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WHAT IS HUD'S ROLE IN LITIGATION AGAINST GUN MANUFACTURERS?

HEARING

BEFORE THE

SUBCOMMITTEE ON CRIMINAL JUSTICE, DRUG POLICY, AND HUMAN RESOURCES

OF THE

COMMITTEE ON GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTH CONGRESS

FIRST SESSION

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WHAT IS HUD'S ROLE IN LITIGATION AGAINST GUN MANUFACTURERS?

WEDNESDAY, AUGUST 4, 1999

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIMINAL JUSTICE, DRUG POLICY,
AND HUMAN RESOURCES,
COMMITTEE ON GOVERNMENT REFORM,
Washington, DC.

The subcommittee met, pursuant to notice, at 10 a.m., in room 2203, Rayburn House Office Building, John L. Mica (Chairman of the Subcommittee) presiding.

Present: Representatives Barr, Mink, Hutchinson, Tierney, and Schakowsky.

Also present: Representatives Waxman and Cummings.

Staff present: Sharon Pinkerton, staff director; Mason Alinger, professional staff member; Phil Schiliro, minority staff director; Cherri Branson and Michael Yeager, minority counsels; and Ellen Rayner, minority chief clerk.

Mr. MICA. Good morning. I would like to call this meeting of the Subcommittee on Criminal Justice, Drug Policy, and Human Resources to order. Today's hearing is entitled, "What is HUD's Role in Litigation Against Gun Manufacturers?"

I would like to start in our regular order, which is to present an opening statement. Then, I will yield to other Members for opening statements. Today, we have two panels we will hear from. Today our subcommittee will address an issue that has been publically reported in the press recently, which involves the Department of Housing and Urban Development.

HUD is one of the departments over which our subcommittee has oversight responsibility. This is the first HUD hearing that we have called this year. Our subcommittee plans to examine a number of HUD programs and topics relating to HUD that are very important to our Nation and that are of great interest to this subcommittee and its members.

Unfortunately, until this past week, repeated requests for information records from that agency had been ignored. Although some of our HUD investigation hearings have been delayed as a result of that, it is my hope that our important oversight work can now proceed. I am pleased also that we have received a pledge from the Secretary to cooperate in our investigation and oversight efforts.

Accordingly, I look forward in the near future to having additional hearings on HUD issues that impact our cities, our States, and our Nation. As members of the subcommittee and others know from previous hearings, I am very interested in what we, as a Na-

tion, and what we, as a Federal Government in particular, are doing to help rid our communities of the scourge of drugs and crime.

The role and actions of HUD in this regard are of special importance. I continue to hear that residents of our public housing are the hardest hit by violent crime and drug trafficking. These dual evils continue to destroy the quality of life for many of those who live in our urban communities, and especially the poor, the elderly, and the infirm who must rely on public housing.

We can, and we must, take decisive steps to combat these evils and to protect families and their loved ones. Today, we will hear about a proposal that, according to some major news articles, has been considered or is under consideration by HUD. The proposal is for HUD to either join or assist in litigation against lawful manufacturers of firearms.

These manufacturers are the same companies that produce weapons used by our law enforcement officials, and are used legally every day by citizens across the Nation, sometimes and often for their own protection. In getting to the root of the problem of crime and violence in our public housing, tracing the problem and looking at the idea for tracing the blame and liability back to gun manufacturers raises a number of questions.

I am very interested in learning why the makers of firearms are seen by HUD as a possible cause of violence in our cities and housing areas. If this litigation is pursued, what would the cost be? Would this action help cure the problem of crime and violence in our housing projects?

Quite frankly, I am baffled by the ideas that makers of guns are seen by anyone as being somehow legally responsible for those who acquire the weapons and misuse them. If we extended this question, are automobile manufacturers also legally responsible for those who misuse their cars? Are drug manufacturers liable for those who misuse legal drugs?

Are computer manufacturers liable for those who use computers for illegal purposes? The list of potential defendants who become liable for producing legal products could be endless. With knife stabbings accounting for a substantial death count in our public housing projects, will HUD expand product liabilities to manufacturers of Swiss Army Knives and Oneida silver?

Again, the imagination can run wild, if you pursue that logic. While I will listen very closely to the testimony, I cannot imagine while HUD, an agency of the Federal Government, would expend its time, its talents, and our tax dollars on considering such a strange approach to some very real and critical safety issues. I asked our staff, and we have not had time to complete a thorough report, but we have looked at some of the many reports that have been done just in the last 10 years relating to the problems in public housing.

We have not been able to identify a single report that identified gun manufacturers as the source of the problem, although there is a litany of additional sources and problems identified. The enforcement of our laws, and the protection of residents of public housing, deserves a reasoned and effective response.

Prevention efforts are essential and require support and coordination at all levels, including National, State, and community levels. As we recently have learned, Federal officials are not doing nearly enough to enforce existing laws regarding the purchase of firearms to dangerous criminals, and those who are ineligible to purchase them.

I think that targeting our attention and law enforcement resources to criminals who threaten residents in public housing communities could be much more effective than wasting time and money on misguided legislation. This administration and many of its leaders have championed, what I will call, a blame-and-sue philosophy at every turn.

One week we should sue HMOs. The next week we blame mothers and grandmothers. Today, I am sure we will hear a variety of views on this issue. When all is said and done, we are obligated to do what is legally sound and most effective.

Joining or encouraging litigation against the lawful manufacture of firearms has never been recommended by any of the countless studies that have been conducted by numerous public and private organizations to remedy the problems of crime and violence at public housing projects.

I look forward to the testimony of our witnesses and hope that common sense and reasonable approaches, rather than ill-conceived and knee-jerk responses ultimately prevail. Our citizens, and especially those who have been victims of a broken Welfare system, Federal policies that bread illegitimacy, destroyed the traditional family structure, dismantled our Nation's Anti-Drug Programs, and provided irresponsible actions as a new basis for our children to judge their leaders by, they need our help.

They deserve real and effective solutions. Those solutions should not be sought through the misuse of our judicial process, especially by our Federal Government. So, those are my opening comments. I am pleased now to be joined by both our ranking member of the subcommittee, the distinguished lady from Hawaii, Mrs. Mink, and also our distinguished ranking member of the full committee, Mr. Waxman, in whatever order you prefer.

[The prepared statement of Hon. John L. Mica follows:]

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OPENING STATEMENT

Chairman John L. Mica

August 4, 1999

Today, this Subcommittee will address an issue that has been publicly reported in the press recently, and which involves the Department of Housing and Urban Development (HUD). HUD is one of the departments over which this Subcommittee has oversight responsibility.

This is the first HUD hearing that we have called this year. Our Subcommittee plans to examine number of HUD programs and topics that are very important to this nation, and that are of great interest to this Subcommittee and its members. Unfortunately, until this past week repeated requests for information and records from that agency had been ignored. Although some of our HUD investigative hearings have been delayed it is my hope that our important oversight work can now proceed. Accordingly, I look forward in the near future to having additional hearings on HUD issues that impact our cities, our states and our nation.

As members of this Subcommittee and others know from previous hearings, I am very interested in what we as a nation, and what our federal departments in particular, are doing to help rid our communities of the scourge of drugs and crime.
The role and actions of HUD in this regard are of special importance. I continue to hear that residents of our public housing are the hardest hit by violent crime and drug trafficking. These dual evils continue to destroy the quality of lives for many of those who live in our urban communities and the poor elderly and infirm that must rely on public housing. We can, and we must, take decisive steps to combat these evils and to protect families and loved ones.

Today, we will hear about a proposal that, according to some major news articles, has been considered by HUD. The proposal is for HUD to either join or assist in litigation against lawful manufacturers of firearms. These manufacturers are the same companies that produce weapons used by our law enforcement officials and are used legally every day by citizens across the nation -- often for their own protection.

In getting to the root of the problem of crime and violence in our public housing tracing the problem, the idea of tracing the blame and liability back to gun manufacturers raises a number of questions.

I am very interested in learning why the makers of firearms are seen by HUD as a possible cause of violence in our cities and housing areas.
If this litigation is pursued, what would it cost and would this action help cure the problem of crime and violence in our housing projects?

Quite frankly, I am baffled by the idea that makers of guns are seen by anyone as being somehow legally responsible for those who acquire the weapons and misuse them. Are automobile manufacturers also legally responsible for those who misuse their cars? Are drug manufacturers liable for those who misuse legal drugs? Are computer manufacturers liable for those who use computers for illegal purposes? The list of potential defendants who become liable for producing legal products is endless. With knife stabbings accounting for a substantial death count at our public housing projects will HUD expand liability to manufacturers of Swiss Army Knives and Oneida silver?

While I will listen very closely to the testimony, I cannot imagine why HUD -- an agency of the federal government -- would expend its time, its talent and our tax dollars even considering such a strange approach to some very real and critical safety issues.

The enforcement of our laws and the protection of residents of public housing deserve a more reasoned and effective response. Prevention efforts are essential, and require support and coordination at all levels --including national, state and community levels. As we recently have learned, federal officials are not doing nearly enough to enforce existing laws regarding the purchase of firearms to dangerous criminals and those who are ineligible to purchase them.

I think that targeting our attention and law enforcement resources at the criminals who threaten residents in public housing communities would be much more effective than wasting time and money on misguided litigation.

This Administration and may of its leaders have championed a blame and sue philosophy at every turn. One week we should sue HMO's the next week we blame mothers and grandmothers.

Today, I am sure that you will hear a variety of views on this issue. But when all is said and done, we are obligated to do what is legally sound and effective. Joining or encouraging litigation against the lawful manufacture of firearms has never been recommended by any of the countless studies that have been conducted by numerous public and private organizations to remedy the problems of crime and violence at public housing projects.

I look forward to the testimony of our witnesses and hope that common sense and reasonable approaches, rather than ill conceived and knee jerk responses, ultimately prevail.

Our citizens and especially those who have been victims of a broken welfare system, federal policies that bred illegitimacy, destroyed the tradition family structure, dismantled our nation anti-drug programs and provided irresponsible actions as a new basis for our children to judge their leaders by, need our help, and they deserve real and effective solutions. Those solutions should not be sought through the misuse of our judicial process, especially by our government.

Mrs. MINK. I will yield to Mr. Waxman and then take my 5 minutes.

Mr. MICA. Well, we will yield to both. Go ahead.

Mr. Waxman, you are recognized.

Mr. WAXMAN. Thank you very much.

We are here today because the Wall Street Journal reported that HUD may be involved in a possible lawsuit by Public Housing Authorities against gun manufacturers. That article appeared last Wednesday. Immediately thereafter, this subcommittee demanded that HUD lawyers appear today to explain such an outrage.

With equal speed, this subcommittee asked the representatives of several gun manufacturers to appear to explain why such HUD action is improper. I do not have a view on whether HUD or Public Housing Authorities would have a strong case against gun manufacturers on various legal theories. I am interested in hearing about those theories but, more importantly, some court will decide that issue.

That is why we have lawyers and courts. They are better-suited than this subcommittee to decide whether such claims have legal merit. I do have a view on whether HUD can get involved, as a plaintiff or otherwise, in litigation against gun manufacturers. It absolutely can. One of HUD's core missions is to help Public Housing Authorities across the country reduce housing problems.

In HUD's enabling statute, Congress declared that the agency's purpose is, among other things, "to encourage the solution of problems of housing, urban development, and mass transportation through State, County, Town, Village, or other local and private action."

Another statute, the Housing Act of 1937, similarly provides that "Our Nation should promote the goal of providing decent and affordable housing for all citizens through the efforts and encouragement of Federal, State, and Local Governments, and by the independent and collective actions of private citizens, organizations, and the private sector."

I think it is undisputed, or at least it should be, that gun violence is a problem afflicting public housing and stands in the way of HUD's goal of providing decent housing for all of our citizens. From 1994 to 1997, there were more than 500 murders each year at the 100 largest housing authorities. Many of those murders are attributable to gun violence.

In New York City alone, 454 murders were committed in public housing from 1994 to 1997. In Washington, during that same period, there was one murder for every 61 homes over a 3-year period. Those of us here in Washington, and I am sure elsewhere around the country, will recall the shooting of Helen Forest-El. She was a grandmother who, on June 21st, was shot to death as she tried to move neighborhood children to safety in a public housing complex.

That is a problem. HUD should think creatively and act aggressively to address it. It seems peculiar to me that this committee, with all of the responsibility that we have, would jump on this issue so quickly and take this issue and elevate it into one where we are in effect, as you will notice from the chairman's statement, condemning HUD's actions before anything has happened.

The chairman said the administration is all ready to blame and pass the responsibility onto others. Well, I would say it sounds like Republican leaders are willing to defend their friends, even though we find that some of their friends and contributors produce products that kill.

That was the attitude of the Republican leadership in the House, when it came to tobacco and tobacco companies that make a product that, when used as intended, kills. No legislation was even brought up in the House of Representatives to deal with the tobacco companies. Not surprisingly enough, tobacco was the No. 1 contributor to the Republican House political efforts.

Another friend of the Republican leadership seems to be gun manufacturers. This hearing seems to be not on how to deal with the problem of gun violence in public housing. It seems to be on how to make sure that nobody goes after the friends of the Republican leadership in the House, the gun manufacturers. Now, whether they can be held responsible under one legal theory or another is something that the courts will decide. Can HUD think about it? You bet they can think about it. Can they talk to others about it? They certainly have the freedom of speech rights to do that.

If the administration wants to pursue a policy that the Republican leaders disagree with, well that is their right. I will hear what the policy has been at HUD. To be in a furry over the fact that they may be thinking about an idea that some people here do not like is certainly a strange notion.

I welcome our witnesses today. I look forward to hearing their testimony. It seems to me any way we can have fewer guns around would mean fewer people dying from guns, even though the people who misuse these guns are the ones responsible. I think the manufacturers have to be held responsible as well, if there is a legal theory to do it.

Mr. MICA. I thank the ranking member of the full committee for coming to the subcommittee hearing this morning and also expressing, very candidly, his viewpoint.

Now, we will hear from Mr. Barr, who is the vice chairman of this subcommittee. Mr. Barr, you are recognized.

Mr. BARR. Thank you, Mr. Chairman.

Thank you for calling this hearing today. Far too often Congress allows problems to fester, and allows administration officials to do what they want, despite making bad policy decisions or possibly operating illegally, until it is too late to really do anything about it. So, I appreciate the Chair calling this hearing today to address a burgeoning problem before it gets out of hand.

The fact of the matter is that this has nothing to do with free speech. If we were to take the ranking member's logic that any Government official could do whatever they want as long as they talk about it, because then it becomes a free speech issue. Before our HUD guests take too much solace in the comments of the ranking member, I want to assure you all that there are still Members of Congress who do care about the law.

We do care about separation of powers. We do look for legal authority before any Government official or any Government agency can begin operating. The fact of the matter is that a Federal agency can engage in discussions that are inappropriate. They can look

forward to involving themselves in matters which are not within the purview of the Federal Government. When that happens, that is indeed a matter that Congress ought to look into.

It is within our jurisdiction. It obviously is within the jurisdiction of this committee. Despite how individual Members may feel about tobacco, and look for a tobacco- related solution to every problem in our society, that does not necessary make it legal. It does not make it proper. It does not make that solution fit within the bounds of our Federalist system of Government.

There are Members, and sometimes it seems only Members on one side of the aisle, that care about such matters, but we do here. No matter how one may feel about the second amendment, one may dislike the second amendment. You all may dislike the second amendment. The fact of the matter is that it is there. Simply because there are guns in our society, as there are guns in every society on the face of the Earth, does not mean that every Federal agency can subsume, for itself, the jurisdiction to do something about it.

There are appropriate ways to address the problems of violence in our society. There are appropriate ways to address the matter and the problem of misuse of guns in our society, and then there are ways that are not appropriate. Indeed, it is the mandate of HUD to involve itself in housing matters in our communities. That is a statutory matter that is long recognized.

That does not mean HUD, or any other Federal agency, can simply go out and assist in filing lawsuits against the lawful manufacturers of products. It would be very interesting. I would be very interested to hear HUD witnesses explain why it is the manufacturers of firearms that are responsible for the violence in public housing communities or in any other community.

We certainly want to work with HUD to solve these problems, but it has to be done in a rational way. It has to be done in a legal way. It has to be done in a way that is consistent with Constitutional principles of governing. It also has to be done in a way that is consistent with principles of jurisprudence.

Those principles of jurisprudence and common sense tell a number of us here in the Congress, not the ranking member apparently, but a number of us here in Congress, that you do not hold the manufacturer of a lawful product liable for the misuse, the criminal misuse, of that product.

To search for simplistic solutions, like going after the manufacturer of a firearm because there are problems of violence in our public housing communities, is just ridiculous. So, I will be very interested, Mr. Chairman, to hear the rationale for HUD involving itself in these matters. I will be very interested to hear our witnesses hopefully tell us that they are not involved in this, that HUD is not involved in this, that HUD has no intention of becoming involved in this.

Therefore, if there is a restriction placed in HUD funding to prevent them from utilizing any funds for becoming involved in this, they would certainly have no problem with that because they are not involved in this matter.

So, I appreciate, Mr. Chairman, your calling this hearing today. Hopefully, we can nip this problem in the bud and have the wit-

nesses today tell us that the reports from the Wall Street Journal, and other newspapers, are indeed incorrect as media reports frequently are. Thank you, Mr. Chairman.

Mr. MICA. I thank our vice chairman for his comments, candid comments, this morning. I am now pleased to recognize our ranking member of our subcommittee, Mrs. Mink, the gentle lady from Hawaii.

Mrs. MINK. Thank you, Mr. Chairman.

I am pleased to be here, but not so pleased we are here under these circumstances. I see no justification for calling a hearing based upon a newspaper article. I was only notified, I believe it was Thursday last week, that this hearing was contemplated. I had a very short time to inquire as to the basis of this hearing, and only yesterday was able to confer with HUD officials.

I have come to the conclusion that there is ample justification for the Department to respond to their constituency. That is their mission. That is their statutory obligation, when it comes to their attention that certain elements of their constituency, which is the housing authorities and those who control housing activities in the cities and counties, are rising to this issue.

It would be absolutely a dereliction of their responsibility if they were blind to the circumstances that they are faced with. I believe that getting involved in providing technical assistance, helping these cities and counties to determine whether there is justification and merit in their legal activities is perfectly within the realm of their Federal responsibilities. I am shocked to find that there could be any conclusion to the contrary. I am told that there are 23 legal actions against gun manufacturers across the country. This is not something which the Department generated. It is generated because the prime responsibility of the authorities in public housing is to make these housings safe and secure for their tenants.

If the safety and security of their tenants is somehow fractured because of the presence of guns in that community, then it is their obligation, just as fire control and any of the other threats upon the safety of the tenants is their responsibility. It is their job to look into it.

When they found that there were 23 other cities, communities, and authorities already engaged in litigation against the gun manufacturers, it was absolutely correct that they inquire and find out exactly what was going on, and what kind of technical assistance needed to be provided.

So, I am somewhat chagrined that we are here meddling in the executive responsibility, which Congress has given the Department, to make sure that their constituents are safe and secure in the places that we have provided them. Frankly, if a gun manufacturer is advertising or allows advertising to go into the market that they have a fingerprint-proof gun, there is certainly something wrong with the manufacturer. For years they have known about providing safety locks so that children would not be injured by playing around with guns. There are certainly meritorious arguments for an inquiry as to what the gun manufacturers should be doing in order to make their so-called second amendment commodity free and safe in this Nation. So, I commend the Department for the participation that was revealed in the Wall Street Journal article. I

hope that this hearing today does not in any way intimidate them from pursuing this responsibility. Thank you, Mr. Chairman.

Mr. MICA. I thank the gentle lady for her opening statement. I am pleased to recognize the gentleman from Massachusetts, Mr. Tierney.

Mr. TIERNEY. I have no opening statement.

Mr. MICA. Thank you. There being no further opening statements at this time, we will go right to our first panel. On our first panel, I would like to welcome Ms. Gail Laster. Ms. Laster is the General Counsel of the Department of Housing and Urban Development.

Ms. Laster is accompanied by Mr. Kevin Simpson, Deputy General Counsel, Office of Deputy General Counsel for Programs and Regulations; and also Ms. Gloria Cousar, Deputy Assistant Secretary of the Office of Public and Assisted Housing Delivery of the Department.

So, I would like to welcome our first panel. Just let me set the ground rules if I may. This is an investigations and oversight subcommittee of Congress. I will swear you in, then we will proceed and give each of you an opportunity for a statement. We will withhold all questions until afterwards.

If you would please stand and be sworn. Raise your right hands please. Do, you solemnly swear or affirm that the testimony you are about to give before this subcommittee of Congress is the whole truth and nothing but the truth?

[Witnesses sworn.]

Mr. MICA. Thank you. The witnesses answered in the affirmative. Again, let me also say that if you have any lengthy statement, anything that exceeds our 5-minute oral limitation, we would be glad, by unanimous consent request, to submit that documentation or additional statement into the record in its entirety. So, just request that.

With those comments, again, let me welcome Gail Laster, General Counsel of HUD. Welcome, and you are recognized.

STATEMENT OF GAIL LASTER, GENERAL COUNSEL, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, ACCOMPANIED BY KEVIN SIMPSON, DEPUTY GENERAL COUNSEL, OFFICE OF DEPUTY GENERAL COUNSEL FOR PROGRAMS AND REGULATIONS; AND GLORIA COUSAR, DEPUTY ASSISTANT SECRETARY, OFFICE OF PUBLIC AND ASSISTED HOUSING DELIVERY

Ms. LASTER. Thank you, Mr. Chairman.

Good morning Ranking Member Mink, Congressman Barr, Congressman Waxman, and Congressman Tierney. I am pleased to have this opportunity to address you today about the problems created by gun violence in our Nation's public housing. As you are aware, in 1937, Congress mandated that the Federal Government provide decent and safe housing to the Nation's neediest citizens.

That mandate has never been changed by Congress. It is a mandate that the Department takes very seriously. Moreover, each year Congress appropriates billions of dollars to fund over a million units of public housing, and expects that HUD will do everything in its power to ensure that those funds are spent effectively and in a way that fulfills its congressional mandate.

Unfortunately, much has changed in the last 60 years since public housing was first created, including the cost and consequences of gun violence in America's poorest communities, especially in public housing. Today, I am saddened to report that the congressional mandate for safe public housing is being frustrated by an epidemic of gun violence. It is because of this crisis of gun violence in public housing that many housing authorities are considering litigation to minimize the cost of this problem.

It will come as no surprise to this committee, or to any American who watches the local nightly news, that every year there are thousands of incidents of gun violence in and around public housing projects. Last year, for example, in just the hundred largest Public Housing Authorities, there were more than 500 murders, many involving guns.

Innocent residents, especially children and the elderly, often live in constant fear of being caught in deadly cross-fires between people who have far too ready access to firearms of all types. Their stories are deeply troubling. Five-year-old Taquan Mikell was hit by a stray bullet while walking home from dinner with his mother in Durham, NC.

Grade school principal Patrick Daly was caught in crossfire and shot to death in Brooklyn, NY while looking for a missing pupil. Four-year-old Javina Holmes, a resident of Frederick Douglas Dwellings, was killed when her 8-year-old brother found a loaded shotgun inside their apartment and began shooting.

