun shop's negligence helped arm his killer. Investigator Mark Tucker was shot in the face with a shotgun and killed on February 12, 2004, by Matthew Grant, a convicted felon. The suit includes claims against the shooter and Cary Jewelry & Pawn, who supplied Grant's friend, Van McQueen, with the 12-gauge Mossberg shotgun McQueen used to kill Tucker. The suit claims that Cary Jewelry & Pawn negligently and illegally sold the murder weapon to McQueen.

Three months before the shooting, McQueen and Grant went to Cary Jewelry & Pawn to buy a firearm. Since Grant was a felon prohibited from buying guns, he offered McQueen a beer in return for McQueen purchasing a firearm as a straw buyer for Grant. McQueen is mentally deficient and was

obviously intoxicated, and at first the shop's clerk refused to sell him a gun. Three days later, McQueen returned to the pawn shop with Grant, again wanting to buy a firearm. Even though his home address was a local homeless shelter, and yet McQueen had \$120 in cash to buy the weapon, the very same clerk completed the all-cash sale. McQueen then transferred the shotgun to Grant, who used it to shoot Tucker in the face, killing him.

Grant was arrested, convicted of first-degree murder and sentenced to life in prison for murder. Tucker was a 28-year police veteran and left behind a wife, Patricia, and two sons.

On February 6, 2006, Cary Jewelry filed a response to the Complaint. The case moved into discovery and the Brady Center took the deposition of the straw purchaser, Van McQueen, on September 26, 2006. Before trial, which was set for May 7, 2007, the parties reached a settlement. The owner of the gunshop, who has since stopped selling firearms, agreed that if he or his family ever sold firearms again, that they would take steps to prevent firearms from being sold to straw purchasers.

Patricia Tucker was represented by the Brady Center and by E. Spencer Parris of the Jones Martin Parris & Tessener Law Offices.

## **INDIVIDUAL LAWSUITS CONCERNING DEFECTIVE GUN DESIGNS**

### **Adames v. Beretta**

On August 24, 2009, the Brady Center, along with the Center for Constitutional Litigation, filed a Petition for Writ of Certiorari to the United States Supreme Court, asking the Court to strike down a federal gun industry immunity law as unconstitutional. The case, *Adames v. Beretta*, arises out of the accidental shooting death of 13-year-old Josh Adames, who was killed by another boy as a result of a defective Beretta handgun. After the Court of Appeals of Illinois held that Beretta could be liable for the shooting because of the gun's inadequate warnings, the Supreme Court of Illinois held that the federal Protection of Lawful Commerce in Arms Act (PLCAA) barred the case. The Adames' Petition asks the Supreme Court to hold that the PLCAA is unconstitutional under the Tenth Amendment, as it dictates to states what branch of their government they must use to impose liability on gun companies, allowing gun suits to be brought if sanctioned by state legislatures, but not by state courts. The Petition also contends that the Illinois Court misread the PLCAA, and that the Act actually allows products liability actions such as the Adames.

On May 5, 2001, 13-year-old Billy Swan found his father's Beretta 92FS handgun and removed the magazine that contained its ammunition, believing that this had unloaded the gun. The gun, however, did not contain one of several commonplace safety features that warned users when a round remained in the chamber or prevented the gun from firing when "unloaded" in this fashion. Believing the gun unloaded, Billy pulled the trigger, and the bullet hidden in the chamber killed his friend Josh.

Josh's parents sued Beretta in the Circuit Court of Illinois, alleging that the firearm was unreasonably dangerous as Beretta failed to include effective warnings that indicated to foreseeable users when a round remained in the chamber or that alerted users that the gun could fire when its magazine was removed, and failed to include a magazine disconnect safety, a \$10 device invented a century earlier to prevent precisely these sorts of accidents from occurring. On August 23, 2005, the Circuit Court granted Beretta's Motion for Summary Judgment. Petitioners appealed to the Illinois Court of Appeals, who affirmed dismissal of the design defect claim, but held that the Adames could proceed with their failure to warn claim. Both parties appealed to the Supreme Court of Illinois. The Supreme Court held that the PLCAA was constitutional, and barred the Adames from presenting their case.

### **IMPORTANT PAST CASES CONCERNING DEFECTIVE GUN DESIGN**

**Dix v. Beretta U.S.A. Corp.**, No. 750681-9 (Alameda County Superior Court), reversed, No. A086018 (California Court of Appeal, 1st District, Division 1)

The Brady Center represented the parents of unintentional shooting victim Kenzo Dix. On April 26, 1995, the Brady Center filed in Superior Court in Alameda County, California a lawsuit on behalf of Griffin and Lynn Dix, the parents of fifteen-year old Kenzo Dix who was unintentionally shot by his fourteen-year old friend Michael S. Kenzo and Michael were playing in Michael's bedroom when Michael withdrew to his parents' bedroom to get a 9mm Beretta semi-automatic handgun stored in a bag next to his father's bed. Michael removed a loaded ammunition magazine from the handgun and replaced it with an empty magazine, thinking he had unloaded the gun. A bullet still remained in the handgun's firing chamber, however, and when Michael pointed the gun at Kenzo and pulled the trigger, Kenzo was killed.

The suit seeks damages from Beretta U.S.A. Corp., the company that defectively designed the gun used to kill Kenzo. The suit also included claims against Michael's father and stepmother, who allowed him to have access to their handgun. The parents settled these claims for \$100,000. The complaint alleges that the Beretta 92 Compact L used to kill Kenzo is defective because it was not designed to prevent an "unauthorized user" -- a child like Michael S., for example -- from firing it; that the gun was defective because it did not have an adequate chamber loaded indicator; and that its warnings were defective. Gun manufacturers like Beretta have long had the ability to design a handgun so that it will fire only in the hands of an authorized user.

On November 9, 1998, a jury returned a verdict in favor of Beretta. However, a majority of the jury (7 of 12) found that Beretta's warnings were defective, and 3 jurors found the gun defective on both theories. Griffin and Lynn Dix filed a motion for a new trial, on the grounds of juror misconduct; they submitted declarations obtained from several of the jurors, who reported that a member of the jury made comments during the trial, before the completion of the evidence and before deliberations began, indicating that he had already decided to vote in favor of Beretta. The court denied the motion for new trial at a hearing on January 15, 1999. Despite being troubled by the allegations about the juror's conduct, the trial court ruled that Griffin and Lynn Dix were not entitled to a new trial, even if the allegations about the juror were true. The court took the view that they probably would not have

prevailed on their claims even without the alleged misconduct and therefore they did not suffer prejudice sufficient to warrant a new trial.

Griffin and Lynn Dix appealed the verdict and the denial of the new trial motion. On June 27, 2000, the Court of Appeal issued a decision in favor of Griffin and Lynn Dix. The Court of Appeal ruled that the evidence of juror misconduct was admissible, and that a new trial could not be denied merely because the trial court predicted that they would not prevail even before a fair and impartial jury. The Court of Appeal remanded for the trial court to make findings of fact as to whether the juror in question made the remarks attributed to him by the other jurors. The Court of Appeal indicated that the juror's statements, if he in fact made them, would establish misconduct entitling the Griffin and Lynn Dix to a new trial.

When the case returned to it on remand, the trial court ordered the parties to submit supplemental briefing on the factual issue of whether the juror made the reported comments. On September 8, 2000, the trial court heard argument and granted Griffin and Lynn Dix a new trial. The court found that the evidence indicated that juror misconduct had in fact occurred at the first trial. On October 19, 2000, Beretta filed an appeal of that ruling, and on February 6, 2002, the California Court of Appeal denied Beretta's appeal and ordered that the case be retried.

Beretta filed another motion for summary judgment on June 12, 2003. The motion was denied on October 2, 2003, allowing the case to proceed to trial.

The trial was held from December 2, 2003, to December 15, 2003, before Judge Gordon Baranco. Griffin and Lynn Dix testified, and Beretta called Clarence Soe, Beretta's general counsel, Jeffrey Reh, and employee Gabriel DePlano. The jury deliberated until December 23, 2003, at which point they announced they were deadlocked. Beretta's moved for a mistrial, which was granted. Beretta also asked for a continuance of the new trial. A new trial was set for July 12, 2004, before Judge Needham.

The third trial began on July 12, 2004, and closing arguments took place on July 29, 2004. The jury returned a defense verdict on August 2, 2004. Although Beretta was not held accountable for their defective gun design, Lynn and Griffin Dix's lawsuit, and ten years of advocacy work by them, resulted in a new California law requiring loaded chamber indicators and integral locks on many types of handguns. Such devices would have saved Kenzo Dix's life.

The Brady Center represented Griffin and Lynn Dix in the new trials along with Kecker & Van Nest, LLP of San Francisco.

**Grunow v. Valor Corp. of Florida**, No. CL 00-9657 AB (Circuit Court of the Fifteenth Judicial District in and for Palm Beach County, Florida)

The Brady Center helped to bring a suit on behalf of the family of a Florida schoolteacher killed in his classroom by a 13-year-old student with a handgun. The complaint, filed in a Palm Beach County court on October 4, 2000, sought to hold a gun distributor and dealer liable for selling a gun that was unreasonably dangerous and defective because it lacked a locking system or other safety feature to prevent unauthorized use.

On May 26, 2000, the last day of the school year, a school official sent 13-year-old seventh-grade student Nathaniel Brazill home early for throwing a water balloon. Brazill retrieved a handgun from his home and returned to the school with the gun concealed in his clothing. A school police officer saw Brazill enter the school grounds but did not know that he was carrying the gun. Brazill went to the classroom of language arts teacher Barry Grunow, and asked to speak to two students in the class. When Grunow declined, Brazill pulled out the gun, pointed it at Grunow, and fired one round that struck and killed Grunow.

Brazill obtained the gun a few days before the shooting from the home of Elmore McCray, a close family friend. Brazill found the gun and ammunition for it in an unlocked box in the unlocked drawer of a dresser in the bedroom of McCray's home. Although gun manufacturers have the ability to design weapons that will fire only in the hands of authorized users, this gun did not have any safety device or mechanism to prevent an unauthorized user, like Brazill, from taking it, loading it, and firing it. The gun was a .25 caliber semi-automatic pistol manufactured by Raven Arms, Inc., a California company that is no longer in business. It is a low-quality handgun, made from poor quality materials, of the type commonly known as a "Saturday Night Special." It is lightweight, has a short barrel, and is easy to conceal. According to the ATF, the Raven .25 caliber pistol has consistently been among the most frequently recovered and traced crime guns.

The lawsuit was brought on behalf of Grunow's wife and two young children against wholesale distributor Valor Corporation and retail dealer Hypoluxo Pawn Shop. While the manufacturer of the gun is no longer in business, a distributor or dealer who sells a defective product can be held liable under Florida law just like the manufacturer of the product. The case also included a claim against Brazill, who is serving a 28 year jail sentence, following his conviction for second-degree murder. Before the jury trial, the lawsuit resulted in two favorable settlements for the Grunow family. Before the complaint was even filed, the Grunow family obtained a settlement of its claims against McCray for negligently storing the gun. On December 14, 2000, the dealer who sold the gun, Hypoluxo Pawn Shop, also agreed to a substantial payment to settle the claims against it.

After defeating Valor Corp.'s motion to dismiss and motion for summary judgment, the case proceeded to trial before Judge Labarga in West Palm Beach, Florida. On November 14, 2002, a jury awarded a \$24 million verdict to the Grunows, including an award of \$1.2 million against Valor Corporation. The verdict is the first against a gun seller for distributing "junk guns" without safety features to prevent their use by children and other unauthorized persons.

The jury verdict was subsequently invalidated through a directed verdict by the judge, who ruled that the jury verdict was inconsistent. The Grunows appealed the directed verdict to the Florida District Court of Appeal and a hearing was held on December 7, 2004. On June 1, 2005, the Court of Appeal upheld the trial court's ruling, although it found that the trial judge entered a directed verdict for the wrong reason.

The Brady Center was co-counsel to the Grunow family, who were also represented by Bob Montgomery of the law firm of Montgomery & Larson, LLP, and Edna L. Caruso of the law firm of

Caruso, Burlington, Bohn, & Companiani, P.A. Montgomery is well-known for his groundbreaking litigation on behalf of the people of Florida, including a lawsuit on behalf of the state of Florida against the tobacco industry which resulted in a landmark \$11.3 billion settlement.

**Maxfield v. Bryco Arms, et al**, No. 841636-4 (Superior Court of the State of California, Alameda County)

On May 7, 2003, a jury awarded \$50.9 million in compensatory damages to a plaintiff in a case against Saturday-Night Special manufacturer Bryco Arms. The jury found gun designer Bruce Jennings, manufacturer Bryco Arms and its distributors liable for designing a defective firearm which resulted in the paralysis of a seven year old. Bryco Arms manufactures “Saturday Night Special” .380-caliber Bryco handguns, which were found to be unreasonably dangerous due to their lack of safety features and defective design.

Brandon Maxfield was unintentionally shot in the jaw on April 6, 1994, by a family friend who was trying to unload the handgun. The gun was designed in such a way that it could only be unloaded when the safety was turned off. The gun’s magazine was also designed to be hidden inside the gun, making it hard to tell if it was loaded. The friend thought he had unloaded the gun and unintentionally shot Brandon. Brandon was rendered a quadriplegic. If the handgun had been properly designed and manufactured with sufficient safety features, the accident would not have occurred.

The manufacturer and designer of the gun, Bryco Arms and Bruce Jennings, as well as the guns’ distributors, the pawnshop where Brandon’s parents bought the gun, and Brandon’s parents and the shooter were also held liable. The jury concluded that Bryco Arms manufactured a defective firearm because of its design features and that it was foreseeable that an ordinary consumer would be injured by the defective handgun.

The Brady Center assisted in the case. Richard Ruggieri, of San Rafael, California was counsel for the plaintiff.

**Ryan v. Koehler International, Inc.**, No. 2072 (Court of Common Pleas, Philadelphia)

The Brady Center assisted in a case brought on behalf of Royce Ryan, a brain-damaged boy shot in the face with a defective Smith & Wesson handgun in Wichita, Kansas. Smith & Wesson agreed to settle the suit on April 28, 2005, in order to have the case against it dismissed. The settlement marks the first time a gun manufacturer has paid to settle a claim for failing to childproof a gun.

Eight year old Royce was unintentionally shot in the face by his friend, Jared McMunn, on April 15, 1998, with a Smith & Wesson 9 mm handgun. Jared thought the gun was unloaded and, while showing it to the other kids, squeezed the trigger. Because the gun lacked a chamber-loaded indicator, a simple device to show whether it was loaded, Jared did not know that one bullet remained in the chamber. The shooting would never have taken place if Smith & Wesson had properly designed the gun.

The shooting left Royce with permanent disabilities and extensive brain damage.

