The Consumer Federation of America's Case for Gun Safety Regulation

By Howard Nemerov

In Buyer Beware: Defective Firearms and America's Unregulated Gun Industry*, the Consumer Federation of America argues that firearms in the United States are not subject to safety regulation, and that substantial injury to consumers results. This Article responds to the CFA monograph. The Article argues that accidental deaths from firearms are very low, that firearms are safer and more effectively regulated than many other common consumer products, including automobiles.*

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A new approach to gun control is to promote gun safety. The theory is that:

- guns have a series of defects that make them unpredictably dangerous,
- firearms manufacturers operate in an unregulated environment that makes them irresponsible and insensitive to the need for more safety,
- guns should contain certain features that would make them safer, and
- more regulatory oversight is required to assure these safety features are implemented to protect us from these unethical manufacturers.

Gun rights advocates respond that placing the "safety" devices on guns would render them inoperable in an emergency, and therefore the gun safety movement is just another ploy to disarm the civilian population. Guns perform their greatest utility in an emergency moment of need, say the gun rights proponents, and criminals will not abide by laws requiring safer guns. If the proposed safety features make it more difficult to defend against a sudden attack—because deactivating mandatory trigger locks or computerized biometric locks would take so much time—are they really about safety? If the end result endangers law-abiding gun owners, only criminals have increased safety. Gun-rights advocates also claim that thorough training and education is the most effective way to avoid or reduce accidents.

Gun safety advocates counter that guns are inherently dangerous; safety training alone does not work, and guns need further regulation by a government agency whose purpose is to protect consumers from dangerous products.

I. ENTER THE CONSUMER FEDERATION OF AMERICA

The Consumer Federation of America is an organization comprised of "some 300 nonprofit organizations from throughout the nation with a combined membership exceeding 50 million people" which, according to CFA, "enables CFA to speak for virtually all consumers."[1]

In early 2005, CFA released a study entitled *Buyer Beware: Defective Firearms and America's Unregulated Gun Industry*. The study makes a case that "every year many gun owners and bystanders are killed or injured by defective or hazardously-designed gun."[2] In *Buyer Beware*, CFA states:

> The gun lobby maintains that unintentional shootings generally occur as a result of carelessness on the part of the gun owner. Firearms industry marketing is replete with messages about "responsibility" that emphasize the importance of owner behavior without mentioning the potential dangers of the product.[3]

CFA continues:

> While consumer education does play an important role in injury prevention, no amount of user instruction can eliminate the risks associated with product defects in design or manufacture.[4]

CFA makes a very good point, which we will discuss later in this Article. For now, consider 10-year trends in the rates (per 100,000 population) of various unintentional causes of death. From 1992-2002:

- There was a nearly insignificant decrease in the motor vehicle death rate.[5]
- Drowning deaths decreased 26%.
- Poisoning rates more than doubled.
- Accidental suffocation rates increased as well, up 21%.
- Accidental firearms deaths *decreased* 53%.

By 2002, the rate of accidental death involving a firearm was 0.26 per 100,000 population, or about one accidental death per 400,000 people. Compare this to the rates for the other causes:

- Poisoning – 6 persons per 100,000, or 23 times the firearms rate.
- Drowning – 1.2 per 100,000; nearly 5 times the firearms rate.
- Motor Vehicle – 15.8 per 100,000; over 60 times the firearms rate.
- Suffocation – 1.9 per 100,000; over 7 times the firearms rate.

(See Table 1 for additional data.)

CFA's "Product Safety" and "Child Safety" web pages contain no studies, brochures, or publications regarding deadly household

products such as household chemicals, swimming pools, and plastic bags.[6]

Buyer Beware continues:

> Despite the fact that firearms kill nearly twice as many Americans as all household products combined, no federal agency has the necessary authority to ensure that guns do not explode or unintentionally discharge when they are dropped or bumped. This is unique.
>
> Exactly how many victims are killed or injured each year by defective firearms is unknown.[7]

The claim that "firearms kill nearly twice as many Americans as all household products" is true only if one narrowly defines exactly what can be considered a household product, and only if one broadly interprets "kill." Also, mixing intentional and unintentional deaths confuses the reader by linking firearms homicide—a violent, intentional crime—with firearms accidents.

For the year 2002, the latest for which final data are available, the National Center for Injury Prevention and Control reports there were 49,293 homicide or suicide injury-related deaths; of these 28,937, or 58.7%, were by firearm. So guns do result in more than half of all injury-induced homicides and suicides. But these are intentional deaths, which means that they are either criminal or purposefully self-inflicted, and not the result of product defect. Indeed, you can make the case that these deaths prove that guns function as designed; criminals certainly think so, or they would not use guns as a tool of their trade.

However, if one adds in unintentional injury-related deaths, firearm-related death drops to 19% of the total. If one looks at *only* unintentional injury-related deaths, firearms represented 0.7% percent of the total. Meanwhile, motor vehicles comprise 42.5% of all unintentional deaths, and 29.2% of all murder, suicide, and unintentional deaths, 50% more than firearms. See Table 2.

Because CFA does not differentiate between intentional self-harm and accidental death, it sidesteps the question of how altering civilian firearm accessibility would impact suicide rates. Nor does CFA ask if a person intent on self-harm would simply find the most convenient tool available. For example, Australia and the United

Kingdom saw no decrease in their suicide rates the four years following their gun restrictions, while the U.S. suicide rate dropped 12% despite increasing numbers of civilian firearms. See Table 3.

The blurring of the lines between accidents, intentional violence, and self-inflicted injury encourages a perspective in which personal responsibility is no longer a consideration. Such a perspective encourages a legal environment in which the manufacturer of any inanimate product becomes the target of wrongful death suits.