Here in Washington, DC, Helen Foster-El, a 55-year-old grandmother, was gunned down by two stray bullets as she tried to usher neighborhood children to safety. Sadly, there are hundreds more. While the cost of gun violence in human lives is obviously the most disturbing, the costs to the Federal Government and taxpayers is also striking.

A significant amount of the billions in public housing operational funds appropriated each year must be used by housing authorities to address serious security problems. In Chicago, for example, nearly 40 percent of its recent funding, $44 million, is spent annually on security costs attributed directly or indirectly to gun violence.

Last year, HUD awarded over $200 million worth of drug elimination grants to local housing authorities to help them combat drugs and crime in their projects. In many cases, that money has helped to fund additional police officers, security cameras, and innovative enforcement measures related to gun violence.

We are proud of our efforts to combat crime, but mindful that all of these funds could otherwise be spent not on preventing and dealing with the enormous cost of gun violence, but instead on providing badly needed housing and economic development for our poorest communities.

At a time when a record 5.3 million American families are facing an affordable housing crisis, we; Congress, the executive branch, local governments, housing authorities, and citizens must be prepared to consider any reasonable avenue for controlling the human and economic cost of gun violence. Given these costs, it would not be right for the Nation's housing authorities to refuse to examine every option in their efforts to protect residents.

Now, recently, certain practices of the gun industry have come under scrutiny for the possible role they play in exacerbating the problems of guns and gun violence. Over this past year, municipalities and counties, who know all too well the human and financial cost imposed by gun violence, gun deaths, and accidental injuries began filing lawsuits against the gun industry.

Many people in the public housing community are interested in the possibility of filing similar suits. This search for solutions has lead to discussions, including a broad coalition of local housing authorities, their representative organizations, and legal experts about the viability of such an action. Discussions with housing authorities have indicated that there is a broad interest in taking some type of action to cut the cost of gun violence.

HUD, however, and I repeat, HUD, does not plan to bring any action, on its own, against the gun industry. I want to make clear to this committee that there is nothing fundamentally unusual about these discussions. HUD has traditionally worked closely with housing authorities, including consultations with law firms representing housing authorities on a wide variety of issues. Our actions in exploring the possibility of these lawsuits is entirely consistent with our statutory mission. Congress has long recognized that HUD is not just about bricks and mortar, but about our communities.

For HUD and housing authorities to turn their backs on any potential solution to the gun violence crisis in public housing would not only forgo our Constitutionally mandated obligation to provide decent and safe housing, but would be reneging on our responsibility as public servants to ensure that taxpayer funds are used in the most effective manner possible.

I see the red light is on. I would like to finish.

Mr. MICA. Go right ahead.

Ms. LASTER. But I do appreciate the opportunity to have Gloria Cousar here and Kevin Simpson to answer your questions. Thank you.

[The prepared statement of Ms. Laster follows:]

House Government Reform and Oversight Committee
Hearing re: HUD's Role In Litigation Against the Gun Industry

Opening Statement of Gail W. Laster, HUD General Counsel

Chairman Mica, Ranking Member Mink, honorable members of the Committee, I am pleased to have the opportunity to address you today about the problems created by gun violence in our nation's public housing.

As you are aware, in 1937, Congress mandated that the federal government provide decent and safe housing to the Nation's neediest citizens. That mandate has never been changed by Congress – and it is a mandate the Department takes very seriously.

Moreover, each year, Congress appropriates billions of dollars to fund over a million units of public housing– and expects that HUD will do everything in its power to ensure that those funds are spent effectively and in a way that fulfills its Congressional mandates.

Unfortunately, much has changed in the last sixty years since public housing was first created – including the costs and consequences of gun violence in America's poorest communities, especially in public housing. Today, I am saddened to report that the Congressional mandate for safe public housing is being frustrated by an epidemic of gun violence -- and it is

because of this crisis of gun violence in public housing that many housing authorities are considering litigation to minimize the costs of this problem.

It will come as no surprise to this Committee, or to any American who watches the local nightly news, that every year there are thousands of incidents of gun violence in and around public housing projects. Last year, for example, in just the 100 largest public housing authorities, there were more than 500 murders, many involving guns. Innocent residents – especially children and the elderly – often live in constant fear of being caught in deadly crossfires between people who have far too ready access to firearms of all types. Their stories are deeply troubling. Five year old Taquan Mikell, hit by a stray bullet while walking home from dinner with his mother in Durham, NC. Grade school principal Patrick Daly, caught in crossfire and shot to death in Brooklyn, NY while looking for a missing pupil. Four year old Javina Holmes, a resident of Frederick Douglass Dwellings, killed when her 8 year old brother found a loaded shotgun inside their apartment and began shooting. And here in Washington, Helen Foster-El, a 55 year old grandmother gunned down by two stray bullets as she tried to usher neighborhood children to safety. Sadly, there are hundreds more.

While the cost of gun violence in human lives is obviously the most disturbing, the cost to the federal government and to taxpayers is also striking. A significant amount of the billions in public housing operational funds appropriated each year must be used by housing authorities to address serious security problems. In Chicago, for example, nearly 40% of its recent funding -- $44 million – is spent annually on security costs attributable directly or indirectly to gun violence. And last year, HUD awarded over $200 million dollars worth of drug elimination grants to local housing authorities to help them combat drugs and crime in their projects. In many cases, that money has helped to fund additional police officers, security cameras, and innovative enforcement measures related to gun violence.

We are proud of our efforts to combat crime, but mindful that all of these funds could otherwise be spent not on preventing and dealing with the enormous costs of gun violence but instead on providing badly needed housing and economic development for our poorest communities. At a time when a record 5.3 million American families are facing an affordable housing crisis, we – Congress, the Executive Branch, local governments, housing authorities and citizens – must be prepared to consider any reasonable avenue for controlling the human and economic costs of gun violence. Given

these costs, it would not be right for the Nation's housing authorities to refuse to examine every option in their efforts to protect residents.

Recently, certain practices of the gun industry have come under scrutiny for the possible role they play in exacerbating the problems of guns and gun violence. Over this past year, municipalities and counties, who know all too well the human and financial costs imposed by gun violence, gun deaths and accidental injuries, began filing lawsuits against the gun industry. Many people in the public housing community are interested in the possibility of filing similar suits. This search for solutions has led to discussions including a broad coalition of local housing authorities, their representative organizations and legal experts about the viability of such an action. Discussions with housing authorities have indicated that there is a broad interest in taking some kind of action to cut the costs of gun violence. HUD does not, however, plan to bring its own action against the gun industry.

I want to make clear to this Committee that there is nothing fundamentally unusual about such discussions. HUD has traditionally worked closely with housing authorities, including consultations with law firms representing housing authorities, on a wide variety of issues.

Our actions in exploring the possibility of these lawsuits is entirely consistent with our statutory mission. Congress has long recognized that HUD is not just about bricks and mortar, but about communities. In our enabling legislation, Congress charged HUD to "encourage the solution of problems of housing [and] urban development . . . through State, county, town, village or other local and private action, . . ." This is exactly what we have done through our discussions with housing authorities about a possible suit. Given the size of the threat posed to both our public investment and to the families who live in public housing, the lawsuits under discussion are entirely consistent with our statutory mission.

For HUD and housing authorities to turn their back on any potential solution to the gun violence crisis in public housing would be not only to forgo our Congressionally mandated obligation to provide decent and safe housing – but would be reneging on our responsibility as public servants to ensure that taxpayer funds are used in the most effective manner possible.

I would encourage this Committee, as it considers today's testimony, to remember Taquan, Javina and grandmother Helen. Residents of public housing – and innocent victims of gun violence. It is their memory – and the

hope of preventing further tragedies – that has brought public housing authorities to consider taking the new steps I've described today.

I stand ready to answer any questions you may have.

U.S. Department of Housing and Urban Development

GUN VIOLENCE IN PUBLIC HOUSING – A SMALL SAMPLE FROM 1998 AND 1999

Gun violence in public housing developments across the country has become an all-too-common tragedy. A search of newspaper articles over the years turns up thousands of stories about people who have been killed, people who have been wounded, and families living in fear. Here are brief summaries of just a small sample of news stories published in 1998 and 1999 about shootings in public housing in 15 states and the District of Columbia.

ALABAMA

MONTGOMERY – Police statistics show that 16 percent of the city's 32 homicides in 1998 occurred in public housing. In addition, about 12 percent of the city's aggravated assaults in 1998 were reported in public housing projects.

CALIFORNIA

RICHMOND – July 22, 1999 – Gaston Avila, 19, of Richmond was shot to death and three others – including a 15-year-old girl who was nine months pregnant – were shot during a birthday party at the Easter Hill public housing complex.

SAN FRANCISCO – March 31, 1998 – A 27-year-old man was shot to death execution-style in the Sunnydale public housing development. The neighborhood has experienced gun violence in the past. In November, Charles Adams, a 60-year-old retiree, was killed by a stray bullet from a shoot-out between two young men.

SAN FRANCISCO – May 20, 1999 – Mayor Willie Brown wrote a letter to HUD Secretary Andrew Cuomo saying that the San Francisco Housing Authority is running out of money to pay for private guards and needs $7 million from the federal government to keep crime, vandalism and gangs at bay. In a July 12 letter to HUD, Senators Feinstein and Boxer make the same plea.

CONNECTICUT

BRIDGEPORT – February 1, 1999 –The body of Delmar Epps, 23, was found lying in the road near the Green Homes public housing development, with multiple gunshot wounds.

DISTRICT OF COLUMBIA

WASHINGTON – October 21, 1998 – A 4-year-old girl named Javina Holmes, a resident of the Frederick Douglass Dwellings public housing development, was killed when her 8-year-old brother found a loaded shotgun inside their apartment and began shooting.

WASHINGTON – June 21, 1999 – A 55-year-old grandmother, Helen Foster-El, was gunned down by two stray bullets fired by a group of feuding young men as she tried to usher neighborhood children to safety. Parents in the East Capitol Dwellings public housing development said they give their children survival instructions on what to do when shooting erupts, because it happens so often.

FLORIDA

CLEARWATER – May 20, 1999 – LaShonda Denise Williams, 19, was accidentally shot in her Jasmine Court public housing apartment when a revolver that she and her boyfriend were looking at went off. The bullet passed through Williams' neck and came out her shoulder.

MIAMI – July 15, 1999 – A resident of the James E. Scott Homes, the largest public housing development in Florida, recounted the story of a boy who was shot by two men driving by in a car while the boy was buying ice cream. The man said that another time he was sitting on his porch when he saw a boy being chased and shot.

TAMPA – April 1, 1998 – One man was killed and two others were critically wounded during a shootout in the Riverview Terrace public housing development. The dead man was found on a sidewalk and two wounded men were in a car stopped near the scene. Police said the incident initially appeared to be a drug deal gone bad, since drugs and guns were found in the car. The slaying was the third homicide in three weeks and the second in two days at Riverview Terrace.

ILLINOIS

CHICAGO – January 19, 1998 – Parents and other residents will begin escorting children to school January 20 with the hope of protecting them from gang gunfire in the Cabrini-Green public housing development. The escorts attended a training session to prepare them on what to do if gunfire erupts.

CHICAGO – September 7, 1998 – Lavell Jones, 22, was shot and killed by a Chicago Housing Authority policeman after threatening the officer with a 9-mm. handgun. Police were responding to reports of a shooting at the Robert Taylor Homes public housing development when the incident occurred.

KENTUCKY

LOUISVILLE – May 3, 1999 – Suspected gang member Corey J. Bell, 25, was shot to death in an apparent drug dispute at the Clarksdale public housing development. The suspect in the shooting, Ricky LaSalle Glass, 22, shot in himself in the head on May 4, 1999, after a four-hour standoff with Louisville police. Glass died later in the day.

LOUISIANA

NEW ORLEANS – May 3, 1998 – A mother of seven children, Melissa Stone, was on her way to Jazzfest when she was abducted at gunpoint, raped, shot and left to die in an abandoned apartment in the Desire public housing development. Her body was found several days later. A New Orleans man with no adult criminal record was convicted of manslaughter.

NEW ORLEANS – May 8, 1998 – Theron Corey, 29, was gunned down in the Guste public housing complex. One of two men who shot him was described by prosecutors as a "hit man," and was later convicted of second-degree murder and sentenced to life in prison.

NEW ORLEANS – March 18, 1999 – Sean Jackson, 24, has been charged with two murders that occurred in the C.J. Peete public housing development. Demetrice Harper, 19, was robbed and killed on December 19 in a driveway. Jeremy Nunnery, 23, was shot to death on January 5 after a fight.

MARYLAND

ANNAPOLIS – April 12, 1999 – Bryon Antoine Jones, 22, was fatally shot near the front stoop of his girlfriend's Annapolis Gardens duplex. The shooting at the public housing community was apparently the result of an earlier altercation at Club Hollywood, a nearby nightclub.

MASSACHUSETTS

WORCESTER – March 27, 1998 – Luis A. Torres, 24, was shot in both legs while walking along a street in the Great Brook Valley public housing project. After being treated University of Massachusetts Hospital, Torres was arrested on criminal warrants. Police say the shooting by five assailants wearing ski masks coincides with the assumed arrival in the neighborhood of a cache of stolen handguns.

NEW JERSEY

NEWARK – January 9, 1999 – Newark Police Officer Frederick Johnson was shot and wounded and Douglas Lamont Parker was killed in a shootout during a routine drug arrest in the Stella Wright Homes public housing development. While the officer was preparing to arrest several men during a drug deal, police said Parker burst through a back door and began firing.

PATERSON – June 24, 1999 – Benjamin Reyes, 26, was shot in the back in his car by an unknown assailant at the Alexander Hamilton public housing complex. The shooter fired at least seven rounds into the vehicle, with four bullets piercing the rear window. Reyes and a companion in the car were later charged with possession and distribution of heroin.

NEW YORK

NEW YORK CITY – August 1, 1999 – Gerard Carter, a 28-year-old New York City police officer, died four days after being shot outside a building in the West Brighton Homes, a public housing development on Staten Island. The alleged gunman was Shatiek Johnson, 17. Carter and his partner were attempting to arrest Johnson on charges of shooting a 20-year-old man in July. Johnson was on parole for beating a homeless person to death two years earlier.

SCHENECTADY – June 20, 1999 – As children played nearby, 21-year-old Shawn Stevens was shot twice in the abdomen at a playground courtyard at the Steinmetz Homes public housing development.

NORTH CAROLINA

ASHEVILLE – June 2, 1999 – A 17-year-old youth died after he was shot at Deaverview Apartments, a public housing development. The suspect is a 16-year-old boy.

DURHAM – April 7, 1998 – While walking home from dinner with his mother, a five-year-old boy was hit by a stray bullet from a gunfight. The bullet severed his spine, and Taquan Mikell may never walk again. The bullet struck him more than a half block away from the gunfight, near a park where as many as 100 children play every day.

PENNSYLVANIA

BETHELEM – July 7, 1998 – Police said Julio Hernandez, 39, shot and killed William Lopez, 21, at the Pembroke Village public housing development. The killing took place shortly after Lopez shot and critically wounded Anthony Feliciano, 23, after an early-morning argument.

EASTON – June 16, 1998 – A New York City man was shot in the leg at the Delaware Terrace public housing project in Easton. The alleged assailant, Troy Alvin, 19, was also arrested in another shooting at a Stroudsburg restaurant and bar that injured two bystanders. At the time of the restaurant shooting, Alvin was awaiting trial for the shooting of the New York City man.

MOUNT PLEASANT – October 10, 1998 – A 46-year-old man broke into a neighbor's apartment at the Pleasant Manor public housing development. He shot and killed 9-year-old Jeremy Barnhart and critically wounded the boy's 14-year-old sister, Cori Barnhart. The gunman, Alan Waterhouse, then returned to his own apartment and, after barricading himself inside for 12 hours, killed himself. Waterhouse was the former boyfriend of the children's mother.

TENNESSEE

MEMPHIS – June, 1999 – Two recent shootings of children at Fowler Homes public housing have increased public pressure for better protection, including a proposal to hire private security guards. In the past year, four homicides, 62 assaults, 133 burglaries and other crimes have taken place at Memphis Housing Authority developments, according to the agency.

NASHVILLE – July 2, 1999 – Nashville teenager, Eric Harvey Hazelitt, was fatally shot in the chest when gunfire erupted at the John Henry Hale public housing complex in Nashville. Just 14-years-old, Hazelitt was often seen riding his bike, helping older neighbors shop or emptying the trash. Witnesses said Hazelitt got caught in the crossfire of two groups shooting at each other.

VIRGINIA

PORTSMOUTH – July 10, 1999 – Linwood Scott killed a 28-year-old woman and himself, ending a 13-hour standoff with police at the Jeffrey Wilson Homes public housing development. The woman, Rene Childers, was one of four hostages held by Scott.

RICHMOND – April 28, 1999 – A man was shot to death in the Creighton Court public housing development. A suspect was taken into custody shortly after the incident.

RICHMOND – July 23, 1999 – A woman was shot in the head and killed at the Gilpin Court public housing development while standing next to a pay telephone.

Mr. MICA. Did either of the other individuals have an opening statement?

Ms. LASTER. No. They do not. No; just me.

Mr. MICA. Did you have anything else you wanted to add?

Ms. LASTER. No, sir.

Mr. MICA. Without the others having an opening statement.

Ms. LASTER. And I would just submit my full statement for the record.

Mr. MICA. Without objection, your entire statement will be made a part of the record. Let me just ask, if I may, a few questions that will lead right off here. When this action or interest in this particular area of pursuit started, were there requests of HUD from housing authorities for HUD to get involved and possibly a suit for going after gun manufacturers?

Ms. LASTER. I do not know that I would characterize the request such as that, Mr. Chairman.

Mr. MICA. Would you have any communication, correspondence, written correspondence, a request, or a formal request from any housing authority to pursue gun manufacturers?

Ms. LASTER. I have no knowledge, Mr. Chairman, about any formal or written request.

Mr. MICA. Would it be possible for you to provide this subcommittee with a review of your files and see if there are any requests? We would like to have a copy of those requests from, again, any agency. Again, have there been any requests from any organizations outside to pursue this matter?

Ms. LASTER. I do not know, Congressman.

Mr. MICA. Also, if you would provide this subcommittee with any communications. I am just trying to see how this began. What was the genesis.

Ms. LASTER. But If I could respond.

Mr. MICA. Is it your Department or at the Secretary's request that this is considered?

Ms. LASTER. It was the Department's and, also as we have said, it was in response to inquiries. If I could respond to your initial question.

Mr. MICA. OK, well maybe you could elaborate. I am trying to get some picture as to how this began. What was the genesis; if there is a cry from housing authorities for this and you have a record; if that was initiated by the Secretary or some outside organization?

Ms. LASTER. No, and I understand your question. What I had concerns about was the nature of your question in terms of written and formal. Indeed, there have been discussions and inquiries. As a general matter, and I believe Ms. Cousar can elaborate about this as well, we are in frequent contact with our Public Housing Authorities.

We have frequently talked about the issue of crime and violence in the Public Housing Authorities and the issue of gun violence. We have different forums. We have seminars and we talk about that.

Mr. MICA. Was there a specific housing authority that came forward with the idea to go after gun manufacturers?

Ms. LASTER. Not one that I could identify now.

Mr. MICA. Did you have one, Ms. Cousar?

Ms. COUSAR. I do not have one, but I do have frequent concerns expressed about the issue of gun violence and crime related to the availability of guns by public housing residents and public housing staff, including executive directors.

Mr. MICA. May I ask, if I can, Ms. Laster, have you discussed this pursuit with the Department of Justice?

Ms. LASTER. Well, it depends on what you mean "this pursuit." I am not trying to be vague.

Mr. MICA. The idea. I just wondered if the DOJ would be an agency you would expect that would go into this area? I wondered if this is something that is just within the Department or it is being discussed with, again, it would be my assumption that DOJ would look at something like this?

Ms. LASTER. As you know, Mr. Chairman, HUD has no authority on its own to bring litigation. The Department of Justice would have to make a decision to bring litigation. In the past, several months ago, we had general discussions with DOJ when the first cases came out in New Orleans and Chicago, what have you, about those cases.

However, we have not discussed with DOJ what was, in fact, reported in the Wall Street Journal, which is PHAs, Public Housing Authorities, themselves, bringing these cases. I repeat, HUD has no plans to bring a case and DOJ, as I understand it, has no plans to bring a case.

Mr. MICA. Have there been any memos or communication between HUD and DOJ on this matter?

Ms. LASTER. On the matter of the PHAs bringing lawsuits?

Mr. MICA. Yes.

Ms. LASTER. No.

Mr. MICA. In any way? Could you also check and see if you have any communication between the agency? What I am trying to do is see how the policy might be developed, or how folks generated this idea, and if there is an administration policy developing in this regard. Have any funds been spent so far in pursuit of possibly either assisting others with going after gun manufacturers, or the Department, or DOJ to your knowledge? Anyone expended any funds other than this?

Ms. LASTER. Again, I would most respectfully disagree with the characterization of "going after gun manufacturers." What we have had are discussions, general discussions, to explain and to understand the lawsuits that are out there; to understand if the Public Housing Authority has a role to play in that.

There has been no determination whatsoever that indeed there will be litigation or that a suit will be filed. We have, in fact, had conversations with Public Housing Authorities. We have, in fact, had conversations with law firms. As far as my knowledge, I am aware of travel funds being spent to meet with the law firms.

Mr. MICA. The only final question, if I may, is do you know if we have any study or report, that you can point your fingers to that mentions or indicates that we should go after, as a solution to some of the problems of crime and violence in our public housing projects, litigation against gun manufacturers or hold them liable?

As I have said, the hearing has been called rather quickly, as Mr. Waxman pointed out, but we could not find anything. Can you cite anything or provide us with any specific studies or reports?

Mr. SIMPSON. I am not aware of any particular report that key in on Public Housing Authorities, the problems they confront with gun violence, and which resulted in a recommendation saying that a suit against the gun industry should be the answer. Our discussions have focused on the theories that are being advanced by the cities to the larger issue of gun violence. I am not sure if we do have a report.

Mr. MICA. If you do have something, I wish you would provide it, or come across something, to this subcommittee.

Now, we have about 5 or 6 minutes. We have time for one full round. Is that acceptable or would you like to come back?

Mrs. MINK. Come back, come back.

Mr. MICA. Whatever you would like to do; Mr. Waxman.

Mr. WAXMAN. Well.

Mrs. MINK. Come back.

Mr. MICA. OK. We do have a vote. So, I wanted to try to be as clear as possible on time. So, what we will do is recess until about 5 minutes after this vote concludes. We are looking at about 20 or 25 minutes. You might get a chance to get coffee or a cold drink.

Thank you. We will stand in recess.

[Recess.]

Mr. MICA. I would like to call this subcommittee back to order. I had concluded the first questions. I would like to yield now to the minority, Mrs. Mink, our ranking member.

Mrs. MINK. Thank you, Mr. Chairman.

The chairman of the subcommittee was pursuing his questions to find out how HUD was involved in advising these various housing agencies. It probably has some bearing on the activity. Although, I do not really see the relevance.

Just as these hearings today were called because of a newspaper article, I am sure that the Department reads the newspapers and found out that in New Orleans there was a lawsuit already filed over which the Department had no involvement. Is that a correct statement?