On May 22, 2000, Royce and his mother filed suit in Pennsylvania state court against Smith & Wesson, alleging that the Model 915 was defectively designed without a chamber loaded indicator. The Ryans also alleged that the gun had a defective magazine disconnect safety, a device that is supposed to prevent a gun from firing when the magazine is removed, and that the gun was defective because it lacked childproof features.

Trial Lawyers for Public Justice, as well as the law firms of Pottroff & Ball and Megaffin, Brown & Lynch of Kansas, represented the Ryans.

**Smith v. Bryco Arms**, No. CV-94-09455 (New Mexico Second Judicial District Court), reversed and remanded, No. 20389 (New Mexico Court of Appeal)

The Brady Center represented parents of a child shot in the face in an unintentional shooting in a lawsuit against two "Saturday Night Special" manufacturers. On July 27, 2001, the Brady Center won a major victory, as the New Mexico Court of Appeals allowed the case to go to trial and issued the first appellate ruling in New Mexico indicating that gun makers can be held liable for failing to include feasible safety devices.

In their amended complaint filed August 16, 1995, the plaintiffs charge that Bryco Arms and Jennings Firearms, Inc. should be held liable for selling handguns that fail to protect against accidental discharge by children. Sean Smith was 14-years-old when he was shot in the face with the "Saturday Night Special" semi-automatic handgun known as the J-22 on January 20, 1993. He was with a group of friends when he was unintentionally shot. One of the boys had pulled the ammunition magazine out of the handgun, and another boy, believing the gun to be unloaded, fired it toward Sean.

There was no magazine disconnect safety device in the J-22, an inexpensive mechanism that prevents a pistol from being discharged after the magazine is removed. The gun also lacked a warning, understandable to a child, that it might be loaded and could be fired with the magazine removed. The plaintiffs alleged that Bryco manufactured, and Jennings distributed to the general public, a defective handgun because it did not include any of these features.

On August 12, 1998, defendants moved for summary judgment before discovery was complete. In opposition to the motion, plaintiffs submitted expert affidavits and other evidence to establish that Sean Smith's injuries were caused by defendants' defective design of the J-22 pistol. However, on March 2, 1999, the District Court granted summary judgment to defendants. On July 27, 2001, the New Mexico Court of Appeals reversed the district court in an important ruling for the plaintiffs. The Court of Appeals held that the district court erred in ruling that Bryco and Jennings had no duty to incorporate safety features on their gun. Rather, the court held that plaintiffs "present straightforward assertions that the handgun could have -- and therefore should have -- incorporated long-known design features which would have prevented this shooting and others like it." Indeed, "[t]he fact that handguns are meant to fire projectiles which can cause great harm is to our view all the more reason to allow the tort system to assess

whether the product is reasonably designed to prevent or help avoid unintended--albeit careless--firings such as occurred here.”

The Court of Appeals further explained, “We recognize that firearms are different than other products in the sense that they are the subject of a [New Mexico] constitutional right. However, ... we do not perceive anything so unique about handguns that they cannot or should not be subject to normal tort law concepts, norms, and methods of analysis. ... To the contrary, application of our tort law can be expected to enhance [gun] ownership by tending to increase the safety of handgun use.” Bryco appealed the Court of Appeals ruling to the New Mexico Supreme Court. In an important victory, the New Mexico Supreme Court refused to overturn the Court of Appeals ruling, clearing the way for this case to proceed to trial. A trial date was set for June 2003, which was postponed due to the assignment of a new judge.

Bryco Arms and B.L. Jennings thereafter filed for bankruptcy protection, requiring the case against them to be stayed and eventually terminating the action. Even so, the case led to a very important appellate ruling establishing a duty on behalf of gun manufacturers to incorporate safer gun designs. The case also helped pave the way for the huge jury verdict against Bryco and B.L. Jennings in the *Maxfield* case discussed above.

Albuquerque attorney Michael G. Rosenberg filed the suit and served as co-counsel with the Brady Center.

## **INDIVIDUAL LAWSUITS CONCERNING SAFE GUN STORAGE**

### **Commonwealth v. Runyan** (Massachusetts Supreme Judicial Court)

On June 29, 2009, the Brady Center, joined by law enforcement and other gun violence prevention groups, filed a friend of the court brief in the Massachusetts Supreme Judicial Court urging the Court to uphold a life-saving gun safety law requiring that guns be secured to prevent accidents and unauthorized use.

The case, *Commonwealth v. Runyan*, marks the first time an appellate court has considered a challenge to a safe gun storage law following the U.S. Supreme Court’s Second Amendment ruling in *District of Columbia v. Heller*. The *Runyan* case involves a government appeal of a lower court ruling citing the Second Amendment in dismissing an indictment against a parent who failed to secure a semiautomatic rifle from his handicapped teenage son.

The brief in support of Middlesex District Attorney Gerry Leone’s appeal argues that a lower court improperly dismissed an indictment under Massachusetts’ safe gun storage law, G.L. ch. 140, Section 131L. This law allows self-defense gun use but requires that firearms be secured when not carried by or under the control of an owner or authorized user. The U.S. Supreme Court in *District of Columbia v. Heller* struck down District of Columbia gun laws that broadly barred handgun possession and prohibited use of a firearm in the home, even for self-defense. The Court in *Heller*, however,

specifically noted that its ruling does not call into question “laws regulating the storage of firearms to prevent accidents,” such as Massachusetts’ safe gun storage law.

The brief explains how studies have found a direct correlation between improper gun storage and accidental shooting deaths, and that unintentional shooting deaths among children have been reduced by twenty-three percent in states with safe storage laws. The brief cites Massachusetts’ long history of legislation keeping citizens safe from gun violence, including safe gun storage laws dating back to the time of ratification of the Second Amendment.

The Court heard arguments on November 5, 2009, and reversed the lower court, which had held that the safe storage law was unconstitutional under the *Heller* decision. The Supreme Judicial Court agreed with our positions that the Second Amendment is not incorporated under current law, and that the safe storage law is not akin to the DC handgun ban struck down in *Heller*.

The groups on the brief are the Brady Center, International Brotherhood of Police Officers, Legal Community Against Violence, Massachusetts Chiefs of Police, Massachusetts Million Mom March Chapter of the Brady Campaign to Prevent Gun Violence, and Stop Handgun Violence.

Former Massachusetts Attorney General Scott Harshbarger and the law firm Proskauer Rose are representing the Brady Center and other groups filing the brief *pro bono*.

## **IMPORTANT PAST CASES CONCERNING SAFE GUN STORAGE**

### **Estate of Heck v. Stoffer**, No. 02A03-0007-CV-267 (Supreme Court of Indiana)

The Brady Center filed an *amicus curiae* brief with the Indiana Supreme Court urging the Court to overturn a lower court ruling that Indiana gun owners have no duty to exercise reasonable care in storing their guns. On April 7, 2003, the Indiana Supreme Court unanimously agreed with the Brady Center. In the first-ever ruling by the Court on this issue, it ruled that gun owners have a legal duty to exercise care in the storage of their guns to keep them away from criminals. The ruling sets a historic precedent for the state and will likely be given great weight by other state courts that hear similar cases.

The Court held, "Guns are dangerous instrumentalities that in the wrong hands have the potential to cause serious injuries. It is a responsible gun owner's duty to exercise reasonable care in the safe storage of a firearm." The ruling rejected the NRA's argument that a state constitutional "right to bear arms" protects irresponsible gun ownership. The Court refused to accept the NRA's argument, holding that gun owners may not "impose on their fellow citizens all the external human and economic costs associated with their ownership." The court also cited statistics from the Brady Center and largely adopted the Brady Center’s argument to the court.

In this case, the parents of a drug-addicted felon gave their son free access to their home where they kept their unlocked handgun. One day after the son failed to appear at his sentencing hearing, he obtained his parents’ gun and used it to shoot and kill a sheriff’s deputy. The Brady Center urged the

Court to find that the felon's parents had a duty to exercise reasonable care in storing their gun to prevent persons likely to misuse it from gaining access to it. The National Rifle Association also filed an *amicus curiae* brief with the Court, arguing that gun owners should be permitted to store their guns how they see fit, even if this results in police officers being killed by felons given free access to unlocked guns. The Brady Center responded to this argument by explaining to the Court that the NRA's position is not supported by the law of any state, and would unnecessarily endanger the public as well as law enforcement officers like the sheriff's deputy in this case.

The Indiana Supreme Court decision reversed rulings dismissing the case by the trial court and Indiana Court of Appeals and allowed the case to proceed to trial. The Court heard *amicus curiae* arguments from the Brady Center on behalf of Officer Heck, and from the National Rifle Association, on behalf of the felon's parents.

The Brady Center and the law firm of Arnold & Porter prepared the brief on behalf of the Center and Hoosiers Concerned About Gun Violence.

**Jupin v. Kask**, No. 2004-P-1708 (Appeals Court of the Commonwealth of Massachusetts)

On March 21, 2005, the Brady Center filed an *amicus curiae* brief on behalf of the Brady Center, International Brotherhood of Police Officers, Massachusetts Million Mom March, and Stop Handgun Violence, with the Appeals Court of Massachusetts in a case involving a police officer who was shot and killed due to negligent gun storage practices of a homeowner.

Joanne Jupin brought a complaint against Sharon Kask on behalf of her son, Westminster Police Officer Larry Jupin, who was tragically shot while on duty by Jason Rivers on May 10, 1999, with a gun from Sharon Kask's home. After the shooting, Officer Jupin fell into a coma, and died after three and a half years in a vegetative state. Rivers was charged with the murder of Officer Jupin, but was diagnosed as a paranoid schizophrenic and ruled mentally incompetent to stand trial. Rivers has since been committed to a state hospital.

Although Rivers was AWOL from the army and had a history of mental problems and felony convictions, he was able to obtain the .357 Magnum handgun used to shoot Jupin by stealing it from his father, Willis Rivers, and Sharon Kask. Sharon and Willis had been living together for over 15 years and Sharon allowed Willis to store his collection of 30 handguns and rifles in her basement in a flimsy box. During that time, Jason Rivers lived with them, owning a key to the house and coming and going as he pleased, even when no one was home. All the while, Sharon Kask personally knew of Jason's mental instability, continued run-ins with police and violations of his probation, yet did nothing to ensure that the guns in her home were stored in a manner that would prevent Jason from accessing them. At some point before May 10, 1999, Jason unscrewed screws in the box where the guns were stored and took a .357 Magnum handgun from inside, using it to kill Officer Jupin.

The *amici* argued in support of Joanne Jupin that homeowners owe a duty of reasonable care to securely store firearms in their homes in order to prevent foreseeable harm. This duty particularly

applies when a homeowner maintains an arsenal of 30 firearms accessible to a paranoid schizophrenic with a history of criminal violence and a pending arrest warrant. *Amici* argued that the trial court incorrectly ruled that Kask was exempt from the requirement to take reasonable precautions simply because she was not the owner of the guns that she stored in her home. It was Kask who controlled Jason Rivers's access to her home and the guns inside and the social policies of Massachusetts overwhelmingly favor keeping guns away from individuals likely to misuse them.

Before a date for oral argument could be set in the Appeals court, the Massachusetts Supreme Judicial Court *sua sponte* transferred the case. A hearing was held before the Supreme Court on February 9, 2006. On June 30, 2006, the Massachusetts Supreme Judicial Court ruled that homeowners must ensure that firearms in their homes are secured from theft or they may be held liable for shootings with stolen guns if they do not properly secure guns in the home. This is the first time that a court in Massachusetts has ruled that a homeowner may be liable for a shooting with a gun stolen from a home.

The Brady Center and Daniel Swanson of the law firm Crowell & Moring, LLP prepared the *amicus curiae* brief. Joanne Jupin is represented by Douglas Fox of Shumway, Giguere & Fox, P.C. of Worcester, Massachusetts.

## **INDIVIDUAL LAWSUITS CONCERNING ASSAULT WEAPONS**

**Estate of Pascal Charlot, v. Bushmaster Firearms, Inc.**, No. 03-2501 (U.S. District Court the District of Columbia)

On October 1, 2003, the Brady Center, along with Hogan & Hartson, LLP, and the Washington Lawyers Committee for Civil Rights and Urban Affairs, filed a lawsuit on behalf of the family of Pascal Charlot, the sixth victim of the sniper shootings in 2002, and the only victim who was a resident of Washington, D.C.

Mr. Charlot, a 72-year-old retired carpenter, was the primary caregiver for his wife, who suffers from Alzheimer's disease. On October 3, 2002, after cooking dinner for his wife, he was walking near his home when John Allen Muhammad and John Lee Malvo shot and killed him with a Bushmaster XM-15 E2S .223 caliber semiautomatic assault rifle. Mr. Charlot's surviving daughters, Myrtha Charlot Cinada, Carline Charlot Latortue, and son, Ricot Charlot, sued Bushmaster Firearms, Inc. under the District of Columbia Assault Weapons Manufacturing Strict Liability Act, D.C. Code §§ 7-2551.01 to - 2551.03.

The Bushmaster XM-15 rifle used to kill Mr. Charlot is among the weapons which the District of Columbia found pose risks outweighing any possible benefits. Based on findings of the dangers posed by such guns, in 1990 the District passed its strict liability act, which makes manufacturers of specified assault weapons and any firearm which shoots, is designed to shoot, or can be readily converted or restored to shoot more than 12 shots semi-automatically without reloading, liable for damages to any victim of such a gun in the District.

Bushmaster manufactures, advertises and sells to the general public the Bushmaster XM-15 E2S .223 caliber semi-automatic assault rifle and other similar rifles. Bushmaster touts the XM-15 rifle as being made “to military specification” and as a copy of Colt AR-15 assault rifle. The Colt AR-15 rifle itself was specifically banned by the Assault Weapons Ban.

Bushmaster also markets its guns for use in sniper and counter-sniper military-style operations. Bushmaster touts on a link on its website that its guns are easily adaptable to include military-style sniper accessories that it sells directly to consumers through its website or by mail, including a bipod, laser, telescopic scope and infrared and red-dot sights. The Bushmaster assault rifle used in the sniper attacks was outfitted with both a bipod and a telescopic scope. Optional attachments sold by Bushmaster also include bayonets and bayonet lugs for easily attaching bayonets to its firearms, flash suppressors, telescoping stocks, flare launchers and “Tactical Assault Sling” adapters “to allow easier assault position carry of your weapon.”

Plaintiffs filed their Complaint in the Superior Court of the District of Columbia, asking the court to find Bushmaster strictly liable to them for the loss of their father because of Bushmaster’s manufacture and sale of the dangerous XM-15 rifle. Bushmaster then removed the case to the U.S. District Court for the District of Columbia on December 12, 2003, and answered the Complaint on December 12, 2003. Bushmaster moved to dismiss the case, arguing that the strict liability act is unconstitutional, on January 21, 2004.