CFA also sidesteps the question of whether criminals would stop killing people if guns were made "safe." As Dr. Martin L. Fackler, a leading firearms wound ballistics expert, notes:

> When anti-gun activists list the number of deaths per year from firearms, they neglect to mention that 60 percent of the 30,000 figure they often use are suicides. They also fail to mention that at least three-quarters of the 12,000 homicides are criminals killing other criminals in disputes over illicit drugs, or police shooting criminals engaged in felonies. Subtracting those, we are left with no more than 3,000 deaths that I think most would consider truly lamentable.[8]

Since CFA mentions the word "safety" 344 times in *Buyer Beware*, we will address the issue of safety, but first, keep in mind that a person of evil intent could use many "household products" to kill another human being. In 2002, over 3,000 deaths were attributed to cutting instruments, drowning, fire, poison, and suffocation. See Table 4. Thus, accident prevention safety concerns are irrelevant when the intention is homicidal, as the criminal will avoid or circumvent any and all safety features to accomplish his or her goal. Safety concerns are only an issue when considering unintentional (accidental) deaths that arise from the intended use of a product assumed to be non-defective.

What is the Consumer Federation of America doing to address the imminent and omnipresent dangers of the "household products" that are causing the highest numbers of accidental deaths?

II. Is Motor Vehicle Safety Being Properly Addressed?

The National Center for Injury Prevention and Control lists firearms as the 15th leading cause of unintentional death. Poisoning

is the second leading cause, suffocation fifth, drowning sixth, and fire/burn seventh, with motor vehicle accidents topping the list.

In 2002, motor vehicles caused a total of 45,579 deaths. Sixty of these were homicide and 112 suicide, leaving 27 deaths of undetermined intent.[9] This means that there were 45,380 unintentional, or accidental, deaths. Consumer Federation of America's stated concern is to curtail sales of potentially defective, commonly-used products that result in unintentional death, and motor vehicles are such products. The CFA links to an associated site called Regulate Guns, which discusses the need for the Consumer Product Safety Commission (CPSC) to have oversight on firearms. Regulate Guns states:

> More than 30 years ago, the United States made prevention of deaths from motor vehicles injuries a national priority. As a result, the death rate from motor vehicle crashes was cut nearly in half.[10]

The claim is correct: from 1966 to 2003, the motor vehicle traffic fatality rate decreased 43.4%.[11] But when we compare motor vehicle death and injury rates to those from firearms accidents, using the earliest and latest data available online from the Centers for Disease Control, we find that between 1979 and 2002:

- Accidental deaths from motor vehicles dropped 34%, but
- Accidental deaths from firearms dropped 71%.
- Accidental injuries from motor vehicles dropped 19%, but
- Accidental injuries from firearms dropped 84%.

Firearm safety has improved at a far faster rate than motor vehicle safety, despite CFA's claim of the government making it a priority to prevent motor vehicle deaths. This does not encourage confidence that a government program could do any better with gun safety, since voluntary safety education has been more successful than federal regulation. Nor do these statistics bode well for "gun safety" advocates. Since CFA is content that safety issues have been properly addressed with motor vehicle regulation, it should follow that because accidental firearm death has decreased twice as fast, and accidental firearm injury about 4.5 times as fast, as the corresponding motor vehicle rates, there is even less of a need for more

firearms regulation. See Table 5.

The CPSC admits on its own web site that the National Highway Traffic Safety Administration (NHTSA) is the government agency with jurisdiction over motor vehicles.[12] Thus, CFA is implicitly declaring that despite not being regulated by the CPSC, having a different government organization dedicated to the product's oversight is a satisfactory assurance that consumer safety concerns are being properly addressed. CFA's satisfaction is borne out by the fact that there is only one reference to motor vehicles listed on their site,[13] as opposed to about 50 for guns.[14] The main point to remember is this: If the CPSC says another government agency is sufficient for oversight on a product, this is acceptable to the Consumer Federation. Later in this Article, current governmental regulatory and oversight agencies under which firearms manufacturers operate are examined.

The NHTSA, overseer of the automotive industry's safety standards, confirms that motor vehicle crashes are the leading non-disease cause of death in 2002.[15] NHTSA preliminary estimates show there were 6,328,000 million motor vehicle crashes in 2003,[16] with 42,643 people losing their lives, and another 2,889,000 million people injured, with 313,000 of those injuries resulting in incapacitation.[17] In alcohol-related crashes, 17,013 persons were killed and 275,000 injured, 39.9% and 9.5%, respectively, of the victim totals.[18]

Drunk driving could be considered an intentional or premeditated crash, as the driver must spend time and money getting drunk prior to getting into the vehicle and operating it, knowing that such behavior is dangerous. Drunks with cars killed 76% more people in 2003 than did criminals with firearms, as the FBI reports there were 9,638 intentional firearm murders that year.[19] For 2003, the CDC reports there were over 46 times as many motor vehicle injuries (intentional plus accidental) as all firearm injuries, and nearly 160 times the unintentional firearms injuries. Firearms accounted for 0.2% of all injuries, while motor vehicles caused over 10%. See Table 6.

III. CFA-Approved Regulation Does Not Eradicate Product Defects

No matter who is in charge of regulating automobile safety, lots of dangerous vehicles slip through the regulatory net. Here is a par-

tial list of recent automobile recalls, all covering issues which had the potential for causing injury or death:

> Ford has announced a safety recall for a part that could cause fires underneath the hoods of several popular Ford pickup trucks and SUVs. But consumer advocates and lawyers representing several Texans whose vehicles were destroyed say the problem extends beyond the models recalled.[20]

Ford is recalling nearly 360,000 Ford Focus cars to fix a potential problem with their rear door latches. the problem involves about 358,857 vehicles from the 2000-2002 model years and stems from a build-up of corrosion around the rear door latches which can eventually prevent them from ensuring the doors are secure.