Ms. LASTER. Yes, Ranking Member Mink. That would be correct.

Mrs. MINK. Did you have any prior contact with what I understand to be the first lawsuit filed, which is in New Orleans? Is that a correct statement?

Ms. LASTER. I am sorry, contact with whom?

Mrs. MINK. The people in New Orleans that filed the first lawsuit against gun manufacturers.

Ms. LASTER. To my knowledge, there was no contact between HUD and the people who filed the first lawsuit.

Mrs. MINK. So, how did you find out about this lawsuit that the New Orleans Housing Authority filed?

Ms. LASTER. You are correct in your assertion that we read it in the newspaper.

Mrs. MINK. Read it in the newspaper like everybody else.

Then there were a series of other lawsuits, as I understand, that have occurred. Then following that activity, which was generated independent of HUD, you decided that it was your responsibility to

look into these avenues of assistance, and that is how the genesis of HUD's involvement took place. Is that a correct synopsis of your situation?

Ms. LASTER. Yes, that would be correct. That is my understanding of what occurred here.

Mrs. MINK. Was there ever a call by the Department to all of the housing agencies to come together in any sort of a forum or meeting to discuss this matter, specifically this matter, and no other matter?

Ms. LASTER. No, not to my knowledge.

Mrs. MINK. So that if you did discuss this matter with other authorities, it was in conjunction with your other responsibilities. Is that a correct statement?

Ms. LASTER. Yes.

Mrs. MINK. So, no specific effort with the sole, solitary purpose of discussing the propriety of a class action suit by housing authorities against gun manufacturers was ever tabled by your agency?

Ms. LASTER. I believe though, that most recently, there may have been calls and discussions with Public Housing Authorities in which the main topic of conversation was the potential for litigation.

Mrs. MINK. Was this in a meeting called by HUD at some site?

Ms. LASTER. No.

Mrs. MINK. You were talking about telephone calls?

Ms. LASTER. Telephone calls.

Mrs. MINK. The telephone calls would have been made in response to an inquiry that someone else was making, or was it a telephone call that generated from your office because of an assumed responsibility?

Ms. LASTER. I think both cases would be correct, sometimes an inquiry and sometimes an inquiry initiated by the Department.

Mrs. MINK. So, as general counsel for HUD, could you elaborate on the legal definition of the mission of the Department and how these discussions with other housing agencies fall within the mandate and mission of your Department?

Ms. LASTER. I would be happy to. Thank you.

Many of them have already been addressed. Congressman Waxman, first of all, cited our enabling statute which is 42 U.S.C. 3531 which states, as the Congressman indicated, that the purpose of HUD is to encourage the solution of problems of housing and urban development through State, counties, village, or other local and private action.

I also believe there has been reference to the Housing Act of 1937, which has two relevant parts here. The first is that HUD is to assist States and political subdivisions of States to remedy the unsafe housing conditions and the acute shortage of decent and safe dwellings for low income families. Another relevant section is that our Nation should promote the goal of providing decent and affordable housing for all citizens through the efforts and encouragement of Federal, State, and local governments, and by the independent and collective actions of private citizens, organizations, and the private sector.

One other thing that has not been cited here is, in fact, our governing statute for the Public Housing Authorities. Under this stat-

ute, HUD requires that Public Housing Authorities seek HUD approval before initiating litigation with HUD funds. That would be chapter 5, and section 3 of our litigation manual. So, those are basically the statutory provisions that we think enable us to, in fact, provide the technical assistance to the Public Housing Authorities and that enable us to answer their questions.

We have a full range of, as you say, as you have pointed out, issues that are in the public eye, and to be able to, in fact, reach for possible actions to address the different issues regarding safety, as well as affordable housing.

Mrs. MINK. Thank you, Mr. Chairman.

Mr. MICA. Thank you. I would now like to recognize Mr. Barr.

Mr. BARR. Thank you, Mr. Chairman.

Ms. Laster, you said earlier in a response I think to a question by the chairman that HUD had expended travel funds.

Ms. LASTER. Yes, sir.

Mr. BARR. For what purpose were those travel funds expended?

Ms. LASTER. I also think I said, in response to the chairman's question, that travel funds were to meet with a law firm.

Mr. BARR. What law firm, where, and when did that meeting take place?

Ms. LASTER. I believe it took place last week. The law firm was Cravath, Swain, and Moore. It was in New York City.

Mr. BARR. Who was that with, in particular, which lawyer or lawyers, or other personnel from the firm?

Ms. LASTER. I was not at the meeting, sir. So, I do not know. I believe Thomas Barr was there from the firm.

Mr. BARR. Who was there from HUD?

Ms. LASTER. Douglas Kantor, Special Counsel in the Office of General Counsel and Max Stier who is the Deputy General Counsel.

Mr. BARR. Are you familiar with the Anti-Deficiency Act, 31 U.S.C. 1342?

Ms. LASTER. I am familiar with it, but I do not have it in front of me, sir.

Mr. BARR. Do you see any problem with the Federal Government meeting with outside lawyers, not paid for by the Government, for which there is no line item authorization or appropriation authority?

Ms. LASTER. I do not see a problem in this instance, sir, because in fact we were not meeting to obtain legal services for the Department or any benefit to the Department. We were simply consulting.

Mr. BARR. What was the purpose of the meeting?

Ms. LASTER. Simply to consult about various legal issues.

Mr. BARR. Why is it necessary for HUD lawyers to consult with outside lawyers? I presume also that you believe that you do have the authority then to engage in the discussions that were the subject matter of the meeting.

Ms. LASTER. Yes, sir. We do that often, to discuss with outside lawyers, trade associations, a variety of private entities, some private and some public, about issues that effect the Department. We believe this is one such instance.

Mr. BARR. Were minutes kept of that meeting?

Ms. LASTER. Not to my knowledge, but I could certainly check.

Mr. BARR. I would appreciate that.

One thing that we have learned up here, particularly in recent months, is to look at statements that the government makes very, very carefully. One of the statements in your written testimony, which you read is "HUD does not, however, plan to bring its own action against the gun industry." Would you expand upon that? Does that mean that HUD will not bring any action against the gun industry or any component thereof?

Ms. LASTER. That is correct.

Mr. BARR. Does that mean also that HUD does not intend to become involved as a party or as an amicus in any such lawsuit against the gun industry or any component thereof?

Ms. LASTER. As a party, that might be out of our control, sir. I guess to the extent that you are talking about a plaintiff.

Mr. BARR. Well, let us talk about a plaintiff first.

Ms. LASTER. Sir, I would not be able to answer that as no. Also, in terms of an amicus, I would not be able to answer that.

Mr. BARR. I am not sure I understand. Am I correct in stating that HUD does not intend to, and will not become a party-plaintiff in any lawsuit against the gun industry or any component thereof? Can you give us that assurance?

Ms. LASTER. Just a second.

[Pause.]

Mr. LASTER. Again, I would say that we do not know of any existing plans. We have no intentions at this time. I do not know that I can find the same way, the Department, as I did with my other statements, but no. We have no intentions at this time to be a third party in any lawsuit that is filed.

Mr. BARR. But that could change tomorrow. I mean, simply saying that you have no intention at this time means that at 11:25 a.m., on August 4th, the Department has no intention, but that could change in the future is what you are telling us?

Ms. LASTER. Yes. I am also saying that, to my knowledge, we have no intention, in terms of the conversations we might have had with law firms, in terms of the conversations I have had with folks, that it is not our intention to be a third party in any lawsuit.

Mr. BARR. I know you understand very, very clearly as all government lawyers do, the essential nature of our government; one of limited powers and specified powers. Therefore, any Federal agency, whether it is the Department of Justice, the FBI, or HUD, before it can engage in a lawful act, there has to be a statutory authority that provides a basis for that.

What is the specific statutory authority, not general language about the policy of HUD to help with public housing, the specific statutory authority that would allow HUD to become involved in any way, shape, or form, other than being made a defendant, I know you have no control over that, in any lawsuit against the gun industry, the firearms industry, or a manufacture of a firearm for the purposes contemplated by the lawsuits that are the subject matter here today? What specific authority is there for HUD to do that?

Ms. LASTER. Well, other than what I have already cited, Congressman, I would have nothing else.

Mr. BARR. All you have cited were just the general preferatory language which is not the same thing as specific statutory authority to engage in a lawsuit. So, you are unable to cite any specific authority?

Ms. LASTER. No; nothing other than the general enabling statutes that I cited, as well as the litigation handbook which would govern the litigation done by Public Housing Authorities and our role in that.

Mr. BARR. That is not a statute.

Ms. LASTER. No, sir.

Mr. BARR. Mr. Chairman, will we have time for a second round?

Mr. MICA. Yes. We can go as long as patience, kidneys, and everything else.

Mr. BARR. OK, thank you.

Mr. MICA. I am pleased to recognize now the ranking member of the full committee, Mr. Waxman.

Mr. WAXMAN. Thank you very much, Mr. Chairman.

So, just to clarify everything here, you are not planning to bring a lawsuit at the present time anyway?

Ms. LASTER. That is correct.

Mr. WAXMAN. You have had from HUD, some officials have discussed with Public Housing Authorities that they might bring a lawsuit?

Ms. LASTER. Yes, sir.

Mr. WAXMAN. Your view is that such activity is perfectly proper and within the scope of HUD's authority. Is that correct?

Ms. LASTER. Yes, sir.

Mr. WAXMAN. You have testified that HUD has carefully tracked the 23 lawsuits that have been filed by cities and counties against gun manufacturers, as well as the suit filed by the NAACP. Is that correct?

Ms. LASTER. Yes.

Mr. WAXMAN. HUD officials have discussed the possibility that Public Housing Authorities may bring similar lawsuits against gun manufacturers?

Ms. LASTER. That is correct.

Mr. WAXMAN. Now, some of my colleagues may not be happy that HUD is looking at litigation as a way of addressing gun violence in public housing. Protecting the safety of people who live in public housing is a part of your core function. Is it not?

Ms. LASTER. Yes, sir.

Mr. WAXMAN. I am looking at the statute that created HUD, the Department of Housing and Urban Development Act. In section 2, Congress finds that one of HUD's purposes is "to encourage the solution of problems of housing, urban development, and mass transportation through State, County, Town, Village, or other local, and private actions." Is it fair to say that gun violence in public housing is one of the problems contemplated by this statute?

Ms. LASTER. Yes.

Mr. WAXMAN. In attempting to develop solutions to the problems of gun violence, it is perfectly appropriate for HUD to provide assistance or information in connection with possible gun litigation. Is that HUD's position?

Ms. LASTER. Yes, it is.

Mr. WAXMAN. That is because such an effort is consistent with HUD's core mission to solve problems affecting public housing. Is that correct?

Ms. LASTER. Yes.

Mr. WAXMAN. Now, given the focus of this hearing today, you would think that dozens of HUD officials have been spending time thinking about litigation against gun manufacturers and HUD has spent millions of dollars on the matter, but that is not the case; is it?

Ms. LASTER. Not to my knowledge.

Mr. WAXMAN. Roughly speaking, how many HUD officials have worked on this matter in any substantive way?

Ms. LASTER. I would say, speaking for the Office of General Counsel, perhaps half a dozen senior attorneys; the Office of the PIH, maybe a handful; maybe a handful in different offices in the Department.

Mr. WAXMAN. This is not all that these individuals have done?

Ms. LASTER. No, sir.

Mr. WAXMAN. They have just taken some time to talk to people about this issue?

Ms. LASTER. Right. It has been over a period of several months. I believe the New Orleans case was back in the fall.

Mr. WAXMAN. Can you quantify the dollars that have been spent on the HUD activities in this regard?

Ms. LASTER. Outside of staff time, it would just be the New York trip, which I elaborated for Congressman Barr.

Mr. WAXMAN. So, it strikes me that probably this committee is spending more money on this issue than HUD might have spent?

Ms. LASTER. I will let you say that.

Mr. WAXMAN. I do not know if we can quantify it. It could well be the case. In the past, what kind of coordinated effort has HUD made with housing authorities to address the problems of guns and violence in public housing projects?

Ms. COUSAR. Well, if I might contribute. Our office is involved principally through the programs that we administer, the Drug Elimination Program which supplies supplemental law enforcement, security assistance, and physical security strategies. We have come together in conferences on crime prevention, gang abatements, and youth violence.

In all of these forums, we seek to provide technical assistance. We seek to provide an avenue in which these issues and these concerns can be discussed and bring experts together who are working at the local level and in the communities to address these problems.

So, this happens during the course of the year. We also have a one-strike policy that we have been administering to try to effectively screen out of public housing potential violent offenders, criminals. So, there is a range of activities that we are undertaking in the course of the normal administration of public housing.

Mr. WAXMAN. My understanding is the Public Housing Authorities spent, on an average, about 33 percent of their annual budgets on security-related expenses, such as guards, closed circuit cameras, and physical barriers. If these Public Housing Authorities could use these resources to rehabilitate existing units or create

new units, how would the lives of public housing tenants be affected?

Ms. COUSAR. That is a very interesting point because it is the same point that is made to me by housing authority directors in any number of communities that are faced with high incidents of violent crime. I will give you the illustration of the District of Columbia, if I may.

Mr. WAXMAN. Well, rather than to do that, it is clear there is a lot of money at stake. It is also clear my time is up. I am not going to be here for the second round. I just want to make this observation. HUD is being criticized for doing something that I think is within its core authority to do. There is certainly no expressed prohibition.

It reminds of a time, around 10 years ago, where there was an expressed prohibition against the administration going out and giving support to the Contras in Nicaragua. We had a man by the name of Ollie North go out and ignore the expressed prohibition against his activities, where he tried to circumvent the law.

We did not hear some of the woes and cries from some of the people when the expressed prohibition with Congress was being violated as we do now. It seems to me you are acting perfectly lawfully and properly in trying to deal with this problem. Thank you, Mr. Chairman.

Mr. MICA. Thank you.

Mrs. MINK. Mr. Chairman, I have a unanimous consent request to insert at this point the statement by our colleague, Dennis Kucinich.

Mr. MICA. Without objection, it will be made a part of the record.

Mrs. MINK. Mr. Chairman, I would like to take this opportunity to welcome our colleague, Janice Schakowsky as a new member of our subcommittee.

Mr. MICA. Yes, I just noticed. She is most welcome. She is from Chicago.

Ms. SCHAKOWSKY. Right.

Mr. MICA. Well, welcome. Put your tray table in an upright position. Make sure your seatbelt is fastened and hang on. With that, I would like to recognize Mr. Tierney.

Mr. TIERNEY. Thank you, Mr. Chairman.

Mr. Chairman, I have to start just by saying I am shocked at how quickly the majority party responds on behalf of the gun industry at the slightest hint that somebody may be looking into ways to hold them responsible for some of the activities that we see.

I think that it is shameful that Congress has not been able to take any action with respect to gun violence, particularly among young people, yet the minute there is a hint that some economic interest may be even questioned, within a matter of days, I think the Wall Street Journal article ran on July 28th.

We had notices of a scheduled hearing on July 30th. Here it is on August 4th and we are all sitting around talking about why HUD is doing something that, I would suspect, they would be derelict in their duties if they were not doing.

Let me just ask the witnesses, I think, an obvious question. Gun violence, I would assume, is a threat to the investment that we are making in our public housing?

Ms. LASTER. Yes. We would agree with that.

Mr. TIERNEY. My records indicate that in the 100 largest housing authorities, there were more than 500 murders each year from 1994 to 1997. In fact, in 1995, there were 627 murders in the various housing authorities. Does that sound consistent with your records?

Ms. LASTER. Yes, and we mentioned it in our opening statement.

Mr. TIERNEY. We have 3,400 public housing authorities that receive Federal funds?

Ms. LASTER. Yes.

Mr. TIERNEY. I would assume that it is our responsibility, as well as HUD's, to see that that money is used wisely and not wasted?

Ms. LASTER. Certainly.

Mr. TIERNEY. Now, I have Department of Housing and Urban Development records here that show that HUD is provided approximately $2.5 billion each year in public housing comprehensive grants.

Ms. LASTER. Yes.

Mr. TIERNEY. Now, some of that money has to be diverted toward security measures?

Ms. LASTER. Yes.

Mr. TIERNEY. Chicago, I understand, alone, spent $43,777,157 of its 1997 comprehensive grant, or 38 percent of that funding, on security.

Ms. LASTER. Right.

Mr. TIERNEY. In 1998, HUD spent $243,736,400 on the Public Housing Drug Elimination Program, with about 46 percent of those funds going to security, law enforcement, investigators, and tenant patrols. Does that sound accurate?

Ms. LASTER. Yes, sir.

Mr. TIERNEY. So, would you agree with me that somewhere in the broad authority of the Housing Department is some obligation to see that if there were a way to reasonably and legitimately decrease those expenditures so the money could be used elsewhere to better people's welfare and housing conditions, that would be your duty to investigate that?

Ms. LASTER. Yes.

Mr. TIERNEY. In fact, I suspect that is exactly what HUD was doing as it started these conversations with the various housing authorities and legal people.

Ms. LASTER. Right. That was the purpose.

Mr. TIERNEY. Now, the fact that Congress chooses not to act, the fact that the majority chooses to tuck this issue way back somewhere ought not, in my estimation, to impede the agencies for whom there is responsibility to act. I, for one, am glad to see that you are moving in that direction. Is there anything that you have seen, in the authorizing language for HUD, that would prohibit you from taking on the responsibility of making these inquiries?

Ms. LASTER. No. We have seen nothing that would prohibit us from entering in this course of conduct.

Mr. TIERNEY. In fact, if you wanted to be totally responsible and pursue it, did you see anything that would prohibit you from actually spending money toward making those inquiries?

Ms. LASTER. No.

Mr. TIERNEY. Have you had any resistance from any of the housing authorities asking that you not help them out by looking into ways to address this severe financial burden of violence and security?

Ms. LASTER. No. I do not know if I would characterize it as "resistance." The situation is that they are coming to us. We are having conversations. We have not made any formal proposals. We have not suggested anything. We have not done anything to resist, frankly. We have just had general discussions.

Mr. TIERNEY. Now, do you have any idea of how many people in the housing authority properties are teenagers or children?

Ms. COUSAR. There are approximately two and a half to three children per household in public housing. We have about 1.3 million households in public housing.

Mr. TIERNEY. I would suspect the gun violence has proportionately, at least, affected these children?

Ms. COUSAR. Most certainly. We have, for example, in the District of Columbia, for the city as a whole in 1997, there were 463 murders; 225 of those murders were in public housing. Over 70 percent of them involved handguns. A significant portion of those were connected with youth gang violence.

Mr. TIERNEY. So, it is just not surprising that Katherine Christoffer who is a children's advocate who writes for Children's Environments says, "The firearm injury epidemic, due largely to handgun injuries, is 10 times larger than the polio epidemic of the first half of this century."

I find it surprising that Congress would in any way try to suggest that HUD ought not try to do something about this. The fact of the matter is that in 1996, 2,866 children were murdered with guns. I think that would, I hope that would, resonate.

Let me stop my questioning because I think that the point is obvious that I am a little bit embarrassed with Congress, the majority, that they would have you here, as I think, brow-beating you to back-off of a responsibility that I think you are rightfully moving forward on.

There is a quote from one of the former senior vice presidents of Smith and Wesson, Robert Haas. He said, "The Company and the industry as a whole are fully aware of the extent of the criminal misuse of handguns. The Company and the industry are also aware that the black market in handguns is not simply the result of stolen handguns, but is due to the seepage of handguns into the illicit market for multiple thousands of unsupervised Federal handgun licensees."

I think it is about time that we did something about it. I commend the Department for not sitting by and waiting for somebody else to act. I hope that you go forward with this and not be intimidated by today's proceedings. Thank you.

Mr. MICA. I would now like to recognize Ms. Schakowsky.

Ms. SCHAKOWSKY. Thank you, Mr. Chairman. Thank you for the welcome. Thank you, Mrs. Mink, for welcoming me to this commit-

tee. My seatbelt is fastened. Perhaps I can contribute to the turbulence today as well. I come from a district that over July 4th weekend was devastated by gun violence. People peacefully coming home from a synagog were shot at.

A man walking with his children, who happened to be African-American, was shot and killed by a hater. Someone said this not just about hate. This is what happens when hate has a gun. I come from a district that has a good deal of public housing, particularly senior citizen housing.

I come from the city of Chicago where we, in 1997, spent 38 percent of our comprehensive grant funding, almost $44 million, on security. I come from a city that has sued the gun manufacturers. Mayor Daley has been a leading force in that. We are pretty proud of that and hope that those suits are successful. So, quite frankly, when I saw the article when it appeared, my reaction was right-on. I am really glad that this is happening.

I am a bit mystified why the tone of this would be to suggest that something improper is going on, particularly when I look actually at the language that provides that the Secretary shall provide technical assistance and information, including a clearing house service, to aid States, counties, towns, villages, or other local governments in developing solutions to community and metropolitan problems.

In Chicago, and throughout my district, no question, this is a community-wide problem. What I would like to know, and maybe you covered this in your opening statement. I am sorry that I missed it. Were we not spending the 38 percent of this money that came to us on security, what kinds of things would those funds be available to do?

Ms. COUSAR. They would be available to rehabilitate and revitalize distressed public housing properties in the city of Chicago. To do renovations, to do repairs, to do maintenance, to turn around vacancies. That is the intention and the purpose of the Comprehensive Grant Program. To provide improvement in the management and operation of the public housing.

Ms. SCHAKOWSKY. So, we have had trouble with elevators that do not work in public housing. So, that would be one of the ways that the funds could be used?

Ms. COUSAR. Most certainly.

Mr. SIMPSON. If I could amplify on that response. HUD recently issued a study detailing the fact that there are still 5.3 million Americans that are in need of affordable housing. So, we are not only talking about the needs for the existing public housing residents, but additional people out there who could benefit from federally subsidized housing.

The needs are acute. If these demands were not being made on the present funds that we are expending for security, it would be available to expand the housing that we are offering.

Ms. SCHAKOWSKY. Well, that comment certainly strikes home with me, given the VA-HUD appropriation that was just announced that severely cuts into some funds that would be available for public housing. It breaks all of our hearts in Chicago, but it is absolutely necessary, because we have had story-after-story of pretty dramatic shootings of children on their way to school from public

housing that have been shot. In our view, nothing could be more important than exploring every kind of avenue. I really do not even have any questions to ask because for me, my district, and my town this is kind of a no-brainer. We certainly agree that we should be doing what we can to address this crisis, particularly as it affects residents of public housing.

So, I really do not have anything else to ask. If there is anything that I and my Office can do to be helpful in making those buildings more secure in my district and beyond, I am certainly happy to do that.

Mr. MICA. I thank the gentle lady.

We will do a quick second round of additional questions. I have a couple, if I may. Thank you. I was interested in some of the statistics that have been cited, particularly since we brought up the District of Columbia. I think you said there were 463 murders?

Ms. COUSAR. For the city as a whole in 1997.

Mr. MICA. How many in public housing?

Ms. COUSAR. It was 225.

Mr. MICA. It was 225; almost half of them. I thought the district had some of the tightest gun control policies in the Nation. Is that not true?

Ms. LASTER. That is correct. I used to be a Public Defender here.