Plaintiffs opposed defendant’s motion to dismiss and moved for partial summary judgment on February 20, 2004, asking the court to find Bushmaster liable without the need for a trial. However, Judge Sullivan stayed the case until the Court of Appeals ruled on the District’s own suit involving the strict liability statute.

The D.C. Court of Appeals ruled on the District's case on April 21, 2005, upholding the constitutionality of the strict liability act, and the Supreme Court declined to review the decision on October 3, 2005. Plaintiffs again moved for summary judgment against Bushmaster, but on October 27, 2005, defendants filed a motion to dismiss the case, arguing that the newly-enacted “Protection of Lawful Commerce in Arms Act” (PLCAA) required the case to be thrown out. Plaintiffs opposed the motion, arguing that the legislation does not apply and is unconstitutional, and the case should be allowed to move forward. A hearing on the motions was held on April 18, 2006.

In the District’s case, the D.C. Court of Appeals ruled on January 10, 2008, that the PLCAA barred actions brought under the District’s strict liability act, affirming an earlier trial court decision dismissing that case. The parties have until February 25, 2008, to seek rehearing en banc of the court’s ruling.

## **IMPORTANT PAST CASES CONCERNING ASSAULT WEAPONS**

**Merrill v. Navegar, Inc. (In Re 101 California Street Litigation)**, 75 Cal. App. 4th 500 (California Court of Appeal, 1st District, Division 2 1999), reversed, No. A079863 (Supreme Court of California)

On May 18, 1994, the Center filed a lawsuit against Navegar (doing business as Intratec) on behalf of relatives of several of the victims killed by Gian Luigi Ferri in the July 1, 1993 shooting at the 101 California Street office building in San Francisco. Eight people were killed and another six injured in one of the most infamous mass shootings in American history. A lawsuit on behalf of an additional victim was filed later in June 1994. To carry out his attack, Ferri used two TEC-9 military-style assault pistols made by Intratec that were equipped with high-capacity ammunition magazines and fitted with Hell-Fire triggers, a device designed to make the assault pistols fire at a faster rate.

On May 6, 1997, after factual discovery in the case was complete, Judge James Warren of the Superior Court for San Francisco County dismissed the case against Navegar on summary judgment. The court's decision was not based on the factual record, but on the court's conclusion that, as a matter of law, Navegar owed no duty to the victims of the 101 California Street assault because the TEC-9 used by Ferri in the assault were legally manufactured and sold in Florida.

Plaintiffs appealed Judge Warren's ruling, and on September 29, 1999, the Court of Appeal issued a 2-1 decision reversing the summary judgment ruling on plaintiffs' negligence claim. In a lengthy, detailed, and strongly-worded opinion, Judge Lambden explained that the mere manufacture and sale of a lawful firearm is not negligent but that "[t]his does not mean, however, that those who manufacture, market and sell firearms have no duty to use due care to minimize risks which exceed those necessarily presented by such commercial activities." The manner in which Navegar manufactured and marketed the TEC-9 and TEC-DC9 to the general public "created risks above and beyond those citizens may reasonably be expected to bear in a society in which firearms may legally be acquired and used and are widely available." The court emphatically rejected Judge Warren's suggestion that the only way to address gun manufacturers' dangerous practices is "through the Capitol, not the Court," holding that "neither Congress nor the California legislature has expressed any desire to abrogate the operation of the common law as it applies to the conduct of those who manufacture and sell firearms, and the judicial responsibility to faithfully apply the common law cannot otherwise be constrained."

Navegar appealed to the California Supreme Court and the Brady Center, representing families of victims of the 101 California massacre, argued before the highest court in California that the gun manufacturer should be held liable for negligent business practices that contribute to the illegal use of its products. On August 6, 2001, the California Supreme Court reversed the Court of Appeal and ruled in favor of the manufacturer of the TEC-9 assault pistol. Declining to address the broader issues presented in the case or to endorse the gun manufacturer's argument that gun makers can never be held liable for criminal use of their products, the court ruled instead on the much narrower ground that a California statute precluded the particular type of claim brought against the gun maker in this case.

The California Supreme Court decision was later overturned by the legislature in a stunning legal development. On September 25, 2002, California became the first state in the country to repeal a statute giving special legal immunity for the gun industry. Governor Gray Davis signed into law SB 682, sponsored by Senator Don Perata, and AB 496, sponsored by Assemblyman Paul Koretz, as part of a package of far-reaching new gun laws. Although the statute giving the gun industry special

protection has now been repealed, the victims in this case will not have another chance to be heard in court.

The Center represented Stephen Sposato, Michelle Scully, and Carol Kingsley, the surviving spouses of three of the people killed at 101 California. The Center also represented Carol Ernsting, the mother of one of the victims. The law firms of Morrison & Foerster; Cotchett & Pitre; Jaffe, Trutanich, Scatena & Blum; and Orrick, Herrington & Sutcliffe served as co-counsel for these plaintiffs.

## **LITIGATION DEFENDING AND UPHOLDING GUN LAWS**

The Brady Center's Legal Action Project is working to defend and uphold reasonable federal, state, and local gun laws and regulations. The Brady Center represents government entities, files amicus briefs, actively assists and monitors numerous cases, including:

**American Academy of Pediatrics, Florida Chapter, et al. v. Gov. Rick Scott** (U.S. District Court for the Southern District of Florida)

On June 6, 2011, the Brady Center filed a lawsuit in U.S. District Court for the Southern District of Florida to strike down and prevent enforcement of an unprecedented new law in Florida that interferes with health care providers' ability to warn patients about the risks posed by firearms and to offer them advice on gun safety. The suit contends that the Florida law is a violation of basic First Amendment rights and seeks a permanent injunction to block implementation of the law.

The Florida law, H.B. 155, subjects health care providers to possible sanctions, including fines and loss of their license, if they discuss or record information in a patient's chart about firearm safety that a medical board later determines was not "relevant" or was "unnecessarily harassing." The law, however, does not define these terms. The suit charges that the law is unconstitutionally vague and violates the First Amendment by having a severe chilling effect on confidential, life-saving discussions.

The lawsuit cites the extreme risk posed by firearms and the duty of health care providers to counsel patients about risks to their health and well-being. One-third of U.S. homes with children younger than 18 have a firearm. More than 40 percent of gun-owning households with children store their guns unlocked and one-fourth of those homes store them loaded. Children aged 5 to 14 years in the United States are 11 times more likely to be killed accidentally with a gun than similarly aged children in other developed countries. Because of these well-documented risks, pediatricians advise parents to keep guns away from children, secured with gun locks, and stored separately from ammunition.

On September 14, 2011, U.S. District Judge Marcia G. Cooke granted a preliminary injunction against enforcement of H.B. 155, holding that plaintiff's would likely prevail in their facial challenge on grounds that the law was an unconstitutional content-based restriction on speech that specifically targeted firearms issues. Rejecting the State of Florida's argument, Judge Cooke held that the law "does not implicate rights that the Second Amendment protects."

Judge Cooke earlier rejected the NRA's motion to intervene in the case, agreeing with the Brady Center that the gun lobby lacked standing.

The lawsuit was filed on behalf of the American Academy of Pediatrics, Florida Chapter; American Academy of Family Physicians, Florida Chapter; the American College of Physicians, Florida Chapter, and other individual physicians.

The law firms of Ropes and Gray; Astigarraga Davis Mullins & Grossman; and Weisberg and Kainen are providing pro bono assistance.

**Association of New Jersey Rifle and Pistol Clubs v. The City of Jersey City** (New Jersey Supreme Court).

The Brady Center joined with gun violence prevention advocates to file a friend of the court brief in the New Jersey Supreme Court defending Jersey City's ordinance limiting bulk handgun sales. The brief argues that the City's ordinance limiting handgun sales to one per month is an important and lawful tool for blocking bulk purchases by gun traffickers. Lower courts ruled that Jersey City does not have the power to enact the ordinance because it is pre-empted by state laws regulating gun sales.

As federal law and most state laws do not limit the number of firearms that a person can buy in one transaction, gun traffickers often buy large numbers of handguns from gun dealers to resell to criminals. Jersey City's ordinance aims to stop these reckless sales that supply criminals.

The law firm of Gibson, Dunn and Crutcher represented the amici.

**Bateman v. Perdue**, No. 5:10-cv-265 (U.S. District Court for the Eastern District of North Carolina)

The Second Amendment Foundation, Grass Roots North Carolina, and three individual plaintiffs brought this action against the Governor of North Carolina, the Secretary of the North Carolina Department of Crime Control and Public Safety, and other State entities.

The lawsuit challenges a longstanding North Carolina law, North Carolina Gen. Stat. § 14-288.7, that allows gun carrying on a person's property but temporarily bars public gun carrying in the vicinity of a riot and during states of emergency. Plaintiffs allege that North Carolina Gen. Stat. § 14-288.7 is unconstitutional and a violation of Second Amendment rights, and they are seeking a permanent injunction.

On December 16, 2010, the Brady Center filed a brief in the case, urging the court to dismiss the lawsuit which is seeking a right to take up arms in streets and other public spaces during riots or other emergencies. The Brady Center's brief argues that there is no right of armed vigilantes to take to the streets during riots or congregate in the vicinity of emergency responders trying to secure a downtown during riots, looting, or terrorist attacks. The prospect of police and emergency responders being powerless to stop bands of armed citizens from taking to the streets during emergencies, looting, or rioting poses a serious threat to the government's ability to maintain public order and deliver

emergency services. If the lawsuit were successful, law enforcement would be unable to detect whether roaming armed individuals or gangs were would-be looters, terrorists, or vigilantes, thus jeopardizing their safety and their ability to respond to states of emergency.

The U.S. Supreme Court recently held that the Second Amendment grants a right to possess a gun in the home for self-defense, but emphasized that this right is not unlimited and is subject to reasonable firearms regulations. The Supreme Court has held that bans on carrying concealed weapons do not violate the Second Amendment and courts have given the government broad authority to restore order during riots and emergencies.

The Brady Center's brief was joined by North Carolina Million Mom March Chapters of the Brady Campaign to Prevent Gun Violence and the Religious Coalition For a Nonviolent Durham. The brief was filed by attorneys with the Brady Center and the firm Hogan Lovells US LLP, along with Drew Erteschik of the Raleigh, N.C. firm Poyner Spruill LLP.

**Benson v. City of Chicago** (U.S. District Court for the Northern District of Illinois)

This case was filed eight days after the Supreme Court's ruling in *McDonald*, against the City of Chicago by the Illinois Association of Firearms Retailers and four individual plaintiffs. The suit alleges that the City's new firearms ordinances, which were altered after the *McDonald* ruling, are unconstitutional and a violation of plaintiff's Second and Fourteenth Amendment rights. Plaintiffs seek an injunction and declaratory relief.

**Birdt v. Beck** (U.S. District Court for the Central District of California)

The Brady Center filed an amicus brief on April 18, 2011, urging a federal court to dismiss a lawsuit seeking a right to carry loaded firearms in Los Angeles without a showing of necessity. The lawsuit claims that the Second Amendment does not allow California law to require a showing of good cause to carry concealed, loaded firearms in public.

The brief cites studies showing that states with laws broadly allowing concealed carrying of firearms in public experience increases in violent crime, murder, and robbery when those laws are adopted.

The law firm of Hogan Lovells US LLP provided pro bono assistance.

**Brady Campaign to Prevent Gun Violence v. Kempthorne**, No. 1:08-cv-02243 (U.S. District Court for the District of Columbia).

The Brady Campaign to Prevent Gun Violence filed suit in the U.S. District Court for the District of Columbia on December 30, 2008, asking that the court strike down a last-minute Bush Administration rule change allowing concealed, loaded firearms in national parks and wildlife refuges. The suit sought an injunction to block the rule, which went into effect January 9, 2009. The suit was filed on behalf of the Brady Campaign and its affected members.

The suit charged that the Interior Department violated several federal laws in its rush to implement the rule before President Bush left office, including failing to conduct any environmental review of the harm that the rule will cause, as is required by the National Environmental Policy Act. The rule was issued despite a White House directive that no rules should be issued after November 1, 2008, except in “extraordinary circumstances,” issuing the last-minute rule change on December 10, 2008. The rule also violates the National Park Service Organic Act and the National Wildlife Refuge System Administration Act, which created the parks and wildlife refuges as protected lands for safe enjoyment of all visitors.

Rules in place since the Reagan Administration have allowed visitors to transport guns in national parks and wildlife refuges if they are unloaded and stored or dismantled. These restrictions have helped make these areas some of the safest places to visit in the country. Yet at the behest of the gun lobby, the Interior Department announced earlier that it planned to allow concealed firearms in national parks and wildlife refuges. Concealed carrying will be allowed in every state that allows concealed carrying, even if the state specifically bans the practice in state parks. Only Illinois and Wisconsin prohibit concealed carrying.

Numerous studies have confirmed that concealed carrying of firearms does not reduce crime and, if anything, leads to increased violent crime. Experience in states that have allowed concealed carrying of firearms has shown that thousands of dangerous people are able to get licenses. In Florida, for example, more than 4,200 licenses were revoked because many of these licensees committed a crime. Since becoming the first state to allow the concealed carrying of firearms in 1987, Florida consistently has had one of the highest rates of violent crime in the nation. Florida has been ranked as the state with the highest annual violent crime rate more often than any other state in the last two decades.

The NRA and the Mountain States Legal Foundation filed motions to intervene, defending the rule, which were granted by the court.

On March 19, 2009, U.S. District Court Judge Colleen Kollar-Kotelly granted the Brady Campaign’s motion for a preliminary injunction and ordered the government to immediately stop “implementing or enforcing” the Bush rule. The court found that the last-minute rule was a product of an “astoundingly flawed process” and held that the Brady Campaign is “highly likely to prevail” in showing that the rule is illegal. The court also rejected arguments made by the NRA. The court ordered the government to indicate its “intended course of action” by April 20, 2009, and on April 17, 2009, the government announced it will prepare an Environmental Impact Statement of the effects of the rule.

On July 30, 2009, Judge Kollar-Kotelly permanently vacated the Bush rule. The NRA appealed the ruling but the court dismissed their appeal as moot. In spite of these legal victories, guns were allowed into national parks and wildlife refuges on February 22, 2010.

This is because between the March and July injunctions, an amendment to allow people to carry loaded guns in national parks and wildlife refuges was introduced by Senator Coburn, passed by Congress, and signed into law by President Obama, which overrode the court.

The Brady Center and the law firm Ropes & Gray represented the Brady Campaign.

**City of Cleveland v. State of Ohio** (Ohio Court of Appeals)

On March 25, 2009, the Brady Center joined with gun violence prevention advocates to file an amicus brief in the Ohio Court of Appeals in *City of Cleveland v. State of Ohio*, urging the court to declare that a state statute prohibiting local governments from regulating firearms violates the Ohio Constitution.