> "If not latched properly, the door may open while the vehicle is in motion," NHTSA said.
>
> The Focus has set new recall records since its introduction. This is the tenth safety recall conducted in the U.S. There have also been several defect investigations.[21]
>
> General Motors is recalling 717,000 minivans because of a problem with the power sliding door. Passengers could hurt their arms or wrists, the automaker said.[22]
>
> General Motors Corp. is recalling 155,465 pickups and sport utility vehicles – including the Hummer H2 – because of possible brake malfunctions, the automaker and federal safety regulators said Thursday.
>
> NHTSA said a pressure accumulator in the braking system could crack during normal driving and fragments could injure people if the hood was open. The crack also could allow hydraulic fluid to leak, which could make it harder to brake or steer and could cause a crash.[23]
>
> The National Highway Traffic Safety Administration said the North American division of problem-plagued Mitsubishi was recalling 65,436 of its mid-sized Endeavor SUVs, built between 2004 and 2005, because their parking brakes may fail.

> NHTSA also said the Chrysler group was recalling 43,180 of its Pacifica SUVs because some may experience intermittent or eventual total failure of their halogen headlamps.[24]

Despite regulatory oversight by the NHTSA, including the CFA's much-favored ability to issue recalls, hundreds of thousands of dangerously defective automobiles are sold each year. Sometimes these defective products result in litigation for wrongful death and injury. Despite the CFA-accepted regulation, motor vehicle crashes result in far more deaths and injuries than firearms. The high death rate exists notwithstanding mandatory consumer education (drivers' education) and ongoing anti-drunk-driving advertising. Nevertheless, Consumer Federation of America is satisfied that motor vehicles are properly regulated, and has not called upon the Consumer Protection Safety Commission for additional regulation.

IV. Firearms Regulation under the Consumer Product Safety Commission

Currently, the Consumer Product Safety Commission is forbidden by federal law to impose restrictions on firearms. The CPSC is comprised of three politically-appointed administrators who, if they were anti-gun, could regulate civilian gun ownership out of existence by creating product safety standards so stringent as to make it impossible for civilians to own functioning firearms. Consider what happened when the CPSC got involved with air guns.

In 1993, CPSC initiated an investigation into two of Daisy Manufacturing's air rifles, based upon a complaint that there were dangerous defects. Ten years later, after rancorous and expensive litigation, both parties reached a settlement. There were four basic points in the settlement to which Daisy and CPSC agreed:

- "Add warnings related to the hazards associated with these air guns, including misfeeding and failure to load BBs as part of its $1.5 million safety campaign."

- "All BBs manufactured by Daisy will contain a label or insert on the package, which will be apparent to all users accessing BBs."

> • "Submit performance issues to the appropriate ASTM [American Society for Testing and Materials] committee for the purpose of developing standards related to the propensity of air guns to fail to load, feed or fire BBs."
>
> • "Submit the issue of age appropriateness for air guns that fire projectiles in excess of 350 feet per second to the appropriate ASTM standards committee."[25]

Point 1 of the agreement forced Daisy to accept responsibility for extreme, intentional consumer misuse of their product. In a dissenting opinion, Mary Sheila Gall, one of the commissioners, stated:

> Even Complaint Counsel's expert could induce lodging in the magazine of the Model 880 air rifle only by using BBs that were grossly out of specification in their dimensions or by loosening a screw in the receiver of the Model 880.
>
> Similarly, a laboratory modification to a gun in order to induce lodging is of interest only if the modification is reasonably likely to occur when such guns are in the hands of consumers. Even Complaint Counsel's expert concluded that the experiment in screw loosening that led to BB lodging in the laboratory was unlikely to occur in the hands of consumers. Therefore, like the issue of out-of-specification BBs, the laboratory example of BB lodging is simply irrelevant in the Commission's determination over whether the Model 880 is a substantial product hazard. Without evidence of BBs lodging in the magazine in a manner likely to be encountered by consumers, the Commission cannot find that this characteristic of the Model 880 constitutes a substantial product hazard.[26]

In other words, in order to demonstrate the gun's defect, basic product design considerations had to be willfully ignored, or the gun had to be partially disassembled prior to use, another willfully malicious act intended to make the air rifle unsafe.

Point 2 is interesting because the first two parts of the safety warning are "(1) Always point the gun in a safe direction; (2) Always treat every gun as if it were loaded…"[27] The first safety rule is

copied verbatim from the National Rifle Association's safety rule 1, while the second is another NRA basic safety rule.[28] The NRA is an independent, non-regulatory organization that strongly and consistently promotes responsible use, and its gun safety rules are considered the industry standard.

Points 3 and 4 are particularly interesting, as the CPSC creates a standard that acknowledges certain issues are best left to independent experts. In this case, the CPSC relies on the American Society for Testing and Materials, a voluntary standards development organization whose mission is to promote public health and safety and help produce more reliable products.[29] The mission is accomplished via participation of their international membership:

> Standards developed at ASTM are the work of over 30,000 ASTM members. These technical experts represent producers, users, consumers, government and academia from over 100 countries.[30]

Therefore, by promoting the CPSC, the CFA effectively supports the CPSC policy of relying upon an independent group of experts to help create safe design standards. This concept, that the Consumer Federation's prize regulatory organization (CPSC) can designate independent organizations to create safety standards, is also a very important point to remember when covering the existing regulatory standards for firearms later in this Article.