Mr. MICA. Could you tell me about enforcement? Is there a tough enforcement policy at public housing? I mean, this is criminal to have that percentage of murders. It is unconscionable. Is there some prosecution? Certainly, if we have Federal responsibility, if we do not have it in the district, where do we have it? We have numerous Federal laws. Are we going after these folks?

Ms. LASTER. Again, if I could.

Mr. MICA. It is illegal to possess a gun in the district.

Ms. LASTER. It is.

Mr. MICA. Whether you are in public housing or somewhere else.

Ms. LASTER. Right. As you said, Mr. Chairman, that some of the strongest possession laws in the country are right here.

Mr. MICA. Are right here.

Ms. LASTER. The issue, if I might.

Mr. MICA. Do you have an active prosecution program to go after folks that have guns in housing projects?

Ms. LASTER. Well, sir, we would not prosecute. Again, that is a criminal matter.

Mr. MICA. Do we have any kind of a program?

Ms. LASTER. Certainly, Public Housing Authorities have their own duties.

Mr. MICA. That is a disgrace. That is a national disgrace. Then somebody told me that 70 percent are by handguns. What the hell are we doing with the other 30 percent? We do not care if you are stabbed, or strangled to death, or beaten through spouse abuse to when you have no life left in you? Do we have a program for that, that we are considering?

Ms. COUSAR. If I may.

Mr. MICA. Go right ahead.

Ms. COUSAR. The District of Columbia Housing Authorities are working in concert with the Metropolitan Police Department in at-

tempting to stem the tide of gun- related violence and crime involving drugs and domestic violence that has plagued the city.

Mr. MICA. The Department has a program that we spent $1.3 billion on drug elimination. If anything ties murder into death in the district or public housing, it is drugs. In my district that we held hearings of this subcommittee, 70 percent of the people in prison, or deaths, are drug-related, it has got to be that high or higher in our public housing projects. Do we have a program that is getting to the root of these problems, which is drugs?

Ms. COUSAR. Yes, sir.

Mr. MICA. Are we spending in excess of $1.3 billion? Is that correct?

Ms. COUSAR. $1.3 billion does not come to the district.

Mr. MICA. No, but nationally.

Ms. COUSAR. Nationally.

Mr. MICA. How much comes to the district?

Ms. COUSAR. I can get that for you. I did not get the specific amount, but what I wanted to point out there are efforts to arrest persons who have illegal possession of firearms. That is what those charts show over there, everywhere you see a black icon.

Mr. MICA. Why is it not working?

Ms. LASTER. Well, the availability. It is just simply the availability and proliferation of handguns.

Mr. MICA. Well, how can it not work here and you take the largest metropolitan area of the United States, New York City, where Mr. Giuliani is mayor? When he came into office, they were right in the range of 2,000 murders, probably the same percent of them, 70 percent by guns, in a city with a population of maybe 10 million to 12 million. There were 600 murders last year and there are 463 in the District of Columbia. Almost half of those are in public housing. What is wrong?

Mr. SIMPSON. Congressman, if I could try to address your concerns. HUD does spend a great deal of money, energy, and programmatic resources in trying to address the problem.

Mr. MICA. And it sounds like it is not very effectively expended.

Mr. SIMPSON. But all of those efforts cannot eliminate the problem of gun violence. We cannot rest on only one approach.

Mr. MICA. So, what should we do, pass more gun laws in the District of Columbia?

Mr. SIMPSON. I think that is a decision for Congress to make.

Mr. MICA. What about zero-tolerance? What about zero-tolerance?

Mr. SIMPSON. For drugs, guns, I am sorry?

Mr. MICA. For violence, for crime, gun possession.

Mr. SIMPSON. We certainly have.

Mr. MICA. Talk prosecution.

Mr. SIMPSON. We have allowed housing authorities to implement policies that embody a one-strike-and-you-are-out concept.

Mr. MICA. I think this is a national disgrace. I think it is a scam to go after manufacturers in this fashion when we have spent billions of dollars in the district. I saw pictures of the district housing on television, which was bankrupt when we took over the majority in Congress. I would not have put my dog in public housing in the

city. It was a disgrace. Rat-infested and forcing people, who are poor, elderly, and infirm to live in those kinds of conditions.

Then come up here and tell me that you are going to New York on a hunt and not paying attention to problems. The district has been cited time and time again. I did not want to get into this. Even their General Accounting Office has numerous long-standing deficiencies and calls your programs high-risk for operation. To me, it is a disgrace. I have no further questions. Mrs. Mink.

Mrs. MINK. Mr. Chairman, I want you to know that your light was not on.

Mr. MICA. I must confess, I told them not to put the light on.

Mrs. MINK. I only make that comment because the moment I took my mic, the light went on.

Mr. MICA. My personal light was on.

Mrs. MINK. That was obvious. I think all of us are very deeply concerned about the crime rates in the District of Columbia. Frankly, I am very, very pleased that they are tough on gun possession and all of those things. I am very disturbed, nonetheless, that the murder rate in the district continues unabated it seems.

Now, with respect to the gun violence in the housing units over which you have some knowledge, has there been any indication, since the enactment of the gun laws in the district, of any lowering of violence in the public housing units?

Ms. COUSAR. We have seen some decline in the level of murders and in the level of gun-related crime. What the officials at the housing authority tell me is that the security and the police feel like they are swimming up-stream because of just the mass availability of firearms and weapons. They make the arrests. The arrests have increased. You can see the arrests all over the community and throughout public housing. That is what our resources support.

Mrs. MINK. How many arrests are there in the district that you are aware of involving public housing units for possession of guns?

Ms. COUSAR. In 1997, which are the most current figures that we have, 1,090 arrests alone for possession of firearms.

Mrs. MINK. That was in 1997. Do you have any figures for 1998?

Ms. COUSAR. The 1998 figures are not complete yet.

Mrs. MINK. So, do you have any criticism against the police department, prosecutors, and so forth in their enforcement of the gun laws in the district? Have you had discussions with the district officials with respect to your concerns about violence in the public housing units in the district?

Ms. COUSAR. Within the district's public housing, I have had discussions with the staff who are at the front lines. They lament that we need to do more. We need to do more to stem the tide of the availability of guns that come across the borders of the district from places like Virginia and Maryland. They find their way into the communities and into the hands of people who really should not have guns.

No one is licensed to carry a gun in the District of Columbia, yet the guns are getting in. They are getting in from outside of the district. Now, the police do what they can inside the district to arrest. Our jails are full. There are frequent arrests made. Again, that is not enough and our resources can only go so far.

Mr. SIMPSON. If I could followup. Ms. Cousar raises an important point. This same theme has emerged in many of the suits brought by the cities and counties in identifying suburban outlying areas, gun dealers located in those areas, being responsible for an inordinately large number of gun traffic that could not possibly be satisfied by a legal demand in and around those areas.

Tracing reveals that those guns disproportionately are ending up being used in the urban areas; despite the existence of local gun control laws, and being used in crimes. Over 50 percent of the guns used in crimes are distributed by 1 percent of the distributors.

Some of those distributors really can be charged with constructive knowledge of the extent to which their supplying of these distributors is contributing to criminal activities. Those kinds of theories are being explored by the local housing authorities. It is a significant problem. I think it deserves their attention.

Mrs. MINK. So, even if the district has tough gun possession law, if the guns are permitted to come in from Maryland and Virginia, the district is a hapless victim of the inability of these other communities to do anything about their gun distribution problems. Is that the tenor of your statement?

Mr. SIMPSON. That is absolutely correct. I think it is that phenomenon of the relative impotence of isolated localities. Chicago, itself, also has strict gun laws and similarly has filed a suit with this exact same theme. That is what the cities and counties are looking at, in terms of possible responsibility for at least some gun manufacturers and their distribution practices.

Those practices could be changed without any significant incursion on second amendment rights or what have you to the significant benefit, in terms of administering the flow of guns to people who are likely to use them in criminal activities. That is, I think, all that is at issue with respect to many of the suits that have been brought.

Mrs. MINK. Going back to the initial question which prompted these hearings, and that is the responsibility, or authority, or lack thereof of the Department of reviewing these matters having to do with gun violence in public housing units all across the country.

It would seem to me that if I were a tenant in a public housing unit, and I realized there was this rampant threat upon my life and the life of my family members because of guns in the possession of persons around, near, or in the public housing unit, that I would hold the Department, HUD Department, or the housing agency responsible if anything happened to my family.

That sense of holding the Department responsible would also give me the right to sue the Department as a defendant. So, if the Department understood the vehemence with which I am sure many of the tenants feel that their safety is being jeopardized, it would be derelict on the part of the Department not to do everything that it could to assure the safety of the tenants in these units, including collaborating, joining forces, giving advice and assistance to those cities, counties, and housing authorities that are moving forward on their own initiatives to do something about it.

In the defense of the Department to assure that it cannot be charged with negligence or dereliction of duty with respect to the safety of their tenants. It would seem to me that it is incumbent

upon the Department to collaborate, and join forces, and provide whatever assistance that they could.

So, I think that the chairman's recognition of the severity of the problems that exist here in the district and our colleague in Chicago requires the Department. So, I think the inquiry underscores the promptness and legitimacy of the Department's action in this sense. So, I thank the chairman for his inquiry. Thank you.

Mr. MICA. Thank you. Mr. Barr.

Mr. BARR. Thank you. There have been some very intriguing legal theories discussed today. There have been some very passionate expositions of public policy. I would hope though, Ms. Laster, that you would recognize and agree with me that whatever policies HUD engages in, no matter what people might feel in their heart, or just feel is the right thing to do, or it makes us feel good, or despite whatever legal theory one concocts, as was just done to engage in lawsuits, has to be built on something more than sand.

Does it not have to be based, that is any action that HUD might undertake as a Federal agency, have to be based on authority, legal authority to do so?

Ms. LASTER. Yes. But I would argue that it can be both general or specific.

Mr. BARR. Well, apparently you think HUD can do anything literally. This is an astounding legal theory, although it is consistent, I grant you, with virtually everything we see from this administration. Apparently, some Members in Congress have this same view. That so long as there is no expressed prohibition on a Federal agency doing anything at all, it is legal. It is OK to do so. That is a preposterous legal theory. I am not amazed that the folks on the other side subscribe to it because it justifies involving the Government in everything they want to get it involved in.

Mrs. MINK. Will the gentleman yield?

Mr. BARR. No.

Mrs. MINK. That is simply not my point of view.

Mr. BARR. I did not attribute it to you. I attributed it to other strange legal theories. The problem here is that if you say that a Federal agency can do anything it wants, so long as there is no expressed prohibition, then you are saying a Federal agency can do anything it wants to do.

That amazes me that you apparently, on the one hand, Ms. Laster, recognize and responded to my earlier question that yes, there has to be legal authority. Then you keep turning simply to the general language of a statute that says that the Department of Housing and Urban Development will engage in housing activities, and that includes providing a safe environment.

Ms. LASTER. Well, sir, it really has not been the Department's position that we can do anything.

Mr. BARR. Well, that is obvious because there are a lot of things you have not been doing.

Ms. LASTER. Right. But I think we are talking about the safety issues.

Mr. BARR. Well, let us talk about safety issues. You apparently because that simply because HUD is charged generally with providing a safe environment, that it can sue gun manufacturers?

Ms. LASTER. No. That was not our statement.

Mr. BARR. Then what is the authority under which the Department would engage in discussions with outside lawyers involving lawsuits against manufacturers of firearms?

Ms. LASTER. Well, to be clear, it is not that HUD would sue gun manufacturers. We have been engaging in discussions about Public Housing Authorities.

Mr. BARR. You have not ruled that out?

Ms. LASTER. I am sorry. I thought I did in answering all of your questions.

Mr. BARR. No. You said, HUD has no intention, at this time, of becoming a plaintiff in any lawsuit against the gun industry or any component thereof.

Ms. LASTER. Well then, I did not speak clearly. I did mean to make clear that HUD, the HUD that I work for, this administration that I am working for, has no plans to sue the gun manufacturing industry. Now, what I could not give you assurances on are the issues of third party and also the issue of an amicus brief, which indeed is not necessarily suing, but it would be coming in on the side of somebody who has already sued. However, I do want to be clear that HUD, itself, has no plans to sue gun manufacturers. However, the theories we have been talking about, and if you would like to talk about that further, include Public Housing Authorities.

Mr. BARR. No. I think Mr. Simpson has viewed them very well. He has made his position very clear with regard to the issue. Let us talk about safety though. There are problems of alcohol abuse in Federal-subsidized housing projects; are there not?

Ms. LASTER. Yes, sir.

Mr. BARR. Have you engaged in any discussions with outside attorneys to bring lawsuits or possible lawsuits against the alcoholic beverages industry?

Ms. LASTER. Not to my knowledge.

Mr. BARR. There are automobile accidents on housing projects. Is not that correct?

Ms. LASTER. That is correct.

Mr. BARR. Why have you not engaged therefore, under the same legal theory that you think provides the justification for you to engage in outside discussions with lawyers involving possible suits against the gun industry, why have you not similarly engaged, pursuant to this very broad theory that you say you have authority to do anything that would protect people in public housing, why have you not similarly engaged in discussions with the automobile lawyers to sue automobile manufacturers?

Ms. LASTER. Because the facts of the circumstances are different. We believe that in the case of the gun manufacturers, there has been a credible argument about perhaps the negligence of certain gun manufacturers.

Mr. BARR. That is very revealing. There lies your view on this. I think that what you are indicating is you have a policy view that it is legitimate to do this. Do you think it is legitimate to hold gun manufacturers responsible or the illegal use of their lawful product?

Ms. LASTER. The Department is looking at these lawsuits and examining the lawsuits.

Mr. BARR. You cannot derive the legal authority from simply that the Department looks at it. The legal authority has to be there in the first place.

Ms. LASTER. Well, sir, no lawsuits have been instituted. So, to say the Department has this policy when there are no lawsuits that have been filed, is incorrect. HUD has no intention of filing a lawsuit, and we did not make a policy determination.

Mr. BARR. But there still has to be legal justification, not just to bring a lawsuit, but to engage in certain activities. That is what I keep trying to get back to. There are press reports that the Department has already asked several, not just one, this silk stocking firm in New York, but several outside law firms to consider drafting legal action. That is the Wall Street Journal. Is that statement categorically incorrect?

Ms. LASTER. Yes.

Mr. BARR. OK. So, it is a lie that the Department has had several outside law firms to consider drafting legal action?

Ms. LASTER. I would not use the term "lie." That is not my term. I would say that we have not asked any law firm to "draft a complaint." We have certainly talked to law firms.

Mr. BARR. That is not what it says. It says, "consider drafting legal action."

Ms. LASTER. Well, that term is imprecise. So, to the extent that, that term means drafting a complaint to initiate a lawsuit, we have not done that.

Mr. BARR. There we get back to the parsing that the President so loves to do.

Ms. LASTER. OK.

Mr. TIERNEY. Are you accusing the Wall Street Journal of parsing?

Mr. BARR. The Wall Street Journal goes on to say that, "HUD Secretary Andrew Cuomo privately has expressed interest in finding a way to get involved in the anti-gun litigation." Has the Secretary been involved in any discussions, either on the phone or in person with any outside lawyers or groups to involve HUD in these lawsuits?

Ms. LASTER. Not to my knowledge.

Mr. BARR. You discussed this very briefly earlier, that there had been this one trip to the firm in New York.

Ms. LASTER. Yes, sir.

Mr. BARR. Have there been telephone discussions with outside law firms or lawyers?

Ms. LASTER. Yes, sir.

Mr. BARR. Have there been any meetings at any HUD offices where the HUD people did not have to travel to the law firm, but the lawyers came to HUD?

Ms. LASTER. Yes, sir.

Mr. BARR. Do you have a list of those? Can you provide us the details on those meetings?

Ms. LASTER. I can provide you that list, sir.

Mr. BARR. When they took place, who they were with?

Ms. LASTER. Yes.

Mr. BARR. And the substance of the discussions?

Mr. MICA. If we could begin to conclude.

Mr. BARR. Thank you, Mr. Chairman.

Mr. MICA. Thank you. Mr. Tierney, did you have anything?

Mr. TIERNEY. First of all, I want to say that I am just shocked, absolutely shocked, to find out that a newspaper might have gotten something wrong or not entirely accurate. It seems the newspapers generate hearings like this from time-to-time. I am still shocked that my earlier statements are that we end up having a hearing days after a story runs.

It appears that we are doing discovery, to use the legal term, for the gun industry here to find out all that we can for them to benefit whatever defenses they may want to put up. I would suspect, Ms. Laster, that what the Department is doing is trying to determine whether or not there is a valid legal theory under which anyone might proceed.

Ms. LASTER. That is correct.

Mr. TIERNEY. You are not going on proposing legal theories. You are questioning counsel to find out whether or not there is some theory.

Ms. LASTER. Right, and getting their opinion.

Mr. TIERNEY. I understand the chairman's peak at all of the circumstances in the district, but the fact of the matter is the district has undertaken, on the local level, to ban possession of handguns; correct?

Ms. LASTER. That is correct.

Mr. TIERNEY. Therein lies the problem. It is not lack of enforcement with 1,090 possession arrests in 1997. Certainly, I think you would be a little stretched to say that they are not doing anything. What the problem seems to be is exactly the theory you might inquire.

Are the gun manufacturers at all responsible for the fact that they allow guns to go into an area where the local community has undertaken to ban possession, allow these people to come in from Virginia or wherever else, to get a gun and bring it back?

That seems to be what we are talking about here, why there may be a need to look at this in a broader perspective. That may be one of the theories, as I read earlier. There are people that are former vice presidents of some of these gun manufacturers that say the companies and the industries are aware of the black market of handguns.

They know that it is simply not the result of stolen handguns, but due to seepage of handguns into the illicit market for multiple thousands of unsupervised Federal handguns licensees. I would suspect that some people could make the claim that they are also aware that people leave D.C. or other cities where they have tried to ban handgun possession, travel elsewhere and get guns very easily, and bring them back into an area. That is, in fact, what these theories are talking about. I am somewhat chagrined that Congress would undertake to try and impede the third branch of this Government, the courts, from having some say in what is legal or not legal, if people want to proceed on some legal theories.

We are three branches of government. When Congress fails to act, as we have so desperately failed around here to do anything on this issue, that we see that people want their rights protected. We would probably turn to the courts to see if there was not some

remedy from time-to-time. Alcohol, I assume, is not banned. Possession of alcohol is not illegal in D.C. Is that correct?

Ms. LASTER. That is correct.

Mr. TIERNEY. And probably why you are not running around seeing if lawyers came up with theories as to what you are going to do about that. I suspect automobiles have not been outlawed lately in D.C. Clearly, possession of guns has been illegal. Yet, there seems to be such easily accessible guns nearby, or just over the border, or whatever. That is the problem and that is why you are seeking some remedy.

Those that would want to stop the use of handguns, or lawsuits against handguns for their misuse or whatever, what is their misuse, when you shoot and you miss? I mean, basically these are weapons that are designed to shoot and hit something. I think that we ought to act as a Congress here. The fact that we are here today trying to stop HUD from acting as a clearing house for local housing authorities that are facing this severe problem, to find some way if Congress will not get up and act, that maybe they would look to see if there was some remedy elsewhere. That seems, to me, fairly reasonable.

I yield back the balance of my time.

Mr. MICA. Thank you. Ms. Schakowsky.

Ms. SCHAKOWSKY. Again, I am really confused by this hearing. Maybe it is because it is my first on this subcommittee. Talking about the problems in D.C., yet I recall a proposal from the Republican side of the aisle that would have actually reversed some of the gun safety laws in the district and made guns more available, as if that might be some kind of solution to something.

I wanted to quote from the gun maker IntraTech who advertised one of its weapons as "an assault-type pistol" that "has excellent resistence to fingerprints." In discussing the add, IntraTech sales director says, "Hey, it is talked about. It is read about. The media write about it. That generates more sales for me. It might sound cold and cruel, but I am sales oriented."

When you have an industry that says that it has excellent resistence to fingerprints, I do not think they are talking about just making this weapon dirty in some way. They are talking about how to evade criminal prosecution and advertising that. I think that when we are looking for strategies, not just a single strategy, but strategies on how to make housing safer, that exploring all of them makes a lot of sense to me.

Banning handguns is one way. We have talked about how hard it is when they are available elsewhere. Then another strategy may be to have security guards. Another strategy is to look at how can we stop the proliferation of weapons. This seems, to me, to be searching for a solution, looking for a problem or something. I do not understand what the problem is here again. So, I yield back the balance of my time.

Mr. MICA. I thank the gentle lady.

I would like to thank our first panel, Ms. Laster, Mr. Simpson, and Ms. Cousar, for their participation today. Obviously, we have some very serious problems in our public housing, both in violence and crime. Obviously, we have some disagreement about the solutions.

We look forward to working with you, the Secretary, other officials at HUD, and members of this panel in helping to resolve some of those problems and make some meaningful changes. So, I will let you all be dismissed at this time. I will ask our second panel to come forward. Thank you.

[Pause.]

Mr. MICA. The second panel consists of the police chief of the city of Baltimore Housing Authority, Mr. Hezekiah Bunch. We also have Mr. James Chambers, executive director of the Sporting Arms and Ammunition Manufacturers' Institute. We lost one person in the second round, one witness in the second round.

Mr. Jeff Reh, general counsel of the Beretta Corp.; Mr. Donald Zilkah, chairman of the board of Colt's Manufacturing; and Mr. Pal Jannuzo, general counsel of Glock, Inc. I would like to welcome our witnesses on this second panel.

Again, we are an investigations and oversight subcommittee of Congress. Maybe you heard my directive that we do swear in our witnesses for the purpose of testimony. We do try to limit your opening statement to 5 minutes and then we will have a round of questions.

If you could please stand and be sworn. Would you raise your right hand please? Do you solemnly swear or affirm that the testimony you are about to give before this subcommittee of Congress is the whole truth and nothing but the truth?

[Witnesses sworn.]

Mr. MICA. The witnesses answered in the affirmative. Again, if you have any lengthy statements, or additional information you may like to have made a part of the record, we would be glad to do that upon request. I am going to recognize first Mr. Donald Zilkah, who is chairman of the board of Colt Manufacturing. I understand he has to leave. We apologize for the delay. You are recognized.

STATEMENTS OF HEZEKIAH BUNCH, CHIEF OF POLICE, CITY OF BALTIMORE HOUSING AUTHORITY; JAMES CHAMBERS, EXECUTIVE DIRECTOR, SPORTING ARMS AND AMMUNITION, MANUFACTURERS' INSTITUTE, INC.; JEFF REH, GENERAL COUNSEL, BERETTA CORP.; DONALD ZILKAH, CHAIRMAN OF THE BOARD, COLT'S MANUFACTURING; AND PAUL JANNUZO, GENERAL COUNSEL, GLOCK, INC.

Mr. ZILKAH. Thank you, Mr. Chairman.

I apologize that I have to leave. Thank you, Mr. Chairman, and members of the subcommittee for inviting me here to speak. I want to begin by expressing my sympathies and regrets to those who have been victims or have suffered as a result of crime and, particularly, those perpetrated by the use of handguns. These are truly unfortunate situations that Colt deplores, along with the rest of the industry.

With respect to today's testimony, I am grateful for the opportunity to discuss with you the devastating effect these lawsuits are having on legitimate business owners and, in particular, on my company, Colt. While I certainly appreciate the politics involved in the firearms debate, and the importance of protecting the second

amendment, today I want to stress to you the business aspects of what these lawsuits will do to our country.