The law, R.C. section 9.68 of Ohio's concealed handgun licensing scheme, currently preempts local firearms ordinances. In the brief, the Brady Center argues that the law violates the Ohio Constitution, which gives municipalities the "authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws." The brief argues that section 9.68 is not a general law as defined by judicial precedent, and therefore, the state cannot preclude municipalities from regulating firearms within their jurisdictions.

Not only does R.C. section 9.68 violate the Ohio Constitution, but it also prevents cities, such as Cleveland, from enforcing firearms ordinances that have been enacted over the years in order to stop gun violence.

On November 12, 2009, the Court of Appeals found that R.C. 9.68 unconstitutionally attempts to limit municipalities' home rule police powers and that it violates the separation-of-powers doctrine espoused by the Ohio Constitution. The Court awarded summary judgment to the City of Cleveland.

**Commonwealth v. DePina** (Massachusetts Supreme Judicial Court)

The Brady Center, joined by law enforcement and other gun violence prevention groups, filed a friend of the court brief on October 19, 2009, in the Massachusetts Supreme Judicial Court urging the Court to uphold life-saving gun safety laws requiring that a person obtain a firearm identification card before possessing a firearm and obtain a license before carrying a handgun outside the home.

DePina was convicted of unlawfully carrying a firearm, unlawfully carrying a loaded firearm, and possessing ammunition without a firearm identification card, and is challenging Massachusetts licensing and carry laws. In support of the Bristol County District Attorney, the Brady Center's brief urges the Court to reject DePina's argument that Massachusetts licensing statute (M.G.L. ch. 140, s. 131) and firearm identification card statute (M.G.L. ch. 140, s. 129B and 129C) should be invalidated because they violate the Second Amendment.

The U.S. Supreme Court in *Heller* acknowledged the appropriateness of licensing and safety requirements like those in Massachusetts, noting that the Court was not casting doubt on longstanding firearms restrictions that it considered presumptively lawful. In *Heller*, the Court limited the right granted by the Second Amendment to law-abiding, responsible citizens acting in defense of hearth and home. As pointed out in the amicus brief, Massachusetts' firearm identification card law sensibly limits

gun possession to law-abiding citizens and Massachusetts' licensing law reasonably requires that a person obtain a license to carry a handgun in public.

The Court heard arguments on November 5, 2009, the same day as another Second Amendment case, *Commonwealth v. Runyan*. The Brady Center also filed a friend of the court brief in *Runyan*, which involves a challenge to a Massachusetts law requiring that guns be safely stored while not in use. Decisions are expected shortly for both cases. The Court agreed with the Brady Center in both cases, and rejected Nathaniel DePina's claim that the Second Amendment prohibited the state from prosecuting him for illegal gun carrying.

The groups joining the Brady Center's brief are the International Brotherhood of Police Officers, Legal Community Against Violence, Massachusetts Chiefs of Police, Massachusetts Million Mom March Chapter of the Brady Campaign to Prevent Gun Violence, and Stop Handgun Violence. Former Massachusetts Attorney General Scott Harshbarger and his law firm, Proskauer Rose LLP, are representing the Brady Center and the other groups filing the brief pro bono.

**D'Cruz v. ATF**, No. 10-140 (U.S. District Court for the Northern District of Texas)

This lawsuit contends that the constitutional rights of 18-year-old Plaintiff James D'Cruz are being violated because of the prohibition on handgun purchase by individuals younger than 21 years of age from gun shops. The National Rifle Association is a plaintiff, and the lawsuit was filed against ATF, its acting director, and U.S. Attorney General Eric Holder. It alleges Second and Fifth Amendment violations and asks for an injunction against enforcement of 18 U.S.C. §§ 922(b)(1), (c) and any derivative regulations, such as 27 C.F.R. §§ 478.99(b)(1), 478.124(a), 478.96(b).

On December 27, 2010, the Brady Center filed a brief in the case, urging its dismissal, arguing that the Gun Control Act of 1968 barred these sales because of the risks of gang violence and high rates of violent crime and homicide associated with this age group. Arrests for murder, non-negligent homicides and other violent crimes peak from ages 18 to 20. Even though 18-20 year-olds make up only 5% of the population, they account for about 20% of homicide and manslaughter arrests. The brief cites studies showing that young persons under 21 often lack the same ability as adults to govern impulsivity, judgment, planning for the future, and foresight of consequences.

The U.S. Supreme Court has held that the Second Amendment protects a limited, narrow right of law-abiding, responsible citizens to use arms in defense of hearth and home but that laws imposing conditions and qualifications on the commercial sale of arms are presumptively lawful. The brief argues that laws restricting teenage gun purchases are reasonable gun laws permissible under the Second Amendment.

The Student Government and Graduate Student Assembly of the University of Texas at Austin joined the Brady Center on the brief on behalf of the campus 62,000 students, along with the Texas organizations Mothers Against Teen Violence, the Texas Chapters of the Brady Campaign to Prevent Gun Violence, and Students for Gun-Free Schools in Texas.

The Brady Center amicus brief was filed by attorneys with the Brady Center and the law firm Hogan Lovells.

**D’Cruz v. McCraw**, No. 10-141 (U.S. District Court for the Northern District of Texas)

This lawsuit contends that the constitutional rights of 18-year-old Plaintiff James D’Cruz are being violated because of the prohibition on handgun carrying by individuals younger than 21 years of age. The lawsuit was filed against six officials in the Texas Department of Public Safety and the Texas Public Safety Commission. It alleges Second and Fourteenth Amendment violations and asks for an injunction against enforcement of TEX. PENAL CODE § 46.02 and TEX. GOV’T CODE §§ 411.172(a)(2), (a)(9), (g).

The Brady Center filed an amicus brief on May 18, 2011, on behalf of the Brady Center, Graduate Student Assembly and Student Government of the University of Texas at Austin, Mothers Against Teen Violence, Students for Gun-Free Schools in Texas, and Texas Chapters of the Brady Campaign. Similar to our brief filed in *D’Cruz v. ATF*, this brief highlights the dangers of allowing teens access to guns.

On September 29, 2011, a federal district judge in Texas agreed with our brief and dismissed the NRA’s challenge.

**Dearth v. Holder** (formerly *Hodgkins v. Holder*) (U.S. Court of Appeals for the District of Columbia Circuit)

The Second Amendment Foundation and two individual plaintiffs brought this action in March 2009 claiming, among other violations, that 18 U.S.C. § 922(b)(3) and 27 CFR 478.96, 478.99 and 478.124 discriminate against them in a manner as to forbid American citizens who do not reside in any state from purchasing firearms. Plaintiffs contend constitutional violations and are seeking an injunction.

**District of Columbia v. Heller**, No. 07-290 (U.S. Supreme Court), *cert. granted from Parker v. District of Columbia*, 478 F.3d 370 (D.C. Cir. 2007).

The Brady Center is supporting the District of Columbia in defending its longstanding handgun ban in this case brought by the CATO Institute, a libertarian think-tank. CATO filed a lawsuit on February 10, 2003, on behalf of several District of Columbia residents seeking to strike down as unconstitutional D.C.’s restrictive handgun law, along with separate provisions of D.C. law requiring that registered firearms be kept unloaded or locked when stored at home. The Brady Center filed an *amicus curiae* brief on behalf of the District of Columbia.

U.S. District Judge Emmet G. Sullivan upheld the District’s laws in a decision issued March 31, 2004. The CATO Institute appealed the ruling, which was stayed pending the outcome in another case attacking the District’s gun laws, *Seegars v. Ashcroft*. The ruling in *Seegars* upheld the District’s laws

and on July 15, 2005, counsel for the District filed a motion to remand asking the Appeals court to affirm the lower court's dismissal of the lawsuit. However, on November 2, 2005, the Appeals Court denied the motion to remand and asked for further briefing on the merits of the case. Briefing was completed in August 2006, and the Brady Center again filed an *amicus* brief on behalf of the District. A hearing before the Court of Appeals took place on December 7, 2006.

On March 9, 2007, the court issued a decision, with two judges overruling the trial court and striking down the District of Columbia's handgun law. The ruling represents the first time in American history that a Federal appeals court has struck down a gun law on Second Amendment grounds. In doing so, the two judges disregarded nearly seventy years of U.S. Supreme Court precedent, negated the democratically-expressed will of the people of the District of Columbia and deprived the community of a gun law it enacted thirty years ago and still strongly supports. The dissent vigorously disagreed, correctly noting that the Second Amendment "relates to the Militia of the States only." While acknowledging that "reasonable restrictions" to promote "the government's interest in public safety" are permitted by the Second Amendment, the two-judge majority substituted its policy preferences for those of the elected representatives of the District of Columbia.

On May 8, 2007, the D.C. Circuit denied rehearing en banc. The District's gun laws remain in effect while the case continues to be litigated. On September 4, 2007, the District of Columbia filed a cert petition asking the U.S. Supreme Court to accept an appeal. The Supreme Court granted certiorari and the District of Columbia's opening brief was filed on January 4, 2008.

On January 11, 2008, the Brady Center, joined by nine major national law enforcement organizations – International Association of Chiefs of Police, Major Cities Chiefs, International Brotherhood Of Police Officers, National Organization Of Black Law Enforcement Executives, Hispanic American Police Command Officers Association, National Black Police Association, National Latino Peace Officers Association, School Safety Advocacy Council, And Police Executive Research Forum – filed an *amicus* brief in support of the District in the case.

The Supreme Court heard oral arguments on March 18, 2008 and issued a decision on June 26, 2008, in which they affirmed the decision of the Court of Appeals striking down the District's thirty-two-year-old law. However, the Supreme Court decision clearly stated that other gun laws are entirely consistent with the Constitution, such as prohibitions on the possession of firearms by felons and the dangerously mentally ill, laws banning firearms in sensitive places such as schools and government buildings, and laws imposing conditions and qualifications on the commercial sale of firearms.

The firm of Wilmer Hale is assisting the Brady Center.

**Doe v. Wilmington Housing Authority**, No. 1:10-cv-00473-LPS (U.S. District Court for the District of Delaware)

This lawsuit was filed against the Wilmington Housing Authority by tenants in a public assistance building who claim a constitutional right to guns in public housing. Plaintiffs claim Second and

Fourteenth Amendment violations, as well as violations of the Delaware Constitution and certain state statutes, and are seeking an injunction against the prohibition on firearms in public housing. Since the lawsuit was originally filed, the rule has changed to allow guns in apartments but not in common areas.

On February 28, 2011, the Brady Center filed a brief urging dismissal of the lawsuit, which claims a Second Amendment right to carry, use, and discharge guns in common areas on public housing property for reasons other than self-defense. The brief argues that there is no Second Amendment right to carry guns outside the home and that the state, as landlord and owner, has the authority to regulate the terms and use of its property.

**GeorgiaCarry.org v. City of Atlanta** (U.S. Court of Appeals for the Eleventh Circuit)

GeorgiaCarry.org filed suit seeking to allow licensed gun owners to bring firearms into the Hartsfield-Jackson Atlanta International Airport. A Georgia state law took effect on July 1, 2008, allowing people with gun permits to carry firearms into restaurants, state parks, and on public transportation. Atlanta officials stated that firearms were not permitted at the Hartsfield-Jackson Airport. GeorgiaCarry.org sued the City of Atlanta and the airport, claiming that airports qualify as public transportation under the new Georgia law and, therefore, that permit holders could not be stopped from bringing guns there.

City of Atlanta attorneys argued that allowing firearms in the airport would pose a threat to passengers and that airports do not qualify as public transportation. The U.S. District Court agreed, and sharply rejected the argument from GeorgiaCarry.org, stating that the definition of public transportation does not include airports and that there was no clear evidence that Georgia legislators intended the law to apply to airports.

GeorgiaCarry.org appealed the decision to the U.S. Court of Appeals for the 11<sup>th</sup> Circuit. On February 18, 2009, the Court upheld the lower court's decision that the City of Atlanta was entitled to prohibit visitors from carrying concealed firearms in its international airport. The Court accepted arguments made by the Brady Center in an amicus brief it filed, represented by the law firm of Covington and Burling.

**GeorgiaCarry.org v. State of Georgia**, No. 5:10-cv-302-CAR (U.S. District Court for the Middle District of Georgia)

GeorgiaCarry.org, a Georgia church, and two individual plaintiffs brought this action against the State of Georgia's prohibition on carrying guns into places of worship (O.C.G.A. § 16-1-127(b)(4)). The suit alleges that the statute violates the First and Second Amendments and plaintiffs are seeking an injunction against enforcement.

On January 24, 2011, a federal judge dismissed this case, rejecting gun lobby arguments that the state's prohibition on guns in places of worship violated the Second Amendment. The gun lobby plaintiffs have appealed to the U.S. Court of Appeals for the Eleventh Circuit.

**Hain, Meleanie et al. v. DeLeo, Michael et al.**, No. 02136 (U.S District Court for the Middle District of Pennsylvania)

The Brady Center provided pro bono legal assistance to Lebanon County, PA Sheriff Michael DeLeo in a lawsuit filed against the county and sheriff on November 24, 2008, by Meleanie Hain, a mother of four whose concealed carry license was revoked following complaints from parents that Hain posed a danger to the community after she openly carried a loaded semiautomatic firearm at her 5-year-old's soccer games. Hain stated in a December 12, 2008, Philadelphia Inquirer article that she openly carries a loaded handgun because "I don't really need anything extra in the way of the gun if I'm going to have to pull it out and I'm holding a baby and trying to shuttle two or three other kids."

In the lawsuit, Hain and her husband sought \$1 million in damages, including emotional distress and loss of babysitting clients.

In December 2008, DeLeo moved to dismiss the lawsuit, asserting that it has no legal basis.

Meleanie was shot to death by her husband on October 7, 2009, as she sat in her home on a computer video chat with a friend; her husband then shot and killed himself.

After their deaths, the case was continued, and on November 2, 2010, Chief Judge Yvette Kane of the U.S. District Court for the Middle District of Pennsylvania dismissed the lawsuit. Judge Kane noted that the U.S. Supreme Court has "explicitly referenced prohibitions on concealed carrying of firearms as an example of regulations that have traditionally been considered lawful under the Second Amendment."

DeLeo is represented by David L. Schwalm and Scott D. McCarroll of Harrisburg, Pennsylvania. Attorneys with the Brady Center plan to assist DeLeo's counsel throughout the case.

**Heller v. District of Columbia** (U.S. Court of Appeals for the District of Columbia Circuit)

This case will decide the constitutionality of the District of Columbia's amended gun laws following the Supreme Court's 2008 decision in *District of Columbia v. Heller*.