There are some other issues in this settlement which should concern the firearms industry as well as gun owners. Hal Stratton, Chairman of the CPSC, wrote:

> Based upon the evidence adduced in the case, I am not at all sure the CPSC complaint counsel would prevail on the merits of the case. Should the complaint counsel fail in their efforts to prove their case, consumers would obtain no benefit from a long and costly legal proceeding…
>
> Although I do not consider it determinative in itself, I have also taken Daisy's financial condition into consideration. From a review of the extensive financial documentation that we requested and received from Daisy, it is clear that Daisy is in a "precarious financial" condition as alleged. It is less clear to me the role this proceeding has played in Daisy's financial

> condition. I believe the CPSC action may now be a factor in Daisy's financial condition, but I do not believe it is the only factor. Nevertheless, when considered with the other reasons to settle this matter, a settlement would provide certain immediate benefits to consumers, which they would not receive if Daisy becomes insolvent or this litigation drags on for years.[31]

Here we have an admission by the CPSC that litigation is expensive for firearms manufacturers, to the point that it may place them in a "precarious financial condition." Since most firearms manufacturers are small to medium-sized businesses without large corporate deep pockets. Litigation has the potential to quickly bankrupt such businesses, causing job loss that spreads into local economies like a rock thrown into a pool. See Table 7.

Chairman Stratton continued:

> Throughout its 30-year history, the Commission consistently found that regulating this product would not enhance safety. Rather, the Commission has continuously made the determination to work with voluntary standards organizations to improve the safety standards of these products…
>
> The Commission has never found that air rifles, or any model of air rifle, constitute a substantial product hazard.[32]

It is curious that the CPSC admits a "consistent" history of finding air rifles safe, and that voluntary standards have been sufficient to keep the rifles safe. Commissioner Gall found that:

> "The Commission's actions have done serious and unjustified damage to the reputation and business prospects of a company whose product represents no substantial product hazard."[33]

Finally, Chairman Stratton stated in his Analysis of Facts:

> Loading, feeding, and firing problems may not be best addressed by singling out a particular air gun or air guns for a corrective action, but by submitting these issues to the appropriate ASTM Subcommittee for the development of voluntary standards.
>
> Even though BB lodging may occur, the link between lodging

> and injuries is not at all clear… It is apparent that if BB lodging injuries occur, they are relatively rare, which goes to the issue of whether the defects alleged in the complaint, as a legal matter, constitute a substantial product hazard.
>
> All of the injuries that can be attributed to the guns at issue in this case were preventable. They all involved either someone pointing the gun at someone and pulling the trigger or playing with the gun in an inappropriate manner—all in violation of widely known and accepted safety rules for the use of guns.[34]

There are three important points being made here:

- The CPSC call for voluntary standards is repeated.
- Chairman Stratton admitted grounds for pursuing litigation for alleged defects are weak, as there is no clear proof that there is a "substantial product hazard."
- He admitted that all of the injuries in this case were in fact the responsibility of the gun owner, and that if consumers followed "accepted safety rules" they could have prevented these injuries.

These points—voluntary standards, no clear proof of substantial product defect, and user error—are exactly the ones that the Consumer Federation of America condemns firearm manufacturers for promoting; CFA allege that the points are merely a cover for a tacit admission that guns are inherently, dangerously defective.

V. A Few Cases or a Vast Conspiracy?

The Consumer Federation of America released another report claiming that "Many firearms contain defects in design or manufacture making them likely to unintentionally discharge."[35] The report actually proves that the existing structures of industry regulation and product liability litigation work.

For example, the report discusses a Sturm, Ruger single action revolver considered dangerous for its unintentional discharges. The manufacturer voluntarily stopped making the revolver in 1972 and replaced it with an upgraded model designed to prevent such accidental discharges. They document how the manufacturer saw a de-

sign flaw and corrected it over 30 years ago. CFA discusses another model of single-action revolver that accidentally discharged after falling out of the holster and hitting a rock. The case resulted in a court settlement, which proves that the legal system works in a case where the gun was proven to be defective.

The Excam Derringer is another pistol considered by the Consumer Federation to be "of poor construction and therefore prone to unintentional discharge." The Consumer Federation reports the company has been successfully sued for this defect. Lorcin Pistols is also reported to have been manufacturing "junk guns" that accidentally discharged. The report states: "In 1996 Lorcin announced it was filing for bankruptcy to protect itself from at least 18 pending liability suits." A Remington hunting rifle was reported to be defective, resulting in unintentional discharge. The report states: "In 1994 a Texas jury awarded $15 million in punitive damages to a hunter who shot himself in the foot when a Remington Model 700 rifle discharged without the trigger being pulled."

The above examples all prove that the legal system works, and that manufacturers who produce substandard products will be held accountable.

The report ends with an analysis report of Glock pistols, and an incident in which "the 3-year-old daughter of a District of Columbia police officer unintentionally shot and killed herself with her father's service pistol." The sad attempt at using tragedy to further the cause of gun control should embarrass the Consumer Federation of America: had the officer been practicing all the safe gun handling and storage procedures he was taught in police academy, his daughter never would have had access to a firearm, loaded or not.

CFA would rather intentionally group product defects with user errors than point out that professionals who have been trained in gun handling and safety do not always behave responsibly. As we saw with automobiles, owner irresponsibility is a far greater danger than real or alleged product defects.

Far from demonstrating the need for further regulation of firearms, the case studies show that a responsible manufacturer usually discontinues manufacturing a questionable design to avoid the risk of expensive product liability judgments.