This so-called municipal firearm litigation threatens a legitimate business, important to the national defense, and by targeting Colt, an industry leader in safety, it may well- undermine the very safety purposes the litigation purports to serve. At its core, the purpose of the backers of this legislation, is to make unlawful that which Congress has determined is lawful, the sale of firearms.

As we all know, if used responsibly, firearms serve legitimate and important purposes, including the national defense, law enforcement, self-defense, and sporting and collector uses. Congress has weighed the benefits and risks of firearms, and has considered the issue of personal choice and responsibility, and properly has determined not to outlaw firearms, but to regulate their sale, possession, and use.

In sharp contrast to the long and considered judgment of Congress, the backers of the municipal firearms litigation now attempt to turn to the courts to have them declare unlawful that which Congress has determined should be lawful, and to prevent law abiding citizens from obtaining our product. Their method is to put us out of business.

Despite the lack of merit in these lawsuits, they may succeed even before any of us have the opportunity to obtain vindication in a courtroom. The legal fees that we are incurring and expect to incur will be astronomical. Conducting everyday business operations has become very difficult. We are faced with dilemmas that I do not believe the plaintiffs understand or appreciate.

In particular, I am sure they have not considered the effect these suits may well have on our country's military, and the ability of a company to conduct the very safety research and development they claim we are not doing. Colt's Manufacturing is one of the oldest manufacturers in the world. We have been a company long known for our ingenuity and skill.

In fact, one of the first key customers to our company was the U.S. Armed Forces. While our company was founded with the issuance of the U.S. patent in 1836 to Samuel Colt for the Colt Revolver, sales of the product did not take off immediately. As a result, Sam Colt tuned his attention to selling the U.S. Government in 1842 on his ideas for waterproof ammunition, underwater mines for harbor defense and, in association with the inventor Samuel F.B. Morris, the telegraph.

When the Mexican War began in 1846, Captain Samuel H. Walker of the U.S. Army traveled east, looked up Sam Colt and collaborated on the design of a new more powerful revolver. Within a week, the U.S. Ordinance Department ordered 1,000 of the newly designed revolver, which Sam Colt called the Walker.

He turned to Eli Whitney, Jr., the son of the famous inventor of the cotton gin, who had a factory in Connecticut, where the order was completed and shipped by mid-1847. By 1856, the company was producing 150 weapons a day, and the product's reputation for exceptional quality, workmanship, safety, and design had spread around the world.

In fact, the Governor of the State of Connecticut awarded the honorary title of Colonel to Sam Colt. Our company's relationship

with the U.S. Armed Forces remains today one of the focal points of our business. We are the sole supplier of the M–16 rifle and M–4 carb into the U.S. military, as well as many of our allies.

In fact, we continue to work with the military to develop new products to protect our Armed Forces and bring them to the highest technology available. Despite the fierce competition and frequent awards to the lowest bidder, we have not and will not let the quality of our product waiver. Our products have always been of the highest quality, and will continue to be so.

We believe, in fact, that we remain a major U.S. military supplier, because of our ability to provide the highest quality at a reasonable cost. One of the reasons we are able to do so, is because of the efficiencies we achieved as the result of our commercial business.

In fact, the Army conducted a study in 1994, and has produced several documents thereafter, which recommend maintaining Colt as the sole supplier to the military because of our commercial business.

In other words, it is less expensive for the U.S. Government to maintain a commercial business supplier than it is to maintain a supplier who supplies only the military. Maintaining a company for pure industrial-based reasons means that the Government has to keep a line warm. In most cases, this means 2,000 rifles a month.

Colt is able to fluctuate its production from commercial to military. Thus, saving the government significant amounts of money. In short, the municipal firearms litigation puts the viability of Colt at risk and, by doing so, jeopardizes national defense.

The effects of this assault will not only have a negative effect on our ability to keep our line warm for the military, but if it forces us out of business, it also will leave the military without an experienced base to turn to during a time of crisis.

It would be more than 5 years, and significant government investment, to return any of today's weapons to their current level of operational ability. Another aspect of our business that is jeopardized by the municipal firearms litigation is the development of a personalized handgun.

Since I purchased the company in 1994, Colt has placed great emphasis on the development of high-tech safety options, including the so-called smart gun. As many of you know, the numerous press accounts of our projects. We began working on this program several years ago. In 1988, we received a grant for $500,000 from the National Institute of Justice. Colt has also invested a significant amount of our own funds into this program. The $500,000 the government has awarded us is clearly not enough for an investment to move this program to a commercially viable product.

In fact, the Army is currently developing a new firearm with electronics on board. Despite their significant delays and cost overruns, the project received over $30 million for research and development this year. Nevertheless, our company is committed to its development. Unfortunately, the very municipalities that are suing us because they believe we are not interested in safety, are the ones who may prevent us from completing this project.

The heavy financial burden of the municipal firearms litigation clearly will continue to impede our progress and possibly jeopardize

its very existence. Mr. Chairman, the issue of these lawsuits is one of paramount interest and concern to our company.

When I purchased the company in 1994, I was always proud to say that I have been able to keep the history of Sam Colt alive. I fear, however, that this history may be coming to an end. Thank you.

[The prepared statement of Mr. Zilkah follows:]

Testimony of Donald Zilkha
Chairman of the Board
Colt's Manufacturing Company, Inc.

Thank you Mr. Chairman and members of the committee for inviting me here to speak. I am grateful for the opportunity to discuss with you the devastating affect these lawsuits are having on legitimate business owners and in particular on my company Colt. While I certainly appreciate the politics involved in the firearms debate and the importance to protect the second amendment, today I want to stress to you the business aspects of what these lawsuits will do to our country.

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Their method is to put us out of business and, despite the lack of merit in these lawsuits, they may succeed even before any of us have the opportunity to obtain vindication in a courtroom. The legal fees that we are incurring and expect to incur will be astronomical. Conducting everyday business operations has become very difficult. We are faced with dilemmas I don't believe the plaintiffs understand or appreciate. In particular, I am sure they have not considered the affect these suits may well have on our country's military and the ability of a company to conduct the very safety research and development they claim we are not doing.

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our company is committed to its development. Unfortunately, the very municipalities which are suing us because they believe we are uninterested in safety, are the ones who may prevent us from completing this project. The heavy financial burdens of the Municipal Firearms Litigation clearly will continue to impede our progress and possibly jeopardize its very existence.

Mr. Chairman, the issue of these lawsuits is one of paramount interest and concern to our company. I bought this company in 1993 and have always been proud to say that I have been able to keep the history of Sam Colt alive. I fear however that that history may be coming to an end.

Thank you.

Mr. MICA. Thank you for your testimony.

I would now like to recognize Mr. James Chambers, executive director of the Sporting Arms Ammunition Manufactures' Institute, Inc.

Mr. CHAMBERS. Mr. Chairman and members of the subcommittee, on behalf of the Sporting Arms and Ammunition Manufacturers' Institute, I want to begin by thanking you for inviting me here to present the firearm industry perspective on the issue of possible Federal lawsuits against gun manufacturers.

I believe, as do many legal experts, and leaders in other industries, that a government lawsuit, such as the one being contemplated by Secretary Cuomo, sets a dangerous precedent that will serve to undermine and erode the power of Congress, while opening up all sectors of the U.S. economy to a debilitating free-for-all of class action lawsuits.

First, let me briefly explain the background of my organization. SAAMI is an association of the Nation's leading manufacturers of sporting firearms, ammunition, and components. We were founded in 1926, at the urging of President Calvin Coolidge and Congress. SAAMI is the primary organization that represents the sporting arms and ammunition manufacturers before the United States.

Our mandate is to work as a critical link between the firearms industry and the government to develop, test, and adopt technical standards for firearms and ammunition, while taking a leading role in the safe and responsible use of a firearm. I want to emphasize that our organization has spent millions of dollars on firearm safety. We are seeing a very disturbing trend in this country.

Trial lawyers have created alliances with State, local, and now administration government officials, and are attempting to use lawsuits or the threat of lawsuits to dictate increased regulation of the gun industry not sanctioned by Congress. I think this is best summed up by a statement former Secretary of Labor, Robert Reich, recently wrote in USA Today. "The era of big Government might be over, but the era of regulation through litigation has just begun."

Mr. Chairman, this scares me. At this moment, we have trial lawyers running around the country trying to convince State attorneys general, city mayors, and housing authorities to jump on the lawsuit bandwagon. Their sales pitch is an irresistible mix of free money and public attention. They say, let us represent you. We sue for millions. We divvy up any settlement, and you use your new money for roads and schools before the next election.

Sir, by intoxicating government officials with visions of a cash pipeline pumping out millions of dollars for their use, without having to raise a single tax, the trial lawyers have convinced 24 cities to join in this legal feeding frenzy. Gun manufacturers, like the car, film, chemical, or thousands of other legitimate industries make up the U.S. economy and produce a legal product.

Firearms are enjoyed by tens of millions of people who use them safely and responsibly. Blaming gun manufacturers for the illegal use of their product is ludicrous. Should we blame a car maker when a drunk driver kills a person? Is, for example, Kodak responsible for the illegal use of its film in the vile world of child pornography?

Perhaps we should hold chemical manufacturers responsible for the production of illicit drugs. I think not, but trial lawyers do and law abiding companies could be facing an avalanche of lawsuits if common sense is not restored to our legal process. What we are seeing now is an attempt by the trial lawyers and anti-gun organizations to usurp the political process.

After having been defeated time-after-time in their continuing efforts to impose more strict gun control measures within Congress, they have found that using the leverage of a lawsuit and the implied threat of draining a company of millions of dollars in legal fees can advance their agenda much faster and with greater success than through the political process where such issues should be decided.

This is a form of legal extortion. Trial lawyers and anti-gun groups are betting that they stand a better chance of convincing a 12-person jury, who are responsible to no one, of their version of the restrictions that gun manufacturers and owners should endure. Suddenly, we are finding ourselves confronted with the fact that 12-person juries can supplant the 535 elected Members of our Congress.

I believe this represents a clear violation of our collective civil rights. The courts, as the trial lawyers and some organizations have found, is a perfect mechanism to take the policy issue of guns in our society out of the political sphere and into a setting where they can force settlements on companies that can affect the entire country.

The Wall Street Journal article reporting HUD's exploration of a lawsuit against the gun industry raises serious questions. First, what basis is there for filing a lawsuit against a legal product?

Second, considerable damage can be done to the firearms industry if HUD decides to coerce or encourage some or all of its 3,400 housing authorities that receive Federal funds to file a similar case.

Third, HUD is apparently using outside counsel involved in gun suits to find a nexus for HUD to file a claim.

Mr. MICA. If you could begin to conclude, sir. We have a vote called and we are trying to limit this to 5 minutes. Thank you.

Mr. CHAMBERS. Well, what we can do to solve this is fall in with Senator Mitch McConnell who has introduced the Litigation Fairness Act 1269. I believe a companion bill will be introduced in the House later on. It is a simple bill that will force the government to adhere to the same rules that individual citizens adhere to. I have in my hand here a letter from the U.S. Chamber of Commerce that I would like to be entered into the record.

Mr. MICA. Without objection; so ordered.

Mr. CHAMBERS. Thank you.

[The prepared statement of Mr. Chambers and the information referred to follow:]

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

LONNIE P. TAYLOR
SENIOR VICE PRESIDENT
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July 22, 1999

To Members of the United States House of Representatives:

I am writing on behalf of the U.S. Chamber of Commerce, the world's largest business federation, representing more than three million businesses and organizations of every size, sector, and region, and the U.S. Chamber Institute for Legal Reform to announce the results of a new national poll regarding the public's attitude toward government suits against American businesses and to ask you to support and cosponsor Representative Roger Wicker's Litigation Fairness Act. The results of the poll support strongly the Litigation Fairness Act and show that the American public has little appetite for government-sponsored litigation against lawful industries.

The poll conducted for the Chamber by Roper-Starch Worldwide was based on a nationally representative sample of 1000 adults in the continental United States. Polling took place by telephone from July 1 to July 12, 1999. The poll results, including questions and wording, are available on request. A summary of the results is attached to this letter.

This poll demonstrates that the public is opposed to the trend of government-sponsored litigation against lawful businesses. The Coalition for Legal Reform chaired by the U.S. Chamber of Commerce and the National Association of Wholesaler-Distributors, illustrates the growing realization that these suits will not stop with tobacco or any other industry that has been the target of intense criticism. All of American business is at risk.

The findings of the Roper-Starch poll indicate that this is a dangerous strategy to pursue.

- A majority of public opinion is unfavorable towards such a policy of government lawsuits. Fifty-one percent of the public says that a Member of Congress' support of government lawsuits would make them less likely to be favorable toward that Member. Only fourteen percent say that they would have a more favorable view.

- Forty-one percent of those surveyed oppose the idea of a Department of Justice lawsuit against the tobacco companies in order to strengthen Medicare. This is in spite of the fact that tobacco is the most vilified industry in America. Only thirty percent of those surveyed actually favor such a lawsuit. Forty-five percent agree that the lawsuit would set a dangerous precedent while only one third disagree. Furthermore, almost half of the public thinks that the current governmental lawsuits are just the beginning.

- In responding to questions about another much criticized industry, an overwhelming sixty-eight percent of those surveyed oppose recent lawsuits against gun manufacturers and only nineteen percent favor them.

- Sixty-seven percent of the public believes that the legislative process rather than the lawsuits should be the method to address tobacco issues. They seem to recognize the need to balance many competing interests when addressing public policy issues and that legislatures—not the courts—are best equipped to achieve that balance.

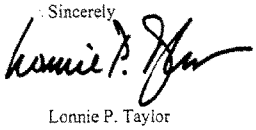
President Clinton promised in this year's State of the Union address to use the Department of Justice to sue the tobacco companies and use the revenue to "strengthen Medicare." This is an outrageous and ominous escalation in the trend to supplement government taxation through government litigation.

The Litigation Fairness Act goes to the heart of the business community's concern: in order to more easily raise revenue through litigation, governments have become willing to strip legitimate businesses of their existing legal rights. The Litigation Fairness Act would help stop this practice.

The Litigation Fairness Act simply assures that when the government sues a business it will have no greater rights than would an individual. However, there are those who are prepared to urge new legal theories that would leave lawful industries without protection against the massive legal resources of the government.

The business community is uniting behind Representative Wicker's effort to put a stop to this. We urge members of the House of Representatives to put a stop to this usurpation of their constitutional prerogatives by co-sponsoring and supporting the Litigation Fairness Act.

Sincerely,



Lonnie P. Taylor

Attachment

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Testimony
Of
James. E. Chambers
Lieutenant General, USAF (Ret)
Executive Director
Sporting Arms and Ammunition Manufacturers' Institute, Inc.

Before the
House Committee on Government Reform
Subcommittee on Criminal Justice, Drug Policy and Human Resources

August 4, 1999

Mr. Chairman, members of the subcommittee, on behalf of the Sporting Arms and Ammunition Manufacturers' Institute, I want to begin by thanking you for inviting me here to present the firearms industry perspective on the issue of a possible federal lawsuit against gun manufacturers. I believe, as do many legal experts and leaders in other industries, that a government lawsuit such as the one being contemplated by Department of Housing and Urban Development Secretary Andrew Cuomo sets a dangerous precedent that will serve to undermine and erode the power of Congress, while opening up whole sectors of the U.S. economy to a debilitating free-for-all of class-action lawsuits.

First, let me briefly explain the background of my organization. SAAMI is an association of the nation's leading manufacturers of sporting firearms, ammunition, and components. Founded in 1926 at the urging of President Calvin Coolidge and Congress, SAAMI is the primary organization that represents the sporting arms and ammunition manufacturers before the U.S. government. Our mandate is to work as a critical link between the firearms industry and government to develop, test, and adopt technical standards for firearms and ammunition, while taking a leading role in the safe and responsible use of a firearm. I want to emphasize that our organization has spent millions of dollars on firearms safety. The shooting and hunting sports collectively generate in excess of **$30.9 billion annually**. This translates into more than **986,000 jobs**.

We are seeing a very disturbing trend in this country. Trial lawyers have created alliances with state, local, and now administration government officials and are attempting to use lawsuits, or the threat of a lawsuit, to dictate increased regulation of the gun industry not sanctioned by Congress. I think this is best summed up by a statement former labor secretary Robert Reich recently wrote in USA Today: "The era of Big Government might be over, but the era of regulation through litigation has just begun." Mr. Chairman, that should scare us.

At this moment we have trial lawyers running around the country trying to convince states attorneys general, city mayors and housing authorities to jump on the lawsuit bandwagon. Their sales pitch is an irresistible mix of "free money" and public attention: "Let us represent you, we sue for millions, we divvy up any settlement, and you use the new money for roads or schools before the next election." By intoxicating government officials with visions of a cash pipeline pumping out millions of dollars for their use, without having to raise a single tax, the trail lawyers have convinced 24 cities and perhaps a couple of states to join in this legal feeding frenzy.

Gun manufacturers, like the car, film, chemical, or thousands of other industries that make up the U.S. economy produce a legal product. Firearms are enjoyed by tens of millions of people who use them safely and responsibly. Blaming gun manufacturers for the illegal use of their product is ludicrous. Should we blame a car maker when a drunk driver kills a person? Is for example, Kodak, responsible for the illegal use of its film in the vile world of child pornography? Or perhaps we should hold chemical manufacturers responsible for the production of illicit drugs. I think not. But trial lawyers do and law-abiding companies could be facing an avalanche of lawsuits if common sense is not restored to our legal process.

What we are seeing now is an attempt by the trial lawyers and anti-gun organizations to usurp the political process. After having been defeated time after time in their continuing efforts to impose strict gun-control measures within Congress, they have found that using the leverage of a lawsuit and the implied threat of draining a company of millions of dollars in legal fees can advance their agenda much faster and with greater success than through the political process where such issues should be decided. This is a form of legal extortion. The trail lawyers and anti-gun groups are betting that they stand a better chance of convincing a 12-person jury, who are responsible to no one, of their version of the restrictions that gun manufactures and owners should endure. Suddenly, we are finding ourselves confronted with the fact that 12-person juries can supplant the 535 elected members of Congress. I believe this represents a clear violation of our collective civil rights. The courts, as the trail lawyers and some organizations have found, is a perfect mechanism to take the policy issue of guns in our society out of the political sphere and into a setting where they can force settlements on companies that can effect the entire country.

A Wall Street Journal article reporting on Department of Housing and Urban Development's (HUD) exploration of a lawsuit against the gun industry raises serious questions. First, what basis is there for filing a lawsuit against a legal product? Second, considerable damage can be done to the firearms industry if HUD decides to coerce or encourage some or all of the 3,400 housing authorities that receive federal funds to file a similar case. Third, HUD is apparently using outside counsel involved in gun suits to find a nexus for HUD to file a claim. The collusion with trail lawyers and firms that might be involved in suing the firearms industry raises critical policy and ethical questions. HUD has plenty of its own lawyers, paying outside counsel is a waste of taxpayer money. And are we to believe that private trial lawyers will make the best decision for the government, their client in court, or the combination that makes them the

most money? Moreover, federal agencies, displeased with their congressional appropriation, will be tempted to sue businesses for massive damage claims thus setting up a revenue stream outside of congressional oversight and spending priorities.

What is important for this committee to understand is that the firearms companies are at the top of trial attorneys' long victim list. Today guns, tomorrow it will be the paint industry, followed by medical suppliers, and even the fast-food industry. The more successful, the more likely the target. Don't make the mistake of thinking that some noble social goal is behind these lawsuits. Let me read a quote from John Coale, a trial lawyer who has played a role in suing gunmakers: "People kept saying that we would go after the alcohol or fast-food industries next...But we would never do that. We enjoy liquor and meat too much." So much, Mr. Chairman, for noble goals.

What can we do? Well, Senator Mitch McConnell has introduced the Litigation Fairness Act, S. 1269. I believe the companion bill will be introduced in the House in the near future. This is a very simple bill. Using Senator McConnell's example, if a person is injured an automobile accident, but could not prove that his or her injuries were caused by a defect in the automobile, than that person can not recover from the manufacturer. S. 1269 says that if the injured party could not recover from the auto manufacturer, than the government should not be allowed to sue the manufacturer to recover the health care expense incurred by the government on behalf of the injured person. This bill would not prohibit lawsuits, nor exempt injured parties from seeking redress in the courts, or place caps, limits, or recoveries on lawyer fees. This common-sense, simple piece of legislation is designed to make sure that the government has no more rights than the average citizen. It will also go a long way to restoring the accountability of elected officials in our democratic process, and make the temptation of creating new revenue streams through lawsuits a lot less desirable.

I have in my hand (HOLD UP) a letter from the U.S. Chamber of Commerce and a list of businesses and industry trade groups dedicated to passing The Litigation Fairness Act. I want to take this opportunity to urge each member to join us in this effort. I would like to submit this for the record.

On behalf of the thousands of men and women throughout the country who are a part of SAAMI and the sport shooting and hunting industry, I thank you again for holding this hearing. By taking action now to pass the Litigation Fairness Act, we can restore balance and equity to our judicial system while preserving the free market that has brought unparalleled prosperity to millions of Americans.

Thank You.

Mr. MICA. Thank you for your testimony.

We have time for one additional witness before we vote. There is a vote called. Mr. Jeff Reh, you are recognized, sir. You are general counsel of Beretta Corp.

Mr. REH. Thank you, Mr. Chairman.

I had a longer version of this statement which is more thorough that I would like to have entered into the record.

Mr. MICA. Without objection; so ordered. It will be made a part of the record.

Mr. REH. Mr. Chairman and members of the subcommittee, thank you for allowing Beretta U.S.A. to make a few comments to you today. Beretta U.S.A. is the manufacturer of the standard, service sidearm for the U.S. Armed Forces. We also supply sidearms to over 2,000 law enforcement organizations of the United States and Canada.

We are also proud to provide high quality, safe, and reliable firearms to private citizens for self-defense and for sporting use. News reports indicate that HUD is considering joining 24 cities in filing lawsuits. I guess that we will find out in the near future whether in fact they are actually going to assist in that effort.

To the uninformed, such a suit may sound reasonable. What these suits ignore though, is the fact that firearms are overwhelmingly used in the United States to save lives. Firearms are used defensively from 2.3 to 3 million times per year. In 15.6 percent of these cases, the person using the firearm defensively stated that they, "almost certainly" saved their life by doing so. This translates into hundreds of thousands of lives saved per year.

It also translates into the fact that for every life tragically lost by firearm misuse, up to 10 lives may be thankfully saved. These suits ignore the fact that the distribution of firearms by manufacturers is one of the most heavily regulated activities in this country. At Beretta U.S.A, we have extensive BATF audits of our records and practices for weeks on end every year by BATF audit teams.

We are allowed by law to only sell to companies or individuals who have, themselves, been audited and approved in advance by BATF.

These suits ignore the widespread and long-standing efforts voluntarily undertaken by the firearm industry to ensure that its products are safely made, and responsibly kept, and maintained.

For decades, industry members have shipped safe use and storage instructions with the firearms they sell. We tell parents, if you have a child and you have a gun, unload the gun, lock it, and store the ammunition in a separate location. Holding a manufacturer liable for a parent's decision to ignore this basic safety rule would be as fair as holding Seagram's responsible for a parent's decision to give a bottle of Vodka to his 10-year-old son.