This lawsuit is being brought by the same individual, Dick Heller, who challenged D.C.'s gun laws in the first *Heller* case. After the Supreme Court's ruling in that case, Washington D.C. amended their gun laws to conform to the Court's ruling. The Brady Center assisted attorneys for the District of Columbia in this process. These gun laws withstood a constitutional challenge by Mr. Heller in the U.S. District Court for the District of Columbia. Mr. Heller then appealed the court's decision to the U.S. Court of Appeals for the D.C. Circuit. If the D.C. Circuit were to strike down the challenged gun laws, including prohibitions on assault weapons and large capacity ammunition magazines, it would make it much easier for criminals to arm themselves in the District, and it would set a harmful (and

incorrect) precedent that the Second Amendment unduly restricts the authority of cities, states, and the federal government to enact reasonable gun laws.

The Brady Center filed an amicus brief in the case on September 20, 2010, joined by Hispanic American Police Command Officers Association, International Brotherhood of Police Officers, and National Black Police Association, arguing that D.C.'s amended gun laws are constitutional and should stand.

On November 15, 2010, a three judge panel of the U.S. Court of Appeals for the D.C. Circuit heard arguments in the case.

On January 14, 2011, the Brady Center filed a supplemental amicus brief in the U.S. Court of Appeals for the D.C. Circuit in the case, in which we argued that D.C.'s ban on assault weapons and high capacity magazines is reasonable and constitutional. Plaintiff Dick Heller objected to the Brady Center filing an amicus brief, but the Court rejected his arguments and accepted the brief.

On October 4, 2011, a conservative panel of the U.S. Court of Appeals for the D.C. Circuit upheld D.C.'s strong registration requirements and bans on assault weapons and assault clips. In upholding the laws, the court relied heavily on evidence submitted by the Brady Center on the dangers of assault weapons and assault clips. Other D.C. laws were remanded to the trial court for further proceedings.

The law firm of WilmerHale is providing pro bono assistance.

**Jackson v. City and County of San Francisco** (U.S. District Court for the Northern District of California)

The National Rifle Association, San Francisco Veteran Police Officers Association, and six individual plaintiffs initiated this action in May 2009 against the City and County of San Francisco. The lawsuit claims that San Francisco's gun laws, including safe storage requirements and prohibitions on the sale of certain types of ammunition, violate the Second and Fourteenth Amendments. Plaintiffs are seeking an injunction against enforcement.

**Kachalsky v. Cacace**, No. 10-civ-05413 (U.S. District Court for the Southern District of New York)

The Second Amendment Foundation and two individual plaintiffs brought this action, challenging the validity of Westchester County, New York's handgun permit process. The named defendants are two handgun permit licensing officers and the County of Westchester.

In order to be issued a handgun permit license, proper cause needs to be shown, including a need for self-defense distinguishable from that of the general public. Plaintiffs contend that this violates the Second and Fourteenth Amendments. Plaintiffs are asking for permanent injunctive relief against the enforcement of the provisions regulating handgun permits.

Defendants filed a motion to dismiss and on November 22, 2010, the Brady Center filed an amicus brief in support of their motion to dismiss.

On September 2, 2011, the court dismissed the suit, agreeing with the Brady Center's brief that the U.S. Supreme Court's recognition of a Second Amendment right to guns in the home for self-defense does not prevent broad restrictions on the carrying of concealed weapons.

The law firm of Hogan Lovells is providing pro bono assistance.

**McDonald v. City of Chicago**, No. 08-1521 (U.S. Supreme Court)

The U.S. Supreme Court announced on September 30, 2009, that it will consider whether the Second Amendment applies to state and local gun laws in *McDonald v. Chicago*, a challenge to Chicago's handgun ban. On November 23, 2009, the Brady Center, along with national law enforcement groups, filed an *amicus curiae* brief arguing that even if the Second Amendment is incorporated against states, states should retain broad police power authority to protect communities from the risks posed by firearms, and courts should broadly defer to reasonable legislative determinations of what gun laws are necessary in a community.

The case follows the June 2008 decision in *District of Columbia v. Heller*, in which the Court held that the Second Amendment protects a private right to possess firearms in the home for self-defense, and struck down a District of Columbia handgun ban. However, the ruling in *Heller* only applied to the federal government and the District of Columbia as a federal enclave. In *McDonald v. Chicago*, the Court will decide whether the Second Amendment is "incorporated" by the 14th Amendment to apply to the states, and whether to reverse an appeals court ruling that upheld Chicago's ban on handguns.

The Brady Center's brief focuses on another crucial question left unanswered in *Heller*: what standard of review courts should use in reviewing Second Amendment challenges to firearms laws. The brief suggests that the Court look to state court decisions that have consistently held that even state constitutional provisions that protect a private right to bear arms unrelated to militia participation do not require that gun laws be subjected to strict scrutiny.

The Supreme Court heard oral arguments on March 2, 2010, and on June 28, 2010 held that the Second Amendment is incorporated to apply to the states, but found, just as the *Heller* court did, that reasonable gun regulations are still valid.

**Mishaga v. Monken**, No. 3:10-cv-03187-MPM-CHE (U.S. District Court for the Central District of Illinois)

This lawsuit was filed July 27, 2010, by Ellen Mishaga against the Director of the Illinois State Department of Police, Jonathan Monken. Mishaga is a resident of Ohio, who, when in Illinois, stays with friends in their home. Mishaga wishes to possess a firearm when in Illinois and has applied for a FOID Card twice and been denied both times.

Possession of firearms in Illinois is governed by the Illinois Firearm Owners Identification Card Act, and the Illinois State Police issues FOID Cards.

Mishaga alleges that the Illinois State Police's refusal to issue her a FOID Card violates her constitutional right to bear arms and to travel. She seeks declaratory and injunctive relief against the Monken to declare the Act to be unconstitutional and to enjoin its enforcement.

On October 15, 2010, Monken filed a motion to dismiss. The court denied the motion on November 22, 2010.

**Montana Shooting Sports Assoc. v. Holder**, No. 09-CV-147-M-DWM-JCL (U.S. District Court for the District of Montana)

The Brady Center, joined by a coalition of Montana and national gun violence prevention, law enforcement, and domestic violence groups, filed an amicus brief on May 18, 2010, in the U.S. District Court for Montana urging the Court to strike down the Montana "Firearms Freedom Act" as unconstitutional and a dangerous threat to our communities and our nation's security. The brief supports the federal government's effort to invalidate the Act.

The Montana "Firearms Freedom Act" seeks to exempt Montana-made firearms from federal laws requiring background checks to keep guns away from criminals and record keeping that allows law enforcement to trace crime guns. It would allow the sale of guns, illegal under federal law, that can evade metal detectors and would allow the manufacture of armor-piercing ammunition banned by federal law.

The Montana law could exempt Montana-made guns from the federal "Gun Free School Zones" law and the ban on guns in federal facilities and courthouses located in Montana. It would allow teenagers to possess handguns despite a federal law prohibiting handgun possession by anyone under 18. All told, it would allow unlimited sales of virtually untraceable firearms without background checks or records of sale, endangering public safety and national security.

The law firm Proskauer and Montana attorney Cynthia Wolken are representing, on a pro bono basis, the Brady Center and other groups filing the brief.

Joining the Brady Center's brief are Montanans Against Gun Violence, Montana Human Rights Network, International Brotherhood of Police Officers, National Black Police Association, Hispanic American Police Command Officers Association, and the National Network to End Domestic Violence. The brief was filed on May 18, 2010.

Oral arguments were held on July 15, 2010, and on August 31, 2010, a Magistrate Judge opinion was issued recommending the dismissal of the lawsuit. The judge found that the plaintiffs lack standing, but that even if they had standing, the Act violates the Supremacy Clause, as a state cannot exempt itself from federal gun laws. The judge declined plaintiffs' request to overturn U.S. Supreme Court precedent

allowing federal regulation of in-state commerce that affects nationwide commerce. The judge also found that the Second Amendment provides no right to make guns that are exempt from federal requirements.

On September 29, 2010, Judge Donald W. Molloy of the U.S. District Court for the District of Montana also agreed with the Brady Center when he adopted the magistrate judge's recommendation that the case be dismissed.

Plaintiffs appealed to the U.S. Court of Appeals for the 9<sup>th</sup> Circuit. On July 27, 2011, the Brady Center, joined by a coalition of law enforcement, domestic violence and gun violence prevention groups, filed an amicus brief urging the Court to strike down the Montana "Firearms Freedom Act" as unconstitutional and a dangerous threat to our communities and our nation's security.

**Moore v. Madigan** (U.S. District Court for the Central District of Illinois)

On July 25, 2011, the Brady Center filed an amicus brief in federal court in Illinois urging dismissal of a gun lobby lawsuit challenging the validity of Illinois law regulating the public carry of firearms. The brief was filed the same day as the Brady Center's amicus brief in *Shepard v. Madigan*.

The Second Amendment Foundation, Illinois Carry, and four individual plaintiffs brought *Moore v. Madigan*, arguing that the Second Amendment gives them the right to carry loaded guns in public and that Illinois' present regulatory scheme is unconstitutional.

The Brady Center's brief highlights the severe danger posed by concealed weapons, with studies showing that the carrying of firearms in public is not a useful or effective form of self-defense and, in fact, repeatedly has been shown to increase the risks that one will fall victim to violent crime.

The brief was filed by attorneys with the Brady Center and the firm of Hogan Lovells US LLP.

**Muller v. Maenza**, No. 2:10-cv-06110-WHW-CCC (U.S. District Court for the District of New Jersey)

This lawsuit was filed November 22, 2010, by six individual plaintiffs, the Second Amendment Foundation, and the Association of New Jersey Rifle and Pistol Clubs against several New Jersey judges and police chiefs. The lawsuit concerns the State of New Jersey's issuance of "Permit to Carry" handgun licenses pursuant to N.J. Stat. § 2C:58-4 and N.J. Admin. Code §§ 13:54-2.3, 13:54-2.4, 13:54-2.5, and 13:54-2.7. The lawsuit alleges Second and Fourteenth Amendment violations, as well as New Jersey state law violations, and plaintiffs seek declaratory and injunctive relief.

On January 26, 2011, the Brady Center filed an amicus brief in the case urging dismissal of the lawsuit. The brief explains that New Jersey's strong gun laws have helped the state achieve one of the lowest gun death rates in the nation, less than half the national average.

**National Shooting Sports Foundation v. ATF** (U.S. District Court for the District of Columbia)

The Brady Center filed an amicus brief in the U.S. District Court for the District of Columbia on September 27, 2011, urging the court to dismiss a gun lobby lawsuit challenging regulations aimed at cracking down on assault rifle trafficking along the Mexico border. LAP's brief supports an Obama Administration rule requiring that gun dealers in the Southwest border states notify law enforcement of bulk sales of semi-automatic rifles, a key indicator of gun trafficking.

On October 25, 2011, a federal district judge in Washington, D.C. heard arguments on a motion to dismiss the lawsuit.

The law firm of Arnold and Porter provided pro bono assistance on the Brady Center's brief.

**Nordyke v. King**, No. 07-15763 (U.S. Court of Appeals for the Ninth Circuit).

In 1999, Alameda County passed an ordinance restricting possession of firearms on County-owned property, in response to widespread gun violence. The Ordinance made firearm possession on County owned property a misdemeanor but did not preclude the purchase of guns from gun retailers elsewhere in or outside of the County, transportation of guns on County roads, gun shows on non-County property, or events (including gun shows) that comply with the County's guidelines. Plaintiff-Appellant Nordyke sued in September 1999 to invalidate the Ordinance, asserting that it prevented him from operating profitable gun shows on County fairgrounds. Nordyke claimed a Second Amendment right to possess and sell guns on County property.

The U.S. District Court for the Northern District of California granted summary judgment in favor of Alameda County on March 31, 2007. Nordyke appealed that decision in the U.S. Court of Appeals for the Ninth Circuit. After the parties completed their briefing on the appeal, the United States Supreme Court decided *District of Columbia v. Heller*. In light of that decision, on July 28, 2008, the Ninth Circuit granted the parties' Motion for Leave to File Supplemental Briefing on the Second Amendment.

On October 6, 2008, the Brady Center filed an amicus brief for the Appellees, contending that the Second Amendment right recognized in *Heller* did not support invalidating Alameda County's ordinance or finding a right to buy or sell guns. The Brady Center was joined on the brief by the City of Oakland, California; the City and County of San Francisco, California; Legal Community Against Violence; California Peace Officers' Association; California Police Chiefs' Association; California State Sheriffs' Association; Coalition To Stop Gun Violence; Violence Policy Center; and Youth Alive! The law firm of Morrison & Foerster provided pro bono assistance in preparing the brief.

Oral argument was held on January 15, 2009 and on April 20, 2009, the court affirmed the district court's grant of summary judgment to the County on the Nordykes' First Amendment and equal protection claims and concluded that the Second Amendment is incorporated against the states. However, on July 29, 2009, the court stated that this three-judge panel opinion shall not be cited as precedent by or to any court of the Ninth Circuit, as the court would hear the case *en banc*.

On September 24, 2009, the *en banc* court heard arguments in the case. On July 12, 2010, the court remanded for further consideration in light of the U.S. Supreme Court's decision in *McDonald v. City of Chicago*.

On August 19, 2010, the Brady Center submitted another amicus brief to the Ninth Circuit. This brief discusses what standard of review should apply in Second Amendment cases, and argues that challenges to laws under the Second Amendment should be reviewed using a reasonable regulation test. The law firm of Proskauer Rose provided pro bono assistance in preparing the brief.

On May 2, 2011, the Ninth Circuit ruled that the ordinance banning possession and sales of firearms on county-owned property was constitutional under the Second Amendment. One of the judges agreed with the Brady Center's argument that gun laws should be upheld under the Second Amendment if they are "reasonable regulations."

**National Rifle Association v. City of Philadelphia**, No. 001472 (Philadelphia County, Court of Common Pleas)

In April 2008, the Philadelphia City Council drafted and unanimously passed five gun control measures requiring gun owners to report lost or stolen guns to police within 24 hours, allowing judges to remove guns from people declared to be a risk to themselves or others, preventing people subject to protection-from-abuse orders from owning guns, banning semiautomatic guns with clips that hold ten or more rounds, and barring straw purchases and limiting handgun purchases to one a month. Mayor Nutter promptly signed the bills into law. One week later, the National Rifle Association, two gun shops in the city of Philadelphia, and other individuals sued the city, arguing that a state preemption statute barred the City from enacting ordinances that regulated guns. The court entered a temporary restraining order preventing the laws from going into effect.

On May 19 and 20, 2008, Judge Jane Cutler Greenspan of the Philadelphia Court of Common Pleas heard arguments in the case. On June 4, 2008, Judge Greenspan lifted injunctions against three of the laws, ruling that Philadelphia may now require gun owners to report lost or stolen guns to police within 24 hours, judges may remove guns from people declared to be a risk to themselves or others, and people subject to protection-from-abuse orders may be prevented from owning guns. However, Judge Greenspan made permanent the injunctions against the laws seeking to ban semiautomatic guns with clips that hold ten or more rounds and limiting handgun purchases to one a month, stating that superceding state laws prevent Philadelphia from regulating guns in this way.