VI. Are Guns Unregulated?

Consumer Federation of America alleges that firearms are insufficiently regulated, and as a result, they present a substantial hazard to consumers and the public at large. Continuing with CFA's *Buyer Beware*:

> Pro-gun organizations such as the Sporting Arms and Ammunition Manufacturers Institute, Inc. (SAAMI) suggest that focusing on user education is all that is needed to reduce firearm accidents…
>
> Although the federal Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) licenses manufacturers, dealers, and importers, it has no general safety authority, such as the power to set safety standards or institute recalls.[36]

The CFA has one point, in that the ATF has only the authority to "to ensure that the firearms dealers are complying with the requirements of the Gun Control Act of 1968 and other federal firearms laws."[37] However, as to CFA's reliance on issuing recalls as a way to improve design safety, there are two points to remember:

- Automobiles may be recalled after hundreds of thousands of dangerously defective units have been released into the general population. This hardly shows how the regulatory ability to recall has made cars safer.

- CFA and other "safety" organizations have provided no evidence that there is any significant number of defective firearms sold, a questionable justification for the need of a regulatory agency with the authority to recall.

It is hard to consider CFA's firearms safety claim when another government agency is not satisfactorily performing its job. The CFA's own criteria are in play here: they promote the Consumer Product Safety Commission as the solution to dangerous products. The CPSC operates according to three important guidelines:

- The CPSC does not need to act when another government agency provides sufficient oversight on a product.

- Independent expert organizations can create satisfactory

safety standards.

• Voluntary standards are an essential part in creating safe products.

Therefore, by supporting the CPSC, Consumer Federation implicitly supports CPSC decision-making processes for determining proper safety standards.

The ATF has certain regulatory authority that is greater than the NHTSA, as its powers can be exercised without notice. The ATF can enter a retailer's establishment unannounced, and the business owner has no right of refusal either on the premises or in their home, should the ATF wish to inspect their private residence. As one retailer wrote in an email interview:

> "Persons who hold FFL's [Federal Firearms License, required by ATF for any firearms business] give up their Fourth Amendment rights to search and seizure. The authorities can knock at my [home] door, come to my business, my car or any other property I own and search same without a warrant."[38]

The ATF also has the authority to perform unannounced audits and inspections on distributors and manufacturers.[39] An ATF public information officer confirmed that the Bureau can perform one unannounced site inspection per year under normal circumstances, but may show up unannounced at any time if a criminal investigation is under way.[40] Thus, suspected violations to federal law involving manufacturing or sales can be investigated immediately, any time, with no legal right of refusal for the business owner.

NHTSA inspections are limited to probable cause related to "an occurrence associated with the maintenance or operation of a motor vehicle or motor vehicle equipment resulting in personal injury, death, or property damage."[41] The NHTSA's authority is strictly reactive, responding to a suspected defect which resulted in injury, death, or property damage. This means that, regarding federal regulations, firearms manufacturers are already held to a tougher inspection standard than the CFA-approved automobile regulation.

This partially satisfies CFA's first criterion: Another government agency is sufficient for oversight on a product. Further control over product quality comes from a coalition of private standards and in-

spection organizations, plus market-induced pressures from government law enforcement agencies.

The Consumer Federation of America report disparages the Sporting Arms and Ammunition Manufacturers Institute (SAAMI) for emphasizing user education and responsible use.[42] The SAAMI web site's main technical page states: "SAAMI is an accredited Standards Developer for the American National Standards Institute (ANSI)."[43] The technical page elaborates:

> As an accredited standards developer, SAAMI's standards for industry test methods, definitive proof loads, and ammunition performance specifications are subject to ANSI review and various ANSI criteria.
>
> According to the American National Standards Institute, "Approval of an American National Standard requires verification by ANSI that the requirements for due process, consensus, and other criteria for approval have been met by the standards developer."[44]

So it is not the firearms manufacturers who set product quality standards, but an independent organization. Also, there are opportunities for input from many other agencies during the standards development process. Part of the ANSI standards process involves approval by the U.S. Customs Service, the Federal Bureau of Investigation, the National Institute of Standards & Technology, the Royal Canadian Mounted Police, and the Association of Firearms & Tool Mark Examiners.[45] These organizations together satisfy CFA's second criterion: Independent expert organizations can create satisfactory safety standards. Nor are standards set once and forgotten. As SAAMI states:

> It is ANSI and SAAMI policy that every five years the standards be revised or reaffirmed. Even if the standards remain the same, they must go through the approval process outlined above. Simply stated, the standards accepted by ANSI and promulgated by SAAMI are reviewed and accepted by outside experts, and every five years the validity of the standards are re-affirmed.[46]

ANSI also schedules audits with the participating manufactur-

er.[47]

Furthermore, if a firearms manufacturer wants to do business with the government, the manufacturer must adhere to the SAAMI/ANSI standards:

> The U.S. military, the Federal Bureau of Investigation, and many other state and local agencies frequently require that their suppliers manufacture to SAAMI specifications. SAAMI is the only trade association whose member companies manufacture and set standards for high-performance law enforcement ammunition.[48]

These lucrative government contracts provide incentive to satisfy the rest of CFA's first criterion by virtue of being large, influential consumers.