Gun locks are cheap, effective, and easy to obtain by consumers. They have been for decades. Notwithstanding this, almost all gun companies provide locks with their products. Some, like Beretta U.S.A., provide free locks for any past or present customer who wants one. You do not see the automobile industry giving free infant car seats to its consumers.

As a consequence of these industry efforts, accidental deaths involving firearms have declined over 40 percent in the last 15 years. The number of accidental deaths involving firearms is at its lowest level since 1903. This is during a period in which the number of guns in circulation have increased four-fold.

The firearm industry has acted for the cause of safety, not because it has been forced to, but because it wants to do so. The things I have told you about are things that occurred long before a single city filed a lawsuit.

We also do more. We take active steps to keep guns out of criminal hands. You may hear about dealers who sell guns illegally.

We believe they should be prosecuted. What you do not hear about is that the firearm industry is one of the chief sources of information to the law enforcement community about criminal attempts to obtain guns. Dealers work with police on a daily basis on these issues. Multiple sales are reported immediately to BATF.

Firearm manufacturers help the police by tracing guns found at crime scenes. We work directly with police in crime investigations.

Some have suggested that manufacturers should investigate dealers themselves, but when a firearm manufacturer gets a trace request from BATF, what is the one thing it knows? It knows that the police are already on the job.

Our amateur attempts to investigate a dealer could get an undercover officer killed, or even one of our employees killed.

In all of this discussion, we also need to bear in mind an important point. We make firearms to save people's lives. A firearm is perhaps unique in that its ability to save a person's life depends upon its lethality.

Without a firearm, a woman may not be able to stop a rapist or a murderer. Without a firearm, a shop owner may not be able to stop a gang from robbing his store and killing him and his family.

Poll-after-poll indicates that the American public overwhelmingly opposes the lawsuits filed against the industry. Why is that? Because the public knows that a criminal act is the fact of the criminal.

Negligence in storing a gun is the fault of the owner.

These lawsuits against the industry will have a cost. Litigation costs will drive prices up. This means that Federal, State, and local law enforcement departments may not be able to upgrade their weapons. The poor in the United States are most often the victims of crime. They will be unable to buy firearms in the future for self-defense.

These suits talk about safety, but they ask for money. If these suits drive companies out of the industry, who will supply sidearms to the Army and the Marine Corps? If the DEA could no longer buy new handguns, it may have the Secretary of HUD to thank for that problem. Who will supply firearms for the personal protection of the American people?

The American people may still have a second amendment when this is all over, but without the means by which that amendment is exercised, it becomes an empty promise of self-determination and self-defense. Thank you.

[The prepared statement of Mr. Reh follows:]

STATEMENT OF JEFF REH
GENERAL COUNSEL AND VICE-GENERAL MANAGER
BERETTA U.S.A. CORP.

BEFORE
THE HOUSE SUBCOMMITTEE ON CRIMINAL JUSTICE,
DRUG POLICY AND HUMAN RESOURCES
AUGUST 4, 1999

Members of the Committee, thank you for allowing Beretta U.S.A. to make a few comments to you concerning the reported interest of the Secretary of Housing and Urban Development in suing the firearms industry for costs associated with the civilian misuse of firearms.

By way of introduction, Beretta U.S.A. is the manufacturer of the standard service sidearm for the U.S. Armed Forces. In addition to being the Company's General Counsel, I was also manager of that project since it began in 1985. Beretta U.S.A. also supplies sidearms to over 2,000 law enforcement organizations in the U.S. and Canada. We are also proud to provide high quality, safe and reliable firearms to private citizens for self-defense and sporting use.

24 cities have recently filed lawsuits against the firearms industry. The attorney general of New York has also expressed an interest in filing a lawsuit. A few private citizens and, recently, the NAACP, have also filed suits. Now, news reports indicate that the Secretary of the Department of Housing and Urban Development is interested in filing a suit as well.

To the uninformed, these suits may sound reasonable. Some claim that firearms are a public nuisance. Some claim that more should be done to control the chain of distribution by which firearms are sold. Some claim that firearms should be built within internal mechanisms to allow them to be locked by their owners. Almost all of the suits seek money.

What the suits ignore, though, is the fact that firearms are purchased because the American public has a right of self-defense and a right of civil defense. The suits ignore the fact that firearms are overwhelmingly used to save lives. Firearms are used defensively from 2.3 to 3.0 million times a year. In 15.6%

of these situations, the person using the firearm stated that they almost certainly saved their life by doing so. This translates into hundreds of thousands of lives saved per year.

These suits ignore the extensive federal, state and local regulation, as well as self-imposed restrictions, which already exist concerning the purchase of firearms. The chain of distribution of firearms is one of the most heavily regulated activities in this country. At Beretta U.S.A., we have extensive audits for weeks on end each year by BATF teams. We only sell to companies or individuals who have, themselves, been audited and approved in advance by BATF. Those companies, in turn, sell only to customers—either retailers or the consumer him or herself—who are similarly investigated and whose purchase of a firearm is approved in advance by the federal government.

These suits ignore the widespread and long-standing efforts voluntarily undertaken by the firearms industry to ensure that its products are safely made and responsibly kept and maintained. For decades, industry members have shipped safe use and storage instructions with firearms they sell. A few years ago, almost all firearm industry members agreed to provide locks to the public for all handguns they sell. Some companies—Beretta U.S.A. is one—are providing locks free of charge for any past or present customer who wants one. You do not see the automobile industry providing free infant car seats with its products. You do not see motorcycle manufacturers providing free helmets with their products.

The firearm industry has done this and more. Through the National Shooting Sports Foundation, industry members recently launched Project HomeSafe, which provides educational materials to communities concerning the safe storage of firearms. The National Rifle Association has, for years, brought the Eddie the Eagle safety program to schoolchildren around the country. The message in these programs for children is simple—if you see a gun, leave it alone, leave the area, go tell an adult.

Gun control advocates have talked about safety, but the gun industry has actually done something about it. Accidental deaths involving firearms have declined over 40% in the last 15 years. The number of accidental deaths involving firearms is at its lowest level since 1903.

There is another important point to make in this regard. Firearm manufacturers have stated for a long time that, if a firearm dealer knowingly sells a gun to a criminal or to someone for criminal use, they should be prosecuted. We do not want our products to go into criminal hands.

What you do not hear is that the firearms industry is one of the chief sources of information to the law enforcement community about criminal attempts to obtain guns. Dealers work with police on a daily basis on such issues. They report all multiple sales of firearms to BATF. They cannot sell a gun unless the person buying it passes a background check. They cannot sell a gun to one person if they know the gun is actually intended for someone who cannot lawful possess it. If they violate these rules, they should go to jail.

Firearm manufacturers help the police by tracing guns found at crime scenes. Some have suggested that these manufacturers should go further, that they should investigate the dealers themselves, but when a firearm manufacturer gets a trace request from BATF or the police, what is the one thing it knows? It knows that the police are already on the job. Any effort it makes to interfere could get undercover officers or employees of the manufacturer killed.

Some of the mayors have sued the firearm industry because we do not build locks into our products. This is a canard. There is no gun made that cannot be locked. A flintlock rifle can be put in a cabinet and the cabinet can be locked. Trigger locks, cable locks, and lockable gun cases have existed for decades. We tell our customers that, if they have children in their households, they should empty their firearms, lock them and store the ammunition in a separate location. Trying to impose liability on the manufacturer because a gunowner choses to ignore this basic safety instruction would be as fair as blaming Seagrams for a parent's decision to give a bottle of vodka to his ten year old son.

In thanks for these efforts, the firearms industry has been sued and vilified by a handful of city mayors who did not take the time or show the common decency to discuss these issues with us before filing their lawsuits. Had they done so, they would have discovered that the efforts I have mentioned previously were undertaken long before a single city lawsuit was filed. The firearms industry has acted in the cause of safety, not because it has been forced to do so, but because it wants to do so.

This brings me to an important point. We make firearms to save people's lives. A firearm is perhaps unique in that its ability to save a person's life depends upon its lethality. Without a firearm, a woman may not be able to stop a rapist or a murderer. Without a firearm, a shopowner may not be able to stop a gang from robbing his store and killing him and his family. Without a firearm, a police officer or a private citizen may be unable to stop a lunatic bent on destruction. Without a firearm, a soldier may not be able to defend our freedom. We make firearms because the American public wisely and correctly wants us to do so

This brings me to the subject of the lawsuit contemplated by HUD. There, I have three questions. Is such a lawsuit fair? Who, in the end, would such a lawsuit harm? Who, in the end, would such a lawsuit benefit?

Let's talk about fairness. We make a lawful product. We sell that product as requested by the public, in accordance with procedures set by the same federal government that is now talking about suing us for relying upon the very distribution system that the federal government established.

We make a non-defective product. It functions as intended. In fact, our products are sold to the same federal government that may be considering suing us because of the way our product is made. Does this mean that the federal government has knowingly purchased a defective product for its employees?

Poll after poll indicates that the American public overwhelmingly opposes the lawsuits filed against the firearm industry. Why is that? Because the public knows that a criminal act is the fault of the criminal. Negligence in storing a gun is the fault of the owner. We think that judgment answers the question of whether these lawsuits are fair.

The second question is, who is harmed by these suits? Ironically, one of the first groups harmed will be the federal government, as well as state and local law enforcement agencies. Prices for handguns are already increasing around the country as companies add the cost of defending these lawsuits to the cost of their products. It may seem like a minor inconvenience to some, but higher prices for a handgun may mean the difference between choosing a new weapon or continuing to rely on an old sidearm for many law enforcement agencies. If the DEA can no longer afford new pistols in the future, it may have the Secretary of HUD to thank for that problem.

As I mentioned before, 24 cities have filed suits already and more are contemplated. The mayor of Chicago alone seeks $435 million in damages. Wayne County, Michigan seeks $200 million. The other cities seek unspecified millions. For an industry whose gross annual income may not exceed these amounts, these court cases inevitably call into question the future of the industry itself.

We think the cases are frivolous and we strongly believe we will win in court. But if manufacturers drop out of this industry, for whatever reason, the first victims of that loss could be the U.S. Armed Forces, as well as federal, state and local law enforcement agencies. Beretta U.S.A. supplies almost all of the pistols used by the Army, Air Force, Navy, Marine Corps and Coast Guard. We supply the standard sidearm for the INS and we supply pistols to police in Chicago, Miami, San Francisco, Los Angeles and St. Louis, all of which are cities which have, ironically, sued us. Glock supplies pistols to the FBI. Colt's supplies rifles to the Armed Forces. Who will supply those agencies in the future if these companies cease doing business in the United States?

Who will supply firearms for the personal protection of the American public? The American people may still have a Second Amendment when this is all over, but without the means by which that Amendment is exercised, it becomes an empty promise of self-determination and self-defense.

Even if the firearms industry succeeds in defending in these cases, which I believe it will, rising prices for firearms will inevitably mean that the less affluent law-abiding citizens of our country will no longer be able to afford firearms for self-defense. The irony of HUD actively trying to make it more difficult for some of its own constituent citizens to save their lives deserves comment and criticism.

Inevitably, of course, we must look at whom these lawsuits benefit. 200 million firearms are in circulation in this country, so an end in new firearm production seems unlikely to prevent the acquisition of firearms by criminals. Will the elimination of new firearms make old guns safer? I don't see how.

There is, of course, one group that benefits from these lawsuits. As I mentioned, poll after poll show that the American public despises these lawsuits, but the city mayors and others have cleverly taken this issue out of the hands of the public. Instead, they have placed the future of the Second Amendment and all that it entails in the hands of band of plaintiff's lawyers.

When these lawyers pursue these cases, do you believe that they are balancing issues like personal liberty, the right of self-defense and the future effectiveness of American soldiers? Are they looking instead for money, self-aggrandizement or, more likely, a few court decisions that will make it easier for them to go after any industry whose products can be misused, like the alcohol industry or the automotive industry or the entertainment industry or the telecommunications industry. To these lawyers, the firearms industry is not small. It's huge. It's their gateway to the future.

In 1972, Congress decided that it did not want the Consumer Product Safety Commission to oversee firearm design because it did not want a small group of government officials to determine the future of firearm ownership. Some have been critical of this decision, but Congress's wisdom in this regard was, ironically, proven immediately thereafter by the decision's harshest critic, Handgun Control Inc., which petitioned the CPSC to ban ammunition instead.

It is time for Congress to exercise this type of judgment again. We believe that it is time for the U.S. Congress to decide whether it wants the Secretary of HUD to decide the future of gun ownership in this country. We believe that it is time for the American public to insist that its rights not be determined by a handful of plaintiff's lawyers.

We respectfully ask that this Congress take steps to halt a lawsuit brought by HUD and, if possible, by the cities and others who have wrongfully sought to charge the firearms industry for the cost of crimes and neglect of safety which are the responsibility of private citizens.

Mr. MICA. Thank you for your testimony.

What we are going to do is recess now until 5 minutes after the vote. Then we will come back and Chief Bunch will be introduced by Mr. Cummings. He will be the first up and then you will be the last witness.

So, we will stand in recess until about 5 minutes after the vote. Thank you.

[Recess.]

Mr. MICA. Mr. Cummings is not back. So, we will go to Mr. Jannuzo. If we can recognize him, and then we will get to the Chief last. I wanted to give Mr. Cummings an opportunity to introduce him. So, let us hear from Mr. Jannuzo who is the general counsel of Glock, Inc. You are recognized, sir.

Mr. JANNUZO. Thank you, Mr. Chairman, and members of the subcommittee for this opportunity to testify here today on this important issue, not only important to the firearms industry, the Constitutional guarantees to the second amendment, the firearms-owning public, but also to the future of Americans.

Glock is the largest supplier of law enforcement firearms in the country. We proudly supply service weapons to the Federal Bureau of Investigation, the Drug Enforcement Agency, U.S. Customs, soon to be the Capitol Police, New York City Police Department, Washington Metro, Boston, Philadelphia, Baltimore, Savannah, and Miami, just to go up and down the East Coast.

We also supply approximately 57 percent of all State and local agencies that have transitioned to semi-automatic pistols as their service weapons. Our industry has an enviable record in regard to safety. In the last 20 years, accidental firearm deaths among children have been reduced by 50 percent. What is truly amazing about this, or truly telling about this, is that this has been done without government interference or programs and solely done by the private sector.

It is a tribute to the virtues of teaching self-reliance and individual responsibility, quintessential American ideals, and done by groups like the NRA, the Boy Scouts, and 4-H Clubs. However, rather than being lauded for their children's safety programs, they have been accused of increasing or promoting gun deaths. Eddie Eagle, the theme character in NRA's award- winning safety program has been called Joe Camel with feathers.

This unfair and unjustifiable comparison to tobacco is a reoccurring mantra of the anti-gun forces. Apparently, they believe the public has been sold on suing tobacco. So, everyone else is fair game. I would suggest to the committee that we seriously neglect the safety and welfare of our children by keeping this sort of valuable safety information out of our schools' curricular. It would seem that those who are in charge of the schools' curricula have decided that this sort of familiarity will not breed the contempt that they desire to instill in our children for firearms.

Apparently, they have decided that a few more children's lives are worth the inflammatory press and headlines they can garner to push their cause. I am not saying everyone should have a firearm. I am not saying there are not certain people that certainly should not have firearms.

This is a decision that we, as citizens in a free country, have to make for ourselves. We are certain, however, that if 51 percent of American households have a firearm in them, then our children are more likely than not to be in a household with firearms. If we have not taught them what to do at our schools and in our homes, then we are putting them at-risk.

We teach our children to look both ways before they cross the streets. We teach them not to drink the chemicals under the sink, not to put their fingers in electrical sockets and most recently for some reason, how to use condoms, but for some reason or another, we have not taught them how to be safe around firearms.

The other element of the proposed or contemplated suit by HUD would apparently be the criminal use of firearms. We know this because we have the experience of 24 other cities and counties to draw upon now. Despite the fact that we have seen violent crime dropping all over the country, despite the fact that we have the experience of cities such as Boston and Richmond to draw from, big city mayors and their tobacco lawyers are still intent on absolving criminals of their deeds and finding a scapegoat.

Boston and Richmond have instituted phenomenally successful crime prevention programs; crime prevention programs specifically addressed to crimes committed with firearms. However, even though Boston has reduced its gang-related violence with firearms to nearly non-existent levels in the fist year and a half of the program, I have read in the Journal this morning that they have been reduced by 60 percent over the 3 years of the program, Boston too has decided to sue our industry.

In light of the fact that accident rates with firearms have been reduced dramatically, and despite the fact that practical experience with cities such as Boston and Richmond have taught us that the most efficient and effective way of reducing violence with firearms is the vigorous enforcement of existing laws, coupled with the unwavering prosecution of those who violate them.

Cities, counties, and now a department of our Federal Government is contemplating suing us. In light of all of the empirical evidence against such folly, one has to ask: why? Luckily, it is a question that is easily answered. All you have to do is review the press statements and clippings that have been reported about the mayors who have filed suit. You can find the insight that you need into Secretary Cuomo's motivation.

It is simply that they are dissatisfied with the legislature and are trying to end-run it. Mayor after mayor have said that they have filed these suits because of the legislature's failure to act. What they do not say, however, is even more interesting. These suits, and the one threatened by HUD, are the result of the mayors and other government executives' failure to act.

The majority of the cities that have filed suit against the industry have abysmal records on crime. These suits are an abdication of their streets to criminals. Now, the abdication of the housing authorities' 3,400 properties is being contemplated. Since they have not been able to control crime, they are allowing society's miscreants to dictate their actions.

Since we do not want to arrest and certainly do not want to incarcerate them, we want to instead absolve them of their actions

and look for a scapegoat. After all, it is probably not their fault. We, as a society, have failed them somehow. Once you couple this need for a scapegoat with the greed that has been promulgated by a feeding at the tobacco trough, it is no longer much of a mystery as to why these suits are being filed.

Mr. TIERNEY. Mr. Chairman, an inquiry. As riveting as this is, I noticed that the light is on.

Mr. MICA. Yes. If you could begin to conclude. We are trying to limit our testimony to 5 minutes.

Mr. JANNUZO. Simply, Mr. Chairman, I would say that these suits, besides being without legal precedent in the United States, are going to become the poster child to the law of unintended consequences. When firearms cost $300 more, or whatever it may be, as the result of this litigation and the litigation costs, cities such as New York, who have a approximately 36,000 police officers, are going to incur a bill at some $11 million more than it would have been had this litigation not taken place.

I, as a taxpayer, object. I am certain other people will also. I would urge this committee to act and stop this folly before it goes any further.

[The prepared statement of Mr. Jannuzo follows:]

Statement of Paul F. Jannuzzo
Vice President & General Counsel
GLOCK, Inc.
Before the Subcommittee on Criminal Justice, Drug Policy and Human Resources
August 4, 1999

Thank you Mr. Chairman and members of the Subcommittee for the opportunity to testify here today on this important issue. Important not only to the firearm industry, adherents to the constitutional guarantees of the second amendment and to the firearm owning public, but also to the future of American jurisprudence. We have heard today from legal scholars as to why allowing this suit to go forward would set a dangerous and potentially destructive precedent in American jurisprudence, so I will not belabor that point further.

GLOCK is the largest supplier of law enforcement firearms in the country. We proudly supply service weapons to the Federal Bureau of Investigation, the Drug Enforcement Agency, U.S. Customs, NYC P.D., Washington Metro P.D., Boston P.D., Philadelphia P.D., Baltimore P.D., Savannah P.D., Miami P.D. just to do a tour of the east coastline. We also supply approximately 57% of all State and local agencies that have transitioned to semi-automatic pistols as their service weapons.

The firearm industry has the most enviable safety record in American industry. In the last twenty years accidental firearms deaths among children have been reduced 50%. This reduction has occurred during a period where both the general population and the amount of firearms in our society have increased dramatically. What is truly telling about this number is that it has occurred without government interference or programs. It is a tribute to the virtues of teaching individual responsibility, the quintessential American ideal. These programs have been conducted by the NRA, The Boy Scouts of America and 4H.

However, rather than having been lauded for their children and firearms record and the programs that they sponsor, groups such as the NRA have been accused of being irresponsible and blamed for

promoting gun deaths. Eddie the Eagle the theme character in the NRA's award winning safety program has been called Joe Camel with feathers. This unfair and unjustifiable comparison to tobacco is a reoccurring mantra of the anti-gun forces. Apparently they believe the public feels it is okay to sue tobacco manufacturers and therefore everyone else is fair game.

We have seriously neglected the safety and welfare of our children by keeping this sort of valuable safety information out of our schools curricula. It would seem that those that are in charge of the curricula have decided that this sort of familiarity will not breed the contempt that they desire to instill in our children for firearms. Apparently they have decided that wasting a few more children's lives is worth the inflammatory press and headlines they can garner to push their cause. I am not saying everyone needs to have a firearm or even should have a firearm. GLOCK believes that is a decision we as citizens in a free country need to make for ourselves. We are certain however that if 51% of American households have firearms then the odds are better than not that your child will be in a home with a firearm. If he or she is and it is not properly stored then that child should know what to do. We teach our children to look both ways before they cross the street, not to drink the chemicals under the sink, not to put their finger in an electrical socket and most recently how to use a condom. There simply is no excuse for not teaching them to be safe around firearms.

The other elements of what we can assume will be the gist of the HUD suit, as we have the experience of 24 other counties and cities who have filed suit to draw from is the criminal misuse of firearms. Despite the fact that we have seen violent crime rates dropping all over the country. Despite the fact that we have the experience of cities such as Boston and Richmond to draw from big city mayors and their tobacco lawyer cohorts are still intent on absolving criminals of their deeds and finding a scapegoat. The two aforementioned cities have instituted phenomenally successful crime prevention programs, specifically aimed at crimes committed with firearms. However, even though Boston has reduced its gang related violence with firearms to nearly non-existent levels, that did not deter them from filing suit against the firearm industry, presumably not unlike the suit that HUD is contemplating.

In light of the fact that accident rates with firearms have been reduced dramatically and, despite the fact that practical experience has taught us that the most efficient and effective way of reducing violence with firearms is the vigorous enforcement of existing laws coupled with the unwavering prosecution of those who violate them; a branch of our own Federal government is contemplating suing us. In light of all the empirical evidence that mitigates against such folly one has to ask why. Luckily it is a question to which the answer is easy to discover. A review of the press releases and statements given by the Mayors who have filed suit will likely provide insight into Secretary Cuomo's motivation. And it is simply this they are dissatisfied with the results of the legislative process and are seeking to end run it. Mayor after Mayor has said that these suits are the result of the legislature's failure to act.

What they do not say however is even more telling. These suits and the one threatened by HUD are the result of the Mayor's and other government executives failure to act. The majority of the cities that have filed have abysmal records on crime. The suits are an abdication of the city streets to criminals. And, now the abdication of the housing authorities 3,400 properties is being contemplated. Since they have not been able to control crime they are allowing society's miscreants to dictate their actions. Since we do not want to arrest these pariah and certainly do not want to incarcerate them we will instead absolve them of their actions and move on to a scapegoat. After all it is not "their" fault, society (we) must have failed them somehow.