The ruling was appealed and in June 2009, the Commonwealth Court of Pennsylvania affirmed the order of the trial court. The ruling allows Philadelphia to continue to enforce ordinances requiring gun owners to report lost or stolen guns to police within 24 hours, allowing judges to remove guns from people declared to be a risk to themselves or others, and preventing people subject to protection-from-abuse orders from owning guns.

On June 8, 2010, The Pennsylvania Supreme Court denied the NRA's petition for appeal based on the lack of the NRA's and other plaintiffs' standing to sue. This means that three Philadelphia ordinances remain in effect: (1) An ordinance requiring the reporting of lost or stolen guns; (2) An ordinance authorizing the temporary removal of firearms from persons found by the court, upon affidavit of two police officers or a district attorney, to pose a risk of imminent harm to themselves or others; and (3) An ordinance prohibiting anyone subject to an active protection from abuse order from acquiring or possessing firearms when the order provides for confiscation of the firearms.

Philadelphia was represented by City Solicitor Shelley Smith, Susan Burke and William Gould of Burke O'Neil, in Philadelphia, whose office was aided by Brady Center attorney Jonathan E. Lowy.

**National Rifle Association v. City of Pittsburgh**, No. 09-007912 (Court of Common Pleas of Allegheny County)

The National Rifle Association and other individuals sued the City of Pittsburgh in April 2009, arguing that a state preemption statute barred the City from enacting ordinances that regulated guns. This was in response to a measure that passed the Pittsburgh City Council on December 2, 2008, requiring firearm owners to report lost or stolen firearms.

On May 12, 2009, the Brady Center announced that it is helping defend the City of Pittsburgh against the National Rifle Association lawsuit. The reporting requirement helps protect against gun trafficking because when guns are recovered at crime scenes and traced back to a gun trafficker, they frequently claim that the guns were lost or stolen to hide their complicity in trafficking. The law also aids law-abiding gun owners by enabling police to quickly investigate and retrieve stolen guns, and it does not punish gun owners who fail to report the loss or theft of a firearm because they are unaware that a loss or theft occurred, but penalizes individuals who seek to hide from police the fact that a gun has been lost or stolen and may be in the hands of a dangerous person.

On July 8, 2009, the Brady Center argued in support of Pittsburgh's Preliminary Objections seeking dismissal of the case before Senior Judge R. Stanton Wettick, who, on July 21, 2009, ruled that the NRA and gun owners who sued lacked standing to bring the case. That ruling was appealed to the Commonwealth Court, which heard arguments in the case on April 20, 2010.

On August 18, 2010, the Pennsylvania Commonwealth Court denied the NRA's motion for reconsideration of the court's ruling throwing out the NRA's case for lack of standing. The Brady Center had filed a brief on behalf of Pittsburgh urging the court not to reconsider its ruling.

On September 17, 2010, the NRA filed a petition for review with the Pennsylvania Supreme Court, seeking review of the ruling dismissing the case. The Brady Center filed a brief opposing the NRA's petition on October 4, 2010. On June 15, 2011, the Pennsylvania Supreme Court denied the NRA's petition for review. The NRA lawsuit was thrown out because the NRA lacked standing to sue, as it could not show that any of its members were harmed at all by the ordinance. The NRA filed a motion for reconsideration with the Pennsylvania Supreme Court which was rejected on December 15, 2011.

Brady Center attorneys Jonathan E. Lowy and Daniel R. Vice are representing the City of Pittsburgh, along with attorneys from the City of Pittsburgh Department of Law.

**Ohio v. Tomas** (Court of Appeals of Ohio)

On March 14, 2011, the Brady Center filed an amicus brief yesterday in the Court of Appeals of Ohio in *Ohio v. Tomas*. The brief argues that the Court should reverse a recent Court of Common Pleas ruling that said that an Ohio law (R.C. 2921.13) barring gun possession by convicted drug criminals is unconstitutional.

This case arose when a search warrant executed on Marinko Tomas's business found nearly a thousand rounds of ammunition, two rifles, a handgun and drugs. Tomas was charged with "Having Weapons While Under Disability", a violation of Ohio Revised Code 2921.13, because he had been convicted of attempted trafficking of marijuana.

On December 7, 2010, the Ohio Court of Common Pleas ruling dismissed the charges against Tomas. It held that R.C. 2921.13 was unconstitutional when applied to a defendant with no felony convictions who possesses firearms for alleged self-defense at his home or business. The State of Ohio appealed and the case is now pending in the Court of Appeals of Ohio, Eighth Appellate District, in Cleveland.

The Ohio Coalition Against Gun Violence (OCAGV) joined the Brady Center as amicus on the brief.

The law firm of Covington and Burling is serving as counsel for the Brady Center and OCAGV.

**Palmer v. District of Columbia** (U.S. District Court for the District of Columbia)

The Brady Center is assisting Washington, D.C. in defending its law prohibiting the carrying of loaded guns in public. The case was brought by the same attorney who challenged Washington, D.C. gun laws in *Heller v. District of Columbia*, where the U.S. Supreme Court ruled for the first time that the Second Amendment grants an individual right to bear arms independent of any service in a well-regulated militia.

In the *Heller* case, Justice Scalia wrote for the majority of the Court that although there is an individual right to bear arms, that right "is not unlimited." In particular, Justice Scalia noted that a majority of courts since the 1800's have consistently held that "prohibitions on carrying concealed weapons were lawful under the Second Amendment or state analogues." Furthermore, all nine Justices agreed that a wide variety of common sense gun laws are "presumptively lawful."

Despite the ruling in *Heller* that recognized the constitutionality of laws restricting concealed carrying of firearms, the plaintiffs in *Palmer* are claiming a constitutional right to carrying loaded weapons on the streets of the nation's capital. A federal court heard arguments on this case on January 22, 2010.

**Pena v. Cid** (U.S. District Court for the Eastern District of California)

The Second Amendment Foundation, Calguns Foundation, and four individual plaintiffs brought this action challenging the validity of California's handgun roster scheme. The suit is brought against Wilfredo Cid, Chief of the California Department of Justice Bureau of Firearms.

California maintains a roster of firearms approved for sale, and California Penal Code § 12126 bars from the approved handgun roster firearms that fail to meet the firing requirement for handguns pursuant to California Penal Code § 12127 or the drop safety requirement for handguns pursuant to California Penal Code § 12128. Plaintiffs contend that this violates the Second and Fourteenth Amendments; as such, they are asking for injunctive relief against the enforcement of the provisions regulating the handgun roster.

**Peruta v. County of San Diego**, No. 09-CV-2371 IEG (BLM) (U.S. District Court for the Southern District of California)

The Brady Center is assisting the County of San Diego in this case, brought by the California Rifle & Pistol Association and five individual plaintiffs, challenging the validity of San Diego's handgun permit process. William Gore, Sheriff of San Diego County, is a named defendant, as well as San Diego County.

Plaintiffs claim that the application requirements for a concealed carry handgun permit are so high that they are illegal and unconstitutional. The permit process includes a criminal background check and completion of a handgun training course. Applicants are then assessed for good moral character and whether they have good cause to carry a concealed weapon; plaintiffs claim this is a violation of the Second and Fourteenth Amendments, the Equal Protection Clause, and California Penal Code section 12050, because it is dependent upon the discretion of the issuing authority and is not consistent throughout the state.

Plaintiffs are asking for permanent injunctive relief against the requirement of showing good cause when requesting a concealed carry handgun permit.

On October 4, 2010, the Brady Center filed an amicus brief in support of San Diego County's motion for summary judgment.

On December 10, 2010, San Diego County's motion for summary judgment was granted and the case was dismissed. The gun lobby has appealed to the U.S. Court of Appeals for the Ninth Circuit.

On August 12, 2011, The Brady Center, along with the Police Foundation and the International Brotherhood of Police Officers, filed an amicus brief in the U.S. Court of Appeals for the Ninth Circuit in defense of San Diego County's concealed handgun permitting. The Brady Center's brief states that the U.S. Supreme Court's recent decisions in *District of Columbia v. Heller* and *McDonald v. Chicago* held only that there is a Second Amendment right to possess guns in the home for self-defense, and do not require San Diego County to change its permitting process.

The law firm of Hogan Lovells is providing pro bono assistance.

**Peterson v. LaCabe** (U.S. Court of Appeals for the 10th Circuit)

The Brady Center filed an amicus brief on July 19, 2011, in the U.S. Court of Appeals for the 10th Circuit urging dismissal of a lawsuit challenging Colorado's restrictions on concealed carrying of loaded firearms in public by out-of-state residents.

To protect public safety, Colorado only allows visitors to carry concealed guns in public if they have concealed carry licenses from states that have concealed carry reciprocity with Colorado, and only if they are residents of the state in which they were issued the license.

The Brady Center's brief highlights the severe danger posed by concealed weapons, with studies showing that the carrying of firearms in public is not a useful or effective form of self-defense and, in fact, repeatedly has been shown to increase the risks that one will fall victim to violent crime.

Plaintiffs argue that out-of-state residents have a right to carry loaded, concealed firearms in Colorado even if they do not meet Colorado's requirements to carry concealed weapons. On March 8, 2011, Senior Judge Walker D. Miller of the U.S. District Court for the District of Colorado dismissed the case based on "the state's interest in monitoring a potential licensee's eligibility for a concealed handguns permit, and the increased difficulty of doing so for out-of-state residents." The case is now on appeal before the 10th Circuit.

The brief was filed by attorneys with the Brady Center and the firm of Hogan Lovells US LLP.

**Richards v. Prieto** (formerly Sykes v. McGinness) (U.S. District Court for the Eastern District of California)

The Second Amendment Foundation, Calguns Foundation, and three individual plaintiffs brought this action, challenging Sacramento and Yolo County, California's concealed carry handgun permit process.

The permit process in Sacramento and Yolo County includes a criminal background check and completion of a handgun training course. Applicants are then assessed for good moral character and whether they have good cause to carry a concealed weapon; plaintiffs claim this is a violation of the Second and Fourteenth Amendments, because it is dependent upon the discretion of the issuing authority and is not consistent throughout the state. Plaintiffs are asking for permanent injunctive relief against the requirement of showing good cause when requesting a concealed carry handgun permit.

On February 11, 2011, the Brady Center filed an amicus brief in the case, arguing that the Supreme Court has made it clear that reasonable gun laws, such as California's restrictions on carrying loaded guns in public, are fully permitted under the Second Amendment. The court agreed with the Brady Center and on May 16, 2011, dismissed the lawsuit.

The gun lobby appealed and on September 30, 2011, the Brady Center filed an amicus brief in the U.S. Court of Appeals for the 9<sup>th</sup> Circuit in defense of Yolo County. The Brady Center's appellate brief contends that while the Second Amendment right recognized by the Supreme Court is limited to the home, law enforcement retains discretion to permit or deny people to carry hidden handguns in public.

The law firm of Hogan Lovells provided pro bono assistance on the brief.

**Shepard v. Madigan** (U.S. District Court for the Southern District of Illinois)

On July 25, 2011, the Brady Center filed an amicus brief in federal court in Illinois urging dismissal of a gun lobby lawsuit challenging the validity of Illinois law regulating the public carry of firearms. The brief in *Shepard v. Madigan* was filed the same day as the Brady Center's amicus brief in *Moore v. Madigan*.

The Illinois State Rifle Association and one individual plaintiff brought *Shepard v. Madigan*, claiming that the Second Amendment gives them the right to carry loaded guns in public and that Illinois' present regulatory scheme is unconstitutional.

The Brady Center's brief highlights the severe danger posed by concealed weapons, with studies showing that the carrying of firearms in public is not a useful or effective form of self-defense and, in fact, repeatedly has been shown to increase the risks that one will fall victim to violent crime.

The brief was filed by attorneys with the Brady Center and the firm of Hogan Lovells US LLP.

**State of Tennessee, ex rel., Randy Rayburn, et al. v. Robert E. Cooper, Jr., Tennessee Attorney General**

On November 20, 2009, Nashville judge Chancellor Claudia Bonnyman ruled that a law allowing handguns in Tennessee bars and restaurants is unconstitutional, "fraught with ambiguity" and "unfairly vague." Brady Center lawyers assisted in the victory.

The suit was brought by a group of restaurant owners against the State's Attorney General. The law allowed handgun permit holders, who number more than 257,000 in Tennessee, to take their weapons into places serving alcohol, providing the establishment makes more than 50 percent of its profits from food. The legislation retained an existing ban on consuming alcohol while carrying a handgun, but this is hard to enforce and guns and alcohol in close proximity is a dangerous combination.

Additionally, handgun permit holders are often not "law-abiding citizens." Records show 607 people had their permits revoked or suspended in the state last year. Revocations are issued for felony convictions, while permits can be suspended for pending criminal charges or for protection in domestic abuse cases.

**Students for Concealed Carry on Campus v. Regents of the University of Colorado** (Colorado Supreme Court)

On April 30, 2009, El Paso County, Colorado District Court Judge G. David Miller dismissed a lawsuit filed by Students for Concealed Carry on Campus against the University of Colorado that had sought to force the University to allow students to carry loaded, concealed firearms on campus. The Brady Center provided advice and assistance to the University in defending against the lawsuit.

In dismissing the lawsuit, the court rejected claims that the Colorado Constitution grants a Constitutional right for students to carry loaded, concealed weapons on campus. The court noted that, to the contrary, the Colorado Constitution specifically states that “nothing herein contained shall be construed to justify the practice of carrying concealed weapons.” The court also rejected claims that the Colorado Concealed Carry Act requires the University of Colorado to allow armed students on campus, finding that this law specifically preempts only local governments from barring concealed weapons, not statewide institutions such as the University.

The court agreed that the University acted reasonably in barring students from carrying concealed weapons on campus, noting the University Regents’ determination that the presence of firearms on campus “threatens the tranquility of the education environment and contributes in an offensive manner to an unacceptable climate of violence.”

Students for Concealed Carry on Campus appealed the district court’s ruling to the Colorado Court of Appeals. On November 23, 2009, the Brady Center filed an amicus brief urging the Court to uphold the University of Colorado’s gun policy. The brief argues that the University’s policy is a constitutional and reasonable response to grave dangers of guns on campuses, is in keeping with the policy of most universities, and is supported by virtually all Americans.

Oral arguments in the Colorado Court of Appeals were held on March 23, 2010. Unfortunately, the Court reversed the lower court and ruled that a Colorado law allowing concealed weapons "in all areas of the state," with some exceptions, also applies on the University of Colorado campus. It remanded to the lower court to continue the case based on this statute. The Court also ruled that the state constitutional right to bear arms is subject to reasonableness review. However, because the Court said that this review involves looking at both the law and facts of the case, it remanded for further proceedings on this claim as well.