The Association of Firearms & Tool Mark Examiners (AFTE) is "an international organization dedicated to the advancement of one of the finest disciplines of Forensic Science...Firearm & Toolmark Identification."[49] The organization began in 1969 with a core group of 35 police and civilian forensics experts. It conducts annual training seminars, and now has about 850 members.[50] AFTE explains:

> The organization is formed exclusively for charitable, scientific, educational, and testing for public safety purposes; and to improve and elevate the quality, integrity, and public image of the scientific crime laboratories… (Emphasis added)

One of the specific goals of the AFTE is "To engage in the testing of firearms, components, ammunition and examiners for the benefit of public safety."[51] The AFTE code of ethics states:

> It is the duty of any person practicing the profession of firearms and toolmark examination to serve the interests of justice to the best of his ability at all times. He will use all of the scientific means at his command to ascertain all of the significant physical facts relative to the matters under investigation. Having made factual determinations, he must then interpret and evaluate his findings. In this he will be guided by experience and knowledge which, coupled with a serious consideration of his analytical findings and the application of sound judgment, may enable him to arrive at opinions and conclusions pertaining to the

> matter under study. These findings of fact and his conclusions and opinions should then be reported with all the accuracy and skill of which the examiner is capable.
>
> In carrying out these functions, the examiner will be guided by those practices and procedures which are generally recognized within the profession to be consistent with a high level of professional ethics. The motives, methods and actions of the examiner shall at all times be above reproach, in good taste and consistent with proper moral conduct.[52]

The Shorter Oxford English Dictionary (OED) defines "integrity" as:

> • "The condition of having no part or element taken away or lacking; undivided state; completeness" and
>
> • "The condition of not being marred or violated; unimpaired or uncorrupted condition; original state; soundness."

OED defines "defect" as: "The absence of something essential to completeness; a lack, a deficiency." These two words—"integrity" and "defect"—are antonyms, conceptual opposites. Therefore, when the AFTE inspects "testing of firearms, components, ammunition," they are looking to detect and eradicate defects, and thus insure proper manufacturing standards are employed to produce properly-working products.

If a firearms manufacturer wants to remain profitable, to be free from meritorious negligence and product defect litigation, and to have access to lucrative government contracts, the manufacturer must maintain the highest standards of product quality. The manufacturing standards and processes must be transparent to all parties involved with standards and processes development. The gun maker must be open to inspections, and participate in regular reviews of manufacturing standards and processes, by a number of different types of organizations. This is multi-layered quality control:

> • Three independent non-governmental standards oversight organizations; (CFA's criterion 2);
>
> • Voluntary participation by the manufacturer (CFA's third criterion);

> • A government organization dedicated to enforcing federal firearms laws, plus a number of powerful, interested government law-enforcement organizations who represent lucrative business opportunities for the gun-makers. (CFA's criterion 1)

VII. THE UTILITY ARGUMENT

When pointing out the differing regulatory results and safety records between cars and guns, you will likely get a response along the lines of: "But automobiles are useful; guns just kill people. Cars help us in our everyday life."

Those who need a firearm to protect themselves find it extremely useful in difficult situations. In *Armed Resistance to Crime*, Gary Kleck and Marc Gertz address the issue of the usefulness of firearms, concluding that "gun defenders appear to face more difficult circumstances than other crime victims, not easier ones."[53] This was based upon their defensive gun use survey, where they found:

> Although the gun defenders usually faced unarmed offenders or offenders with lesser weapons, they were more likely than other victims to face gun-armed criminals. This is consistent with the perception that more desperate circumstances call forth more desperate defensive measures. The findings undercut the view that victims are prone to use guns in "easy" circumstances which are likely to produce favorable outcomes for the victim regardless of their gun use.[54]

> While victims face multiple offenders in only about 24% of all violent crimes, the victims in our sample who used guns faced multiple offenders in 53% of the incidents.[55]

Kleck and Gertz estimated firearms were used defensively 2.1-2.5 million times a year, based upon a one-year recall period for survey respondents.[56] Their estimates of annual defensive gun use over a five year period reflect findings of similar surveys, where the number of defensive gun uses ranged from 1.5-1.8 million per year.[57]

When asked about their perceived likelihood that a victim would have died had they not used a gun for protection, 14.2% responded that somebody "probably would have," while 15.7% said somebody "almost certainly would have" died.[58] Using the more conservative

estimates above of 1.5-1.8 million defensive gun uses per year, this means it was likely that between 235,500 and 282,600 lives "almost certainly" were saved annually by defensive gun use and another 213,000 to 255,600 lives were "probably" saved. The result may sound extreme, but as Kleck and Gertz note:

> If even one-tenth of these people are accurate in their stated perceptions, the number of lives saved by victim use of guns would still exceed the total number of lives taken with guns.[59]

In the survey, Kleck and Gertz found that 5.5% of defenders were injured during a violent encounter with their attackers. The U.S. Department of Justice 2003 Crime Victimization Survey estimated that in 2002, there were 213,250, or 38.5%, of robbery victims injured, and that 338,930, or 32.4%, of aggravated assault victims were injured.[60] Compared to defensive gun users, the overall injury rate for robbery victims was seven times greater, and the aggravated assault injury rate was almost six times greater. The data suggest that 280,000 injuries (140,711 aggravated assault plus 91,832 robbery) injuries avoided in 2002.

In *Guns and Crime: Handgun Victimization, Firearm Self-Defense, and Firearm Theft*, an analysis of crime victimization surveys, Michael Rand found that from 1987-92, crime victims who resisted with other weapons suffered injury 2.5 times as often as those who resisted with a firearm.[61]

In *Victim Costs and Consequences*, Miller, Cohen, and Wiersema of the National Institute of Justice spent two years studying the financial costs (in 1996 dollars) of various crime categories. They concluded: "Personal crime is estimated to cost $105 billion annually in medical costs, lost earnings, and public program costs related to victim assistance."[62]

Beyond tangible costs such as medical care, the authors found: "Including pain, suffering, and the reduced quality of life increases the cost of crime to victims to an estimated $450 billion annually."[63]

Therefore, using the study's average costs per incident, defensive gun use during an assault has the potential for saving over $3.9 billion in annual medical costs, lost productivity, public services, property loss, and quality of life, while defensive gun usage during

a robbery could save another $1.9 billion.[64] These amounts assume each crime incident where a defensive firearm was successfully deployed is downgraded from a completion plus injury to an attempt with no injury. See Table 8.