If you couple the need for a scapegoat with the blindness induced by greed from feeding at the tobacco trough the motivation for the suit contemplated by HUD is no longer a mystery.

However, one other mystery remains, on whose behalf will these suits be filed? And since we are stretching legal principals to hitherto unbeknownst heights why are we working so hard to create a new cause of action. Is it because the public is demanding that our executive branches step in where the legislature has failed? GLOCK recently commissioned a survey by the Wirthlin Group. The results of

that survey indicate that over 90% of the American people are far more interested in seeing criminals prosecuted for their crimes than attempting to hold manufacturers responsible for the actions of criminals or in seeing new laws enacted. As to who should be held responsible for the misuse, criminal or otherwise, of a firearm 79% of the survey felt it should be the actor while fully 83% felt the manufacturer bore no responsibility.

If there is one benefit that can come from the HUD filing suit I would suggest that it is the following. If there is a jurist contemplating a decision on a motion to dismiss and he/she is considering the concept of remoteness as of one of the possible grounds for action, this suit will serve to illustrate how absurd this can get. If you couple this with the suit filed by the NAACP there will be no doubt in his/her mind that this has truly gone around the bend. Every morning when I get the morning mail I expect to see a suit from the national association of ice cream truck drivers.

On a final note I would suggest to the committee that these lawsuits will become the poster child for the law of unintended consequences. If lawsuits such as the one contemplated by HUD and filed by the cities and counties are allowed to proceed it is the taxpayers who will pay the ultimate price. These suits, if successful, will either drive companies out of business or will make the remaining firearms so exorbitantly expensive. The most cash strapped municipalities will be unable to provide their law enforcement officers with their most important tool. If a city with a police department the size of New York City's (~36,000) had to pay an additional $300.00 per pistol the extra bill to the taxpayers would be $10,800,000. I know in a city where we throw around numbers in the billions and trillions as if it is nothing that may not seem like much. But as a taxpayer please note, I object and I am certain others will also.

If the Secretary feels it necessary to file suit and if this body can do nothing to stop him I would recommend that he file in the Northern District of Georgia. Judges there understand that they are to apply the law not make it. At least that way the suit will have a short life and a merciful death.

I again thank the committee for this opportunity and implore you stop this folly before it goes any further.

Mr. MICA. Thank you for your testimony.

I am pleased at this time to yield for the purpose of an introduction of our next witness. I recognize the distinguished gentleman from Maryland, Mr. Cummings.

Mr. CUMMINGS. Thank you very much, Mr. Chairman.

It is my pleasure and my honor to introduce Chief Hezekiah Bunch. Chief Bunch retired from the Baltimore City Police Force after 22 years of service. He joined the Housing Authority Police in 1993. He has been the head of the Authority Police for 6 years. I might add that from 1996 to 1998, there were 494 shootings in Baltimore's public housing projects.

Let's note that it is the home to 50,000 tenants, our housing projects, and over one-half of those folks are children. So, it gives me great pleasure to introduce him because he sees it from a front line situation. He sees where these guns end up. He sees the pain that is brought upon communities and families. He goes to the funerals. So, it is a pleasure to have him.

Mr. MICA. Thank you. You are recognized, sir.

Mr. BUNCH. Thank you, Mr. Cummings. Thank you, Mr. Chairman and other subcommittee members for inviting me here today. During my private and professional life, I have watched a drastic change in the vehicle used to commit violent acts in our society. This change has taken place from the use of hands, to sticks and stones, to knives, and now to the use of firearms.

Gun violence in and around public housing projects in Baltimore is a great concern of the citizens of public housing, law enforcement, the Housing Authority of Baltimore City, and local officials. Between 1996 and 1998, as Mr. Cummings began to talk about, the Baltimore City Police Department reported the following gun-related violent crimes in and around public housing in Baltimore.

The first one that Mr. Cummings noted was 494 shootings. The next area was murders, which was 91 murders that occurred in or around public housing. Rapes where firearms were used. It was 25. Robberies in and around Baltimore's public housing were 958 for the same period. Aggravated assaults were 775.

The two most recent acts of gun violence took place in the month of July 1999. The first act took place on July 17, 1999, when a man was riding bike through one of our developments and was shot during a robbery attempt. On July 26, 1999, a 17-year-old boy was shot and killed in a parking lot in another one of our developments.

As you can see, gun violence in and around public housing in Baltimore is frightening. I have spoken to other chiefs of police around the country. I have found that gun violence is just as frightening or worse. Even with the success of programs such as One Strike, Safe Home, HIDTA, FBI Safe Streets, ATF Achilies, Drug Five, DEA Violent Trafficking Task Force, DEA Felony Project, Violent Crimes Task Forces (Handgun Enforcement Teams), Community Policing and other law enforcement activities designed to reduce gun violence, there are still too many people in and around public housing being killed, injured, and intimidated by firearms.

My experience as a law enforcement officer has afforded me the opportunity to travel and network with other law enforcement officials from around the country. As a result, I believe that the mere number of firearms that have been produced, are currently being

produced, and will be produced in the future has already or has the potential to saturate each and every community in this country.

With the enormous availability of firearms, the potential for more and more citizens in and around public housing to become victims of gun violence increases with each firearm that is produced. What is HUD's role in litigation against gun manufacturers? I see HUD's role in litigation against gun manufacturers as being two-fold: that of a landlord and that of a government entity.

HUD's primary responsibility, as the largest landlord in this country, is to first protect the lives of its tenants, employees, and any person or persons who may be on its properties. If HUD does not do the things within its power to accomplish this as a landlord, then HUD is not only open to litigation itself, but also must continue to absorb the loss of man hours due to gun violence against its employees.

HUD's role as a government entity is one of the protector of all of those persons who it gives the opportunity to live in its housing. HUD must also be allowed to be a responsible entity of government who, when it has identified a threat to the lives of those persons it is entrusted to protect, be allowed by all means at its disposal to take action that will save the lives of the citizens of this country. Thank you.

[The prepared statement of Mr. Bunch follows:]

The Subcommittee On Criminal Justice, Human Resources

and Drug Policy

Hearing on

"What is HUD's Role in Litigation Against Gun

Manufacturers?"

Wednesday, August 4,1999, 10:00 A.M
Room 2203 Rayburn House Officer Building

Testimony

Mr. Hezekiah Bunch

Chief of Police

Housing Authority of Baltimore City Police Force

GUN VIOLENCE IN AND AROUND PUBLIC HOUSING

My name is Hezekiah Bunch, Jr. and I have been a practitioner of law enforcement for over 28 years. I began my career with the Baltimore City Police Department in 1971 where I work in a number of assignments. In 1993 I retired from the Baltimore City Police Department and became the Chief of Police for the Housing Authority of Baltimore City Police Force. I am a native Baltimorean, married with three children and one grandchild.

During my private and professional life, I have watched a drastic change in the vehicle used to commit violent acts in our society. This change has taken place from the use of hands, to sticks and stones, to knives and now to the use of firearms. Gun violence in and around public housing communities in Baltimore is of great concern to the citizens of public housing, law enforcement, the Housing Authority of Baltimore City and local officials. Between 1996 and 1998, the Baltimore City Police Department reported the following gun related violent crimes in and around public housing:

CRIME*	1996	1997	1998	TOTAL
SHOOTINGS**	202	160	132	494
MURDERS	34	31	26	91
RAPES	12	9	4	25
ROBBERIES	458	292	208	958
AGG. ASSAULTS	341	264	170	775

**Note: The above figures were drawn from City of Baltimore Housing Authority property boundaries as of May 1998. During the period between 1996 and 1998, many of the public housing projects have been torn down, which will partially account for the decline in crime within these areas.*

***Shootings are not a separate UCR crime category itself. Officially, they are counted as a sub-category under any of the other four Part I UCR violent crimes. They are broken out here as a point of interest.*

The two most resent acts of gun violence took place in the month of July 1999. The first act took place on July 17, 1999, when a man was riding a bike through one of our developments and was shot during a robbery. On July 26, 1999, a 17-year-old boy was shot and killed in the parking lot of another of our developments.

As you can see, gun violence in and around public housing in Baltimore, is frightening. I have spoken to other chiefs of police around the country and found that gun violence is just as frightening or worse. Even with the success of programs such as: One Strike, Safe Homes, HIDTA, FBI Safe Streets, ATF Achilies, Drug Five, DEA Violent Trafficking Task Force, DEA Felony Project, Violent Crimes Task Forces (Handgun Enforcement Teams), Community Policing and other law enforcement activities designed to reduce gun violence, there are still too many people in and around public housing being killed, injured and intimidated by firearms.

My experience as a law enforcement officer has afforded me the opportunity to travel and network with other law enforcement officials from around the country. As a result, I believe that the mere number of firearms that have been produced, are currently being produced, and will be produced in the future, has already or has the potential to saturate each and every community in this country.

With the enormous availability of firearms, the potential for more and more citizens in and around public housing to become victims of gun violence increases with each firearm that is produced.

"What is HUD's Role in Litigation Against Gun Manufacturers?"

I see HUD's role in litigation against gun manufacturers as being two fold, that of a landlord and that of a government entity.

HUD's primary responsibility, as the largest landlord in this country, is to first protect the lives of its tenants, employees and any person(s) who may be on its properties. If HUD does not do the things within its power to accomplish this as a landlord, then HUD is not only open to litigation itself but also must continue to absorb the loss of man hours due to gun violence against its employees.

HUD's role as a government entity is one of the protector of all those persons who it gives the opportunity to live in its housing. HUD must also be allowed to be a responsible entity of government, who when it has identified a threat to the lives of those persons it is entrusted to protect, be allowed by all means at its disposal to take action that will save the lives of the citizens of this country.

Mr. MICA. Thank you for your testimony.

I feel like I am almost an honorary citizen of Baltimore having served with Mr. Cummings. He was our ranking member on the former panel and does a great job representing Baltimore and certainly telling us about some of the problems and his efforts to resolve some of the problems. Welcome, sir.

I have a couple of quick questions. First of all, I guess Mr. Chambers, this action or an action against gun manufacturers, whether it is by the government or others, is obviously going to curtail manufacturing of weapons or drive up the cost as the result in the United States. What would you predict would happen? Will we see more foreign imports? Exactly what are the consequences, if folks pursue this? Obviously, some are pursuing this.

Mr. CHAMBERS. I think you will see a gross reduction in the number of firearm manufacturers. They will be forced into bankruptcy. They will be forced out of business. Their demise is inevitable. Most of the firearm manufacturers are small. Many of them are family owned. They are privately held. They cannot survive the massive number of lawsuits that we are facing in this country.

Mr. MICA. What about international production of firearms? Would that increase?

Mr. CHAMBERS. A possibility, sir.

Mr. MICA. A possibility. Well, I am just concerned that, for example, with AK–47s and some of the other firearms we have seen, Chinese imports and others, that we ban something on one hand and we end up getting it in large quantities from foreign source manufacturers. Would you think that this might happen, Mr. Reh?

Mr. REH. It is certainly possible. What you would be likely to see would be companies that have not traditionally sold in the U.S. market now trying to enter the market after the long-established, well-respected, and recognized companies leave. So, you might be more likely to see former Eastern Bloc manufacturers come in the country or from other markets.

Mr. MICA. Are not most of the guns, and I do not know the statistics, I am not an expert on this, that are used in the commission of a crime, illegally obtained in the first place? Would anyone know? Mr. Jannuzo.

Mr. REH. I can probably give you some information on that.

Mr. MICA. Mr. Reh.

Mr. REH. Sir, most guns that are used in crimes are obtained second hand. They are purchased from family members, or from acquaintances who can lawfully purchase a gun. When I use the word "acquaintence," I am including within that gang members, fellow people involved in crime who have not yet been convicted and have not yet been barred from purchasing a firearm. A fair percentage are stolen either from home theft or other people who have guns. Then a certain percentage comes from dealers.

Mr. MICA. Chief Bunch, you have certainly seen a great deal of law enforcement experience and also I guess activity in public housing. Your testimony started out and you said you saw sort of a progression of violence in crime from hand- by-hand, and I think you said other weapons, stabbing, et cetera. Now, we see this gun problem.

Is there any relationship between the violence you see and another problem that is of particular interest to our subcommittee, and that is illegal narcotics? Is there much of a correlation between illegal narcotics and the crime that you have seen?

Mr. BUNCH. Yes. It is one of the tools that a drug dealer uses as a weapon to either intimidate or enforce his territory.

Mr. MICA. Of the 91 murders in the housing projects in Baltimore, what percentage would you say were drug-related?

Mr. BUNCH. I would probably say at least 50 percent or more.

Mr. MICA. Do you feel that the Federal Government is doing enough to go at the root problems, drugs and illegal narcotics, unemployment, some of the other social things? People just do not pick up a gun and shot somebody. A few do who are deranged. I would imagine that happens. There have to be some root problems. What would you attribute as a responsibility for the Federal Government to deal with solving these basic fundamental problems?

Mr. BUNCH. I think one of the first things, and I think it is being done with this kind of committee to even discuss the issue. When I was talking about having seen an increase in violence from one vehicle to another, I will go back to my childhood. When we had a dispute, we would go to the fists. Now when a dispute happens, people go to the gun because it is so easy for them to get.

I have had people, in the last several months, ask me where can they get a gun. Naturally, I gave them the correct answer, but people who would never have even thought about a gun now are looking for them. There is no question in my mind that some of those people will go the easiest route to get guns.

Mr. MICA. Is that for their own protection?

Mr. BUNCH. Well, I think that the fear is out there, that everybody has a gun. Everyone needs a gun, but that is the problem. When they are so accessible, you can go on probably any corner in the city and buy a gun. They are that available.

Mr. MICA. And that action would be illegal?

Mr. BUNCH. Most definitely.

Mr. MICA. I will yield to our ranking member, Mrs. Mink.

Mrs. MINK. Thank you, Mr. Chairman.

I also want to welcome you, Chief Bunch and other witnesses who have testified. The issue actually before this committee is the propriety of the Department of Housing and Urban Development in engaging itself in this whole question of whether the other housing agencies that have embarked on litigation against gun manufacturers is something that HUD ought to be concerned about, looking at, becoming knowledgeable about, and doing research in connection therewith.

It is troubling to me that we have to bring such a basic matter of the jurisdiction of the Department, because as you said, Chief Bunch, if they did not care about it, if they did not do anything about it as a landlord, they could be held responsible. So, in that connection, Chief Bunch, could you tell me what kind of a police force you have under your command to handle all of the police issues that affect the housing authority for Baltimore City?

Mr. BUNCH. Yes. We have a police department that has approximately 110 sworn officers, another 125 civilians who also are responsible for access to buildings, our building monitors. Then we

have maybe 10 or 15 support staff. We provide an above-base line services to public housing in Baltimore. Even at that, we do not provide it to every development. We are very limited in the developments that we actually provide the service.

Our strength is in partnerships with other law enforcement agencies, both on the Federal, State, and local levels. We try to get involved in a number of initiatives that go on in and around public housing. That is the way we basically operate.

Mrs. MINK. So, would you have any familiarity then with the budget requirements for your force, as well as all of the other security requirements that go along with your responsibility for these housing agencies?

Mr. BUNCH. I can only talk about Baltimore.

Mrs. MINK. We heard earlier that it ranges between 35 and 40 percent of the total budget.

Mr. BUNCH. Right. It is about the same with us. It may be a little less. For instance, my Department only has an annual budget of around $12 million. That is for everything, materials, equipment, and everything. So, it is probably about the same.

Mrs. MINK. I have no further questions, Mr. Chairman.

Mr. MICA. Thank you. I would like to yield now to the gentleman from Georgia, Mr. Barr.

Mr. BARR. Thank you. Mr. Chambers, we heard the Chief mention, and this is not a new argument, that we have more crime involving guns because guns are more available. As a matter of fact, is it not true that guns have been very available, as a matter of fact, even more readily available to law abiding citizens and the general population than years and decades past before gun control laws started to be enforced, yet, we had less crime?

Mr. CHAMBERS. Yes, sir. Pre-1968, the per capita gun accumulation in the United States was about the same as it is today. I can go back to my childhood and I remember, as the Chief does, that we settled arguments with fists, not because that guns were not available, because they were.

I grew up around guns. They were in my home. Everyone had guns in their home in my hunting community. For some reason, that society, that era, that is how we solved our problems. We never thought about getting a gun and solving it. Gun access was readily available as it is now.

Mr. BARR. With regard to the impact on the legal firearms and ammunition industry in America, if you would please recap how many Americans are employed generally in the business? What is the payroll?

Mr. CHAMBERS. If you take in the entire shooting and hunting sports activities, you are looking at somewhere around a $39 billion a year industry that employs somewhere around 900,000 people in that pursuit.

Mr. BARR. Do you have ballpark figures to contrast that with the size of the tobacco industry, which is the industry that unfortunately has given rise to emboldening lawyers and now government agencies to sue private industry?

Mr. CHAMBERS. No. I would like to go back. When you asked the question, are you talking about only the manufacturers of firearms? I am talking about the widespread hunting, shooting, fishing.

Mr. BARR. I am just talking about the manufacturing.

Mr. CHAMBERS. Then we are less than a $2 billion industry and employ much less than the tobacco, and no comparison at all to them.

Mr. BARR. So, if there is some notion out there that there are these huge deep pockets in the firearms industry, similar to the tobacco industry, that would not be accurate; would it?

Mr. CHAMBERS. That is not an accurate figure. Our entire take in the entire firearms industry is less than a Walmart concern per year.

Mr. BARR. Mr. Jannuzo, you are an attorney. Is that correct?

Mr. JANNUZO. Yes.

Mr. BARR. You have heard some of the legal theories discussed here today about the need, or lack of need depending on whom you talk to or who is speaking, for an expressed legal authority before a government agency can act. I would like your views on that. If you would, put it in the context of answering the following question.

If, in fact, HUD is allowed to proceed in some form or fashion, and they would not give us a categorical answer, no, that they would not, and involve the resources of the Federal Government, just one Federal agency we are talking about today, in suing the firearms industry, would you see the possibility that other Federal agencies could follow that same logic and join in lawsuits against the gun industry?

For example, there are gun crimes committed within the jurisdiction of other Federal agencies. So, if we open the door to Federal agencies generally being able to involve themselves, either directly or assisting lawyers and municipalities in suing the gun industry, could this very quickly drown the ability of the firearms industry to defend itself against that legal onslaught?

Mr. JANNUZO. Certainly, Congressman. In answer to your previous question of Mr. Chambers, tobacco makes in a day and a half what we make in a year. If other Federal agencies and HUD all decided to file against our industry, it would devastate the industry and it would certainly impair cities, States, and local municipalities the ability to give their law enforcement officers the most important tool that they have when they are out in the street.

Mr. BARR. We have heard a lot of discussion in recent years, particularly in recent months about smart guns; a technology that can guarantee that a gun will not be misused, I suppose. Is that technology fairly expensive to develop?

If, in fact, these lawsuits are allowed to proceed, is it reasonable to conclude that the cost of defending against those lawsuits will impair the ability of the firearms industry to proceed forward with the research and development of the very technology that the gun control activists want to develop?

Mr. JANNUZO. Most definitely. Mr. Zilkah made that point this morning that the U.S. military had spent $30 million last year trying to develop an electronic rifle. The Federal Government also commissioned a study at Sandia National Laboratories, and I think over a period of 3 years, spent some $36 million, and still did not come up with a workable product.

Their final conclusion was that it was at least a generation off, both in the confidence level of the user and in technology. If these suits are allowed to continue, you can be sure that is going to be two generations off.

Mr. BARR. I guess if it took place at Sandia, I guess the Chinese probably know how to crank out the technology now more than we do. Thank you very much, Mr. Chairman.

Mr. MICA. Thank you. Mr. Tierney.

Mr. TIERNEY. Thank you. First, Mr. Chairman, I might have a problem with the inquiry. Since Mr. Zilkah undertook to leave, might we just disregard his testimony and wipe it from the record, or is this an opportunity for him to speak and then run? I certainly found his testimony shocking and, in many ways, inappropriate.

Mr. MICA. We will be glad to submit to any of the witnesses written questions. He was under a time constraint and had advised this subcommittee in advance. His testimony can stand on the record. If you would like to submit questions to him, we will be glad to do it.

Mr. TIERNEY. I am not sure it is worth the time and energy, but we will see.

Mr. Reh, you seem to have an extreme distrust for our court system. Would that be an accurate reflection of your feeling about our judicial system?

Mr. REH. I am concerned about any system in which people can file lawsuits without having a substantial basis for doing so.

Mr. TIERNEY. Are you a lawyer, sir?

Mr. REH. Yes, I am.

Mr. TIERNEY. So, it is your opinion then that every single lawsuit that has been filed so far has no basis?

Mr. REH. Yes, sir.

Mr. TIERNEY. Whenever you make that decision, not regarding what a judge may think, in your impression, then your decision should carry and they should not be allowed to proceed for their rights.

Mr. REH. Well, I have to pay for the cost of the defense. So, that is a concern to me no matter what the basis of the suit is.

Mr. TIERNEY. So, does your company hire lawyers?

Mr. REH. Yes, we do.

Mr. TIERNEY. Those are the good guys and all of the other lawyers are the bad guys?

Mr. REH. That is how I see them at this point.

Mr. TIERNEY. Oh, I am sure that is how you see it, sir.

Mr. Chambers, you also seem to have a pretty low tolerance level for the judicial system these days. Is it your understanding that the courts are somehow incapable of deciding whether any of these causes of actions have merit or not?

Mr. CHAMBERS. I think the actions that they are attempting to take ought to be taken by Congress and not by the court system.

Mr. TIERNEY. But you are aware, are you not from your earlier history courses, that we have three branches of this government; one of which is the judicial system?

Mr. CHAMBERS. I am very aware of that.

Mr. TIERNEY. I was not sure when I heard your testimony. I could have counted the number of times that you undertook the

buzz word "trial lawyers." You have some problem with people in the judicial system being represented by counsel?

Mr. CHAMBERS. Only those greedy lawyers, sir.

Mr. TIERNEY. And you know which ones are greedy and which ones are not?

Mr. CHAMBERS. I have a pretty good idea.

Mr. TIERNEY. And the ones that work for companies like yours certainly are not greedy at all?

Mr. CHAMBERS. They are not.

Mr. TIERNEY. Whatever they get period?

Mr. CHAMBERS. No, sir.

Mr. TIERNEY. Now, you are aware of the fact that it took litigation to stop the Pinto from being made with the gas engine too close to the rear of the car?

Mr. CHAMBERS. I am aware of that.

Mr. TIERNEY. Those are greedy lawyers that preceded that case?

Mr. CHAMBERS. I do not know what preceded that case. I am not that familiar with what motivated them.

Mr. TIERNEY. And you are familiar with cases that finally stopped some clothing manufacturers from making pajamas that were inflammable and were resulting in the injury of little children?

Mr. CHAMBERS. Yes, sir, and those were defective products; were they not?

Mr. TIERNEY. They may well have been, but are you thinking that the lawyers who brought that case under that theory were greedy little lawyers?

Mr. CHAMBERS. Maybe.

Mr. TIERNEY. Of course, all of the lawyers involved in the tobacco case must be greedy lawyers.

Mr. CHAMBERS. I did not say that.

Mr. TIERNEY. Well, is that your opinion?