On June 30, 2010, the Brady Center filed an amicus brief in the Colorado Supreme Court asking the Court to grant the petition for writ of certiorari. The brief argued that the University’s policy is a constitutional and reasonable response to the grave dangers posed by armed students and campus visitors and is in keeping with the policies of most universities. The brief was joined by Colorado Ceasefire Capitol Fund and the Greater Denver Million Mom March Chapter. On October 18, 2010, the Colorado Supreme Court agreed to review the appeals court ruling which allowed the challenge to the guns on campus ban to proceed.

On December 20, 2010, the Brady Center filed another brief in the Colorado Supreme Court, this time urging the court to overturn the April 2010 Colorado Appeals Court ruling. Other groups joining the Brady Center on the brief are the Colorado Ceasefire Capitol Fund and the Greater Denver Million Mom March.

The Colorado Supreme Court heard arguments in the case on June 8, 2011.

Edward Ramey of the Denver law firm of Isaacson Rosenbaum P.C. is representing the Brady Center pro bono.

**U.S. v. Frechette**, 456 F.3d 1 (U.S. Court of Appeals for the First Circuit)

The Brady Center, along with the Southern Maine Chapter of the Million Mom March, Maine Citizens Against Handgun Violence, Maine Coalition to End Domestic Violence, National Council of Women's Organizations, Chief Matthew Baker, Chief Timothy Burton, Sheriff Mark Dion, Chief Edward Googins, Chief William Welch, and Chief Don Winslow, filed an *amicus* brief on January 30, 2006, supporting the government's right to prohibit individuals convicted of misdemeanor crimes of domestic violence from possessing firearms.

After oral argument before the First Circuit Court of Appeals on May 5, 2006, the Court ruled on August 2, 2006, upholding the defendant's indictment for possession of a gun after committing a domestic violence misdemeanor. This ruling will strengthen the federal law that prohibits possession of a firearm by those who have been convicted of misdemeanor crimes involving domestic violence - the Lautenberg Amendment - as a mechanism for keeping guns out of the hands of dangerous people.

Following a 1996 conviction for a crime of domestic violence in Maine state court, John Frechette was charged with violating the Lautenberg Amendment. Frechette asked the U.S. District Court to dismiss the indictment because he thought the state court erred when it found that he did not qualify for court appointed counsel and he was not adequately advised of his right to a jury trial. According to him, he could not be considered to have been convicted of the state crime, and he still had the right to possess firearms.

The District Court correctly found that Frechette had knowingly and willingly waived his right to counsel and had not been denied that right. However, basing its decision on its interpretation of the state standard for advising a defendant of the defendant's right to a jury trial, the court decided that Frechette had not been adequately advised of that right and that his indictment should be dismissed. The District Court's decision appears to be the first of its kind anywhere in the country. Both the U.S. Attorney General and Frechette appealed the court's decision to the United States Court of Appeals for the First Circuit. Amici filed a brief supporting the U.S. Attorney General because an affirmance of the District Court's decision could allow many perpetrators of domestic violence crimes in Maine to avoid conviction under the Federal law prohibiting gun possession.

The Court of Appeals overturned the District Court's dismissal of the indictment and remanded the case.

The law firm of Verrill Dana, LLP in Portland, Maine, prepared the brief for amici.

**U.S. v. Hayes**, No. 07-608 (U.S. Supreme Court).

The Brady Center, along with the International Association of Chiefs of Police, Major Cities Chiefs, National Sheriffs' Association, National Organization of Black Law Enforcement Executives, Hispanic American Police Command Officers Association, Police Executive Research Forum, National Black Police Association, National Latino Peace Officers Association, Legal Community Against Violence, and School Safety Advocacy Council, filed an *amicus* brief on June 16, 2008, supporting the government's right to prohibit individuals convicted of misdemeanor crimes of domestic violence from possessing firearms under the "Lautenberg Amendment."

In April 2007, the 4th Circuit Court of Appeals overturned a wife beater's conviction for illegal gun possession. The Court narrowly construed the Lautenberg Amendment to bar gun possession only by abusers convicted of laws specifically barring domestic violence, rather than anyone convicted of domestic violence under general laws, such as laws against battery. The flawed 4th Circuit ruling is contrary to the rulings of nine other Federal Circuit Courts. More than half of the states do not have laws specifically barring violence against spouses or family members, but instead charge abusers under general battery laws. The brief argues that the lower court ruling, if affirmed, could re-arm thousands of convicted domestic violence abusers by requiring that the names of thousands of dangerous, convicted abusers be purged from the Brady background check system, enabling these individuals to purchase and possess firearms.

The Supreme Court heard arguments on November 10, 2008, and the case was the first gun case the Supreme Court heard following its Second Amendment decision in *District of Columbia v. Heller*. On February 24, 2009, the Supreme Court issued a 7-2 ruling rejecting arguments by the gun lobby and convicted wife beater Randy Edward Hayes that federal law allowed Hayes to possess firearms. The Court upheld the broad federal ban on gun possession by convicted misdemeanor domestic violence abusers, citing the Brady Center's *amicus* brief about the risks posed by firearms in the hands of domestic abusers.

The law firm Proskauer Rose provided *pro bono* assistance in preparing the brief.

**U.S. v. Skoien**, No. 08-3770 (U.S. Court of Appeals for the Seventh Circuit)

On May 3, 2010, the Brady Center filed an *amicus* brief in the U.S. Court of Appeals for the Seventh Circuit urging the Court to reject the defendant's attempt to expand the scope of the Second Amendment to allow domestic abusers to possess firearms.

In 2006, Steven Skoien was convicted of domestic battery in a Wisconsin state court and sentenced to two years' probation. Skoien was prohibited from possessing firearms, both as a condition of his probation and because federal law prohibits any person convicted in any court of a misdemeanor crime of domestic violence from possessing a firearm. In 2007, Wisconsin probation agents, believing that Skoien had acquired a gun in violation of his probation, searched his home and a pickup truck parked outside the home; they found a Winchester 12-gauge shotgun in the bed of the truck.

Skoien argued that prosecuting him for illegally possessing the shotgun violated his Second Amendment right to bear arms, as explained in *District of Columbia v. Heller*. In *Heller*, however, the Supreme Court announced only a limited right of law-abiding citizens to possess firearms for self-defense in the home. Congress prohibited convicted abusers like Skoien from possessing firearms precisely because of the threat he poses to his family and community.

Upon a conditional guilty plea in the lower court, Skoien was sentenced to two years in prison for illegal gun possession. Skoien appealed, and following an initial ruling by a panel of three judges, the appeal was heard before the 7<sup>th</sup> Circuit *en banc* on May 20, 2010.

On July 13, 2010, the United States Court of Appeals for the Seventh Circuit, sitting *en banc*, upheld Skoien's conviction for illegally possessing a firearm. The Court's 10-1 decision agreed with our amicus brief, and rejected Skoien's argument that the "Lautenberg Amendment" barring domestic violence offenders from possessing guns is violative of the Second Amendment. The Court reversed a panel decision that had vacated Skoien's conviction. That decision was one of the only post-*Heller* Second Amendment decisions to side with gun criminals or the gun lobby.

Joining the Brady Center on the brief are the National Black Police Association, the Hispanic American Police Command Officers Association, the National Latino Peace Officers Association, and the National Network to End Domestic Violence. The law firm of WilmerHale represented amici pro bono.

**West Virginia Citizens Defense League v. Charleston, et al.** (U.S. District Court for the Southern District of West Virginia)

The Brady Center filed an amicus brief in federal court in West Virginia on April 15, 2011, urging dismissal of a gun lobby lawsuit challenging the validity of life-saving gun laws in Charleston, South Charleston, and Dunbar.

The West Virginia Citizens Defense League sued these cities, claiming that numerous local ordinances violate the Second Amendment and the West Virginia Constitution. The laws they attacked include those preventing sales of guns to criminals and the mentally ill, those restricting guns in public, those limiting handgun sales to one every month, and those requiring a 72-hour waiting period. The Brady Center's amicus brief urges the court to uphold these laws as reasonable restrictions that help keep firearms away from dangerous people.

Studies show that people with arrest records who buy handguns are 7 times more likely to be arrested after the handgun purchase than people with clean records. Another study indicates that the stronger the laws, the less in-state gun trafficking there is.

**White v. U.S.**, No. 08-16010-DD (U.S. Court of Appeals for the Eleventh Circuit).

On April 1, 2009, the Brady Center joined with domestic violence and gun violence prevention advocates to file a friend of the court brief in the Court of Appeals for the Eleventh Circuit in *White v. United States*. The brief argues that the Second Amendment does not prohibit Congress from criminalizing the possession of firearms by convicted domestic violence offenders like Ludovic White, Jr.

The Brady Center brief explains that the U.S. Supreme Court decision in *District of Columbia v. Heller* does not support striking down the federal law banning domestic violence abusers from possessing firearms. *Heller* made clear that the Second Amendment does not entitle convicted criminals to possess guns, and legislation barring criminals from possessing guns was even deemed “presumptively lawful” by the Court.

The Court of Appeals agreed with the Brady Center’s amicus brief, and ruled in January 2010 that the Second Amendment does not protect the right of domestic violence abusers to possess firearms. The ruling set the important precedent that the federal Lautenberg Amendment prohibiting domestic violence misdemeanants from possessing guns is “presumptively lawful” under the Second Amendment.

The law firm of Wilmer Hale joined the Brady Center as counsel on the brief.

**Wilson v. Cook County**, No. 112026 (Supreme Court of Illinois)

On November 18, 2011, the Brady center filed an amicus brief in Chicago, Illinois on behalf of Cook County’s law banning the sale and possession of assault weapons. The Brady Center’s brief contends that Cook County’s strong law promotes public safety and is permissible under the Second Amendment.

The law firm of WilmerHale provided pro bono assistance on the brief.

**Woollard v. Sheridan** (U.S. District Court for the District of Maryland)

The Brady Center is assisting the State of Maryland in this case, brought by the Second Amendment Foundation and Raymond Woollard, challenging the validity of Maryland’s handgun permit process. The named defendants include the Secretary and Superintendent of the Maryland State Police, Terrence Sheridan, and three members of Maryland’s Handgun Permit Review Board.

To qualify for a handgun carry permit in Maryland, an applicant must establish that he or she is an adult; has not been convicted of a felony or misdemeanor for which a term of over 1 year imprisonment has been imposed; has not been convicted of drug crimes; is not an alcoholic or drug addict; and has not exhibited a propensity for violence or instability that may render the applicant's possession of a handgun dangerous. Additionally, the Superintendent of the State must determine that the applicant "has good and substantial reason to wear, carry, or transport a handgun, such as a finding that the permit is necessary as a reasonable precaution against apprehended danger."

Plaintiffs contend that the State cannot require handgun permit applicants to prove the above, as it deals with "the exercise of fundamental constitutional rights, including the right to keep and bear arms." They allege this violates the Second and Fourteenth Amendments. Plaintiffs are asking for permanent injunctive relief against the enforcement of the provisions regulating handgun permits.

On March 22, 2011, the Brady Center filed an amicus brief in the case arguing for dismissal of the lawsuit.

**Wyoming v. U.S.**, No. 07-8046 (U.S. Court of Appeals for the Tenth Circuit)

The Brady Center, along with the National Center for Victims of Crime, filed an *amicus* brief on October 9, 2007, supporting the government's right to prohibit individuals convicted of misdemeanor crimes of domestic violence from possessing firearms.

Wyoming passed a statute in 2004 which allowed people convicted of domestic violence misdemeanors to partially expunge their convictions, strictly for the purpose of regaining the ability to possess a firearm. This was an attempt by legislators in Wyoming to circumvent the Lautenberg Amendment - the federal law that prohibits possession of a firearm by those who have been convicted of misdemeanor crimes involving domestic violence. ATF then notified the state that it was in conflict with federal law and that persons convicted of domestic violence misdemeanors would continue to be prohibited from possessing firearms under federal law. Wyoming brought suit against ATF, and lost before the U.S. District Court of Wyoming. The state appealed to the Tenth Circuit and the Brady Center supported ATF, arguing that a uniform federal standard determines whether state law allows an individual to regain the ability to possess firearms. The Tenth Circuit also agreed with ATF and upheld the trial court ruling on August 26, 2008.

The law firm of Steptoe and Johnson prepared the brief for amici.

**IMPORTANT PAST CASES**

**Allegheny Sportsmen's League, et al. v. Ridge**, No. 4 WAP 2002 (Supreme Court of Pennsylvania, Western District)

The Brady Center, along with the Pennsylvania Chiefs of Police Association, Pennsylvanians Against Handgun Violence, Ceasefire PA, and the Pennsylvania Million Mom March, filed an *amicus* brief on June 17, 2002, in the Supreme Court in Pennsylvania in litigation defending the state's handgun sales database.

Pennsylvania has kept records of handgun sales since 1901, separate from the criminal background checks performed by state police for all gun sales. The handgun sales database is used by police to assist with criminal investigations and is an incredibly important tool for law enforcement. Elimination of the database would impede criminal investigations. However, The Allegheny Sportsmen's League and the Lehigh Valley Firearms Coalition, with four individuals, sought to eliminate the database by bringing a complaint in the Commonwealth Court (trial court) on December 6, 2000. The complaint stated that the database violated the Uniform Firearms Act, which prohibits a registry of "firearms ownership." The court dismissed the suit, finding that the state's handgun database was permissible.

Petitioners then appealed to the Supreme Court, where the Brady Center argued, in its amicus brief, that the database was not a prohibited "registry of firearm ownership." The Supreme Court agreed and affirmed the lower court ruling dismissing the gun group's case. The court repeatedly cited our brief in its opinion and relied on it for parts of its decision. The law firm of Covington & Burling prepared the *amicus* brief on behalf of the Center and the law enforcement organizations.

**Brady Campaign v. Ashcroft**, No. 1:04-cv-00454 (RCL) (U. S. District Court for the District of Columbia)

The Brady Campaign to Prevent Gun Violence united with the Million Mom March filed a lawsuit in federal court on March 19, 2004, charging Attorney General Ashcroft and the Justice Department's Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) with violating the 1994 statute banning the manufacture, sale and possession of semiautomatic assault weapons ("Assault Weapon Ban"). The suit charges Ashcroft and ATF with allowing gun manufacturers to make thousands of new illegal assault weapons.

The lawsuit was based in part on documents obtained by the Brady Center from ATF through the Freedom of Information Act ("FOIA"). The documents obtained through FOIA include correspondence with Bushmaster Firearms of Windham, Maine in which ATF repeatedly gave Bushmaster permission to manufacture new "receivers" to replace damaged receivers for semiautomatic assault weapons that were possessed before the Assault Weapon Ban went into effect and thus were protected by the Ban's "grandfather" clause. Since Bushmaster is only one of many gun manufacturers who made assault weapons before the Act was passed, it is likely that ATF has allowed thousands of illegal assault weapons to be manufactured.