It is also interesting to note that the authors of *Victim Costs and Consequences* consider drunk driving to be a violent crime, stating: "Drunk driving is illegal. This study considers it a violent crime when a drunk driver maims or kills innocent victims or damages their property."[65]

Using the DOJ estimates, the costs to society for DWI-caused deaths in 2003 was nearly $68.1 billion. Compared to the estimated costs of firearm-related death—mostly intentional murder by criminals—at $35.7 billion, drunk driving fatalities cost us about $32.4 billion more in 2003.[66] To put this amount in perspective, $32 billion is roughly equivalent to the gross national product of the 60th wealthiest country in the world.[67] See Table 9.

There is significant social utility in civilian ownership of firearms, not only in lives saved and injuries avoided, but in a massive reduction in the cost of crime to society in terms of productivity and quality of life.

VIII. WOMEN, RAPE PREVENTION, AND SELF-DEFENSE

There is one more category of violent crime that is unique in its ability to completely violate, humiliate and dehumanize a person. The costs to society in terms of lost work, medical care, and social services can be calculated in a sterile vacuum of hard numbers, but the hidden costs of damage to the human spirit and family relationships are incalculable. Would not any reasonable person be willing to do anything legally and morally possible to reduce the incidents of rape?

In *Determinants of Completing Rape and Assault*, Alan Lizotte sought to determine if rape had unique properties that differentiated it from other forms of assaultive violence. He analyzed data from the National Crime Survey, compiling over 13,000 cases of rape and assault that occurred in 26 cities from 1972 through 1975. By comparing rape to assault, he was able to create a more definitive qualitative analysis of the crime of rape. He found that resisting assault was not a successful strategy:

> The data suggest that the best method of resisting assault is not to resist with force. Men and women who resist assault with force seem to fare much worse than those who do nothing to resist and those who resist without force.[68]

However, his findings on resisting rape were opposite:

> Resisting rape with force decreases the probability of a completed victimization. For assaults, resisting without force and doing nothing as equivalent: on average they neither raise nor lower the probability of completion.
>
> For rape, however, resistance without force is better than doing nothing at all. In other words, for rape, resisting with force and resisting without force both decrease the probability of victimization. Further, women who resist rape with a gun or knife dramatically decrease their probability of completion.[69]

In *Rape and Resistance*, Kleck and Sayles examined stranger rape incidents recorded in the National Crime Surveys from 1979 to 1985. They concurred that the most effective method for lowering rape completion rates was for the victim to resist with a weapon,[70] and that such resistance did not create "any significant additional risk of other injury." On the other hand, they found some correlation between additional injury and "unarmed forceful resistance or threatening or arguing with the offender."[71] In other words, if you are going to resist, use a weapon.

In *Judged Effectiveness of Common Rape Prevention and Self-Defense Strategies*, Furby, Fischhoff, and Morgan surveyed comparably-sized groups of women, men, and rape experts to determine effective preventative and self-defense strategies. They concluded:

> Consensually effective strategies included threatening the man with a gun, poking the assailant's eyes, kicking him in the groin, and screaming, in roughly that order.
>
> Women, men, and experts all attributed greater effectiveness to physically assertive strategies than to less assertive ones.[72]

Both women and men respondents rated defensive gun use as the most effective strategy once the assault was under way. The only physical resistance strategy rape experts rated higher than defensive

gun use was poking the assailant's eyes.[73] While this sounds good in theory, it means the assailant is already in physical contact, and since men are generally bigger and stronger than women, the assailant will most likely be in control of the situation at that point.

Rape experts surveyed in *Judged Effectiveness of Common Rape Prevention and Self-Defense Strategies* also agreed that the three most effective prevention strategies are for a woman to appear confident and strong (63.3% reduction), stay vigilant (64.1%), and participate in frequent public awareness programs (60%).[74] The authors calculate: "Pursuing the three strategies judged by the experts to be least effective should reduce the risk of assault by 73% (i.e., 1 – [(1 - .326)(1 - .365)(1 - .374)]."[75]

Using the formula, the three *most* effective strategies would reduce the risk of sexual assault 94.7%. The effective strategies of confidence, vigilance, and public awareness are taught in many defensive firearms classes, as well as in martial arts classes. Combine the effective behavioral strategies with a tool that can halt the assault before the attacker comes within grappling and striking distance, appears to be highly effective at preventing rape.

Using the same formula from the analysis of the costs of aggravated assault and robbery, we find that if all potential victims had employed the successful strategies outlined in *Judged Effectiveness of Common Rape Prevention and Self-Defense Strategies*, there would have been an additional $11.6 billion saved annually in medical costs, lost productivity, public services, property loss, and quality of life. See Table 10.