Mr. CHAMBERS. I would say that some of them are motivated by greed.

Mr. TIERNEY. Would it be your opinion that people ought to be deprived of the opportunity to go to court to press a legal theory that they believe is just and fair?

Mr. CHAMBERS. No, I do not.

Mr. TIERNEY. So, that you do not have any problem then with people undertaking the use of the judicial system to press a claim that they believe is merited?

Mr. CHAMBERS. For a defective product, no sir.

Mr. TIERNEY. Any legal claim that they believe has merit; do you believe that people have the right to go to court to press that claim?

Mr. CHAMBERS. Certainly, they do.

Mr. TIERNEY. Now, are you familiar with any of the cases that are now pending by these municipalities having yet been thrown out of court on the basis that they did not have merit?

Mr. CHAMBERS. No.

Mr. TIERNEY. Do you trust the judicial system, a judge in particular, to be able to make the determination whether or not the cases ought to proceed because they have merit or not proceed because they do not have merit?

Mr. CHAMBERS. I think the system ought to work the way it is designed to work, yes.

Mr. TIERNEY. If it did so, then you would not have any problem with it?

Mr. CHAMBERS. No.

Mr. TIERNEY. Now, are you telling us that if the cases are allowed to proceed, then you do not think the system is working the way it was designed to work?

Mr. CHAMBERS. If they fail on appeal, or if they are judged that way, who knows?

Mr. TIERNEY. If these cases were to proceed all the way to trial?

Mr. CHAMBERS. OK.

Mr. TIERNEY. And the jury was to come back with a finding, after instructions by the judge as to what the law was. The finding was in favor of the plaintiffs. Are you then saying that you think this whole thing would be——

Mr. CHAMBERS. Juries are not infallible.

Mr. TIERNEY. None of us are.

Mr. CHAMBERS. Juries make wrong decisions, wrong judgments.

Mr. TIERNEY. So, and legislators do, and executive branches do, and judicial branches do. The fact of the matter is, this is our system. Are you saying that you would deprive people of a system of the jury system for an opportunity to go to court?

Mr. CHAMBERS. I do not know where you got that idea, sir.

Mr. TIERNEY. Well, I think maybe from the language during your testimony where you seem to be taking on trial lawyers, and the court system, and thinking that it was inappropriate for people to use the judicial system to press what they think is a legitimate claim.

Mr. CHAMBERS. I have seen their actions with the city mayors who are filing lawsuits against my industry; yes, sir.

Mr. TIERNEY. If a judge allowed those to proceed because the judge believed that the claims had merit, and a jury came back and made a finding, that I guess would indicate to us that the people were on the right track and not the wrong track; right?

Mr. CHAMBERS. Not necessarily.

Mr. TIERNEY. Mr. Jannuzo, beside your also obvious dislike for the litigation system, despite the fact you are a lawyer, you indicated that you are proud that your company supplied the military, the FBI, and other branches.

Mr. JANNUZO. I did not say the military, sir.

Mr. TIERNEY. All right; the FBI. I think Mr. Zilkah wanted to tell us that if we did not keep making as many guns commercially as we make, then we would not be able to make them for the military. It is your case that if we do not make as many guns as possible, flood the streets with them, then we will not be able to have people making guns for the FBI or other security people. Is that what your testimony was?

Mr. JANNUZO. I do not think you could have been here when I testified, sir. I did not say that.

Mr. TIERNEY. Well, the impression I got was that one of the things that you were inferring was that if the cost of guns were to go up so high, it would be prohibitive if you were not allowed to keep making guns at the rate you are making them.

Mr. JANNUZO. I said nothing about the rate, sir. I said about the cost of litigation. The rate never entered any statement that I made.

Mr. TIERNEY. How did you determine the cost of litigation?

Mr. JANNUZO. I took a number out at random and I said that when I said the number, sir.

Mr. TIERNEY. And the cost you took out was the increased cost of guns for law enforcement officers?

Mr. JANNUZO. The cost I took out would be added cost as the result of litigation, sir.

Mr. MICA. To be fair.

Mr. TIERNEY. You are going to stop me when you did not stop the others?

Mr. MICA. I stopped Mr. Barr approximately one question after the red light.

Mr. TIERNEY. Fine.

Mr. MICA. It is up to the ranking member as to how we want to proceed.

Mr. BARR. I am getting a kick out of this, let him proceed. It is fine with me.

Mr. MICA. Whatever you want to do.

Mrs. MINK. Conclude.

Mr. MICA. I usually go further.

Mrs. MINK. Conclude.

Mr. MICA. OK. Well, the time of the gentleman has expired. All time for the hearing has expired. Without objection, we will leave the record open for 3 weeks.

Mrs. MINK. Fine for questions.

Mr. MICA. If Members on either side have questions of any of the witnesses or the agency, we would be glad to submit them.

No further business to come before this subcommittee today, I would like to thank each of our witnesses for participating and for your contributions.

This meeting of the subcommittee is adjourned.

[Whereupon, at 1:25 p.m., the hearing adjourned.]

[The prepared statement of Hon. Edolphus Towns and additional information submitted for the hearing record follow:]

Congress of the United States
House of Representatives
Washington, DC 20515

STATEMENT

BY

HONORABLE ED TOWNS (D-NY)

"What is HUD's Role in Litigation Against Gun Manufacturers"

Subcommittee on Criminal Justice, Drug Policy and Human Resources

August 4, 1999

MR. CHAIRMAN, I MUST LEND MY VOICE TO THOSE WHO APPLAUD THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT FOR ACTING WITHIN THEIR LEGAL AUTHORITY TO ASSIST THE PUBLIC HOUSING ENTITIES THROUGHOUT THIS NATION IN PURSUING AN END TO GUN VIOLENCE. AS THIS SUBCOMMITTEE UNCOVERED IN THE 103RD CONGRESS IN A HEARING ON "VIOLENCE AS A PUBLIC HEALTH ISSUE", GUNS HAVE A SERIOUS IMPACT ON THE QUALITY OF LIFE FOR MANY AMERICANS. ACCORDING TO THE CENTERS FOR DISEASE CONTROL AND PREVENTION, IN 1996 THERE WERE 34,040 FIREARM RELATED DEATHS. FIREARM INJURIES ARE THE SECOND LEADING CAUSE OF DEATH FOR YOUNG PEOPLE, AGES 10 TO 24 AND THE THIRD LEADING CAUSE OF DEATH FOR PERSONS AGES 25 TO 34. ACCORDING TO A 1993 ARTICLE ARTICLE IN "HEALTH AFFAIRS", AT LEAST 80% OF THE ECONOMIC COSTS OF TREATING FIREARM INJURIES ARE PAID FOR BY TAXPAYER DOLLARS. THE SANFORD INSTITUTE OF DUKE UNIVERSITY RECENTLY ISSUED A REPORT WHICH FOUND THAT THE FEDERAL GOVERNMENT SPENDS $1.1 BILLION ANNUALLY ON TREATING THE VICTIMS OF GUN VIOLENCE THROUGH THE MEDICAID AND MEDICARE PROGRAMS. THE TREATMENT

OF A GUNSHOT WOUND COSTS $17,000 AND THIS COST IS DOUBLED WHEN A PERSON HAS TO BE HOSPITALIZED FOR TREATMENT.

I AM PROUD OF THE FACT THAT THE LEAD PLAINTIFF IN THE FIRST SUCCESSFUL CLASS ACTION LAWSUIT AGAINST GUN MANUFACTURERS, HAMILTON V. ACCU-TEK, IS MY CONSTITUENT, MRS. FREDDIE HAMILTON. IN FEBRUARY OF THIS YEAR, A FEDERAL JURY IN BROOKLYN, NEW YORK, FOUND FIFTEEN OF THE HANDGUN MANUFACTURERS LIABLE FOR NEGLIGENCE DUE TO THEIR MARKETING AND DISTRIBUTION PRACTICES. THE JURY AWARDED DAMAGES OF $3.9 MILLION.

MR. CHAIRMAN, AT A TIME WHEN WE ARE CHALLENGING OUR GOVERNMENT TO DO MORE TO END THE TRAFFICKING IN DRUGS FROM COLOMBIA, IT SEEMS HYPOCRITICAL TO ATTACK H.U.D. FOR THEIR ADVOCACY ON BEHALF OF PUBLIC HOUSING AGENCIES WHO MUST COPE WITH THE INCREASED GUN VIOLENCE IN THEIR PROPERTIES BECAUSE OF THESE SAME DRUGS. H.U.D. HAS STATED THAT IT DOES NOT INTEND TO FILE ANY LAWSUITS AGAINST GUN MANUFACTURERS. HOWEVER, ACTING AS A COORDINATOR TO PUBLIC HOUSING AUTHORITIES, WHO WISH TO PURSUE LITIGATION AGAINST THE GUN INDUSTRY, IS A PERFECTLY LEGITIMATE ROLE FOR H.U.D. AS IT SEEKS TO

REDUCE CRIMINAL ACTIVITY IN PUBLIC HOUSING. OUR INTEREST SHOULD BE IN HELPING LOCAL GOVERNMENT TO PROTECT THE SAFETY AND SECURITY OF PUBLIC HOUSING TENANTS. ABSENT ANY LAW TO THE CONTRARY, WE SHOULD ACTIVELY ENCOURAGE H.U.D. TO PURSUE POLICIES WHICH WILL REDUCE GUN VIOLENCE IN PUBLIC HOUSING. THANK YOU FOR YOUR ATTENTION TO THIS MATTER MR. CHAIRMAN AND I LOOK FORWARD TO HEARING FROM OUR WITNESSES TODAY ON THIS CRITICAL QUALITY OF LIFE ISSUE FOR PUBLIC HOUSING AUTHORITIES AND THEIR RESIDENTS.

June 22, 1999

The Honorable Conrad Burns
United States Senate
187 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Burns:

The Coalition for Legal Reform, a broad-based, industry and consumer group is writing to urge you to support The Litigation Fairness Act, introduced by Senator Mitch McConnell.

The business community is greatly troubled by the growing trend of government entities suing legitimate industries to raise revenue. In order to win these lawsuits, governments are stacking the deck by stripping the defendant corporations of their rights and defenses in order to generate additional tax revenue through litigation. This problem began with the state lawsuits filed against the tobacco industry and has now spread to other industries.

President Clinton signaled his intention to follow this trend during his January 19, 1999 State of the Union Address when he announced that the Department of Justice was preparing to sue the tobacco companies. In order to win this lawsuit, the Justice Department will likely use the same theories used in the state Medicaid tobacco cases to undermine 200 years of tort law. The Litigation Fairness Act is a reasonable and balanced approach to addressing this significant problem and will help stop this blatant misuse of governmental authority.

The Litigation Fairness Act does not affect any individual's rights or ability to sue a company that has caused them harm. This evenhanded bill would ensure that a government entity filing suit to directly recover funds expended by that entity on behalf of a third-party (such as a Medicare or Medicaid patient) would only be entitled to the same rights as an individual suing that defendant. Moreover, that governmental entity would be subject to the same substantive and procedural rules and defenses as any other individual plaintiff. In essence, this legislation would simply codify the

principle that an indirectly injured party should not have any greater rights than a directly injured person.

We urge you to cosponsor the Litigation Fairness Act and stop this assault on America's business community.

Sincerely,

American Insurance Association
American Tort Reform Association
American Wholesale Marketers Association
Americans for Tax Reform
Business Civil Liberties, Inc.
Capitol Watch
CATO Institute
Citizens for a Sound Economy
Citizens for Civil Justice Reform
Coalition for Uniform Product Liability Law
Food Distributors International
Food Marketing Institute
National Association of Manufacturers
National Association of Wholesalers-Distributors
National Grocers Association
National Restaurant Association
National Roofing Contractors Association
National Taxpayers Union
Petroleum Marketers Association
Small Business Survival Committee
U.S. Chamber of Commerce

ATRA American Tort Reform Association

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August 4, 1999

STATEMENT OF SHERMAN JOYCE, PRESIDENT OF THE AMERICAN TORT REFORM ASSOCIATION[1] (ATRA) ON "REGULATION THROUGH LITIGATION"

Submitted to the Subcommittee on Criminal Justice, Drug Policy, and Human Resources of the Committee on Government Reform of the United States House of Representatives, Washington, DC.

Mr. Chairman and members of the subcommittee:

While I regret that I am unable to appear before this subcommittee personally, I thank you for the opportunity to submit written testimony on the public policy implications of a lawsuit that may be brought by the Department of Housing and Urban Development (HUD) against gun manufacturers.

On February 11, 1999 former Secretary of Labor Robert Reich wrote in a *USA Today* editorial that, "The era of big government may be over, but the era of regulation through litigation has just begun."

ATRA fundamentally opposes so called "regulation through litigation" because we believe that lawsuits, filed first against the tobacco industry and gun manufacturers, and likely to be filed against the one-time makers of lead paint, are the beginning of a troubling trend in which complex public policy issues are adjudicated not in our nation's legislatures, but in our courts.

The Remoteness Doctrine

If HUD were to file lawsuits on behalf of the approximately 3400 housing authorities that receive federal funds, traditional theories of tort law would make it difficult for HUD to prevail. Simply put, the link between HUD's purported economic "harm" or "loss" and the makers of firearms is too remote.

This so-called "remoteness doctrine" is based on centuries of common-sense tort law. The doctrine is meant to prevent duplicate recoveries for the same harm, and it applies to the federal government as well as individual and class action claims.

In 1947, the Supreme Court of the United States held in *United States v. Standard Oil of Calif.*[2] that the federal government had no independent cause of action to recover against Standard Oil for the medical services it provided a member of the armed services who was negligently hit by a Standard Oil truck. The Court said that if the law were to be changed, that it should be done by *Congress,* not the courts.

The federal government already enjoys the power to recover *on behalf* of persons for whom it has provided medical care and expenditures, it just does not have an independent power of recovery.

In litigation against the tobacco industry, however, several lower courts created a new and independent "quasi-sovereign" doctrine that gave government an independent right of recovery *greater than that extended to any actual injured individual.*

The result was an avalanche of claims against tobacco makers. A similar litigation avalanche is cascading over gun manufacturers. ATRA believes that the intent of such litigation is to coerce concessions from a politically unpopular industry. According to a recent article in the *Wall Street Journal*, plaintiffs' lawyer Wendell Gauthier, who represents the city of New Orleans in its suit against gun makers, believes that if enough plaintiffs sue gun makers simultaneously, these companies will be forced to accept manufacturing and marketing restrictions.[3]

Lacking the resources of the tobacco industry, Davis Industries of California is the first firearms maker to file for bankruptcy, citing the cost of defending itself from municipal lawsuits as its reason. Now, any person who might be injured by a faulty gun from Davis' factory has no practical means to recover.

Public Policy Issues Belong to the Legislature

The integrity of our coequal three-branch government is best upheld when our nation's legislatures, and not our courts, determine complex public policy issues.

When this Congress makes law, it does so prospectively, that is, in a forward looking fashion. You have the power to hold hearings, query your constituents, and enact legislation through a process of debate and compromise. Your public policy pronouncement is the result of many different interests and inputs.

When the courts make law, judges hear only from the attorneys arguing the narrow matter before the bench. Furthermore, courts' decisions are applied retroactively — to past conduct and actions.

Conclusion

While traditional theories of tort and liability would prevent HUD from prevailing in litigation against gun manufacturers, new legal theories that have been accepted by some courts might permit HUD to prevail. These new legal theories run counter to centuries-old principles of our civil justice system and have been rightly rejected by most courts.

More importantly, complex public policy judgements meant to achieve regulatory ends belong not to our courts, but to our legislatures. For this reason, ATRA opposes "regulation through litigation."

NOTES

1. Founded in 1986, ATRA is an association of some 300 members working to restore fairness, balance and predictability in our nation's civil justice system.

2. 332 U.S. 301 (1947).

3. Barrett, Paul, "Jumping the Gun: Where Tobacco and Firearms Diverge," *The Wall Street Journal*, Friday, March 12, 1999, A6.

Statement of Bruce Fein
Before the House Subcommittee on Criminal Justice,
Drug Policy and Human Resources
Addressing the Legal Authority of the Department of
Housing and Urban Development to Sue
Gun Manufacturers for Security Costs at Federally
Funded Public Housing Authorities
August 4, 1999

Mr. Chairman and Members of the Subcommittee:

I am grateful for the opportunity to address the legal authority and propriety of contemplated litigation against gun manufacturers initiated by the Department of Housing and Urban Development seeking damages for the security costs at federally funded public housing complexes associated with the misuses of gun owners or possessors. Information about the potential lawsuit at present seems confined to newspaper sources; thus, I will offer only general views and plausible legal theories that might be different if HUD's precise legal complaint were known. Furthermore, I have not enjoyed the time in preparing my statement to make it more than tentative. In other words, it is more a flute accompaniment in a national concert than a French horn or first violin.

It seems highly improbable that Congress has empowered HUD to undertake the envisioned suit against gun manufacturers. It is an agency of the United States. Its powers must be anchored to federal statutes. There is, to my knowledge, no federal law that expressly crowns HUD with power to sue gun manufacturers pursuant to the complaint that seems afoot which sports pioneering theories tort liability and relief beyond the Milky Way.

HUD's prospective cause of action would apparently be as follows: federal funds support the cost of operating 3,400 public housing authorities; gun manufacturers under state tort law owe a duty of care towards landlords generally (and possibly home owners), both public and private; that duty obligates gun manufacturers to exercise reasonable care in the sale of their merchandise to avoid ownership or possession by persons who might misuse guns and thus proximately cause the security costs of their operations to climb; gun manufacturers have violated that duty by declining to design their product to forestall or minimize the harms associated with its misuse or to adopt production limits that would curtail illicit gun distribution or possession; their negligence has proximately caused inflated landlord security costs; and, HUD is entitled to recover damages for the federally funded share of that alleged inflation.

If HUD's legal theory is viable, it would mean the bankruptcy of the gun industry. Gun manufacturers would be vulnerable to damage suits by tens of millions of property owners whose costs of security -private guards; security devices or services; or structural adaptations -are attributable in part to the misuse of guns. The costs of legal defense alone would be prohibitive, even if the causes of action would not have prevailed at trial. Is it plausible that Congresses which have fiercely debated simple restrictions on gun sales would have simultaneously armed HUD with a "Star Wars" legal weapon to destroy the industry as conclusively as Napoleon at Austerlitz?

Enlightened law, of course, is a matter of degree. To reject HUD's gun suit is not to reject all HUD litigation seeking damages under state tort law or otherwise. Suppose an arsonist burns a federally funded public housing complex. It would not seem implausible to imply as within

congressional intent a HUD cause of action jointly with the local housing authority to sue the arsonist under traditional state common law for the cost of rebuilding. That type of suit built on well established liability, however, is a far cry from the dramatic social engineering that would be entailed by HUD's would-be suit against gun manufacturers. That executive branch gambit is a clear end run around the legislative prerogatives of Congress.

The HUD suit would set a chilling precedent. The litigating resources of United States agencies are vast; they confront no profit and loss statements at the close of fiscal years. With unstressful mental exercise, government lawyers can conceive of Abstract Expressionist theories of liability whose simple pursuit in a complaint could push a "politically incorrect" business to the abyss. Take the alcohol and casino industries. The United States might sue under state common law for the increased costs of federal unemployment and disability payments associated with the alcohol and gambling abuses of their patrons. If the United States fully exploited its discovery and appeal rights, the costs of defense by the two industries would rocket. They could be easily coerced into settlements or "understandings" that would revamp their operations as profoundly as new federal legislation. The constitutional balance of powers would shift sharply to the executive. I do not think Congress has ever authorized such a worrisome change. But if the Chief Executive thinks otherwise, I would strongly urge speedy enactment of a statute that prudently cabins its litigating powers.

RESPONSES TO QUESTIONS FROM TRANSCRIPT OF 8/4/99 HEARING"WHAT IS HUD'S ROLE IN LITIGATION AGAINST GUN MANUFACTURERS"

BEFORE THE HOUSE SUBCOMMITTEE ON CRIMINAL JUSTICE, DRUG POLICY AND HUMAN RESOURCES

The following are the Department of Housing and Urban Development's supplemental responses to questions asked at the hearing before the Subcommittee on Criminal Justice, Drug Policy and Human Resources of the House Committee on Governmental Reform, held on August 4, 1999, entitled "What is HUD's Role in Litigation Against Gun Manufacturers." These responses reflect Departmental information as of the date of the hearing, and are in response to questions taken from a draft hearing transcript provided to the Department by the Subcommittee by letter dated September 16, 1999.

1) Please provide the Subcommittee with any communications or correspondence from any housing authority, or any other outside organization, requesting HUD to pursue litigation against gun manufacturers. (pages 26-27 -- Rep. Mica).

HUD has no communications or correspondence from any housing authority or outside organization requesting HUD to pursue litigation against gun manufacturers.

2) Have there been any memorandums or other communication between the Department of Justice and HUD on the issue of PHAs bringing lawsuits against gun manufacturers? (page 30 -- Rep. Mica).

HUD has no memorandums or other communications from the Department of Justice on this issue.

3) Please provide the Subcommittee with any study or report that discusses litigation against gun manufacturers as a solution to some of the problems of crime and violence in public housing. (page 31 -- Rep. Mica).

HUD is not aware of any study or report that focuses specifically on litigation against gun manufacturers as a solution to the problem of crime and violence in public housing. However, as was explained by the Department's witnesses at the hearing, there is significant evidence as to the extent of gun violence generally in public housing, the impact of this violence on the children and other residents of public housing, the operational cost to public housing, and the interest in finding solutions to this problem.

4) Were minutes kept of the meeting between the outside New York law firm and HUD lawyers discussing legal issues regarding guns and public housing? (page 38 -- Rep. Barr).

HUD did not take, and does not have any, recorded minutes of this meeting.

5) How much of the $1.3 billion of the Drug Elimination program funding is allocated to the District of Columbia? (pages 58-59 -- Rep. Mica).

The District of Columbia Public Housing Authority has received the following Drug Elimination program funding:

FY 1989 --- $0
FY 1990 --- $1,157,000
FY 1991 --- $1,727,835
FY 1992 --- $1,776,904
FY 1993 --- $0
FY 1994 --- $2,872,000
FY 1995 --- $2,872,000
FY 1996 --- $2,756,670
FY 1997 --- $2,812,680
FY 1998 --- $2,896,104
TOTAL ---$18,871,193

6) How many arrests were there in the District of Columbia for possession of firearms in public housing in 1998? (page 62 -- Rep. Mink).

The Department is awaiting this information from the D.C. Public Housing Authority and the D.C. Police Department, and the information will be provided to the Subcommittee when received.

7) Please provide a listing, and details (including dates, locations, parties, and substance of discussions), of any meetings at any HUD offices where HUD staff met with outside lawyers to discuss litigation against gun manufacturers. (page 72 -- Rep. Barr).

HUD staff had the following meetings with outside lawyers at HUD headquarters on the issue of gun violence and potential litigation against the gun industry:

Meeting with the law firm of Lieff, Cabraser, Heimann & Bernstein on July 29, 1999.

Meeting with the law firm of Hagens, Berman, on July 28, 1999.
Meetings with the Center to Prevent Handgun Violence, on June 7, 1999 and July 21, 1999.
Meeting with the Educational Fund to End Handgun Violence, on June 1, 1999.

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