The "receiver" is the housing for the firing mechanism of the gun and has a special legal status. Under the Act, the "receiver" of an assault weapon is considered the gun itself. Therefore, by allowing gun makers to manufacture new receivers, ATF has been allowing the manufacture of new assault weapons, in contravention of the statute.

When Congress "grandfathered" assault weapons legally possessed when the assault weapon ban was passed, it expected that over time the number of grandfathered assault weapons in circulation would gradually decline, as the guns became nonfunctional due to wear and tear. The Brady Campaign claims

that the Justice Department's enforcement policy ensures, instead, that thousands of grandfathered assault weapons will remain functional into the foreseeable future. At the time the statute was enacted in 1994, ATF estimated there were approximately two million assault weapons in circulation.

On April 7, 2004, the Brady Campaign moved for a preliminary injunction prohibiting the government from continuing to allow the manufacture of new receivers for semiautomatic assault weapons. The government moved for summary judgment on May 19, 2004. The Brady Campaign responded on June 9, 2004, and a hearing was held on the Brady Campaign's motion on July 2, 2004.

On June 9, 2004, ATF produced redacted copies of 1100 more "variances" that ATF sent in response to gun manufacturers requesting that they be allowed to manufacture new receivers to replace damaged ones. The documents were produced pursuant to the Center's previous FOIA requests and show that many manufacturers produced new receivers and likely thousands more illegal assault weapons were made by other manufacturers.

On September 10, 2004, three days before the assault weapon ban was set to expire, District Court Judge Lamberth dismissed the Brady Campaign's claims for lack of standing to challenge ATF's actions. The court did not rule on the legality of ATF's policy. Judge Lamberth held that the Campaign's members had not shown that, if ATF's policy had been different, there would have been a reduced risk of assault weapon violence to them. The judge speculated that, even if ATF had not allowed the manufacture of replacement receivers, gun makers may have found "some alternative means" of doing so.

**GOAL, Inc. v. Cellucci**, No. 98-CV12125 (U.S. District Court for the District of Massachusetts), appealed to (U.S. Court of Appeals for the First Circuit)

In late 1998, the Massachusetts Legislature passed one of the strongest gun control laws in the nation, addressing problems such as unsafe junk guns and assault weapons. On October 21, 1998, the same day the law took effect, the Gun Owners Action League ("GOAL") filed suit in federal district court to stop certain aspects of the new law from taking effect. Leaving most of the law's gun safety requirements unchallenged, GOAL principally argued that (1) the law's licensing system for "large capacity" weapons was unconstitutionally vague, and (2) the law's ban on using human silhouettes on gun targets violated the First Amendment. The Brady Center assisted the Attorney General's office in preparing a response to the motion for a preliminary injunction as well as a motion to dismiss the case.

On October 2, 2000, the court dismissed GOAL's claims. "This is a major victory for common sense and for the overwhelming majority of Massachusetts residents who support our state's toughest-in-the-nation laws," said state Sen. Charyl Jacques. "Now our laws can continue to be a model for other states to adopt, because the states will know the laws will be upheld in court."

The gun owner organization bringing the suit appealed its defeat to the U.S. Court of Appeals for the First Circuit. The Brady Center filed an amicus brief in support of the law. The American Academy of Child and Adolescent Psychiatry, American Association of Suicidology, American Medical Student Association,

American Public Health Association, Stop Handgun Violence, Inc., Massachusetts Brain Injury Association, and the International Brotherhood of Police Officers joined the brief.

In a victory for common sense gun laws, on March 25, 2002, the U.S. Court of Appeals for the First Circuit affirmed the lower court ruling and upheld the dismissal of GOAL's lawsuit, calling many of its claims "meritless."

The Brady Center was assisted in this case by Brown Rudnick Freed & Gesmer, P.C.

**Klein v. Leis**, 795 N.E.2d 633 (Ohio 2003).

The Brady Center assisted the City of Cincinnati in defending the Ohio laws that control the carrying of concealed weapons and the carrying of weapons in motor vehicles. With financial backing from the Second Amendment Foundation, four individuals brought the case against Hamilton County's sheriff and Cincinnati's police, seeking to have the state laws struck down as violating various provisions of the U.S. and Ohio Constitutions, including the Second Amendment.

On July 18, 2000, Judge Robert Ruehlman of the Court of Common Pleas, the same judge who dismissed the City of Cincinnati's lawsuit against gun manufacturers, issued a temporary restraining order barring enforcement of the laws being challenged. Judge Ruehlman ordered Cincinnati and Hamilton County law enforcement officers not to arrest anyone for violating the laws, with this suspension of the laws to remain in effect for at least three weeks until the court held another hearing in the case. The judge called Ohio's laws banning concealed weapons "most unfortunate" and opined that "everywhere carrying concealed weapons is allowed, crime seems to go down."

Law enforcement officials disagreed, stating that the ruling would threaten officers' safety and wreak havoc with the justice system. "This misdirected ruling opens the barn door for every violent criminal to carry a weapon and get away scot free," said Keith Fangman, president of the Fraternal Order of Police. "If any of our officers or innocent citizens are killed because Judge Ruehlman allowed violent criminals to carry guns, he's going to have blood on his hands."

Hamilton County prosecutors asked the Ohio Court of Appeals to intervene and set aside the temporary restraining order issued by Judge Ruehlman. On July 28, 2000, the Court of Appeals ruled that Judge Ruehlman did not have the legal authority to issue the order. The Court of Appeals' decision restored law enforcement's ability to enforce the concealed carry laws, but the case remains before Judge Ruehlman for further proceedings on the constitutional challenge to the laws.

On August 8, 2000, the plaintiffs amended their complaint so that it sought to bar enforcement of the concealed carry laws throughout Ohio, not just in the City of Cincinnati and Hamilton County. Also on August 8, 2000, Cincinnati moved to dismiss the case for lack of jurisdiction and for failure to state a claim on which relief can be granted. The City argued that there is no federal or state constitutional right to carry concealed weapons, that the court cannot overrule the public safety determinations made by the Ohio legislature when it enacted the laws, and that the court should not create a risk of physical harm to law

enforcement officers by interfering with enforcement of the concealed carry laws. Judge Ruehlman denied the motion to dismiss on Sept. 14, 2000.

Cincinnati and the other defendants then moved for summary judgment which was also denied by Judge Ruehlman. The case proceeded to trial in December 2001. On January 10, 2002, Judge Ruehlman issued a decision enjoining the enforcement in Cincinnati of Ohio's longstanding law generally banning the carrying of concealed weapons. Within hours of the ruling, the Ohio Court of Appeals temporarily blocked Judge Ruehlman's decision from taking effect.

With the ongoing assistance of the Brady Center, the office of the City Solicitor of Cincinnati appealed Ruehlman's decision to the Ohio Supreme Court for final judgment. A hearing on the appeal was heard on April 15, 2003. The emergency stay reinstating restrictions on the carrying of concealed weapons stayed in place pending the Ohio Supreme Court's final decision on the case. On September 24, 2003, the Ohio Supreme Court upheld the State's restrictions on the carrying of concealed weapons. The Court found there is no constitutional right to carry concealed weapons. This ruling reverses the Court of Appeals ruling. The 5-2 vote is a decisive victory for the City and the Brady Center.

**Mosby v. McAteer**, No. 2001-0161-A (Supreme Court of Rhode Island)

The Brady Center wrote an *amicus* brief for the Rhode Island Police Chief's Association, Rhode Island Chapter of the Million Mom March and the Brady Center, supporting the state's right to administer its "may issue" concealed carry law. The brief was filed on May 15, 2003, and resulted in a 4-1 ruling by the Supreme Court of Rhode Island upholding the constitutionality of Rhode Island's long-standing law restricting the carrying of concealed weapons to persons with a legitimate need.

Two individuals who were denied permits to carry concealed handguns sued the Attorney General's office and the Rhode Island Bureau of Criminal Identification for violating their due process rights. The Rhode Island Attorney General's office has the discretion to grant or deny concealed handgun licenses, making a case-by-case determination of "need" when reviewing applications for concealed handgun licenses, under R.I. Gen. Laws § 11-47-18.

The trial court granted the Attorney General's motion to dismiss, finding that the plaintiff's did not have a due process right in the application for a concealed handgun license and that the Rhode Island constitution does not guarantee the right to carry a weapon. Plaintiffs appealed this ruling to the Supreme Court.

The Brady Center argued that as the Rhode Island constitution does not provide a right to bear arms, nor any right to carry a loaded concealed handgun in public, the plaintiffs had no due process claim. Additionally, Rhode Island law has made clear that the Attorney General has the power to administer the discretionary concealed carry law. Plaintiffs argued that the Rhode Island law should essentially be turned into a "shall issue" law. The Brady Center's *amicus* brief also pointed out that academic and public policy research demonstrates that most states experience increases in violent crime, murder and robbery when "shall-issue" laws are adopted.

In its ruling on June 10, 2004, the Court strongly rejected arguments by the gun lobby that an “individual right to bear arms” provides a right to carry hidden, loaded weapons in public. Instead, the Court held that the restrictive concealed carry law “is reasonable legislative regulation of weapons that falls squarely within the state’s police power.”

The Brady Center was assisted in this litigation by the law firm Wilmer Hale.

**Springfield, Inc. v. Buckles**, 116 F. Supp. 2d 85 (U.S. District Court for the District of Columbia 2000), affirmed by 292 F.3d 813 (D.C.Cir. 2002).

The Brady Center helped to persuade ATF to close a legal loophole that allowed the importation of semi-automatic rifles with detachable large-capacity military magazines, and helped to preserve that victory in the courts. When ATF undertook a review of these weapons to determine whether they are “particularly suitable for or readily adaptable to sporting purposes” as required by federal law for them to be imported into this country, the Brady Center filed comments encouraging ATF to stop the importation of these guns. ATF’s final ruling adopted the Brady Center’s position and banned the guns.

A licensed importer challenged ATF’s ruling, suing ATF after it revoked the company’s license to import these guns. The district court rejected the importer’s argument, finding that the agency’s ruling came only after an exhaustive review of the purpose and history of the federal Gun Control Act and prior agency policies and that the agency provided a clear explanation of the basis for the change in policy. *See* 116 F. Supp. 2d 85.

The importer brought an appeal of that decision to the U.S. Court of Appeals for the District of Columbia. The Brady Center filed an *amicus* brief supporting the ATF’s ruling and the lower court’s decision on behalf of the Center and an array of law enforcement, public health, and other groups including the American Public Health Association, the International Brotherhood of Police Officers, the National Association of Police Organizations the National Association of School Psychologists, the National Black Police Association, the National Spinal Cord Injury Association, and the Police Foundation.

The D.C. Circuit heard oral arguments in the case on December 3, 2001, and in a victory for common sense gun laws, on June 14, 2002, the court ruled 3-0 in favor of the Brady Center’s position that the ATF regulations were valid.

## **LITIGATION SEEKING TO STRIKE DOWN GUNS-AT-WORK LAWS**

**ConocoPhillips v. Henry**, No. 07-5166 (U.S. Court of Appeals for the Tenth Circuit), *on appeal from* 520 F. Supp.2d 1282 (U.S. District Court for the Northern District of Oklahoma).

The National Rifle Association has made it a major priority to pass state laws prohibiting employers from barring guns from workplaces, starting with a ban on prohibitions in company parking lots. Oklahoma was the first state to pass one of these laws, in 2005. Shortly thereafter, a consortium of companies, headed by ConocoPhillips, filed suit in federal court arguing the law is unconstitutional as a violation of property rights and the Occupational Safety and Health Act's (OSHA) general duty clause, which requires employers in the U.S. to provide safe workplaces.

On October 4, 2007, a federal court in Oklahoma permanently enjoined Oklahoma's guns-at-work law from taking effect. The same court had issued a temporary restraining order in a previous ruling.

The court, citing our Forced Entry report at length – even going so far as to describe the Oklahoma statute as a “forced entry” law – held that the federal obligation to provide a safe workplace for employees under OSHA's general duty clause must trump a state law that threatens workplace safety. "In fact, the Court can imagine no other 'condition' on company property that more significantly increases the risk of death or serious bodily harm to employees in a situation involving workplace violence [than the presence of firearms.]" Courts in Utah and Oklahoma have also found there is no right to bring guns to work. The court rejected the companies' property rights arguments, however.

The case was appealed to the U.S. Court of Appeals for the Tenth Circuit. Oral argument was heard on November 19, 2008. The Brady Center enlisted the law firm of McDermott, Will & Emery to file an amicus brief on its behalf and the brief was filed in February 2008 with the American Society of Safety Engineers (ASSE) and ASIS International joining as amici. On February 18, 2009, the Court upheld the Oklahoma law that forces employers to allow employees to bring guns into the workplace and store them in employer parking lots. The decision reversed the 2007 trial court ruling that had permanently enjoined the guns-at-work law from taking effect.

**Florida Retail Federation, Inc., et al. v. Attorney General of Florida**, No. 4:08-cv-179 (U.S. District Court for the Northern District of Florida)

On April 9, 2008, the Florida legislature passed the “Preservation and Protection of the Right to Keep and Bear Arms in Motor Vehicles Act of 2008”, which was signed by the Governor six days later and takes effect on July 1, 2008. This act prohibits public and private businesses in the state of Florida from prohibiting a customer, employee, or invitee from possessing any legally owned firearm in company parking lots or denying entry into the business's parking lot if someone has a firearm in their vehicle. Businesses are prohibited from even inquiring about the presence of a firearm in their parking lot and are not allowed to search any vehicle to ascertain the presence of a firearm.

In response to this act, the Florida Retail Federation and the Florida Chamber of Commerce filed suit in federal court against the Attorney General of Florida on April 21, 2008. The suit seeks declaratory and injunctive relief and asserts that the law is an unconstitutional deprivation of property rights in violation of the Takings and Substantive Due Process clauses of the Fifth Amendment. It also asserts that the act is in direct conflict with the Occupational Safety and Health Act's (OSHA) general duty

clause, requiring employers to provide safe workplaces, which is an unconstitutional violation of the Supremacy Clause.

The Brady Center filed an amicus brief arguing that the Florida law is preempted by federal OSHA law. A hearing was held in June 2008 on whether to grant a preliminary injunction preventing the Florida law from going into effect.

On July 28, 2008, the court held that Florida's guns-at-work law did not conflict with OSHA because there are no express standards in this area, and absent such standards, states are free to set their own workplace safety policies. The court also rejected plaintiff's property rights argument.

The Brady Center assisted Barry Richard of the Tallahassee, Florida firm of Greenberg Traurig in this litigation.