Despite the data, there is a belief among many some persons that physical means of resistance only provoke the attacker to greater levels of violence. For instance, the U.S. State Department recommends "It may be more advisable to submit than to resist and risk severe injury or death."[76]

Quinsey and Upfold found, however, that "victims resisted more strongly when they were being injured. There was, in fact, no association of victim resistance and the probability of later injury."[77]

After examining the 1984 Victim Risk Supplement, Kleck and Sayles studied sequence of events in assaults, robberies, finding that only in a small minority of cases did the victim resist before being injured. They concluded: "In short, the time sequence of injury and

resistance in the overwhelming majority of assaults and robberies is inconsistent with the resistance-provokes-attack thesis…"[78]

Kleck and Sayles referred to the issue of resisting during attempted rape, concluding: "Taking into account the evidence concerning the causal/temporal order of injury and self-protection, the findings are consistent with the view that injury to the victim can provoke her to take self-protection action…"[79]

Kleck and Sayles also found: "Completion rates for all specific forms of self-protection are substantially lower than for nonresistance, with the lowest rates, 0 percent, associated with resistance with a gun or knife."[80]

Guns not only save lives, they save money, they save families, they save relationships, and they save the sanity of our society. As Dr. Fackler, states:

> Consider the implications of the fact that firearms save many more lives than they take. That means decreasing the number of firearms would actually cause an increase in violent crime and deaths from firearms.[81]

Conclusion

The Consumer Federation of America points to gun fatalities, almost all of which are suicides or homicide by criminals, to make the case that guns are too dangerous to exist among the general population. But to look at firearm-related deaths without a statistical context makes it impossible to determine just how dangerous guns are. The Consumer Federation of America pays little notice to motor vehicle deaths, although motor vehicle mortality is far greater than firearms mortality, and firearms accidental death rates have declined far more steeply than have automobile accidental death rates. Contrary to what the CFA claims, firearms in the United States are stringently regulated by three different organizations according to the model which the Consumer Product Safety Commission considers optimal. Nor does CFA acknowledge the benefits of civilian gun ownership in terms of lives saved and injuries avoided.

Table 1: Unintentional Deaths, Selected Categories[82]					
	1992		2002		
Category	Total	Rate (per 100k)	Total	Rate (per 100k)	% Change in Rate
Poison	7,082	2.76	17,550	6.09	+120.7
Drowning	4,186	1.63	3,447	1.20	-26.4
Motor Vehicle	40,982	15.98	45,380	15.76	-1.4
Suffocation	4,062	1.58	5,517	1.92	+21.5
Firearms	1,409	.55	762	.26	-52.7

Table 2: U.S. Injury-Related Deaths–2002[83]	
All	161,249
Unintentional	106,742
Homicide	17,638
Legal intervention	384
Suicide	31,655
Undetermined intent	4,830
Firearm	
All	30,242
Unintentional	762
Homicide	11,829
Legal intervention	300
Suicide	17,108
Undetermined intent	243
Motor Vehicle	
All	45,579
Unintentional	45,380
Homicide	60

Legal intervention	N/A
Suicide	112
Undetermined intent	27

Table 3: Suicide Rates (per 100,000 population)[8]			
	1995	1999/2000	Change
UK	7.4	7.5	1.4%
USA	11.9	10.4	-12.6%
AUS	12.0	12.5	4.2%

Table 4: Other Intentional Causes of Death–2002[85]	
Cut/Pierce	2,074
Drown	72
Fire/Burn	134
Poison	63
Suffocation	679

Table 5: Unintentional Death and Injury Rate Trends, Motor Vehicle and Firearms (per 100,000 population)						
	1979 Death Rate	2002 Death Rate	% Change	1993 Injury Rate	2003 Injury Rate	% Change
Firearm	.89[86]	.26[87]	-70.8	40.5[88]	6.51[89]	-83.9
Motor Vehicle[90]	22.70	14.93	-34.2	1,222	993	-18.7

Table 6: CDC Injuries–2003[91]	
Overall	
All	29,237,747
Unintentional	27,127,477
Assault	1,639,772
Legal intervention	59,371
Self-harm	411,128
Firearm	
All	65,834
Unintentional	18,941
Assault	42,505
Legal intervention	702
Self-harm	3,687
Motor Vehicle	
All	3,033,466
Unintentional	3,026,595
Assault	4,425
Legal intervention	885
Self-harm	1,562

Table 7: Firearms Manufacturers by Size, 2002[92]						
Units	<100	100-999	1,000-9,999	10,000-100,000	>100,000	Totals
Pistol	29	9	15	15	1	69
Rifle	121	38	21	11	5	196
Shotgun	23	7	6	3	3	42
Totals	173	54	42	29	9	307

Table 8: Crime Victimization 2002		
	Assault	Robbery
Number of Victims	1,045,610	554,310
with injury	338,930	213,250
Pct w/Injury	32%	38%
Kleck, Gertz Inj. %	57,509	30,487
Reduction	281,421	182,763
Annual Reduction	140,711	91,382
Cost per injury	24,000	19,000
Cost, no injury	2,000	2,000
Cost adjustment	22,000	17,000
Annual Savings*	$3,095,631,000	$1,553,485,500
2002 $ Conversion	1.147	
2003 $ Conversion	1.173	
Average[93]	1.160	
2002/2003 Savings	$3,898,948,925	$1,956,615,831

* Initial savings amount based upon 1993 dollars. Final amount is calculated using conversion factors to adjust for inflation.

Table 9: DWI vs. Firearms Deaths, 2002		
	DWI Deaths	Firearm Deaths
Number of Victims	17,013	9,638
Cost per injury	3,180,000	2,940,000
Annual Savings*	54,101,340,000	28,335,720,000
2002 $ Conversion	1.147	
2003 $ Conversion	1.173	
Average	1.160	
Converted Savings	$68,140,667,101	$35,668,854,723

* Initial savings amount based upon 1993 dollars. Final amount is calculated using conversion factors to adjust for inflation.

Table 10: Rape Reduction 2002/3[94]	
Number of Victims	223,290
Reduction	211,456
Annual Reduction	105,728
Cost per injury	87,000
Annual Savings*	9,198,319,905
2002 $ Conversion	1.147
2003 $ Conversion	1.173
Average	1.160
Converted Savings	$11,585,288,914

* Initial savings amount based upon 1993 dollars. Final amount is calculated using conversion factors to adjust for inflation.

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